

Concerns about the SAVE Act's Impact on Asian Americans

Introduced by Representatives Heath Shuler (D-NC) and Tom Tancredo (R-CO), the Secure America through Verification and Enforcement Act of 2007 (H.R. 4088) has picked up over 150 co-sponsors and is being pushed as the answer to undocumented immigration.¹ The so-called "SAVE" Act would make mandatory the participation of all employers in the Basic Pilot/E-Verify program, which relies on the Social Security Administration's (SSA) No-Match program and error-infested Numident database of over 425 million records and the Department of Homeland Security's (DHS) immigration database of over 60 million records to verify the "work eligibility status" of employees.² A closer look reveals the SAVE Act is severely flawed and will:

1. Disproportionately create hardship for over half a million Asian American workers;
2. Further exacerbate the employment discrimination faced by Asian American communities;
3. Increase the regulatory burden on employers, particularly small business owners, in our already fragile economy; and
4. Result in a government price tag of over *40 billion dollars*.

Flawed databases, the foundation of the SAVE Act's mandatory EEVS, will put the jobs of hundreds of thousands of Asian Americans at risk.

- The SAVE Act requires total compliance from all American employers after 4 years.³ Over 11 error-plagued years have passed since the centerpiece of the SAVE Act – the Basic Pilot/E-Verify program – was brought into existence. Serious flaws with Basic Pilot have been repeatedly pointed out since the beginning and it has taken over a decade to begin to address these flaws.⁴ Given Basic Pilot's troubled history, it is highly unrealistic to believe that 4 years will be anywhere close to enough time to ensure accuracy in the SSA's Numident database.
- Given the over 17.8 million records with errors in the Numident database, it is certain that Asian American immigrant workers, who are legal permanent residents or otherwise authorized to work, and those who are U.S. Citizens will be incorrectly identified and have "No-Match" letters from the SSA sent to their employers.⁵ Over 70% (12.7 million) of these flawed records belong to U.S. Citizens.⁶
- In 2007, the Department of Homeland Security commissioned an independent evaluation of the Basic Pilot program. The study found that Numident database errors had a disproportionate impact on foreign-born U.S. Citizens. Almost 10% of foreign-born U.S. Citizens processed through Basic Pilot were told that they were not authorized to work.⁷ The evaluation found that legal, foreign-born workers are thirty times more likely to be identified as "work ineligible" than native-born U.S. citizens.⁸

- Over 60% of Asian Americans are immigrants.⁹ Half of these foreign-born Asian Americans are naturalized U.S. citizens.¹⁰ Due to the almost 10% rate of error for foreign-born U.S. Citizens, an estimated 500,000 Asian American citizens would be wrongly identified and put in jeopardy of losing their jobs. An estimated additional 150,000 Asian Americans who are legal residents would also be wrongly identified. While the error rate is 0.1% for native-born U.S. citizens, this still means that an estimated 262,000 native-born citizens will be told that they are not authorized to work, affecting an estimated 5,700 native-born Asian Americans.¹¹
- Lack of familiarity with administrative rules and procedures, language barriers, and widespread ignorance amongst officials of cultural nuances operate to increase the errors in the SSA records of Asian Americans. Many Asian Americans put their last names first and may forget to follow English name conventions when filling out records. Also, there are Asian ethnic groups with a limited number of traditional first names and family names resulting in many with the same names. Furthermore, Asian Americans who speak multiple Asian languages may transliterate different spellings of their names due to different pronunciations across languages or simply by mistake.
- These cultural differences frequently result in erroneous records for Asian Americans, as community members who are limited English proficient (LEP) often are not familiar enough with administrative rules and procedures to understand the importance of submitting information that is consistent. Language barriers compound the ability of many Asian Americans to communicate with administrative officials and to understand administrative rules and procedures.
- Administrative officials are often not aware of these cultural nuances and thus do not follow up to clarify, resulting in improperly recorded names and personal information. This reduces the effectiveness of administrative officials as a screening mechanism and allows improperly recorded names and personal information and/or conflicting records to remain uncorrected. This means that the actual errors are likely to be even higher than estimated for Asian Americans, enlarging the SAVE Act's disproportionate impact on Asian American communities.

Basic Pilot is plagued by “substantial” employer non-compliance, which will result in increased discrimination against many Asian Americans, and the SAVE Act lacks adequate protections against abuse, discrimination, and error.

- The findings of the Department of Homeland Security's 2007 study make it clear that adequate safeguards against employer abuse or bureaucratic mistakes are lacking. The SAVE Act does not address these concerns, nor does it take into account the reality of working families and the severe costs that are incurred by being erroneously fired or by missing one or more days of work to petition the SSA to correct its records.
- Asian Americans are still perceived as “foreigners” by many individuals, even if we are U.S. citizens or speak English fluently. There is a legitimate concern that many employers, upon

receiving a No-Match letter from the SSA, will automatically assume that the “foreign” employee is undocumented and terminate them without complying with proper procedure or notifying the employee of their rights. Consequentially, a mandatory employment eligibility verification program would increase the tendency of employers to refuse to hire Asian Americans in the first place to avoid the *perceived* risk that the employee is more likely to be undocumented or harder to verify.

- The Department of Homeland Security’s 2007 study found that the rate of employer noncompliance with the program’s rules was “substantial”: employers engaged in prohibited practices such as pre-employment screening, took adverse employment actions based on *tentative* non-confirmation notices, and failed to inform employees of their rights.¹² This is very disconcerting given the fact that the majority of employers who participated in Basic Pilot/E-Verify are large companies who have the capacity for compliance training and can afford to wait for existing or potential hires to correct the SSA’s errors.¹³
- Even worse, some employers required employees to work longer hours and in poorer conditions after receiving a No-Match letter, assuming that the employee had fewer rights than a lawful worker and therefore would not resist.¹⁴
- The significantly higher numbers of foreign-born workers who are the subjects of No-Match letters simply serves to validate an employer’s belief that ‘foreign-looking’ workers, such as Asian Americans, are indeed much more likely to be undocumented – even though those inflated numbers are due in large part to the vast number of errors for foreign-born workers in the SSA’s Numident database.
- Employers who choose to engage in such conduct are usually not held accountable unless the work-authorized employee chooses to file a complaint with the Department of Justice’s Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) or the relatively small staff of the OSC launches an independent investigation. Given the likelihood that workers may not even be aware of their rights due to an employer’s failure to notify them of those rights and/or the hefty expense of hiring an attorney, many work-authorized employees likely will not pursue a complaint against their former employer. Furthermore, the resource constraints faced by the OSC’s small staff reduces the number of meritorious cases that are litigated. These factors likely result in under-enforcement of the INA’s anti-discrimination provisions and continuing employer violations.
- The SAVE Act’s reliance on the SSA’s database and field offices to correct erroneous records would force Asian American workers to engage an already overburdened and understaffed agency. One visit or call to an SSA field office is unlikely to resolve a No-Match error, considering the SSA’s severe backlogs on various records and claims such as disability benefits and social security insurance. Asian American workers likely will have to engage the SSA multiple times to fix its records, resulting in further lost wages for Asian American workers and further lost labor for Asian American businesses.

- There are over 60 million calls made a year to the SSA. Over 30 million of these are ‘answered’ by busy signals.¹⁵ To obtain an administrative hearing on disability claims, the average wait time during 2007-2008 was 499 days.¹⁶ A review conducted by the SSA’s Inspector General found that between January 2004 and September 2005, the SSA had erroneously declared 23,366 people to be dead.¹⁷
- The agency will be at its lowest staffing levels since the 1970s.¹⁸ It is anticipated that many SSA officials will retire in the next few years due to the approaching wave of baby boomer retirements. This approaching wave also translates directly into additional work for the SSA, as retiring Americans seek out their Social Security benefits. The SAVE Act will take the SSA further away from its original mission, which has already been significantly endangered due to severe understaffing.
- The SAVE Act has incredibly unrealistic deadlines and procedures and puts the burden entirely on the employee to get their records fixed within a very small 10-day window in the face of bureaucratic understaffing, delays, and technicalities.¹⁹

Asian American businesses and our economy cannot afford the SAVE Act.

- The SAVE Act would require all American employers, big and small, to spend money to comply with its requirements. Such requirements would include compliance training, the verification of every employee and new hire, and a capable infrastructure for electronic submission and verification.
- These compliance costs will disproportionately affect small businesses, which generally have fewer resources to spare and reduced access to the telecommunication infrastructure.
- The SAVE Act’s disproportionate impact on small businesses would also disproportionately impact Asian American communities, since the community relies on small, family-owned businesses to realize the American Dream. Asian Americans own more than 1.1 million small businesses, the majority of which have small staffs and cannot afford to lose any employees actually qualified to work.²⁰ In 2002, these businesses had sales and receipts of approximately \$331 billion and employed almost 2.24 million workers.²¹
- A 2007 report by the President’s Advisory Council on Asian Americans and Pacific Islanders found that Asian American and Pacific Islander communities “represent a potential ‘economic engine’ that can make significant contributions to the United States economy over the next decade.”²² As the fastest growing population segment in America, Asian Americans and Pacific Islanders have business ownership per capita rates comparable to non-minority populations.²³ The report concludes that providing greater entrepreneurial opportunities for AAPI communities would garner an additional \$140 billion in business receipts annually.²⁴
- The report points out that overlooking the barriers that AAPI businesses face will potentially result in national economic and social costs.²⁵ These barriers may include ineffective

government outreach, administrative ignorance of cultural nuances, language barriers, and a general lack of familiarity with government rules, procedures, and resources.

Taxpayers will swallow a hefty 40 billion dollar price tag for the SAVE Act.

- A recent estimate released by the Congressional Budget Office (CBO) states that the SAVE Act will cost taxpayers \$23.4 billion to implement over ten years.²⁶
- In addition, the CBO also estimates that federal tax revenues will be decreased by \$17.3 billion over a ten year period as employers go “underground,” paying undocumented immigrants outside of the tax system.²⁷ Taxpayers may bear the brunt of any tax increases that attempt to make up for this lost revenue.
- This price tag does not include the compliance costs which approximately 7 million American businesses and 160 million American workers will have to pay.

Contrary to its name, the SAVE Act provides no guarantees that the migration of undocumented immigrants to America will cease.

- The SAVE Act will require massive government spending and operations and many employers will simply go ‘underground’ and continue to hire undocumented immigrants because they can be forced to accept lower wages.
- Attempts to address undocumented immigration that fail to understand the history and dynamics of immigration are unlikely to succeed. Asian American businesses, Asian American workers, and Asian American taxpayers will suffer as a result of the SAVE Act’s misguided and ineffective approach.

ENDNOTES

¹ See generally H.R. 4088, 110th Congress (2007), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.04088> and http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h4088ih.txt.pdf.

² See U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, *E-Verify: Getting Started* (2008), at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=6a0988e60a405110VgnVCM1000004718190aRCRD&vgnnextchannel=6a0988e60a405110VgnVCM1000004718190aRCRD>.

³ See H.R. 4088, §§ 201-02.

⁴ See generally Westat, *Findings of the Web Basic Pilot Evaluation*, September 2007, submitted to the U.S. Department of Homeland Security, available at <http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>.

⁵ Social Security Administration’s Office of the Inspector General, *Congressional Response Report: Accuracy of the Social Security Administration’s Numident File*, December 2007, at ii, available at <http://www.ssa.gov/oig/ADOBEPDF/A-08-06-26100.pdf>.

⁶ See *Id.* at 6.

⁷ See Westat, *supra* note 4, at xxv.

⁸ See *Id.*

⁹ See *Asian American Perspective on Comprehensive Immigration Reform: Hearing on Perspectives of Immigrant Advocacy Organizations on Comprehensive Immigration Reform Before the House Subcomm. on Immigration*,

110th Cong. 6 (2007) (statement of Karen K. Narasaki, President and Executive Director, Asian American Justice Center) (citing the U.S. Census Bureau's 2005 American Communities Survey), *available at* http://www.advancingequality.org/files/Asian_American_Perspective_on_CIR_Testimony.pdf.

¹⁰ *See Id.*

¹¹ *See Westat, supra* note 4, at xxv.

¹² *Id.* at xxii-xxiii, 71-2, 75-8.

¹³ *See Id.* at 118-19.

¹⁴ *Id.* at 77.

¹⁵ *Written Testimony for the Record of Richard E. Warsinskey Before the House Subcomm. on Labor, Health and Human Services, and Education, and Related Agencies*, 110th Cong. 6 (2008). (statement of Richard E. Warsinskey, Past President, National Council of Social Security Management Associations, Inc.), *available at* <http://www.nosscr.org/nosscma.pdf>.

¹⁶ *Reducing the Disability Backlog at the Social Security Administration Before the House Subcomm. on Labor, Health and Human Services, and Education, and Related Agencies*, 110th Cong. (2008). (statement of The Honorable Patrick P. O'Carroll, Jr., Inspector General, Social Security Administration), *available at* http://www.ssa.gov/oig/communications/testimony_speeches/02282008testimony.htm.

¹⁷ Alex Johnson & Nancy Amons, "'Resurrected' but still wallowing in red tape: Government Records Incorrectly Kill Off Thousands, and There's No Easy Fix," MSNBC and NBC News, February 29, 2008, *available at* <http://www.msnbc.msn.com/id/23378093/>.

¹⁸ Warsinskey, *supra* note 15, at 3-5.

¹⁹ *See* H.R. 4088, § 202(a).

²⁰ *See generally* Congressman Mike Honda, *Bush's Budget Will Hurt Middle Class and Asian American and Pacific Islander Communities*, February 7, 2007 (citing U.S. Census statistics), *available at* http://www.house.gov/list/speech/ca15_honda/budgetFY08.html.

²¹ President's Advisory Commission on Asian Americans and Pacific Islanders, *Enhancing the Economic Potential of Asian Americans and Pacific Islanders (AAPI): A Report to the President from the President's Advisory Commission on Asian Americans and Pacific Islanders*, May 7, 2007, at 9, *available at* http://www.mbda.gov/?section_id=9&bucket_id=620&content_id=6207&well=entire_page&portal_document_download=true&download_cid=6207&name=CommissionFINALreport.pdf&legacy_flag=false.

²² *Id.* at 7.

²³ *Id.*

²⁴ *Id.* at 7-8.

²⁵ *Id.* at 8.

²⁶ Peter R. Orszag, Director of the Congressional Budget Office, "Letter to the Honorable John Conyers," April 4, 2008, at 1-2, *available at* <http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf>.

²⁷ *Id.*