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Congress of the United States

House of Representatives

COMMITTEE ON WAYS AND MEANS

WASHINGTON, DC 20515

SUBCOMMITTEE ON SOCIAL SECURITY

May 22, 2008

The Honorable Michael Chertoff, Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

At a recent Committee on Ways and Means Social Security Subcommittee hearing, Representative Heath Shuler provided to each member of the subcommittee a list of employers, in their respective congressional districts, who are registered to participate in E-Verify. We were extremely concerned to see this information distributed. We believe employers, who are voluntarily using E-Verify, deserve the highest levels of privacy protection in return for their good efforts to help ensure a legal workforce.

Recognizing that employer E-Verify information is not protected from disclosure by the Privacy Act and may be disclosed under the Freedom of Information Act, the following language included in "The E-Verify Program for Employment Verification Memorandum of Understanding" (MOU), which sets forth the agreement between the Social Security Administration, the Department of Homeland Security, and the Employer regarding their participation in the E-Verify program, raises a number of concerns:

"The employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA)."

In light of the preceding paragraph, we have a number of questions for your consideration and response regarding employer and other information disclosed related to E-Verify:

1. Please provide the Department's definitions for "Congressional oversight," "E-Verify publicity," "media inquires." What information disclosures may be allowed that are not within the scope of these definitions?
2. Please explain the process by which requests for information are screened and approved within the Department, including what approval is required by management.
3. Please describe how information is protected by the Department.
4. Within the last three years, what information has been disclosed, and to whom, under the category of "E-Verify publicity"? Within the last three years, what information has been requested, and by whom, but was not disclosed under the category of "E-Verify publicity"?
5. Within the last three years, what information has been disclosed, and to whom, under the category of "media inquiries"? Within the last three years, what information has been requested, and by whom, but was not disclosed under the category of "media inquiries"?
6. Within the last three years, what information has been disclosed under the Freedom of Information Act? Please provide an overview of the information that has not been disclosed under the Freedom of Information Act within the last three years.
7. Are employers' Employer Identification Numbers collected and stored? Are these numbers ever released to the public and if so, under what circumstances?
8. While employers may choose not to join the program if they find the terms of the Memorandum of Understanding objectionable, there are many employers who are mandated to participate under Federal, State or local laws, or because of DHS enforcement actions resulting in employer sanctions. What proportion of currently participating employers are required by law or by employer sanctions to participate, and how many are fully voluntary participants? What privacy protections exist for employers required to participate in E-Verify and how do those protections differ for employers who voluntarily participate in the program?
9. We understand the E-Verify Memorandum of Understanding has evolved over time. How has this impacted the sharing of program information over time?

Committee on Ways and Means
Subcommittee on Social Security
May 22, 2008
Page 3

10. The Privacy Impact Assessment for the Verification Information System (VIS) Supporting Verification Programs, dated February 22, 2008, included the statement that certain public outreach materials include notification that VIS collects and stores information on both U.S. citizens and U.S. non-citizens. Please provide detailed information as to what information is collected and stored (including whether Social Security numbers are collected and stored), how this information is used, how this information is protected, who has access to this information, and the privacy protections that apply to this information.

Your reply by close of business June 6, 2008 is most appreciated. Should your staff have any questions, they may contact Kathryn Olson, Staff Director, Subcommittee on Social Security, at 225-9263, or Kim Hildred, Chief Social Security Advisor for Committee on Ways and Means Republicans, at 225-4021.

Sincerely,



Michael R. McNulty
Chairman



Sam Johnson
Ranking Member