

Angelo I. Amador, Co-Chair
US Chamber of Commerce

Kelly Knott, Co-Chair
Associated General
Contractors of America

Scott Vinson, Co-Chair
National Retail
Federation/National Council of
Chain Restaurants

Executive Committee

Agriculture Coalition for
Immigration Reform

Americans for Tax Reform

American Meat Institute

American Nursery & Landscape
Association

American Road & Transportation
Builders Association

American Seniors Housing
Association

American Staffing Association

American Subcontractors
Association

Associated Builders and
Contractors, Inc.

Building Service Contractors
Association International

College and University
Professional Association for
Human Resources

Essential Worker Immigration
Coalition

Golf Course Superintendents
Association of America

International Franchise
Association

International Public Management
Association for Human Resources

Mason Contractors Association of
America

National Association of Home
Builders

National Association of
Plumbing-Heating-Cooling
Contractors

National Chicken Council

National Club Association

National Multi Housing Council

National Restaurant Association

National Roofing Contractors
Association

Printing Industries of America

Retail Industry Leaders
Association

Society of American Florists

Tree Care Industry Association

10 May 2007

The Honorable «FullName»
United States Senate
Washington, DC 20510

Dear «FormalName»:

On behalf of the Electronic Employment Verification System (EEVS) Working Group, we would like to share with you our thoughts on some items of key concern in the current debate over comprehensive immigration reform, and its impact on the role of all U.S. employers who will be required to participate in a new employee verification system.

The EEVS Working Group is a coalition of employer trade associations that has a focused interest on the way in which a new employee verification system will impact the day-to-day activities, obligations and responsibilities of all U.S. employers. While some members of the EEVS Working Group are interested in the broader issue of comprehensive immigration reform, all of our members share a joint belief that in order for an immigration reform effort to be successful, its employer requirements and enforcement provisions must be workable, efficient, and fair. With this letter, we would like to outline some of the top priority issues of our organizations.

Liability/Intent Standard

The employer community has stepped up to the plate in agreement with lawmakers that the current verification systems—the I-9 system, and Basic Pilot—are broken. We support reforming and refining these systems to not only enhance their accuracy and efficiency, but also because we believe creating a new, workable system will give all U.S. employers the peace of mind that comes with knowing that all of your employees are authorized to work in the United States. However, with all of the new employer obligations and mandates that will be added into a new system, one thing that the employer community cannot support is a lowering of the liability standard from the current statutory “knowing standard,” to a more subjective statutory “reckless disregard” or, even more subjective, a “reason to know” standard.

Under current statute, employers in the system are held to the “knowing” standard. When it comes to enforcement proceedings, the determining factor is whether an employer knew that they were violating the law, and chose to continue doing so. Several iterations of draft legislation as part of comprehensive immigration reform negotiations have sought to lower the standard of liability on employers to “reckless disregard,” or “reason to know”—standards that, as part of statute, make enforcement of these provisions much more subjective, and make it much more difficult for an employer to know whether they are in compliance. Employers must have a clear understanding of their roles and obligations under the new system.

Lowering the liability standard to “reckless disregard” or “reason to know” makes an employer’s compliance more open to interpretation, and much more prone to “gotcha” politics by enforcement agents. The employer community firmly supports maintaining the current statutory “knowing standard,” and does not support watering down the statute to a lesser liability standard.

Contractor/Subcontractor Relationships

Frequent in the debate over immigration reform has been a discussion about the liability relationship between an employer and their subcontractors. The members of the EEVS Working Group believe that all U.S. employers must participate in the system, and must be held responsible for the legal status of their own, direct employees. We firmly oppose any effort to commingle liability by requiring employers to become involved in verifying or investigating the employment status of another employer’s employees. Further, we continue to support the maintenance of the current statute and standard of liability for contractor and subcontractor relationships that makes it a violation of law to *knowingly* use subcontract labor to circumvent U.S. law. We do not believe that an employer should be able to knowingly and purposefully use subcontract labor to circumvent the law; however, we strongly believe that it would be short-sighted and patently unfair for lawmakers to create a direct liability chain between employers and their subcontractors’ employees’ legal status—the status of people whom the primary employer has no power to hire or fire. If all U.S. employers are required to participate in the system, then creating an additional, burdensome liability chain between employers and those with whom they have subcontracts is moot. All employers should be held accountable by the government for their own employees.

CEO certification requirements

The immigration debate often includes a conversation about extra certification requirements that can be assessed on employers by the Department of Homeland Security (DHS) when they believe that an employer or industry is prone to having illegal immigrants in their workforce. While we understand the government’s interest in being able to identify a specific person who can be held accountable for the implementation of the employment verification system, we disagree that certifications of compliance with the system must always be completed by the CEO. In many instances, especially with small businesses, the “CEO” of that small business will always be the person signing a certification of compliance. However, for larger, multi-jurisdictional businesses who may be hiring employees in many locations across the country, we believe that the law must allow for companies to have the flexibility to designate a more appropriate management employee to sign certifications of compliance. We support legislative language that would instruct a “CEO *or* designated official authorized to implement the EEVS requirements” to fulfill the responsibility for completing certifications of compliance.

Re-verification

The employer community is greatly concerned about any efforts to force a rapid re-verification of the entire U.S. workforce as part of a larger comprehensive immigration reform bill. Implementing a large-scale re-verification of all U.S. workers would be an enormously burdensome, complicated and lengthy process. For many legitimate U.S. workers, just trying to find their social security card to present to their employer could prove time-consuming and problematic. Congress must consider the burdens that a rapid re-verification will impose on employers and citizens, and adopt more sensible approaches to ensuring that all U.S. workers are work authorized.

The EEVS Working Group members would recommend that instead of requiring a full re-verification of all current workers, that lawmakers consider requiring employers to run a match of their employees' social security numbers with the SSA database. Those current employees who come up in the system as a 'No Match' could then be asked to complete a full re-verification. We believe that such a strategy would dramatically cut down on the number of employees nationwide who need to submit to the full re-verification process, and would dramatically decrease the implementation burden for employers trying to navigate a new system. It is important to note that current estimates indicate approximately 5% of the U.S. workforce is illegal. A re-verification requirement for all U.S. workers will require that 95% of U.S. workers who are already work authorized undergo a burdensome process for essentially no purpose.

Debarment

The EEVS Working Group believes that employers who contract with the federal government, and who knowingly violate the system, should be subject to debarment in the same way as any government contractor who violates any federal law. Importantly though, we strongly disagree with many lawmakers' recent efforts that would make debarment *automatic*, lacking commonsense due process procedures. Current law *already* provides for federal contractor debarment for violations of immigration laws under the **Federal Acquisition Regulations (FAR)**. We urge lawmakers not to single out immigration violations for automatic debarment without due process. For many government contractors, debarment is a 'death sentence' for their company. Those employers should be entitled to the same due process under the FAR that all government contractors are entitled to for other violations of laws or terms of their contracts.

Penalties

The employer community does not oppose efforts to increase penalties against egregious and willful violators, however, we urge lawmakers to pursue a penalty structure that is rational and fair. If penalties are too high, and too unyielding, an employer who is assessed a penalty, but believes that they did not violate the law, will be forced into an unnecessary settlement because they cannot afford to pay both the legal fees necessary to fight the citation, and gamble that they won't end up with a penalty that is so high it devastates their business. Penalties should not be inflexible, and we urge lawmakers to incorporate statutory language that allows enforcement agencies to mitigate penalties, rather than tying them to a specific, non-negotiable, dollar amount.

Private Rights of Action

The EEVS Working Group believes that enforcement of federal immigration law resides properly with the federal government. Accordingly, we maintain that DHS, as the federal agency tasked with responsibility for immigration enforcement, should have sole enforcement authority over prosecutions for violations of section 274A of the immigration code, and also for all other enforcement provisions of any new employment verification system.

Lawmakers may be aware that the federal RICO statute has recently been used by private attorneys seeking to enforce immigration law. Not only does this invade the province of the federal government as sole enforcer of federal immigration policy, it also perverts the federal RICO statute into a use that is contrary to the intent of the statute. Immigration reform should

include statutory language that makes clear immigration enforcement is the exclusive domain of the federal government, and specifically prohibiting private rights of action in this arena.

Preemption

Inaction on immigration reform at the federal level has led to the proliferation of new immigration enforcement laws at the state and local levels. For multi-state employers this phenomenon is creating new complexities as they struggle to comply with an ever-larger array of disparate requirements. EEVS strongly believes that states and localities should be preempted from singling out segments of the business community by mandating onerous requirements as a precondition of doing business. As such, we urge Congress to preempt all state and local immigration laws as quickly as possible. Employers must know what their responsibilities are under immigration law, and having one federal law will help alleviate any confusion about employers' role under the law.

While these issues are by no means the full list of our various organizations' concerns with a new enforcement and employee verification system, we appreciate this opportunity to share with you our thoughts on some of our top concerns. The federal government seeks, through this new employee verification system, to impose massive new responsibilities on every single employer in the United States, with serious consequences for failing to live up to those responsibilities. We look forward to working with you to ensure that this system is fair, efficient, reliable, workable and simple for employers to use.

For more information, please do not hesitate to contact Angelo Amador, U.S. Chamber of Commerce (202-463-5422), Kelly Knott, Associated General Contractors (202-547-4685), or Scott Vinson, National Council of Chain Restaurants (202-661-3059).

Sincerely,

EEVS Working Group