



U.S. CHAMBER OF COMMERCE

Employment Verification System

The U.S. Chamber recognizes that an enhanced employment verification system with obligations by employers must be part of any immigration reform package. There should be stiff penalties for an employer's failure to complete the employment verification process but there needs to be one, single national policy and uniform enforcement with safe harbors for good faith employers and an integrated, single employment verification system.

In the past, the U.S. Chamber has opposed the expansion of E-Verify. However, in light of improvements in E-Verify, its use by federal contractors, and the focus on a more reliable employment verification system as a necessity as well as a prerequisite to further immigration reform, the U.S. Chamber created an E-Verify Task Force in January 2011 to assess the Chamber's current position on whether or how E-Verify should be expanded. The U.S. Chamber remains committed to advocating for reform to fix our broken immigration system, and continues to believe that a workable and reliable employment verification system is only one part of necessary immigration reforms. However, a review of the Legal Workforce Act (H.R. 2885), introduced by Rep. Lamar Smith (Chairman of the House Judiciary Committee in the 112th Congress), shows that it addresses most of the current priorities of the Chamber and our E-Verify Task Force to make the employment verification system more workable for business, hence the Chamber supports the approach taken in that bill. The U.S. Chamber would oppose the approach taken in the employment verification bill introduced by Sen. Chuck Grassley (S. 1196, the Achieving Accountability Through Electronic Verification Act).

Most important for a workable employment verification bill for the U.S. Chamber are: strong preemption language for state and local laws mandating the use of E-Verify or establishing state or local employment verification investigation or enforcement schemes, mirror to existing FAR rules with respect to federal contractor obligations to use E-Verify on current workforce, no obligation to reverify entire current workforce for private employers, and creation of a clear safe harbor for employers that act in good faith.

The Chamber's top tier concerns around expansion of E-Verify, and the issues we think need to be addressed **prior** to or as a condition of any mandatory expansion of E-Verify, are:

1. **Preemption** – Made even more important after the Supreme Court's May 26, 2011 decision in *Whiting*, statutory expansion of E-Verify should bar, as of the date of enactment, any state and local laws mandating the use of E-Verify or establishing state or local employment verification schemes. The Chamber understands that federal legislation mandating the use of E-Verify will allow states to pass laws focused solely on state licensing authority which can be a penalty for employers who do not use the electronic verification system when mandated to do so by federal law.
2. **Reverification** – Employers have already verified their current workforce through the I-9 employment verification process and, therefore, "reverification" should be unnecessary and instead the E-Verify mandate should be prospective on new hires. The U.S. Chamber will oppose an obligation for private sector employers to be subject to mandatory reverification of their entire current workforce. Mandatory use of E-Verify on current workforce should

apply to staff assigned to critical infrastructure sites. With respect to federal contractors, any mandatory E-Verify legislation should establish that current workforce assigned to such contracts be verified in E-Verify, except that individuals exempted by the FAR provisions must likewise be exempted under any proposed legislation. Provisions may allow the voluntary use of E-Verify on current workforce but, in order to provide clarity to employers and to better protect from inadvertent discrimination or the appearance of discrimination, any employer that voluntarily chooses to use E-Verify must do so on its full workforce and it must be clear that no government agency can use the employer's choice on whether or not to use E-Verify voluntarily on previously hired staff to either target companies for investigation or as part of any enforcement matter.

3. **Safe harbor** – It is critical that there be new, very strong safe harbor language, protecting employers who act in good faith, starting with a presumption that those that use E-Verify are good faith actors. There are two good faith defenses: employers who act in good faith cannot be liable under any state or federal civil or criminal law for any employment-related action taken in reliance on information provided through E-Verify, and, in addition, the burden of proof shifts when employers act in good faith by establishing compliance with their employment verification obligations such that DHS may not proceed unless it shows by clear and convincing evidence that the employer had knowledge that an employee is an unauthorized alien. Further, employers who act in good faith may have penalties waived or reduced and good faith employers may not be penalized for de minimus violations. It would be ideal for there also to be recognition of business disruption avoidance during the transition period to a new mandatory E-Verify system.
4. **Integrated single employment verification system, integrating I-9 requirements into E-Verify** – Such integration should be required before any mandatory use by employers, so that both a fully electronic option and telephonic option will be available to employers. Current law requires employers to both complete the I-9 employment verification process and, where the employer uses E-Verify, to separately input data from the I-9 into E-Verify.
5. **Phase-in** – Employers should be phased-in to any E-Verify mandate and once phased-in obligated to use E-Verify on all new hires. The phase-in should take at least three years after the establishment of an integrated employment verification system. E-Verify queries may be run as of the date of job offer, and must be done no later than the third day of employment, for each new hire.
6. **Agriculture** – We have made it clear that we believe production agriculture should be treated differently in that a new, workable agricultural worker visa program should be established before that industry is mandated to use E-Verify.

