



STATEMENT OF BRUCE A. MORRISON

FORMER MEMBER OF CONGRESS

**AND CONSULTANT TO THE
SOCIETY FOR HUMAN RESOURCE MANAGEMENT**

**SUBMITTED TO
VIRGINIA SMALL BUSINESS COMMISSION**

AUGUST 3, 2009

Mr. Chairman and Members of the Committee. My name is Bruce A. Morrison. I am the chairman of Morrison Public Affairs Group and a consultant to the Society for Human Resources Management. From 1983 to 1991, I was a Member of Congress (CT-3) and a member of the Immigration Subcommittee of the Judiciary Committee during the passage of the Immigration Reform and Control Act of 1986. From 1989 to 1991, I was chairman of the Immigration Subcommittee and authored the Immigration Act of 1990. During the 1990s, I served on the U.S. Commission on Immigration Reform chaired by former Congresswoman Barbara Jordan, which first recommended electronic employment verification. I also was Chairman of the Federal Housing Finance Board.

I am here today on behalf of the Society for Human Resource Management (SHRM) – the world’s largest association devoted to human resource management. Representing more than 250,000 individual members, including 15,711 members in the Commonwealth of Virginia. The Society’s mission is both to serve human resource management professionals and to advance the human resources profession.

SHRM represents the professionals on the front lines of employment verification, and the people we represent are fully committed to the hiring of only work-authorized individuals through an effective, efficient electronic employment verification system. We believe effective employment verification is the answer to keeping unauthorized workers off U.S. payrolls.

My remarks this morning will focus on the employment verification process established in the Immigration Reform and Control Act (IRCA) of 1986, as well as the state of the current electronic verification system, E-Verify – a program that was enacted in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. I will outline the strengths and weaknesses of the E-Verify and discuss a way forward that offers the promise of an efficient and effective national employment verification system.

History of Employment Verification

Mr. Chairman, under IRCA, employers are now required to review a variety of documents, to be presented by employees within three business days of a hire that demonstrate the employee's identity and authorization to work in the United States. Employers are then required to attest on Form I-9 that they have reviewed the documents and that they appear genuine and authentic. Under current law, 25 paper-based documents are available to employees to demonstrate work eligibility, with 12 different documents authorized under law to prove identity. In addition, employers may choose to also verify work authorization through E-Verify.

Even under the best of circumstances, HR professionals encounter numerous challenges with the employment verification requirements under IRCA. These include verifying the authenticity of documents presented by an employee and managing the current I-9 process, which is burdensome and time-consuming.

According to *SHRM's 2006 Access to Human Capital and Employment Verification* survey, 60 percent of responding HR professionals indicated that they continue to experience problems with the verification requirements of IRCA over 20 years after its enactment. The most common challenge cited is ascertaining the authenticity of documents presented for employment (40 percent).

There is ample evidence that the I-9 system is prone to fraud, forgeries and identity theft, making it difficult – if not impossible – for an employer to differentiate between the legal and illegal worker.

In an attempt to address the shortcomings of the paper-based system, Congress created the Basic Pilot program – now known as E-Verify – for employers to confirm an employee's eligibility to work using a voluntary electronic verification system. Under E-Verify, employers review an employee's identity and work authorization documents consistent with IRCA requirements, including completing all Form I-9 paperwork prior to using E-Verify. Employers then check each new employee's work eligibility using an electronic system that verifies that the

presented name, date of birth, Social Security number and / or Department of Homeland Security (DHS) alien number, matches information in these databases.

The E-Verify system is required to respond to the employer within three days with either a confirmation or a tentative non-confirmation of the employee's work eligibility. In the case of a tentative non-confirmation, a secondary verification process lasting ten days is initiated to confirm the validity of the information provided and to provide the employer with a confirmation or non-verification of work eligibility. Employers are not permitted to terminate individuals that have received a tentative non-confirmation until the employer has received a final non-verification or the ten-day period has elapsed.

From its beginning, E-Verify has been a laudable effort. Using the technologies available at the time, it has provided a fairly reliable option for employers seeking a better method than a simple review of paper documents for employment verification. However, as technologies have evolved, the E-Verify program has remained static.

Shortcomings of E-Verify

Although E-Verify has been operational since 1997, and despite the best efforts of the men and women who administer this program in the United States Citizen Immigration Services (USCIS), we believe it is inadequate to meet the needs of mandated use by all U.S. employers and will not provide an effective system for preventing unauthorized employment without significant change. SHRM therefore believes that mandating E-Verify at this time is the wrong choice for the Commonwealth of Virginia and the United States for several reasons.

First, E-Verify is not reliable because it depends principally on the Social Security Administration database. According to testimony before the U.S. Congress by the Social Security Administration's own Office of the Inspector General, there is a 4.1 percent error rate in the Social Security records. If all U.S. employers were to use the system, millions of U.S. citizens and legal residents could potentially be denied employment due to bureaucratic errors. Moreover, the error rate for work authorized foreign nationals has been estimated to be as high

as 10 percent (although some recent improvements have been reported in this area), thereby opening the door to increased discrimination based on national origin.

This error rate is unacceptable – especially when it will hamper the ability of legal workers to obtain jobs. We should not place human resource professionals and their employers in the middle – subjecting them to stiff penalties if they mistakenly hire an unauthorized worker, while exposing them to potential lawsuits if they deny employment to a legal worker – all because of faulty government data and processes.

Second, E-Verify remains a paper-based system and not the entirely electronic system portrayed by its advocates. Employers are still required to complete the paper Form I-9 after analyzing one or more of 25 documents that an employee can use for identity and work authorization purposes. It is only after completing the Form I-9 and finding the employee eligible to work on the documentary evidence that an employer enters data into E-Verify.

Third, and finally, 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. This is because E-Verify does not verify that the person presenting the documents has the name and identifiers alleged. If the employee is an imposter, the fact that the person he or she is impersonating checks out in the Social Security and Department of Homeland Security databases does not prevent the hiring of an unauthorized worker.

Simply stated, unauthorized workers are using stolen Social Security numbers, fake certificates and fraudulently-obtained photo IDs to bypass the system and gain employment. Even the E-Verify photo tool can only detect fake documents where a photo has been substituted. It cannot detect whether the document actually relates to the person presenting it.

The proliferation of false or stolen documents can and does cause reputable employers to mistakenly hire individuals who are not eligible to work. At the same time, the lack of certainty and the threat of government-imposed penalties may lead some employers to delay or forego

hiring legal workers who are eligible. In either case, the costs are high for both U.S. employers and legal workers.

Issues Raised by State Mandates

Employers need the right tools to verify a legal workforce. We believe employers are entitled to a quick, unambiguous, and accurate answer from the government to the query whether an employee is authorized to accept an offer of employment. Unfortunately, mandating E-Verify without change will not meet this need, and may make the challenges more difficult for reputable employers and legal employees.

Over the past two years – primarily due to an understandable frustration on the part of state and local governments over the lack of immigration control – many jurisdictions have enacted their own laws on employment eligibility verification. The desire to deter illegal immigration proactively by ending unauthorized employment is both understandable and laudable, and one we support. State legislatures, such as here in Virginia, feel the need to step in and do something on an issue of such great importance.

In fact, dozens of states have already acted or are in the process of considering legislation in the area of employment verification. What is resulting, however, is a confusing and complex patchwork of laws and regulations that could make it all but impossible for multi-state businesses to comply, and that do not serve the interests of employers, employees or the country.

If Virginia enacts legislation mandating participation in E-Verify by your state's employers, you will replicate many provisions contained in other controversial state laws that have been strenuously opposed by organizations representing employers, civil rights groups and legal immigrants.

We urge the Commonwealth of Virginia to carefully consider the effort underway to mandate employer use of E-Verify. As a pilot program, E-Verify has been very worthwhile in highlighting the challenges in creating a system for the many hiring situations in the U.S.

economy. It is time, however, to go beyond E-Verify and to provide employers the option of enrolling in a more secure system. That is why SHRM has endorsed a bill now before the U.S. Congress entitled the New Employee Verification Act (NEVA) – as it will employ far superior technologies, and represents the next generation in effective employment verification.

The New Employee Verification Act

The New Employee Verification Act will transform the current paper-based verification process into a state-of-the-art electronic system that is accurate, reliable, cost-efficient, easy-to-use, and shares responsibility among government, employers and employees.

Under NEVA, all employers would be required to participate in a completely electronic employment verification system (EEVS) that improves upon E-Verify by replacing the paper-based, error-prone, I-9 work status verification process with a paperless system.

EEVS would require the Social Security Administration and the Department Homeland Security to certify the accuracy of the system in advance of full implementation, and annually thereafter – and it would also require the Government Accountability Office to evaluate the accuracy, efficiency and impact of the EEVS.

EEVS would provide for the verification of U.S. citizens only by the Social Security Administration – with only non-citizens checked and tracked by law enforcement authorities at DHS. Importantly, all employers would be subject to stepped-up Federal enforcement efforts and penalties for noncompliance with the verification system.

Employers would be provided with a second voluntary option for a more secure electronic employment verification system (SEEVs) to guard against identity theft. The proposed SEEVs system would verify employees' identity and work eligibility through both government and publicly available databases and "lock" that identity once verified through use of biometric technologies. To achieve this level of security, SEEVs would establish a network

of private sector government-certified companies to authenticate new employees' identities utilizing existing background check and document screening tools. Each employee's identity would be safeguarded through the use of a biometric identifier (such as a thumbprint) and interoperable dispersed databases that will keep the biometric and identity information separate. An employee would simply present his or her biometric to an employer to confirm identity and work authorization. After verification, the biometric database entry could be erased at the option of the employee. The service would be paid for by employers.

Use of biometric identifiers is becoming widely accepted by Americans, as it increases an individual's ability to protect personal identification data and prevent identity theft. Many employers – including certain high security industries, schools, hospitals and government entities– already use biometrics in the employment process, and U.S. consumers are increasingly using them at banks and airports, and other service providers and retail outlets incorporate the technology into everyday transactions. In addition, and contrary to expectation, biometric scanners are inexpensive and easy to use.

Importantly, a secure employment verification system – as proposed in NEVA – would preclude the creation of new government bureaucracies to administer the employment verification system and does not require any new national or state identification cards to facilitate the process, thus savings billions of dollars as well as preventing another opportunity for identity fraud.

The new system would also provide employers with a “safe harbor” protecting them from prosecution if the system fails, along with a reasonable phased-in implementation schedule designed to achieve deterrence of illegal immigration and unauthorized employment, while providing employees needed protections against discrimination.

We believe this new system could eradicate virtually all unauthorized employment, thereby eliminating a huge incentive for illegal immigration. It would also combat employment discrimination by taking the subjectivity out of the verification process.

True employment verification is the only way to ensure fair and equitable treatment for those individuals who are eligible to work in the U.S. It is essential for a legal workforce and for America's national and economic security to have this kind of dependable system.

Thank you again for this opportunity to present the views of the Society for Human Resource Management and tens of thousands of U.S. employers. I would be happy to answer any question you may have at this time.