



# Statement of the U.S. Chamber of Commerce

---

**ON:** EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEMS  
(EEVS) AND THE POTENTIAL IMPACTS ON THE  
SOCIAL SECURITY ADMINISTRATION'S (SSA'S)  
ABILITY TO SERVE RETIREES, PEOPLE WITH  
DISABILITIES, AND WORKERS

**TO:** HOUSE SUBCOMMITTEE ON SOCIAL SECURITY OF  
THE COMMITTEE ON WAYS AND MEANS

**BY:** MITCHELL C. LAIRD, ESQ.  
PRESIDENT, MCL ENTERPRISES, INC.

**DATE:** MAY 6, 2008

---

The Chamber's mission is to advance human progress through an economic,  
political and social system based on individual freedom,  
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 96 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Testimony before  
House Subcommittee on Social Security of the Committee on Ways and Means

Hearing on  
Employment Eligibility Verification Systems (EEVS) and the Potential Impacts on the  
Social Security Administration's (SSA's) Ability to Serve Retirees, People with  
Disabilities, and Workers

Tuesday, May 6, 2008

Statement of  
Mitchell C. Laird, Esq.  
President, MCL Enterprises, Inc.

Chairman McNulty, Ranking Member Johnson, and members of the Committee, I am Mitchell C. Laird, President of MCL Enterprises, Inc., and it is an honor and a privilege to testify before you today on the many issues raised by the Employment Eligibility Verification Systems (EEVS) and their potential impact on businesses and employees. I will be testifying today on behalf of MCL Enterprises, Inc., and the United States Chamber of Commerce.

## **Background**

MCL Enterprises, Inc. and its affiliated entities own twenty-four Burger King® restaurants throughout the state of Arizona. At a given time, the MCL Enterprises family of companies employs approximately 600 workers at its restaurants. In addition, MCL Enterprises utilizes an administrative staff of ten people who work at an administrative office. Turnover in the quick service restaurant industry is extremely high. At our current rate, we anticipate nearly 900 new hires in 2008. MCL Enterprises has always gone to great lengths to ensure that it is following all federal law relating to the employment of authorized workers. The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees.

## **Arizona Legislation**

The current immigration system is clearly broken and states and localities have responded to the lack of action at the federal level with a patchwork of immigration laws and enforcement, exposing employers who must deal with a broken legal structure to unfair liability. Many states and local governments are attempting to either force employers to bear the cost of helping to shield undocumented workers or are attempting to impose additional worksite enforcement provisions.<sup>1</sup> These attempts run the risk of

---

<sup>1</sup> For a study commissioned by the Labor, Immigration and Employee Benefits Division of the U.S. Chamber of Commerce and the National Association of Home Builders on the impact of these laws on

undermining the ability of the federal government to oversee and enforce national immigration laws and also put undue burden on businesses attempting to deal with the current broken system.<sup>2</sup>

My home state of Arizona has enacted the toughest legislation in the country for the punishment of employers who have hired unauthorized aliens. Under the Arizona statute, if an employer “knowingly” employs two unauthorized aliens in a three year period, that employer’s business license will be permanently revoked.<sup>3</sup> It is the death penalty for the business. “Knowingly employ unauthorized aliens” is a term of art in the Arizona statute that does not necessarily require actual knowledge.<sup>4</sup> As mentioned above, we anticipate approximately 900 new hires for the current calendar year. At that rate, two bad hires over three years would be better than a 99.9% successful hire rate. However, it would still expose the company to the ultimate sanction of the loss of its business license, which would mean the loss of my life’s work and the displacement of approximately 600 jobs of authorized workers in Arizona.<sup>5</sup>

The Arizona statute also places administrative burdens on employers and on the Social Security Administration (SSA) and other federal agencies. Although federal law created E-Verify, also known as Basic Pilot, as a voluntary program, Arizona law requires all employers, regardless of size, to use E-Verify for all employees hired after December 31, 2007.<sup>6</sup> Furthermore, a proposed amendment to the Arizona statute would contain a voluntary “safe harbor” provision which would additionally require employers to run a Social Security Number Verification System (SSNVS) check on all existing employees hired before January 1, 2008.<sup>7</sup> The proposed amendment would include additional penalties for employers that fail to sign up for and utilize E-Verify.<sup>8</sup> As a result of this legislation, more than 100,000 Arizona employers are being forced to volunteer for the E-Verify program.<sup>9</sup> Obviously, more participants in E-Verify means more tentative nonconfirmations, which will have to be resolved at SSA offices. If the proposed amendment becomes law, a significant number of Arizona employers will also run SSNVS checks on their existing workforce. With a total workforce in Arizona of

---

employers, please see “Assessing the Economic Effects of State Laws Addressing the Employment of Foreign-Born Unauthorized Workers,” by Peter Creticos, Ph.D., incorporated in its entirety by reference here into the record.

<sup>2</sup> Amador, Angelo I., U.S. Chamber of Commerce, testimony before the House Subcommittee on Social Security of the Committee on Ways and Means, June 7, 2007, at 6.

<sup>3</sup> Arizona Revised Statutes (A.R.S.) §23-212(F)(3).

<sup>4</sup> See A.R.S. §23-211(6) which incorporates the provisions 8 United States Code §1324a by reference.

<sup>5</sup> In some cases, the Arizona statute will only revoke the licenses at the specific location where the unauthorized alien worked. In other cases, all licenses of the entity are revoked. See A.R.S. §23-212(F)(3). However, because many businesses have cross-collateralization agreements with their lenders, the suspension of operations at one location would put all locations at risk.

<sup>6</sup> A.R.S. §23-214.

<sup>7</sup> See Employer Sanctions, Arizona House Bill 2745, 48<sup>th</sup> Legislature, Sec. 7 (2008). Arizona H.B. 2745 passed the Arizona House of Representatives on April 1, 2008, passed the Arizona Senate on April 28, 2008, and was transferred to Governor Janet Napolitano for signature on April 29, 2008.

<sup>8</sup> See Arizona H.B. 2745, Sec. 6.

<sup>9</sup> Arizona Workplace Informer, a product of the Arizona Department of Commerce, Research Administration, Arizona 2006 Occupational Wage and Employment Estimates, [http://www.workforce.az.gov/admin/uploadedPublications/2448\\_Arizona06.xls](http://www.workforce.az.gov/admin/uploadedPublications/2448_Arizona06.xls).

over 2.5 million,<sup>10</sup> this new provision is likely to generate a substantial number of SSNVS mismatches which will result in calls and visits to local SSA offices.

In addition to the financial burden the Arizona law places on both Arizona employers and federal agencies, the law tends to undermine the efforts of federal legislators to balance the interests of immigration enforcement with the interest of preventing discriminatory employment practices. By creating a new and devastating penalty for violation of immigration laws, the Arizona legislature is creating tremendous pressure on Arizona employers to discriminate against prospective employees who could be the cause of a complaint because of their appearance, nationality, or language skills.

A new worksite enforcement regime needs to address specifically these attempts to preempt jurisdiction of federal immigration law. Employers must know what their responsibilities and liabilities are under immigration law, and having one federal law will help alleviate any confusion about employers' role under the new law.<sup>11</sup>

## **Costs**

The costs to the employer of running a good E-Verify program are substantial. The Government Accountability Office (GAO), relying on independent studies, estimated "that a mandatory dial-up version of the pilot program for all employers would cost the federal government, employers, and employees about \$11.7 billion total per year, with employers bearing most of the costs."<sup>12</sup> While it is anticipated that the web based version of the program is less costly because there is no dedicated phone line and fewer information technology expenses, our experience has been that such costs are likely insubstantial compared to the dramatic costs in productivity as labor is diverted from productive activities to administrative activities.

At the time that the Arizona statute was passed, MCL Enterprises, like most Arizona companies, was not using E-Verify. Preparing for the transition to using E-Verify was extremely costly and disruptive to our operations. All of our restaurant managers, assistant managers, and directors of operations had to attend external training. The training cost the company both in the fees that are paid to attend the training sessions and in lost productivity of these critical employees. In addition to the external training, administrative staff of the company had to take time from their normal duties to review the E-Verify procedures manuals, take the online training, develop a written company policy and then communicate that policy to the employees at the stores. We hire new employees every day. This means that we must create redundancies in the system and have multiple persons trained at every task in the Form I-9 and E-Verify process in order

---

<sup>10</sup> Arizona Workplace Informer, Arizona 2006 Occupational Wage and Employment Estimates, [http://www.workforce.az.gov/admin/uploadedPublications/2448\\_Arizona06.xls](http://www.workforce.az.gov/admin/uploadedPublications/2448_Arizona06.xls).

<sup>11</sup> Amador, Angelo I., U.S. Chamber of Commerce, testimony before the House Subcommittee on Social Security of the Committee on Ways and Means, June 7, 2007, at 6.

<sup>12</sup> Government Accountability Office, "Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts," June 19, 2006, <http://www.gao.gov/new.items/d05813t.pdf> at 29.

to comply with the requirement that all E-Verify queries be run within three days of the date of hire.

Training costs are not limited to the start up period. As we have turnover in managerial and administrative positions, new employees will have to be trained. In addition, quality control will require periodic refresher courses for incumbent employees.

Dealing with Form I-9 and E-Verify issues takes a substantial amount of time. The person responsible for running E-Verify query will check the Form I-9 to make sure that the form has been completely filled out and that we have all the information necessary to run the E-Verify query. Despite all of our training, we estimate that as many as ten percent (10%) of all I-9 forms will have errors upon their initial submission to our administrative offices. In most cases, an error is made by the employee in filling out his or her personal information and the error is not detected by the store manager. In some cases, the error relates to special requirements of the E-Verify system that are not required of employers who have not volunteered for E-Verify.<sup>13</sup> The person responsible for running E-Verify must contact the restaurant and the restaurant typically must contact the employee to correct the error.

Once we have a good I-9 to work from and any additional documentation we need for E-Verify, we run the E-Verify query. In most cases, we receive an immediate response that the employee is employment authorized and the case gets “resolved” in the E-Verify system. However, in over fourteen percent (14%) of our queries, the initial response is something other than “employment authorized.” When the initial response from E-Verify is something other than “employment authorized,” there are going to be additional costs to the employer. When there has been either an SSA or a Department of Homeland Security (DHS) tentative nonconfirmation, a notice must be prepared and delivered to the employee. The information on the notice is re-verified with the employee. If there is an error, then a new query must be run. If there is no error and the employee contests the tentative nonconfirmation, then a referral letter must be generated and delivered to the employee. Federal law requires that the employer continue to treat the employee as fully authorized to work during the time that the tentative nonconfirmation is being contested. This means the employer cannot suspend the employee or even limit the hours or the training for the employee.

Someone must monitor any unresolved E-Verify queries on a daily basis to make sure that employee responses are being made in a timely manner. If an employee contests the tentative nonconfirmation, but does not return with a referral letter, the employer must re-check that employee’s work authorization after the tenth federal work day from the date that the referral letter was issued.

MCL Enterprises is fortunate to have the staff to deal with these issues and allow for redundancy and backup. For smaller operations that do not have that luxury, the burdens will be even greater. With Arizona’s tough statute, that means that these smaller operations will be exposed to tremendous potential liability despite their best efforts.

---

<sup>13</sup> Under Arizona law, participation in E-Verify is not voluntary.

Smaller operations that do not have in-house counsel or layers of administration are also more likely to turn to SSA or DHS with questions, which will impose additional burdens on those agencies.

## **Citizens and Resident Aliens**

In our experience, there is a tremendous disparity between the initial E-Verify results for U.S. citizens versus the initial results for resident aliens. Only 3.2% of U.S. citizens received an initial response other than “employment authorized,” while almost 75% of resident aliens received an initial response other than “employment authorized.”<sup>14</sup> Because of the additional costs under E-Verify of an initial response that is not “employment authorized,” in our experience, resident aliens are more expensive to employ than U.S. citizens. Consistent with our experience, an independent study of the web-based Basic Pilot Program, which DHS refers to as E-Verify, concluded that foreign-born employees were thirty (30) times more likely to receive a false tentative nonconfirmation as were U.S.-born employees.<sup>15</sup>

Another disparity between the treatment of U.S. citizens and resident aliens is that only resident aliens are subject to the photo comparison tool in E-Verify. If a permanent resident alien submits his or her resident alien card as a “List A” document for proof of identification and work authorization, then the employer must compare a copy of the resident alien card to a photo from the Department of Homeland Security database. Employers are required to retain a copy of the resident alien card with the employee’s I-9. This creates another level of liability exposure for employers because the E-Verify manual is clear that the two photographs must be exact. That can be difficult to determine, especially if the employer is looking at a photocopy of the resident alien card. The copy of the card is then retained and the employer is subject to the possibility that Immigration and Customs Enforcement (ICE) or some other agency will second-guess the employer’s determination that the two photographs were an exact match. If the employer is not certain that the photographs match exactly, then that serves as a tentative nonconfirmation, which means extra work and costs for the employer, the employee, and DHS. The employee must go to DHS to resolve the issue, and the employer has an additional E-Verify case to monitor.

---

<sup>14</sup> In MCL Enterprises’ experience, only ten out of thirty-nine *queries* on resident aliens resulted in an initial response of “employment authorized.” Sometimes more than one query is run on a single employee. Information may be entered incorrectly when running E-Verify. When this happens, the employer must “resolve” the query by indicating that it was an “invalid” query. The employer then runs a new initial query on that employee and gets a new initial response. In our experience, invalid queries are much more likely to come from persons with compound surnames, who are much more likely to be resident aliens. If we assume that all the invalid queries on resident aliens resulted in duplicate queries on a single employee, then a little over two-thirds of all resident alien employees (21 out of 31) had an initial result other than “employment authorized.”

<sup>15</sup> Westat, Findings of the Web Basic Pilot Program Evaluation, at 97, September 2007.

Because of the disparity in cost and the disparity in liability exposure between applicants who are U.S. citizens and those who are resident aliens, I believe the current E-Verify system puts pressure on employers to give preference to applicants who look like they will check the box on the I-9 indicating that they are a U.S. citizen.

## **Labor Shortages**

Any aspect of immigration reform, such as the expansion of the E-Verify system, that have the effect of shrinking the currently available labor pool should be rolled out as part of a comprehensive immigration reform program that also addresses the legitimate need for workers in this country. MCL Enterprises is constantly seeking workers at all of its locations. Since E-Verify became mandatory in Arizona, applications are down. Restaurant owners throughout the state of Arizona are experiencing the same shortage. It is not uncommon for restaurants to have permanent or semi-permanent “now hiring” signs. On a recent tour of quick service restaurants in southern Arizona, a number of those restaurants used their main marquee signage to advertise “now hiring” rather than the products they are selling. Dealing with enforcement issues without, at the same time, addressing the labor shortage issue will have a substantial negative impact on employers and the economy.

## **Conclusion**

In conclusion, I urge you to work with the business community to create a unified, and workable, EEVS within the context of comprehensive immigration reform. This includes:

- \* A single, federal system with regard to worksite enforcement that would preclude state and local governments from imposing multiple layers of sanctions on employers;
- \* An overall system that is fast, accurate, and reliable under practical real world working conditions;
- \* A system that provides adequate work visas to address labor shortages in our country;
- \* A system that does not impose undue burdens on non-citizens or create incentives for employers to treat applicants unequally based on citizenship.

Employers will be at the forefront of all compliance issues. Thus, employers should be consulted from the start in the shaping of the EEVS to ensure that it is workable, reliable, and easy to use.

Finally, I would like to re-emphasize that changes must be addressed within the framework of comprehensive immigration reform.

I wish to thank you again for this opportunity to express my views, the views of the U.S. Chamber of Commerce, and the views of many other employers in my state on this important issue and I look forward to your questions.