

December 15, 2011

## **THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM**

*A Fact Sheet*

[Immigration law](#) is highly complex. Determining which non-citizens are “lawfully” or “unlawfully” present and whether they should be allowed to stay in the United States are complex matters which involve the interpretation of a range of federal laws and regulations, broad policy considerations, and prioritization of existing resources, to name just a few considerations.<sup>1</sup>

Alabama and other states that have passed harsh anti-immigration laws don’t understand this complexity. State legislators seem to want a fast, simple answer to the question of whether someone is lawfully or unlawfully present in the United States. These states are planning to lean heavily on the Systematic Alien Verification for Entitlements (SAVE) program or some other system of verification, such as E-verify, as the mechanism for determining whether someone is unlawfully present in the country.

But there is no magic database or system that gives the simple, speedy determination of unlawful presence that states crave. The SAVE program, operated by the United States Citizenship and Immigration Services (USCIS), does not and was never designed to meet these needs. SAVE can only verify immigration status or immigration information at a particular point in time, and cannot **determine whether someone is unlawfully present in the U.S.** E-Verify is a federal database that can only be used to verify a worker’s authorization to work in the U.S.

This disconnect between what current verification programs can do and how state legislatures seek to use them means that much of the state immigration legislation that has passed or is under consideration is relying on a false premise. **If the programs relied upon for determining unlawful presence cannot actually meet that expectation, then the legislation itself is not on solid ground.** This fact sheet explains the purposes of the SAVE program, its limitations, and its inability to meet the demands placed upon it by state legislators seeking an easy answer to the lawful presence question.

### **I. SAVE does not verify whether an immigrant is unlawfully present in the U.S.**

#### **What is SAVE?**

- The [Systematic Alien Verification for Entitlements](#) (SAVE) program is an electronic, fee-based system operated by USCIS to verify that a person has the immigration status his documents indicate or that the immigration information he has provided is accurate for government benefits and licensing agencies or other lawful purposes.
- SAVE does not indicate whether a person is eligible for a particular benefit. A state employee still has to determine whether the immigrant is eligible for a particular benefit, given the immigrant’s status and other eligibility criteria.

## **Does SAVE answer whether a non-citizen is unlawfully present in the U.S.?**

- No. SAVE simply verifies that the immigration documents or information provided by an immigrant are accurate at that moment in time.
- For example, it will confirm that someone is:
  - an asylum applicant;
  - an applicant for lawful permanent residence who is married to a U.S. citizen;
  - an applicant for a U-visa as a victim of domestic violence;
  - a Cuban paroled into the U.S. who is not yet eligible for adjustment of status under the Cuban Adjustment Act;
  - a lawful permanent resident in removal proceedings because of a shoplifting conviction; or
  - a college student whose removal proceedings have been terminated as a matter of prosecutorial discretion.
- SAVE does not use the terms “lawfully” or “unlawfully” present in its response.

## **Why can't SAVE answer the question of whether someone is unlawfully present in the United States?**

- There is no magic database that can say whether a person is lawfully or unlawfully present. The U.S. has a complex administrative and judicial process for determining whether a non-citizen is lawfully present or may be eligible for lawful status, or whether he will be permitted to remain in the U.S.
- Immigration status is fluid and can change over time. Someone who at one point is unlawfully present in the U.S. may eventually obtain legal status.
- The government may, as a matter of discretion, permit a non-citizen to remain in the U.S. That decision may happen at any time during administrative or judicial proceedings, or even before those proceedings are instituted.
- Even non-citizens who have been ordered deported may be permitted to stay in the U.S. as a humanitarian matter or because they cannot be returned to their country of origin or because of political considerations or considerations of foreign policy.

## **Will SAVE indicate that someone is a U.S. citizen?**

- SAVE can only verify information contained in immigrations records. A naturalized citizen or a person who has obtained a certificate of citizenship from USCIS (or its predecessor) would have a record in immigration files. But a native born citizen would not have such a record.
- There is no national database of citizens that states can check to prove U.S. citizenship.

## **Who can use SAVE?**

- According to [USCIS](#), a government agency is eligible to use SAVE if it is “a federal, state or local government agency or licensing bureau [and] [t]he agency provides a public benefit, license or is otherwise authorized by law to engage in an activity for which the verification of immigration status is appropriate.”
- A private company or individual cannot verify immigration status through SAVE.

## How does the [SAVE verification process](#) work?

- The agency submits an electronic query to USCIS<sup>2</sup> using documents provided by the applicant. In response, the system either provides the applicant's immigration status (in which case the process is complete) or asks the agency to take additional steps.
- If SAVE cannot immediately confirm immigration status at this step, it does not necessarily indicate that the applicant is not authorized to be in the U.S. or that the applicant is ineligible for the benefit.
- In secondary verification, the agency then provides additional information about the applicant. In response, the system either provides the applicant's immigration status (in which case the process is complete) or the process continues to third step verification.
- In third step verification, the agency submits a form, by mail, to a designated USCIS field office. In response, USCIS provides the agency with the applicant's immigration status "or the action to be taken" (in which case the process is complete), but "[i]f status is not confirmed, options are provided to the agency on how to resolve the matter."

## Can a government agency just sign up to use SAVE?

- No. A government agency that would like to use SAVE must [apply](#) to USCIS, establishing—among other things—its legal authority to issue the benefit or license or engage in another activity for which the agency will be verifying immigration status and its authority to verify immigration status before it issues the benefit or license or engages in other activity.
- SAVE then must then conduct a legal review to confirm that the agency has the proper legal authority.
- SAVE and the agency then enter into both a [Memorandum of Understanding](#) setting forth the responsibilities for use of SAVE and an Addendum establishing payment.
- SAVE then determines the online access system that best suits the needs of the agency, and provide training and access information.

## How will USCIS make the legal determination of whether an agency is authorized to verify legal status for some purpose other than licensing or issuing benefits (such as for completing a "business transaction")?

- The process is not clear. USCIS has not explained under what circumstances SAVE can be used "for any purpose authorized by law."
- According to DHS, the use of SAVE to verify immigration status for purposes other than licensing or issuing benefits is authorized by 8 USC 1373(c), which provides that USCIS must "respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information." There has been no interpretation or guidance from USCIS, however, regarding current state laws seeking to use SAVE to verify status for purposes other than benefits or licensing.
- In its most recent [program update](#), DHS has simply reiterated that "to the extent that a federal, state or local government agency has the authority to verify immigration status, SAVE, as an

access method to USIS systems, is authorized to respond to the request,” but not how the authorization decision will be made.

### **How does USCIS conduct monitoring of its use and compliance with its rule given the expanded use of SAVE as a result of state laws requiring its use?**

- Under the generic [Memorandum of Understanding](#) (MOU) that user agencies sign with USCIS, USCIS is authorized to:
  - Monitor records and documents related to SAVE’s use or misuse
  - Conduct compliance inspections and review
  - Interview users
  - Perform audits
- But it is not clear how USCIS will monitor SAVE’s use and compliance by states, given its expanded use “for any purpose authorized by law.”
- A verification system whose current incarnation is SAVE was legislatively authorized by section 121 of the [Immigration Reform and Control Act of 1986 \(IRCA\)](#). It was originally intended for use by a limited number of benefits granting agencies. The 2005 REAL ID Act subsequently allowed use of SAVE in verifying immigration status for driver’s license issuance.
- In a December 11, 2008 [System of Records Notice](#) (SORN) the Department of Homeland Security expanded the use of SAVE for the broader purpose of responding to inquiries under 8 USC sec. 1373.
- In a May 22, 2009 [SORN](#), the Department of Homeland Security created a Monitoring and Compliance Branch within the USCIS Verification Division and launched the Compliance Tracking and Monitoring System to identify abuse of SAVE and E-Verify and apply corrective measures.
- Despite the 2008 expansion of SAVE, the 2009 SORN [makes no mention](#) of the expanded use of SAVE “for any purpose authorized by law.”
- DHS subsequently [acknowledged](#) that the use of SAVE by a governmental agency under 8 USC 1373(c) “will increase the number and types of SAVE users” and that “[t]here users will pose different monitoring and compliance challenges.”
- However, DHS reported no special mechanisms to meet those challenges.

### **Is there a process for correcting errors or if an answer is not given in a timely manner?**

- The SAVE system may provide inaccurate information and, as a result, an eligible individual’s benefits may be denied or delayed. The SAVE website indicates that the procedure to correct records when SAVE’s answer to a [benefits](#) granting agency was inaccurate is to make an appointment with the local USCIS office, call the National Customer Service center or through a Freedom of Information Act (FOIA)/Privacy Act request.
- The website provides no information about a remedy when verification is done in connection with other purposes, or when a response from SAVE is unreasonably delayed.

## **What privacy protections and safeguards exist under SAVE regarding use and disclosure of data:**

- The MOU that government agencies sign with USCIS to use SAVE provides that:
  - SAVE must be used in a non-discriminatory way and in compliance with the Privacy Act.
  - Any information provided by USCIS can only be used to determine eligibility for the benefit in question and in accordance with the MOU.
  - The agency cannot disclose information provided by USCIS without its consent.
  - USCIS will make no decision or recommendation regarding eligibility for benefit.
  - The agency will comply with rules regarding electronic storage, transport, and internal processing of records.
- But DHS [exempted](#) SAVE's Compliance Tracking and Monitoring System (CTMS) from many provisions of the Privacy Act on the basis that the Privacy Act's protections would interfere with law enforcement. This means that affected persons will not be notified that their personal information has been wrongly disclosed, or that they can have access to CTMS records to correct them.
- Neither of the previously mentioned SORNs—which expanded the use of SAVE “for any purpose authorized by law,” nor a recent DHS [Privacy Impact Assessment](#) on SAVE—including due process or privacy protections regarding how the system will be used by state and local government agencies for the expanded purposes, such as notice to affected individuals, redress if a benefit is wrongly denied or if SAVE is misused, or any evaluation of how the system is used or if it is accurate.

## **II. SAVE and E-verify are not interchangeable**

### **Can E-Verify verify legal status for the purposes of obtaining benefits or licenses or other non-employment eligibility questions?**

- No. E-Verify can only be used to verify employment authorization.
- Lawful presence and authorization to work are not the same. Under federal law, only certain [classes](#) of non-citizens are authorized to accept employment in the U.S. As a result, a non-citizen may be in the U.S. with the permission or knowledge of the federal government, but not have permission to work.

### **How do SAVE and E-Verify differ?**

- [E-Verify](#) confirms employment eligibility. It is an Internet-based system operated by USCIS that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records.
- Like SAVE, E-Verify cannot be used to determine whether someone is lawfully present in the U.S.—it only verifies work authorization.

## **Endnotes**

---

<sup>1</sup> In fact an individual determination might require assessing all of the following factors: interpretation of federal laws, regulations, policies and procedures; administrative and judicial processes; interaction with multiple agencies; balancing of national interests including foreign policy, national security, and humanitarian and international law; the exercise of discretion; and decisions about the most effective use of federal resources.

<sup>2</sup> SAVE also has a paper-based verification method which begins with the agency sending Form G-845 to USCIS.