

**ACIP's "Solutions for Immigration" Series:****Concepts for Solving America's Employment-based Immigration Puzzle****Worksite Enforcement****WORKSITE ENFORCEMENT: CENTRAL TO REFORM BUT NEEDS IMPROVEMENT**

Effective worksite enforcement is crucial to securing America's borders and our interior. Secretary Janet Napolitano, Senator Charles Schumer (D-NY), Senator Charles Grassley (R-IA), and Congressman Lamar Smith (R-TX) have all emphasized that employment eligibility verification is central to any bipartisan immigration reform. This Congress Congressman Smith has introduced The Legal Workforce Act (H.R. 2885), a bill that as drafted would mandate electronic employment verification for large multinational employers in as little as six months time, should the bill be enacted.

*"...Because E-Verify remains a paper-based system, it is unable to detect many forms of document fraud and identity theft. This leaves all employers vulnerable to sanctions through no fault of their own. ...Simply stated, unauthorized workers are using stolen Social Security numbers, fake certificates and fraudulently-obtained photo IDs to bypass the system and gain employment."*

*-Bruce Morrison,  
Chairman,  
U.S. House  
Immigration  
Subcommittee,  
1989 - 1991*

Congress must ensure that any mandatory employment verification system builds on E-Verify's success and is easy to use; accurate and reliable; deploys the latest technologies; is fully electronic; protects against identity theft; provides a safe harbor for employers against government error and subcontractor liability; and applies solely to new hires.

**THE E-VERIFY SYSTEM: RELIABLE, EXCEPT WHEN IT'S NOT . . .**

E-Verify is the current federal employment verification system and has been reauthorized through September 30, 2012 (PL 11-083). It is an Internet-based system operated by the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), in partnership with the Social Security Administration (SSA). While E-Verify enrollment is expected to continue to grow, roughly only four percent, or about 288,000 of the approximately 7.5 million employers nationwide currently use it.

Today, E-Verify operates alongside its paper-based predecessor, which requires all employers to complete a Form I-9 for a new hire. This information is then entered by employers into an online interface, which checks databases at DHS and SSA to verify if a worker is authorized for employment. While E-Verify can be effective in matching a name and a Social Security number to verify work authorization, the program cannot stop identity fraud, i.e., the unauthorized use of names and Social Security numbers of other work-authorized persons. While, USCIS uses a photo tool and has begun a pilot program, the Records and Information from DMVs for E-Verify (RIDE) to attempt to address these concerns, identity theft continues to be the Achilles heel of the E-Verify system, and Congress must take action to eliminate this problem in any reform measure so that employers are not vulnerable to sanctions through no fault of their own.

**EMPLOYERS NEED ONE FEDERAL ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM**

Today, E-Verify remains mostly voluntary, except when mandated by federal or state law. As of September 8, 2009, E-Verify is required for certain employers awarded federal contracts. Additionally, a number of states, and even cities, have enacted laws that require employers to use E-Verify or

complete additional verification requirements.

In May 2011, the Supreme Court issued a decision, *Chamber of Commerce of the United States of America v. Whiting*, that upheld an Arizona law requiring employers within the state to use E-Verify to confirm the employment eligibility of all new hires and allowed the state to suspend or revoke a business license when an employer knowingly employs unauthorized workers. This recent decision has empowered even more states to move forward in crafting E-Verify laws. Congress should preempt this patchwork of state laws with one reliable federal system so that employers have uniform requirements to follow.

#### CONCERNS TO ADDRESS BEFORE EXPANDING E-VERIFY

Employers must have confidence that any employment verification system accurately identifies those who are authorized, or unauthorized, to work, while reducing the redundancies that exist today. While USCIS has been making improvements to the E-Verify system over the last few years, the following concerns must be addressed before any system is expanded:

- **Eliminate the Form I-9 requirement when other verification is used.** For instance, E-Verify requires the employer to complete Form I-9 and enter very similar information online, which is both unnecessary and duplicative.
- **Prevent identity theft with a biometric option.** Currently the E-Verify system is unable to always detect document fraud and identity theft. While a “photo tool” is available for some documents, it is not as reliable as a biometric option. Employers should have the choice to use either E-Verify or a more secure biometric system to complete verification. A poll of Americans found that 79 percent favor the use of biometric identifiers for employment verification.
- **Ensure safe harbor from liability for verification users.** Any verification system must protect employers from liability when they rely on government approvals of erroneous authorizations. A safe-harbor must also exist for employers who use subcontractors without knowing the subcontractors hire or employ unauthorized workers.
- **Apply verification only to new hires.** Re-verification is redundant, expensive and burdensome. In 2008, the Congressional Budget Office estimated that the re-verification provisions found in one bill would cost U.S. employers over \$136 million a year during at least one of the first five years if enacted.

We encourage Congress to include these provisions in bipartisan reform this year. To learn more about worksite enforcement, please visit [www.acip.com](http://www.acip.com) or the HR Initiative for a Legal Workforce: <http://www.legal-workforce.org>.



*“Many occupations already require biometric identification for employees, and consumers are regularly given the option of securing their identity through use of a biometric identifier. It only makes sense to use the best technologies that are available to guarantee a legal workforce.”*

*-Mike Aitken,  
Chair, The HR Initiative for a Legal Workforce*

*An ACIP Member that specializes in information technology and has 45,000 U.S. employees, almost all of whom have at least a bachelor’s degree and are unlikely to be undocumented, anticipates spending \$35,000 per year to outsource E-Verify for all new hires.”*

*- ACIP submitted comments, Federal Acquisition Regulation, August 2008*