



**Written Statement of
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Before the Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives

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Dear Chairman McNulty and Members of the Subcommittee:

Thank you for the opportunity to submit comments on “Employment Eligibility Verification Systems and the Potential Impacts on SSA’s Ability to Serve Retirees, People with Disabilities, and Workers.”

The Center for Law and Social Policy is a non-profit organization engaged in research, analysis, technical assistance, and advocacy. CLASP is nationally recognized as an expert on child support policy, including policies related to child support data bases, and consults regularly with federal and state child support agencies. Founded in 1968, CLASP’s mission is to improve the economic security, educational and workforce prospects, and family stability of low-income children, youth and families. CLASP does not directly receive federal funds.

The National Immigration Law Center (NILC) is a nonpartisan national legal advocacy organization that works to protect and promote the rights of low-income immigrants and their family members. Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and the employment rights of low-income immigrants. NILC’s extensive knowledge of the complex interplay between immigrants’ legal status and their rights under U.S. employment laws is an important resource for immigrant rights coalitions and community groups, as well as national advocacy groups, policymakers, attorneys and legal aid groups, workers’ rights advocates, labor unions, government agencies, and the media.

CLASP and NILC are submitting testimony to express our opposition to using the National Directory of New Hires for purposes of establishing a mandatory electronic employment verification system (EEVS) as is proposed in the “New Employee Verification Act of 2008” (HR 5515). While HR 5515 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, its use of the National Directory will seriously undermine the goals and effectiveness of the child support system.

The 1996 welfare law required the Federal Office of Child Support Enforcement (OCSE) to establish the National Directory of New Hires.¹ The primary purpose of the National Directory is to assist state child support agencies in locating parents and enforcing child support orders. Under the program, employers must report information about newly-hired employees to a State Directory of New Hires. States then match new hire reports against their child support records to locate parents and enforce child support orders. Because one-third of all child support cases involve a parent living in other state, the National Directory of New Hires contains information from all state child support agencies across the country. The National Directory is not set up for employment eligibility verification purposes and could not be easily adapted to do so. Moreover, refocusing the program on employment eligibility verification would place the child support system in significant jeopardy.

¹ 42 U.S.C. §653A

Concerns with using the National Directory of New Hires for employment verification purposes include the following:

The National Directory of New Hires Does Not Collect Information about Employment Authorization.

- Under the current EEVS, the E-Verify program, the system requires the employer to report if the worker is a U.S. citizen or immigrant authorized to work. If the worker is not a U.S. citizen, the employer must provide the worker's Alien Number or I-94 number. The employer must also report what type of document the worker presented to prove his or her employment authorization and identity and the expiration date of that document, if applicable.
- The National Directory of New Hires does not collect information about a worker's employment authorization, immigration or citizenship status, or documents presented in the employment verification process. Employers are required only to report the following information: the name, address, social security number, and medical insurance coverage of the worker, and the name, address, and federal employer identification number of the employer. The Social Security numbers used by the child support system are only as accurate as those obtained directly through Social Security Administration's NUMIDENT database. States pay to obtain NUMIDENT matching information.
- Adding these three new data fields to the Directory would require statutory authority and would be extremely expensive. It isn't just the OCSE database that would need to be reprogrammed. In order to add these fields, every state child support agency and every employer using automated payroll systems would also have to reprogram their computers. If state child support programs have to divert resources to enforce immigration laws, there will be fewer resources available to establish and enforce child support orders—leading to fewer children receiving support from their noncustodial parents. As it is, federal child support program funding was cut by 20 percent in the Deficit Reduction Act of 2005, and many states and county child support programs are laying off as many as a third of their enforcement workers.

Using the National Directory of New Hires for Employment Authorization Will Undermine the Effectiveness of the Child Support System.

- The National Directory specifically only collects information that is necessary for enforcing child support orders, which does not include the immigration or citizenship status of workers. Enforcement applies to all parents, regardless of their immigration status. Child support is enforced on an international basis, through negotiated treaties and agreements.
- Employers may be less likely to comply with requirements to furnish this information if they believe it will be shared with the Department of Homeland Security (DHS) and could make them liable for violating immigration laws. States report that employer compliance with New Directory requirements has been a challenge, particularly for small employers. Moreover, if the parents who benefit from the child support system believe that it is linked to immigration enforcement, they may be less likely to apply for enforcement services.

The Statutory Requirement for Employer Compliance with the National Directory of New Hires is Not Consistent with Federal Employment Verification Requirements.

- Employers are required to report to state child support agencies when they hire new employees. The information in the database is only available to authorized entities for authorized purposes specified in the child support statute.
- Under current law, an employer is required to verify an employee's work eligibility, within three business days of the date employment begins. The process of transmitting new hire information to the National Directory can take up to 30 days. Employers have up to 20 business days to transmit information to the state. The state then has 5 business days to transmit information into its database, 2 more business days to match the information against its child support cases, and 3 more business days to report the information to the National Directory. Not all states use an automated process to enter this data, requiring staff-intensive data entry. Any shorter timeline would put an extreme burden on both employers and the states. States, not OCSE, are responsible for communicating directly with employers when a problem arises.

Using the National Directory of New Hires for Employment Authorization Raises Privacy Concerns

- When the National Directory was established, Congress was very concerned that child support agencies maintain new hire data in a secure and confidential manner. As a result, the child support program has had an unblemished track record of managing this data securely and in strict confidentiality. Federal law requires that OCSE implement safeguards to restrict access to the confidential information in the National Directory to authorized persons and restrict the use of the information to authorized purposes. Any new agency seeking to access information in the National Directory for an altogether different purpose must meet data security and confidentiality requirements governing the data exchange. It is not clear at this time if DHS currently meets such security standards.
- Additionally, information in the National Directory is currently purged from the database within one year if it is not used for child support purposes. This is done to protect the privacy of the large number of citizens who do not have child support obligations and to eliminate old employment data from the system. By contrast, data in the E-Verify system or any mandatory EEVS does not have to be destroyed until five years after the completed verification information is archived. DHS is currently requesting that this time be extended to 10 years to facilitate the agency's ability to conduct trend analysis on fraud or other illegal activity.²

For these reasons, the Center for Law and Social Policy and the National Immigration Law Project strongly recommend that the National Directory of New Hires not be used for employment verification purposes.

² See page 4 of http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cis_vis_update_ver.pdf.