American Payroll Association
Government Relations • Washington, DC

July 24, 2017

The Honorable «FirstName» «LastName»
«Title»
«Committee»
United States Senate
«Address»
Washington, DC 20510

RE: Mandatory use of U.S. Citizenship and Immigration Services' E-Verify system

Dear Senator «LastName»:

With the Senate considering mandatory implementation of U.S. Citizenship and Immigration Services' (USCIS) E-Verify system, the American Payroll Association (APA) offers recommendations for your consideration.

About the American Payroll Association and Immigration
Established in 1982, APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to assist employers with understanding their legal obligations. Significant emphasis is placed on minimizing the administrative burden on government, employers, and individual workers.

APA's GRTF Immigration Subcommittee works closely with the Outreach Branch of USCIS's Verification Division for this purpose, offering recommendations on improving the Form I-9 and E-Verify system and sharing information to assist APA members with compliance. In addition, USCIS's Outreach Branch has partnered with APA to offer webinars and in-person seminars to payroll professionals to raise awareness about employment verification requirements.

APA does not advocate for or against matters associated with residency, citizenship, and right-to-work. Establishing policies on immigration reform, security, and civil rights are outside of APA's mission. Instead, our efforts are focused on verification of employment requirements and employers' administrative burden. Therefore, APA does not support nor oppose mandatory E-Verify. However, as long as employers are required to verify employment, clear, concise, and simplified requirements are the most effective method to ensure compliance.

Recommendations for Mandatory E-Verify
To ensure successful implementation of mandatory E-Verify, APA recommends the following:

- **Adequate funding:** APA appreciates the funding provided through the Consolidated Appropriations Act of 2017, signed by President Trump in May, to carry the federal budget through to September 30, including $103.9 million for operations and support of the E-Verify system and another $15.2 million for the procurement, construction, and improvement of the system. However, additional funding may be necessary for initial system upgrades under a mandatory requirement, system interface programs, and employer-employee outreach. Funding is necessary to prevent tentative nonconfirmations because of system and process errors that can have a negative impact on an employee's productivity. In addition, the system cannot remain stagnant such that funding will be needed in the future for upgrades and ongoing outreach. Funding also is needed for the Social Security Administration (SSA) to upgrade its records because E-Verify matches data provided by employers with data in SSA's records.

- **Preemption:** Tracking state and local E-Verify requirements is an unnecessary burden on employers. A decision by Congress to make E-Verify mandatory should preempt state and local government employment verification requirements.

  To date, at the federal level, E-Verify is mainly a voluntary program with mandatory requirements for qualified government contractors. Where they exist, state requirements range broadly. Local governments also have enacted ordinances on E-Verify and these too are inconsistent.

  Twenty-three states have passed legislation regarding E-Verify. These laws include recognizing E-Verify as a voluntary program, blocking local governments from mandating use of E-Verify, applying mandatory requirements to government entities or contractors only, and mandating use of E-Verify for public and private employers. When private-sector mandatory use is required, thresholds for employer size range from 5 to 50 or more employees with no two states the same. Some states include contract size or type of project in defining which government contractors must use E-Verify. Public-sector requirements are sometimes narrowed to specific agencies or job tasks. At least one state offers an alternative to E-Verify through use of a state-developed authorization document list for employees and document retention requirements for employers that are different than the federal Form I-9 process, a key component of the E-Verify system.

- **Retroactive application:** APA opposes mandatory E-Verify for all current employees. Mandatory E-Verify, if implemented, should only apply to new hires and employees requiring reverification and not all current employees. The burden on employers to apply E-Verify to current employees, especially large businesses and employers with significant remote employee populations, is too costly.

- **Criteria and training for users and employer agents:** Legislation should require USCIS to establish universal criteria and training requirements for all users processing E-Verify cases as well as all E-Verify employer agents to ensure they are knowledgeable about employment verification requirements. Mandatory E-Verify will increase the number of private enterprise and employer agent software systems interfaced with E-Verify that seek to minimize risk, increase compliance, and improve efficiency for employers. In addition, the number of employer agents using the E-Verify website to process cases for employers also will increase. The employer is the party responsible for maintaining compliance with employment verification requirements. Therefore, when an employer uses a software system, internal or outsourced, it is critical that the employer identify legitimate, compliant services and ensure that all users processing cases understand and comply with E-Verify processes and procedures.

- **Reasonable compliance grace period:** APA recommends that employers receive at least two to three years after the effective date of legislation to comply with any mandatory E-Verify requirement. Employers will need sufficient time to understand mandatory E-Verify requirements and to develop processes, procedures, and internal training programs to implement the system. Employers also need time to consider outsourcing and, if so, to integrate that decision into internal procedures and electronic systems. This holds true even for employers already engaged in E-Verify to the extent of legislative and regulatory changes and system upgrades.

  The Senate should consider a phased implementation approach based on employer size and relationship to homeland security (e.g., a military service contractor, contractor for the State Department, or a federal agency). This will allow USCIS to effectively respond to employer inquiries, fix any anomalies in the system, and react to more immediate security considerations, while offering employers time to adjust to new requirements.

- **Notice and time to cure problems:** When mistakes are made in complying with mandatory E-Verify requirements, employers should be provided with sufficient notice and time to make corrections before penalties are assessed. This approach makes sense to advance the intent of mandatory E-Verify and to encourage employers striving to comply.

- **Protections from liability:** If an employer acts in accordance with an E-Verify nonconfirmation and terminates an individual's employment based upon a mistake in the E-Verify process, that employer should be protected from a wrongful termination lawsuit.

- **Increased hours of operation:** Employers deserve 24-hour availability of the E-Verify system. Currently, the E-Verify system goes offline at night because of maintenance and batch processing at the SSA. Limited uptime plus a significant increase in volume because of mandatory use could create a processing bottleneck. In addition, employers hire shift employees at all times, including during the third shift.

APA looks forward to working with the Senate on mandatory E-Verify legislation and would be pleased to discuss our recommendations further.

Sincerely,

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American Payroll Association

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