March 20, 2014

Submitted via www.regulations.gov

Ms. Laura Dawkins
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Regulatory Coordination Division
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: Agency Information Collection Activities: myE-Verify, Revision of a Currently Approved Collection; Extension, published at 79 Fed. Reg. 9253-9254 (February 18, 2014)

Dear Ms. Dawkins:

The Council for Global Immigration (The Council) and the Society for Human Resource Management (SHRM) are pleased to submit these comments in connection with myE-Verify. The Council and SHRM welcome the opportunity to work with U.S. Citizenship and Immigration Services (USCIS) to improve the E-Verify program.

The Council for Global Immigration, a strategic affiliate of SHRM, is a nonprofit trade association comprised of leading multinational corporations, universities, and research institutions committed to advancing the employment-based immigration of high-skilled professionals. The Council bridges the public and private sectors to promote sensible, forward-thinking policies that foster innovation and global talent mobility.

Founded in 1948, the Society for Human Resource Management (SHRM) is the world's largest HR membership organization devoted to human resource management. Representing more than 275,000 members in over 160 countries, the Society is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

COMMENTS AND RECOMMENDATIONS

The Council and SHRM commend USCIS for providing a means by which individuals can verify their eligibility to work prior to applying for employment and to take corrective actions should the results of Self Check incorrectly report their status. Throughout the past decade,

SHRM and the Council (and its predecessor the American Council on International Personnel) have made effective worksite verification a top policy and legislative priority. In fact, our members overwhelmingly support the concept of an electronic eligibility system that is efficient and accurate and protects all legal workers and compliant employers against identity theft or fraud. In fact, human resources professionals overwhelmingly support certain changes to the E-Verify electronic employment eligibility system, including the ability to authenticate workers' identity, according to recent survey results released by SHRM and the Council (see attachment).

For this reason, SHRM and the Council strongly recommend that any employment eligibility verification system use state-of-the-art, multidimensional, dynamic technology to determine to a high degree of accuracy whether an individual presenting biographic information is the individual with that true identity. Respectfully, we believe that in order for myE-Verify to provide sufficient safeguard against identity theft, a "knowledge-based authentication" (KBA) component is crucial.

1. **KBA must be multidimensional and dynamic, drawing upon multiple data sources that are not fixed at a prior point in time, and should be used in both myE-Verify and Self Check to prevent identity theft**

SHRM and the Council explored the best alternatives to ensure a compliant workforce and prevent identity fraud, and have come to the conclusion that, of all the available technology today, multidimensional, dynamic KBA is the best option presently to ensure that the person whose identity is being verified is the person entering the information. Therefore, we support the use of multidimensional, dynamic KBA throughout E-Verify – when employers are verifying identity for work authorization as well as when individuals use Self Check and myE-Verify.

   a. The Social Security number locking mechanism in myE-Verify increases the urgency of multidimensional, dynamic KBA

An identity thief who defeats the low level of KBA currently in Self Check can verify whether the employee has current authorization to work in the United States. When myE-Verify comes online and uses the same low level KBA that is currently used for Self Check, as is proposed, the identify thief would be able to accomplish a much more nefarious purpose – locking the employee's Social Security number in E-Verify and preventing employers from verifying his work authorization through E-Verify.

It is imperative that both Self Check and myE-Verify use multidimensional, dynamic KBA to ensure that the strongest steps possible have been taken to ensure that identity thieves are not able to take advantage of U.S. citizens and foreign nationals working in the U.S.

b. Multidimensionality

In order for KBA to be effective, it must be multidimensional, drawing upon multiple data sources. Presently, Self Check draws from data from a single data source purchased from a private entity. The result is a simple form of KBA that an identity thief could easily defeat by learning a few basic facts about the victim.

For instance, a Council employee, in preparation for these comments, used Self Check. The employee was asked four questions. Three of the four questions asked for information pertaining to the same address he lived in seven months ago (one asked to identify the street, one asked to identify the city and one asked to identify the county). The fourth question asked which state issued his Social Security number (which is the state in which he was born)[1]. Thus, if an identity thief knew the address where this employee lived seven months ago and the state where he was born, the identify thief would be able to defeat the static KBA currently used in Self Check.

Multidimensional KBA solves this problem by drawing from many sources, including government entities such as the Social Security Administration, the Office of Biometric Identity Management (formerly US-VISIT) and the Department of State (including passport and visa databases) to formulate queries to be presented to individuals whose identities are being verified. No two questions will ask about the same piece of information – for instance, rather than three questions about the same address, the individual might be asked to identify the date of last entry into the United States, the current balance on a mortgage and the balance of student loans. These are significantly more difficult pieces of information for an identity thief to know in real time.

c. Dynamism

KBA must also be sufficiently dynamic – i.e., asking a series of questions that draw from real time data rather than data that was provided at a single point in time.

Self Check currently uses static KBA, drawing from data purchased at a single point in time that does not change. Thus, if an identity thief obtains the information at the same point in time, he or she can easily defeat static KBA.

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[1] If an identity thief has a victim's Social Security number in his or possession, he or she can easily determine what state in which the Social Security number was issued. The first three digits of a Social Security number represent the "area code," which is based on the zip code of the applicant's mailing address. Also, identity thieves frequently know in advance where the identity is stolen from, or can make an educated guess based on the likelihood of the state or territory from which an identity is stolen. For instance, Puerto Rico has been a frequent target for identity thieves, so a guess that a Social Security number from a stolen identity was issued in Puerto Rico would frequently be correct.

Dynamic KBA solves this problem by drawing upon data that is provided at the time the identity is being verified, such as up-to-the-minute information on the balance of various accounts or the date of verification. In conjunction with the multidimensionality of the questions, this makes KBA particularly difficult to defeat.

2. DHS should ensure that contracts with any outside vendors limit use of information obtained from myE-Verify and Self Check to that which is required in the Fair Credit Reporting Act

As important as accuracy is to our members, SHRM and the Council believe that protecting the privacy of Americans should be our paramount concern when developing an eligibility verification system. We therefore urge DHS to ensure that the privacy of all persons, U.S. citizens and foreign nationals alike, are protected and that KBA providers will not be able to use information provided in any fashion other than for myE-Verify and Self Check. Allowing such misuse would undermine the trust between individuals and the agency that is necessary for a successful employment verification system.

The agency has provided that the following language will appear on the heading "Information You Submit" on the myE-Verify website, which will largely mirror the privacy assurances found in Self Check:

> Third party data providers (also known as third party identity assurance providers) may retain logs of access to personal information in order to comply with their legal obligations to protect personally identifiable information in their possession per the Fair Credit Reporting Act. The DHS contract with third party data providers permits them to use this information only in very limited ways such as fraud monitoring and prevention, and as required by the Fair Credit Reporting Act. This data may be kept by third party data providers for one year.

We urge USCIS to strictly follow this language when contracting with any KBA providers to ensure that the privacy of U.S. citizens and foreign nationals are protected and that KBA providers will not be able to use information provided in any fashion other than for myE-Verify and Self Check.

The Council and SHRM once again thank USCIS for the opportunity to comment on myE-Verify. We would be pleased to provide additional information and feedback at any time.

Sincerely,

Lynn Shotwell
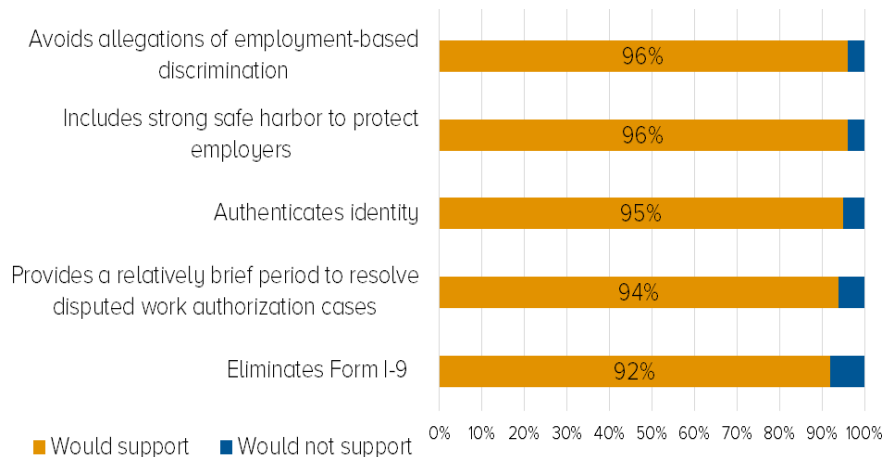Executive Director
Council for Global Immigration

Mike Aitken
Vice President, Government Affairs
Society for Human Resource Management

Overwhelming majorities support using E-Verify, if the following elements are included (currently, 56 percent of employers use the system)

Avoids allegations of employment-based discrimination — 96%
Includes strong safe harbor to protect employers — 96%
Authenticates identity — 95%
Provides a relatively brief period to resolve disputed work authorization cases — 94%
Eliminates Form I-9 — 92%

■ Would support ■ Would not support

Note: Figure represents respondents who answered "Strongly support" and "Somewhat support."

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Percentage of respondents concerned with identity authentication of job seekers
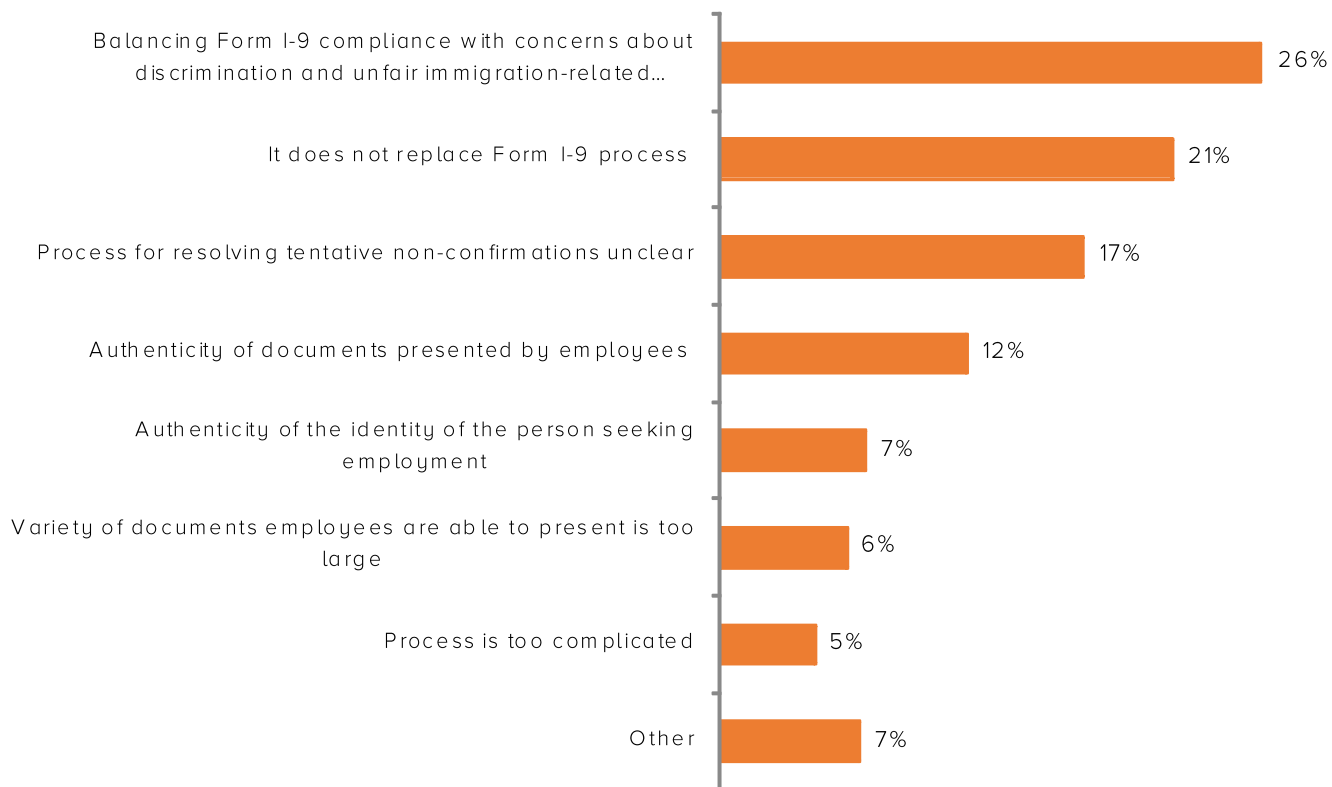
Fully 24% of respondents are concerned about the authenticity of the identity being presented by the persons seeking employment. When this statistic is generalized to U.S. employers, it equates to **1.75 million employers.**

Key Findings

- **The I-9 Challenge:** 52 percent of E-Verify users report that they face challenges using the E-Verify system. Major concerns remain regarding the I-9 process: 28 percent of respondents are concerned about balancing I-9 compliance with concerns about discrimination and unfair employment practices, and 24 percent report concerns that E-Verify does not altogether replace the Form I-9.

- **E-Verify Adoption:** 56 percent of respondents reported that they work for organizations that use E-Verify. Of those who participate, the reasons for doing so were: organization voluntarily participates (38%); required as a federal contractor (36%); and required by state law (20%). The major reason given for not adopting E-Verify was its failure to eliminate the requirement to complete Form I-9 (45%).

- **Authentication Concerns:** 34 percent of respondents were concerned about the authenticity of documents presented by new or current employees. 24 percent of respondents reported concerns with the authenticity of the identity being presented by job seekers. These numbers indicate that identity authentication (matching workers to the identity they present), even under current practices, remains a widespread challenge.
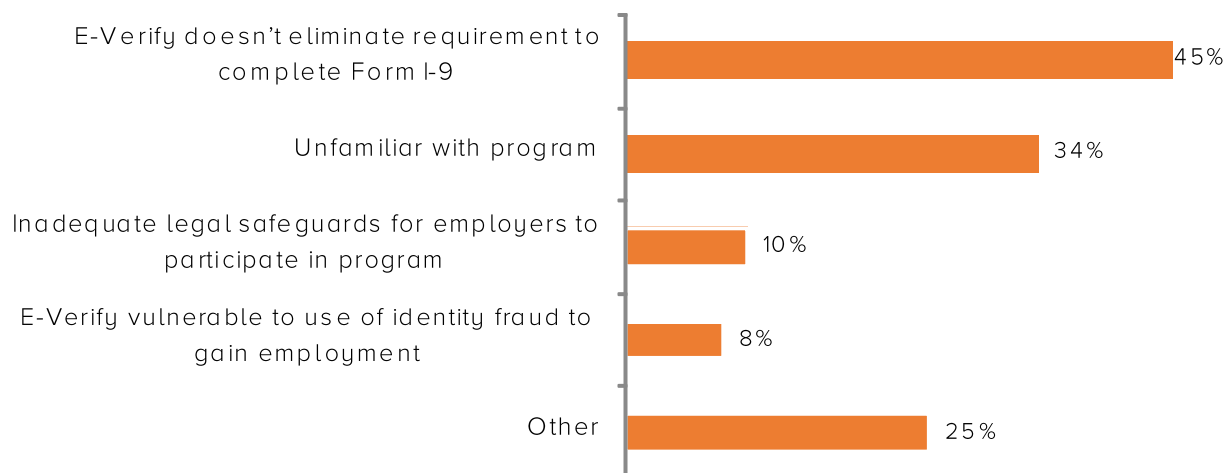
Council for Global Immigration
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SOCIETY FOR HUMAN RESOURCE MANAGEMENT

Challenges organizations have encountered with the E-Verify process

- Balancing Form I-9 compliance with concerns about discrimination and unfair immigration-related… **26%**
- It does not replace Form I-9 process **21%**
- Process for resolving tentative non-confirmations unclear **17%**
- Authenticity of documents presented by employees **12%**
- Authenticity of the identity of the person seeking employment **7%**
- Variety of documents employees are able to present is too large **6%**
- Process is too complicated **5%**
- Other **7%**

Note: Only respondents whose organizations have had challenges with the E-Verify process answered this question.

Why organizations do not participate in E-Verify

- E-Verify doesn't eliminate requirement to complete Form I-9 **45%**
- Unfamiliar with program **34%**
- Inadequate legal safeguards for employers to participate in program **10%**
- E-Verify vulnerable to use of identity fraud to gain employment **8%**
- Other **25%**

Methodology: A sample of HR professionals was randomly selected from SHRM's membership database, which included approximately 275,000 individual members at the time the survey was conducted; 611 responses were analyzed, yielding a response rate of 12%. The margin of error is +/- 4%. Data were collected in February 2014.