

WRITTEN STATEMENT OF
THE FOOD MANUFACTURERS IMMIGRATION COALITION (FMIC),
COUNCIL FOR GLOBAL IMMIGRATION, AND
SOCIETY FOR HUMAN RESOURCE MANAGEMENT (SHRM)

BEFORE THE

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

FEBRUARY 4, 2015

Mr. Chairman, Ranking Member Lofgren, members of the Subcommittee, thank you for the opportunity for our coalition to submit a statement for the record as Congress considers the Legal Workforce Act and ways to create an effective employment verification system to prevent unauthorized employment. Our coalition represents U.S. employers and in-house immigration and human resources professionals in thousands of small to large private and public organizations across every sector of the American economy. Our coalition shares in the goal of the Subcommittee in being committed to enacting legislation that provides employers with effective tools to ensure they are hiring a legal workforce as effective worksite enforcement is central to efforts to secure America's borders.

Our collective memberships have direct knowledge and experience on the topic of employment eligibility verification and the problems U.S. employers face with the current system in the hiring process. As the Subcommittee is aware, the Immigration Reform and Control Act (IRCA) makes it unlawful for an employer to knowingly hire or continue to employ someone who is not authorized to work in the United States. Federal law requires employers to examine numerous

documents presented by new hires to verify identity and work eligibility, and to attest to that examination on the Form I-9. Furthermore, IRCA contains a prohibition against employment discrimination based on an employee's national origin and citizenship status.

As of 2009, certain federal contractors must use the eligibility verification system, known as E-Verify, for employees hired during a contract and employees assigned to that contract. Other employers may be required by state or local law to use E-Verify, and others voluntarily choose to use the E-Verify system. Even if an employer chooses to use the E-Verify system, he or she must still complete Form I-9 for every newly hired employee. E-Verify, which relies on the Social Security Administration and Department of Homeland Security databases to confirm work authorization, lacks sufficient security features to protect employers from persons using fraudulent identities to assert authorization to work. As noted above, E-Verify continues to rely on paper documentation that is susceptible to theft, forgery and alteration, and cannot be verified for authenticity.

Our coalition members are seeking to improve the current process of employment verification by creating a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment. We appreciate the many improvements to the current system proposed in the Legal Workforce Act (LWA), including creating a seamless, entirely electronic, employment verification system. This step alone is a vast improvement over the current paper-based, two-part verification system that in practice results in a focus on imposing liabilities on employers for paperwork violations, as opposed to curbing unauthorized employment. However, our coalition respectfully submits that the LWA leaves two major problems unsolved: the first, providing employers with a reliable mechanism in the verification system to confirm that the person applying for a position is actually the person who owns the identity on the documents used to establish identity

and work status, and second, the lack of protection of employers from liabilities for errors that occur despite good faith reliance on the outputs of the verification system.

The proposed Legal Workforce Act does require the Department of Homeland Security (DHS) to create at least two identity authentication pilot programs, but these pilots will not adequately address identity theft. First, the pilots are not accessible to all employers who wish to participate in the program as DHS selects the employers that are allowed to participate in the program. Second, the pilots contain limited identity authentication standards and goals which the coalition believes will be ineffective in combatting identity fraud. Third, DHS is given 48 months to develop the pilot, with *no* deadline for implementation. Our coalition believes this is too long for employers who face constant threats from identity thieves to have to wait before a system is available to them. Our coalition has specific proposals to address these concerns.

Additionally, an effective employment verification system must also include protections for employers that use the system in accordance with the law but, due to failings in the government-run verification program, inadvertently hire unauthorized workers. It is unjust to hold employers accountable for relying on incomplete or inaccurate information provided by the federally-run system.

Unfortunately, under current law, employers who use E-Verify are highly vulnerable to government action if they inadvertently employ people who used identity fraud to secure employment. Although the provisions in the Legal Workforce Act take meaningful steps to address this issue through a safe harbor, the bill's safe harbor provision is ineffective, because it is conditioned on Immigration Custom Enforcement (ICE) interpretation of whether a company relied in "good faith" on an E-Verify confirmation. However, ICE has historically argued that the presence of identity thieves in an employer's workforce contradicts an employer's position that its

reliance on E-Verify was in good faith. Given the prevalence and sophistication of identity theft, this position renders the safe harbor meaningless. Our coalition has crafted alternative language that addresses this problem.

U.S. employers want to be part of the solution for preventing unauthorized immigration to the United States, but they need a more reliable employment verification system to do it.

Thank you for considering the recommendations of employers, in-house immigration and human resources professionals to improve and build upon the many important reforms contained in the Legal Workforce Act. We look forward to continuing to work with the Subcommittee to shape this legislation to assure that employers and legal workers have adequate tools and protections they require to help curtail unauthorized employment.

Coalition members include the Council for Global Immigration, National Chicken Council, National Pork Producers Council, National Turkey Federation, North American Meat Institute and Society for Human Resource Management.