CLASP
Policy solutions that work for low-income people

February 14, 2020

Samantha Deshommes
Chief, Regulatory Coordination Division
DHS, USCIS, Office of Policy and Strategy
20 Massachusetts Ave, NW
Washington, DC 20529-2140

Re: Docket ID USCIS-2019-0026

Ms. Deshommes:

I am writing on behalf of the Center for Law and Social Policy (CLASP) in response to the Department of Homeland Security's Notice of Information Collection on *Sponsor Deeming and Agency Reimbursement*. We strongly oppose the addition of the optional questions for state agencies seeking information through the Systematic Alien Verification for Entitlements (SAVE) process.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for people with low incomes. Our comments draw upon the work of CLASP experts in the areas of immigration and anti-poverty policies. As a national anti-poverty organization, we understand the critical importance of federal programs that support the health and economic well-being of families with low incomes.

In our comments below, we explain in detail why the proposed collection of information is inconsistent with the purpose of the SAVE program and the way SAVE is utilized in practice. In addition, the proposed questions, while optional, would create confusion and impose significant, costly and duplicative administrative burdens on state and local benefits-granting agencies. U.S. Citizenship and Immigration Services (USCIS) has failed to account for these burdens.

I. The proposed collection of information through SAVE is not authorized by statute or regulation and is not necessary for the proper performance of the functions of either the SAVE program or USCIS.

No statute or regulation authorizes USCIS to use the SAVE system in the manner contemplated in the Information Collection. According to the notice of the proposed information collection, the purpose for collecting this information is to support Federal means-tested public benefit granting agencies in the administration and oversight of their respective benefit programs as they relate to deeming and reimbursement processes in order to better monitor system and information use, and to perform actions to ensure compliance regarding SAVE program rules, federal sponsorship requirements, and deeming and reimbursement obligations. It is unclear how adding the proposed questions to SAVE would advance these purposes.

The purpose of SAVE is to assist benefit granting agencies in verifying the immigration status of noncitizen applicants and recipients of certain benefit programs. State and local benefit agencies use SAVE for that exclusive purpose – to help them in determining eligibility for these programs. Moreover, USCIS is not authorized to use the SAVE system to collect information from benefits-granting agencies – only to verify

immigration status based on the information provided by the state or local agency. In fact, the statute that provides the authority for SAVE embeds privacy protections into its definition of the system:

> "...the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—
>
> (A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and
>
> (B) protects the individual's privacy to the maximum degree possible."
>
> -- 42 USC §1320b-7(d)

It is outside the scope of USCIS' legal authority to use SAVE to collect information from states. Therefore, this ability is clearly not necessary for the proper functioning of the agency.

II. SAVE is not designed to communicate information *to* USCIS but rather to obtain information *from* USCIS in order to verify a noncitizen's immigration status, naturalized or derivative citizenship, or immigration documentation.

Benefits granting agencies provide information through SAVE to USCIS for the sole purpose of verifying an applicant's immigration status and documents. In addition, permitting benefits-granting agencies to inform USCIS about their actions in deeming sponsors' income and pursuing reimbursement raises troubling questions about USCIS' intended use of that information. In the context of the Department of Homeland Security's Public Charge rule, the reduction in public benefits use stemming from a similar 'chilling effect' has been estimated to cause at least $14.5 billion in economic ripple effects and a loss of 99,000 jobs.[1]

III. USCIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is deeply flawed.

In the proposed information collection, USCIS appears to estimate only the time that eligibility workers would require to enter the information into SAVE, without considering the time required to compile the information and share it with eligibility workers or the time those workers would spend to re-open beneficiaries' cases to input the information. At the time authorized users access SAVE to verify status, they will not have the information requested by the proposed new screens. It further fails to consider the significant costs benefits agencies would incur in developing systems and processes to implement the information sharing.

USCIS claims that the completion of the proposed processes would require only .042 hours, but it provides no explanation of its methodology for developing that estimate. It similarly provides no explanation for its conclusion that 324,737 users would respond to the questions. No explanation is needed, however, to recognize USCIS' assertion that 13,639 hours of eligibility worker time would cost $0 is completely unfounded.

Other than recording the determination of whether the application for the benefit was approved, the remaining new information collection queries are likely the responsibility of agency counsel or a collection agency under

[1] Brief Look: "Only Wealthy Immigrants Need Apply "How a Trump Rule's Chilling Effect Will Harm the U.S. (Fiscal Policy Institute, October 10, 2018) available at: **http://fiscalpolicy.org/wp-content/uploads/2018/10/US-Impact-of-Public-Charge.pdf**

contract with the agency. It is impractical and creates privacy concerns to allow personnel who are not required to perform verification to have access to SAVE or to go back to the authorized verification user to access SAVE to respond to the questions regarding reimbursement or their own benefit determinations, questions that are outside of the scope of verification.

USCIS' estimates completely fail to consider the additional costs and burdens benefits agencies would experience in developing mechanisms and protocols to retrieve and transfer information about reimbursement attempts to eligibility workers who have access to SAVE. USCIS also fails to consider the costs of training caseworkers, updating workflows and process manuals and revising consumer-facing resources.

IV. The proposed information collection raises significant confusion over the roles of state, county and agency workers, would require a significant investment in training, education and systems updates to implement and administer – and will still result in errors and confusion.

To implement this change, benefit-granting agencies will need to undertake a significant effort to clarify the role of state and county governments, including agency counsel. Eligibility workers will need to be trained and procedure manuals would need to be updated to reflect the change in workflow. Data collection systems and information sharing processes will need to be updated.

Information concerning any actions for reimbursement is unlikely to be held by the agency's eligibility division. Agencies would need to develop protocols and processes for retrieving the information and sharing it with eligibility workers. These eligibility workers would then undertake the duplicative task of accessing SAVE to input information about actions taken *after* the benefits eligibility determination has been completed, an action that is far outside the scope of the intended use of the SAVE system.

In many cases, state agencies would need to revise consumer-facing messages about the privacy and potential use of information provided in benefits applications, and some agencies may need to develop new regulations. Despite the optional nature of the questions, implementation of the proposed changes to SAVE will be burdensome and costly.

Although the proposed collection is optional, agency personnel performing verification will be confused by the queries and may attempt to respond without having the correct information. Even if workers are trained and processes have been established for responding to the question, the addition of new tasks, particularly those requiring workers to input information, will increase error rates.

V. The proposed information collection threatens privacy and confidentiality if agencies attempt to respond to the proposed questions.

State and federal laws protect the confidentiality of individuals who apply for or receive public benefits. The federal statute under which the SAVE system was established permits information sharing for the purpose of program administration, and the limited purpose of enforcing child support obligations. However, the statute also requires states to have adequate safeguards to ensure that any information exchanged is protected against unauthorized disclosure and made available only to the extent necessary to assist in the valid administrative needs of the program (42 USC §1320b-7(a)(5)).

Similarly, the Medicaid statute requires that Medicaid state plans provide safeguards that "restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan" and limited purposes related to the administration of child nutrition programs (42

U.S.C. § 1396a (a)(7)). Applicable regulations define "purposes directly connected with the administration of the plan" as including:

> (a) Establishing eligibility;
> (b) Determining the amount of medical assistance;
> (c) Providing services for beneficiaries; and
> (d) Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.
>
> -- 42 CFR§ 431.302

The questions in the information collection fall outside the parameters authorized by the SAVE and benefits statutes and regulations. In establishing the SAVE system, Congress granted specific authorization to HHS to receive information for child support purposes. 42 USC 1320b-7(a)(4)(B). *See also* 42 CFR 435.945(c). There is no similar grant of authority to DHS or USCIS. The absence of a similarly specific authorization for sharing information with USCIS via the SAVE program, for *use by USCIS* suggests that it is barred by the more general protections against sharing information.

Notably, the statute governing the enforcement of the affidavit of support gives authority to the Attorney General to *provide information* that can be retrieved through the SAVE system, about whether a person has an enforceable affidavit. 8 USC 1183a(a)(3)(C). There is no similar authorization for states to report on their own activities with respect to sponsor reimbursement. And the regulations implementing that provision address only USCIS' provision of information *to the states*, upon request from the state. 8 C.F.R. § 213a.4(a)(v)(3).
The SAVE statute simply does not authorize USCIS to make these changes. 42 USC § 1320b-7(a)(5)(B) grants various federal agencies the authority to determine the purposes that fall within the scope of administering the program, versus the "other purposes" for which unauthorized disclosure must be protected (e.g. Secretary of Labor for unemployment compensation). The section below it, 42 USC § 1320b-7(d) does not grant DHS/USCIS any similar authority.

VI. Benefit Granting Agencies Risk Violating the Terms of their SAVE Memorandum of Agreement, as well as the Program Regulations and Privacy Rules if they Respond to the Voluntary Information Collection.

This information collection request is outside the legal scope of what was agreed upon between benefit granting agencies and USCIS. Benefit granting agencies that wish to use SAVE to verify noncitizen's immigration status for the purpose of determining eligibility for specific benefits must enter into a Memorandum of Agreement (MOA) with USCIS. The MOA ensures that benefits agencies use SAVE for the sole purpose of verifying immigration status in order to determine eligibility for specific benefits, and that there are protections against uses outside of that. Asking benefits agencies to provide USCIS information concerning sponsor reimbursement does not fall within the purpose articulated in the statute or MOA. This additional request puts benefits agencies in the position of violating the MOA and the law and program regulations that authorize the use of SAVE. The MOA safeguards privacy and security by requiring agencies to comply with the Privacy Act, 5 U.S.C. Section 552a, and other applicable laws, regulations, and policies, and requires the agency to:

- Train all users of SAVE prior to their being provided access to it;
- Ensure that only users that are required to perform verification are provided SAVE IDs;
- Ensure that these users only use SAVE for the purpose of verifying applicant's immigration or naturalized or derived citizenship status for the specified benefit;

- Use the information provided by USCIS under the MOA solely for the purpose of determining eligibility of persons applying for the benefit issued by the agency; and
- Otherwise, limit the use of the information, and safeguard the information and access methods to ensure it is not used for any purpose other than the purpose described in the MOA and ensure it is not disclosed to any unauthorized person without prior written consent of USCIS.

By collecting information from other sources, this proposal will undermine the MOAs and force benefit agencies to perform duplicative and burdensome tasks.

VII. The Proposed Information Collection Increases Rather Than Reduces the Burden on Benefits Granting Agencies.

Because the proposed optional information collection is unnecessary and impractical and very likely to increase the burden on state and local benefits granting agencies, we urge you to rescind the proposed collection.

Our comments include citations to supporting research and documents for the benefit of USCIS in reviewing our comments. We direct USCIS to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed information collection.

Thank you for the opportunity to submit comments. Please do not hesitate to contact me at **mallen@clasp.org** if you have any questions or need any further information.

Sincerely,

Madison Allen
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Center for Law and Social Policy