

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION
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	September 28, 1988

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 59-88

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK 
 Administrator
 for Regional Management

SUBJECT : Secretary's Determinations on Waiver of State Participation in the Systematic Alien Verification for Entitlement (SAVE) Program Effective October 1, 1988

1. Purpose. To announce the Secretary's waiver determinations on State participation in the SAVE program effective on October 1, 1988.

2. References. Sections 121(c)(4)(B) and 121(c)(4)(C) of the Immigration Reform and Control Act of 1986 (IRCA, Public Law 99-603); Sections 302(a), 303(f), 1137(d), and 1137(e) of the Social Security Act (SSA); Secretary's Report to Congress dated July 11, 1988, entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program"; General Accounting Office (GAO) Report entitled "Immigration Reform, Verifying the Status of Aliens Applying for Federal Benefits," GAO/HRD-88-7, dated October 1987; and Unemployment Insurance Program Letter (UIPL) Nos. 26-88 (53 Fed. Reg. 14865), and 40-88.

3. Background. UIPL No. 26-88 announced the conditions on which the Secretary would make waiver decisions of State participation in the SAVE program. UIPL No. 40-88 offered States the opportunity to submit SAVE program waiver requests accompanied by supporting data and information.

As of July 14, 1988, the Department of Labor received waiver requests from nine States. Those States are: Alaska, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, Montana, Virginia, and West Virginia.

These waiver requests were analyzed on the basis of UI alien initial claims workload and cost data submitted by the States in the waiver request, the automated access options offered by the Immigration and Naturalization

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Service (INS), the requirements contained in UIPL No. 26-88, and the cost-effectiveness criteria for waiver contained in Sections 121(c)(4)(B) and 121(c)(4)(C), IRCA. In addition, contacts were made with INS to ascertain the volume of secondary verification (mail) requests that can be timely processed (14-day turnaround) by the INS District Offices.

4. Secretary's Waiver Determinations. The following determinations have been made relating to State participation in the SAVE program, effective October 1, 1988.

a. No State, regardless of alien UI claims volume, will be totally waived from participation in SAVE (automatic and/or mail verification). In the attached report to Congress entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program," page 13, the Secretary announced that the provisions of Sections 1137(d)(1)(A), (2), (4), (5), and (e) SSA, would not be waived. The provisions of Section 1137(d)(4), SSA, are identical to the requirements of the secondary verification component of SAVE, so at a minimum, all States shall participate in at least this component of SAVE.

b. For the nine States who have submitted waiver requests as of July 14, 1988:

(1) Alaska, Delaware, Kentucky, Montana, Virginia, and West Virginia are granted a waiver from participation in the primary (automated) component of SAVE.

(2) Connecticut, Maryland, and Massachusetts are not granted a waiver from participation in the primary (automated) component of SAVE.

c. Waivers for other States from participation in the primary (automated) component of SAVE may be considered if sufficient documentation is provided at the time supplemental budget requests are submitted for Fiscal Year 1988 SAVE program start-up costs.

d. All States not receiving a waiver are required to implement the primary (automated) component of SAVE effective October 1, 1988.

5. Action Required. Administrators are requested to:
(a) distribute this information to appropriate staff; and
(b) initiate action to implement SAVE by October 1, 1988, in accordance with the waiver decisions contained in this UIPL.

6. Inquiries. Direct inquiries to the appropriate Regional Office.

7. Attachment. "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program."

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

July 11, 1988

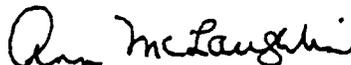
Dear Mr. Chairman:

Enclosed is a report entitled the "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program." This report was prepared pursuant to section 121(c)(4)(A) of the Immigration Reform and Control Act of 1986 (Public Law 99-603).

Based on available unemployment insurance (UI) data on alien workloads supplied by the States, I have determined that the SAVE program would be generally cost effective and appropriate for the UI Program. However, since the SAVE program may not be cost effective for every State, States may apply to the Department for a waiver from participation in the program. Such waivers will be granted only if certain conditions, which are described in this report, are present in a State. The waivers would take effect October 1, 1988.

If you have any questions regarding the report, please contact Roberts T. Jones, Acting Assistant Secretary for Employment and Training, at 523-6050.

Sincerely,



ANN McLAUGHLIN

The Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Enclosure

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

July 11, 1988

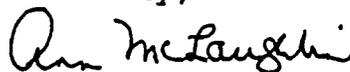
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If you have any questions regarding the report, please contact Roberts T. Jones, Acting Assistant Secretary for Employment and Training, at 523-6050.

Sincerely,



ANN MCLAUGHLIN

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Enclosure

REPORT OF THE SECRETARY OF LABOR ON THE SYSTEMATIC
ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM

I. INTRODUCTION

This report is submitted in accordance with the provisions of Section 121(c)(4)(A) of the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603. This report addresses two issues: (1) whether the alien immigration status verification system developed by the Immigration and Naturalization Service (INS) is cost-effective and otherwise appropriate for the unemployment insurance (UI) program, and (2) whether waivers of State UI program participation in this INS-developed system should be granted.

II. BACKGROUND

A. Statutory Requirements

Section 121(a)(1), IRCA, added Sections 1137(d) and (e) to the Social Security Act (SSA).

Section 1137(d)(1)(A), SSA, mandates that the State shall require, as a condition of eligibility for unemployment compensation, that each individual sign a declaration under penalty of perjury stating:

1. Whether the individual is a citizen or national of the United States; and

2. If not, whether the individual is in a "satisfactory immigration status."

Section 1137(d)(1)(B)(ii)(III) defines "satisfactory immigration status" as an immigration status that does not make the individual ineligible for unemployment benefits.

Section 1137(d)(2), SSA, mandates that if the individual is not a citizen or national of the United States, that individual must present either:

1. An alien registration document or other proof of immigration registration from INS that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number); or

2. Such other documents as the State determines constitute reasonable evidence indicating a satisfactory immigration status.

Section 1137(d)(3), SSA, further requires the State to verify the INS documents referred to above with the INS through an automated or other system designated by the INS. The system, commonly known as SAVE, has been designated by the INS and is currently available. It enables States to access the INS data base to verify an alien's immigration status through several different methods, including a "secondary verification" (mail) procedure. The SAVE program cost-effectiveness and applicability to the UI program is the major focus of this report.

Section 1137(d)(4), SSA, provides that the State shall provide the following procedural safeguards for aliens applying for benefits:

1. The State must provide the individual with a reasonable opportunity to submit documentation indicating satisfactory immigration status if such documentation is not presented at the time of filing for unemployment compensation. The State must also provide the individual reasonable opportunity to submit evidence of satisfactory immigration status if the documentation presented is not verified by the INS.

2. Under Section 1137(d)(4)(A)(ii), SSA, a State may not delay, deny, reduce or terminate an individual's eligibility for benefits on the basis of immigration status until a reasonable opportunity has been provided for the individual to present required documentation. If the alien does present such documentation, pending its verification a State may not delay, deny, reduce, or terminate the individual's eligibility for benefits on the basis of the individual's status.

3. If documents are submitted that the State determines to be reasonable evidence, Section 1137(d)(4)(B)(i), SSA, provides that the State shall transmit to the INS photostatic or other similar copies of the documents for official verification. Section 1137(d)(4)(B)(ii), SSA, provides that the State shall not delay, deny, reduce, or terminate the individual's eligibility for benefits based on immigration status pending the INS verification. Furthermore, under Section 1137(d)(4)(B)(iii), SSA, the State shall not be liable for the consequences of INS action, delay or failure to conduct such verification.

Section 1137(d)(5), SSA, provides that if a State determines that an individual is not in satisfactory immigration status, the State shall deny or terminate the individual's eligibility for unemployment compensation and the individual must be given the opportunity for a fair hearing.

Section 1137(e), SSA, provides that the Department of Labor may not take any compliance, disallowance, penalty or other regulatory action against the State because of an error in a determination holding an individual eligible for benefits based on citizenship or immigration status:

1. If the determination was based on verification provided by the INS;
2. Because the State was required under Section 1137(d)(4)(A) or (B) to pay benefits to the individual during the period required to provide the individual with reasonable opportunity to submit documentation or pending official verification of immigration status by the INS; or
3. As a result of the outcome of the determination and hearing process afforded the individual under State law.

Section 121(c)(3), IRCA, provides that the requirements of Section 1137(d) and (e), SSA, are to be effective for each State by October 1, 1988. However, Section 121(c)(4)(B), IRCA, also provides that the Secretary of Labor may waive State participation with respect to all or part of the requirements of Section 1137(d) and (e), SSA, if certain conditions are met. These statutory conditions are specified in Section 121(c)(4)(B)(i) and (ii).

Federal law also provides certain additional requirements that States must meet in adjudicating the UI claims of aliens. These requirements are:

1. Section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA) prescribes the conditions under which benefits may be paid based on services performed by an alien. Specifically, the FUTA requires that compensation shall not be payable on the basis of services performed by an alien unless:

a. The alien was lawfully admitted for permanent residence at the time the services were performed,

b. The alien was lawfully present for the purposes of performing the services, or

c. The alien was permanently residing in the United States under color of law at the time the services were performed.

Additionally Sections 303(a)(5), SSA, and 3304(a)(4), FUTA, require that an alien must be legally authorized to work at the time UI benefits are claimed to be considered available for work.

2. Section 3304(a)(14)(B) and (C), FUTA, provide certain procedural safeguards concerning aliens claiming unemployment compensation benefits. Section 3304(a)(14)(B), FUTA, specifies that any data or information required of individuals applying for compensation to determine whether compensation is payable to them because of their alien status shall be uniformly required of all applicants for

compensation. (This requirement is currently met by asking all claimants to answer a question concerning their citizenship status at the time of application for benefits.) Section 3304(a)(14)(C), FUTA, requires that no determination denying benefits based on alien status shall be made except on the preponderance of the evidence.

B. Statutory Changes and Effects on State Agency Procedures

State employment security agencies (SESAs) will have to amend their UI claims taking procedures by October 1, 1988, to comply with the provisions of Section 1137(d)(1) and (3), SSA. SESAs will also need to review claims forms to assure that the new Section 1137(d)(1) requirements are met. To comply with the Section 1137(d)(3) requirements (SAVE program), SESAs may have to purchase and install equipment to access the INS' Alien Status Verification Index (ASVI). The access method selected and staffing costs associated with SAVE program participation will be based, in large part, on the number of aliens filing UI claims.

The requirements of Sections 1137(d)(2), (4), and (5), SSA, require no significant changes to existing procedures because Section 3304(a)(14), FUTA, already requires some form of verification of alien status, and Sections 303(a)(1) and (3), SSA, already provide for payment when due and for a fair hearing process.

For the UI program, the use of a nonautomated "secondary verification" system will likely be widespread, regardless of the Department's decision with respect to the granting of a State waiver, because the ASVI accessed by SAVE automated methods does not provide historical employment eligibility information required by SESAs to make a determination of an alien's eligibility for UI benefits. Specifically, SAVE automated access procedures do not provide the date the alien was granted employment eligibility status; the ASVI will only provide the alien's current employment eligibility status.

Consequently, SESAs will need to query the ASVI via "secondary verification" in order to verify the date an alien UI claimant received INS authorization to legally work in the United States. This date is necessary for SESAs to make individual UI eligibility determinations, because Section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA) requires that all wages used in qualifying for UI benefits must be earned while the alien was legally authorized to work in the United States.

C. Limited State Data Available on UI Alien Claims

There is a paucity of State UI program data and information concerning alien claims available to the U.S. Department of Labor (DOL). Data on alien claim workload is currently not routinely collected as part of the regular UI reporting system.

In June 1987, States supplied DOL with obtainable UI program information relative to the statutory SAVE program waiver criteria contained in Section 121(c)(4)(C), IRCA. This available information on a National basis revealed that alien claims are a small percentage of total claim workload, and the bulk of alien workload is concentrated in less than ten States. Approximately 35 States reported that they routinely contact a designated INS District Office, usually by mail, to verify the immigration status of aliens claiming UI.

Some UI data on costs and program savings for the six SAVE program pilot States are available from the General Accounting Office (GAO) Report previously supplied to Congress entitled "Immigration Reform, Verifying the Status of Aliens Applying for Federal Benefits," GAO/HRD-88-7, dated October 1987. These pilots operated on a voluntary basis in California, Colorado, Florida, Illinois, New York, and Texas. The SAVE program pilots were designed to offer State agencies administering certain entitlement programs, including UI, a cost-effective method to rapidly access the INS data base so that aliens would not receive benefits to which they were not legally entitled.

III. SECRETARY'S DETERMINATIONS

Section 121(c)(4)(B), IRCA, provides that the Secretary of Labor may waive State participation in the provisions of Sections 1137(d) and (e), SSA, in all or in part for UI if: (a) the State has in effect an alternative system of alien status verification which is as timely and effective as the program contained in Section 1137, SSA; or (b) the cost of administration of the program contained in Section 1137, SSA, will exceed the estimated savings in the State's UI program. The criteria the Secretary must use in making a waiver decision on cost-effectiveness grounds are set forth in Section 121(c)(4)(C), IRCA. The criteria include an estimate of:

- o The number of aliens claiming UI benefits in relation to the total number of UI claimants;
- o Any savings in UI benefit expenditures reasonably expected from the use of the program contained in Section 1137(d)(3) and (4), SSA;
- o The labor and nonlabor costs of administration of the verification system contained in Section 1137(d)(3) and (4), SSA;
- o The degree to which INS is capable of providing timely and accurate information to SEGAs; and

- o Such other factors as are deemed relevant.

The Secretary will apply the above criteria to States requesting a waiver of participation in the program mandated in Section 1137(d)(3), SSA (SAVE program). The remaining provisions of Section 1137(d) and (e) will not be waived as the Secretary has determined them to be cost-effective and appropriate for the UI program.

A. Is the SAVE Program Cost-Effective and Otherwise Appropriate for the UI Program?

Based on an analysis of the limited data available from the States and the GAO report previously referenced, the automated SAVE program would be cost-effective and appropriate for the UI program in some States. Because alien UI claimants are concentrated in a few States, the automated system may not be cost-effective and appropriate for every State's UI program. Therefore, the waiver of a State's participation in the automated SAVE program effective October 1, 1988, will be granted if certain conditions, described below, are present in that State.

B. Bases on Which Waiver of SAVE Program Participation Will Be Granted

- o Waiver decisions will be made on a State-by-State basis. There will be no blanket inclusion or blanket waiver of all States for the UI program.

o Based on the statutory criteria and on an analysis of costs and estimated savings to be submitted by each State requesting a waiver, participation will not be waived for any State whose annual alien UI claims workload is 3 percent or more of its total UI workload. Based on data contained in the GAO Report cited previously, it is estimated that an annual alien claims workload of 3 percent or more is the point at which UI program savings will exceed the cost of administering SAVE regardless of the access method used.

o Participation by States having less than 3 percent annual alien claims workload will be waived if the State can demonstrate that:

1. 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 as timely as the SAVE program, and the State's present system meets the requirements of Section 121(c)(4)(B)(i)(II), IRCA, providing for a hearings and appeals process; or

2. The proportion of aliens in the 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 estimated benefit savings. The criteria of Section 121(c)(4)(C), listed previously, will be used in each case in making a waiver determination under the provisions of Section 121(c)(4)(B)(ii).

o Regardless of any waiver decision relating to a State's participation in the SAVE program, a waiver will not be granted of the provisions of Sections 1137(d)(1)(A), (2), (4), (5) and (e), SSA. Specifically:

1. Section 1137(d)(1)(A) provides that all claimants must declare in writing, under penalty of perjury, whether or not they are a citizen or national of the United States, and, if not, whether or not they are in a satisfactory immigration status. This requirement will be effective October 1, 1988. All States have been advised of this requirement; and

2. All States will be required to verify alien status with INS in cases where the alien status remains uncertain in order to satisfy the requirements of Section 3304(a)(14), FUTA. States will follow the provisions of Section 3304(a)(14) and Sections 303(a)(1) and (3), SSA, and Sections 1137(d)(2), (4), and (5), SSA, in carrying out this requirement. The States will be required to implement procedures complying with Sections 1137(d)(2), (4), and (5) effective October 1, 1988.

C. Timetable for Waiver Decision

States requesting a waiver of participation in SAVE, effective October 1, 1988, will be offered the opportunity to provide the Department with additional information concerning alien UI workloads, projected costs, and other supporting information. Waiver decisions for FY 1989 will be made by mid-July 1988.

On-going report data concerning alien UI claim workloads will be requested from each SESA beginning October 1, 1988. The availability of such program data will enable the Secretary to review any prior decision to grant waivers or to require State participation in the SAVE program in FY 1990 and beyond. States may make application for a change in the waiver decision or the Secretary may act on his/her own initiative.

IV. IMPLEMENTATION TIMETABLE

States not receiving a waiver will be provided with implementation guidance no later than July 1988. It is anticipated that all States not granted a waiver will complete SAVE implementation by October 1, 1988.