February 18, 2020

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

Re: OMB Control Number 1615-NEW; Docket ID USCIS-2019-0026: Sponsor Deeming and Agency Reimbursement

Dear Ms. Deshommes:

The National Health Law Program (NHeLP) submits the following comments in response to the proposed *New Collection: Sponsor Deeming and Agency Reimbursement*, OMB Control Number 1615-NEW, Department of Homeland Security, U.S. Citizenship and Immigration Services, Docket ID USCIS-2019-0026. NHeLP protects and advances the health rights of low-income and underserved individuals and families by advocating, educating, and litigating at the federal and state level. We strongly oppose the addition of the optional questions for state agencies to complete through the Systematic Alien Verification for Entitlements (SAVE) process. 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 benefit granting agencies. U.S. Citizenship and Immigration Services (USCIS) has failed to account for these burdens.

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.

1444 I Street NW, Suite 1105 · Washington, DC 20005 · (202) 289-7661 · Fax (202) 289-7724
3701 Wilshire Boulevard, Suite 750 · Los Angeles, CA 90010 · (310) 204-6010 · Fax (213) 368-0774
101 East Weaver Street, Suite G-7 · Carrboro, NC 27510 · (919) 968-6308 · Fax (919) 968-8855
www.healthlaw.org

No statute or regulation authorizes USCIS to use the SAVE system in the manner contemplated in the proposed information collection.

First, Congress restricts states' ability to share any information gathered for purposes of eligibility determinations, requiring states to have in place "adequate safeguards . . . to ensure that . . . the information is adequately protected against unauthorized disclosure for," purposes other than "the valid administrative needs of the program."[1]

In addition to these broad protections, Congress established specific privacy protections for the SAVE program. In creating the SAVE program, Congress made clear that its purpose is to assist certain state and local benefit granting agencies to verify a benefit applicant's immigration status, or naturalized or derived citizenship status.[2] Benefit agencies use SAVE for that exclusive purpose—to help the agency make eligibility determinations based on SAVE's verification information.

USCIS is only authorized to use SAVE to verify immigration status based on the information provided by the state or local agency.[3] USCIS is not authorized to expand the purpose of the SAVE system to *collect* information from benefit granting agencies. The statute that provides the authority for SAVE also 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.[4]

With this language, Congress established broad privacy protections against sharing information contained within the SAVE system. Congress did create some limited exceptions for sharing applicant information, but none apply here. First, Congress granted specific

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[1] 42 U.S.C. § 1320b-7(a)(5).
[2] For a history of the SAVE program, s*ee* Gov't Accountability Office, *Immigration Status Verification for Benefits* (GAO-17-204) 1-2 (Mar. 2017), https://www.gao.gov/products/gao-17-204. *See also* USCIS, SAVE Governing Laws, https://www.uscis.gov/save/about-save/governing-laws (last visited Feb. 13, 2020).
[3] 42 U.S.C. § 1320b-7(d)(3).
[4] *Id*.

authorization to the Department of Health and Human Services to receive eligibility information from states for purposes of collecting child support.[5] There is no similar grant of authority to DHS or USCIS to receive eligibility information from states. 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.

Likewise, 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.[6] There is no similar authorization for states to report on their own activities with respect to sponsor reimbursement. Further, the regulations implementing enforceable affidavits address only USCIS' provision of information *to the states*, upon request from the state, and do not permit states to share information back to USCIS.[7] Congress, therefore, has not authorized states to share this information, and the broad privacy protections Congress established apply here.

Finally, the statute simply does not authorize USCIS to make these changes or request sponsorship information from states. As discussed above, 42 U.S.C. § 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). 42 U.S.C. § 1320b-7(d) does not grant DHS/USCIS any similar authority.

The proposed information collections threaten 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 only for the purpose of program administration. It further requires states to have adequate safeguards to protect against unauthorized disclosure and makes information available only to the extent necessary to assist in the valid administrative needs of the program.[8]

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

[5] 42 U.S.C. § 1320b-7(a)(4)(B). *See also* 42 C.F.R. § 435.945(c).
[6] 8 U.S.C. § 1183a(a)(3)(C).
[7] 8 C.F.R. § 213a.4(a)(v)(3).
[8] 42 U.S.C. §1320b-7(a)(5).

directly connected with the administration of the plan" and limited purposes related to the administration of child nutrition programs.[9] 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.[10]

Medicaid regulations implementing these provisions require that the state Medicaid plan "provide, under a State statute that imposes legal sanctions, safeguards . . . that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan."[11] Information concerning applicants and beneficiaries includes, among other things: names and addresses; medical services provided; social and economic conditions or circumstances; SSNs; and any other information used to verify income eligibility or determine the amount of medical assistance.[12] These privacy protections "must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials."[13]

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 a noncitizen applicant's immigration status for the purpose of determining eligibility for specific benefits must enter into a Memorandum of Agreement (MOA) with

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[9] 42 U.S.C. § 1396a(a)(7).
[10] 42 C.F.R. § 431.302.

[11] 42 C.F.R. § 431.301. *See also id.* § 431.303 (state Medicaid agency must "have authority to implement and enforce the provisions . . . for safeguarding information about applicants and beneficiaries."). The state agency must notify Medicaid applicants and recipients, as well as agencies to which information is disclosed, of these use and disclosure restrictions. *Id*. §§ 431.304, 435.945(f).
[12] *Id*. § 431.305(b).
[13] 42 C.F.R. § 431.306(e)

USCIS. The MOA reflects USCIS' interpretation of the statute and regulations, including the broad privacy protections embedded in 42 U.S.C. § 1320b-7(d). The MOA thus ensures that benefits agencies use SAVE for the sole purpose of verifying immigration status in order to determine eligibility for specific benefits, and protects 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. § 552a, and other applicable laws, regulations, and policies. It also outlines a number of requirements regarding system use, including:

- "Ensure all Users performing verification procedures only use SAVE with respect to verification of applicant immigration and naturalized or derived citizenship status for the specified benefit…;"
- "Use any information provided by DHS-USCIS under this MOA solely for the purpose of determining the eligibility of persons applying for the benefit issued by the User Agency, and limit use of such information in accordance with this and all other provisions of this MOA;" and
- "Safeguard such information and access methods to ensure that it is not used for any other purpose than described in this MOA and protect its confidentiality [.]"[14]

By collecting information from other sources, this proposal will undermine the MOAs and force benefit agencies to perform tasks that violate the privacy and security protections embedded in SAVE.

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' records to input the information. It further fails to

[14] USCIS, *SAVE Sample MOA for Federal Agencies* 4 (rev. Jan. 23, 2019), https://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE%20Publications/save-fed-moa-sample.pdf.

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 0.042 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 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.

Implementing the proposed information collection will clearly increase administrative costs, however USCIS claims that the estimated cost burden to the cost will be zero.

This is unacceptable and leaves the public unable to provide effective comments because the public does not know the impact on which to base its comments. 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.

The proposed information collection increases rather than reduces the burden on benefit granting agencies, and will still result in errors and confusion.

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

The benefit granting agency's eligibility division is unlikely to have information concerning any actions for reimbursement. Agencies would therefore need to develop protocols and processes

for retrieving the information and sharing it with eligibility workers, or non-eligibility workers would need to be trained and authorized as SAVE users. 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. 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.

The additional proposed information collection required of SAVE users will be particularly difficult to administer considering the gaps in follow-up verification and training that exist already within user agencies. According to a March 2017 report from the U.S. Government Accountability Office, nearly 60 percent of requests for additional verification were not completed by user agencies despite the decades long use of SAVE for verification purposes at most benefit granting agencies.[15] Adding administrative and oversight functions for SAVE to collect sponsorship data will make it more difficult for benefit granting agencies to comply with existing program requirements.

In many cases, state agencies would also 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.[16] Despite the optional nature of the questions, implementation of the proposed changes to SAVE will be burdensome and costly.

Conclusion

Because the proposed optional information collection is unnecessary, 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.

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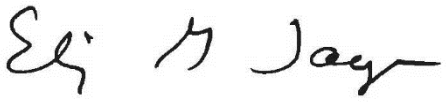
[15] Gov't Accountability Office, *Immigration Status Verification for Benefits* (GAO-17-204) 1-2 (Mar. 2017), https://www.gao.gov/products/gao-17-204.
[16] *See, e.g.*, 42 C.F.R. § 435.910(e)(3).

Thank you for the opportunity to submit comments. Please do not hesitate to contact Priscilla Huang (huang@healthlaw.org) or Sarah Grusin (grusin@healthlaw.org) to provide further information.

Sincerely,



Elizabeth G. Taylor
Executive Director