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**SUBMITTED TO
COMMITTEE ON WAYS AND MEANS
OF THE
UNITED STATES HOUSE OF
REPRESENTATIVES
SUBCOMMITTEE ON SOCIAL SECURITY**

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Mr. Chairman, Ranking Member Johnson, Members of the Committee. My name is Susan R. Meisinger and I am the President and CEO of the Society for Human Resource Management. I appear today on behalf of the Society for Human Resource Management. I am also the Co-chair of HR Initiative for a Legal Workforce. I am grateful for the opportunity to provide our views on this important issue.

The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 217,000 individual members, the Society's mission is both to serve human resource management professionals and to advance the profession.

The Human Resource Initiative for a Legal Workforce is a coalition of human resource organizations and business groups, representing thousands of small and large U.S. employers from a broad range of sectors. The HR Initiative includes SHRM, the American Council on International Personnel, the College and University Professional Association for Human Resources, the Food Marketing Institute, the HR Policy Association, the International Public Management Association for Human Resources, and the National Association of Manufacturers. Our objective is to improve the current employment verification process by creating a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment.

Our collective members represent the front lines on workforce verification, and therefore offer a crucial viewpoint on the matter. We fully support and are committed to the hiring of only work-authorized individuals through an effective, efficient electronic employment verification system.

We also recognize that the current employment verification system is in need of real reform. In fact, we believe verification is the lynchpin for true immigration reform. Unfortunately, the current paper-based employment verification system is inadequate to meet current and future demands, and current proposals before Congress fall far short of what is needed.

As the debate on immigration reform continues, we urge Congress to carefully consider the implications of any new employment verification system, keeping in mind that this is not just a debate about immigration reform, it is a debate about workplace management, which impacts all U.S. employers and all American workers, not just those who are foreign born.

My remarks will focus on the employment verification process established in the Immigration Reform and Control Act (IRCA) of 1986, the state of the current electronic verification system, the Basic Pilot Program that was enacted in The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, as well as our proposal to create an effective electronic employment verification system in the effort to ensure compliance with immigration laws at the worksite, and to protect the civil rights and privacy of employees.

Mr. Chairman, under IRCA employers are required to review documents presented by employees within three business days of hire demonstrating identity and authorization to work in the United States. After reviewing these documents, employers are required to attest on Form I-9 that they have reviewed the documents and that they appear genuine and authentic. Under current law, 27 paper-based documents are available to employees to demonstrate work eligibility, with 12 different documents authorized under law to prove identity.

Even under the best of circumstances, HR professionals encounter numerous challenges with the employment verification requirements under IRCA. These include: maintaining the I-9 records when an employee presents a document that has an expiration date; verifying the authenticity, quality, and quantity of documents presented by an employee for work authorization and identification purposes; and managing the current I-9 process, which is burdensome and time-consuming.

According to *SHRM's 2006 Access to Human Capital and Employment Verification* survey, 60 percent of responding HR professionals indicated that they continue to experience problems with the current verification requirements of IRCA 20 years after its enactment. The most common challenge cited is ascertaining the authenticity of documents presented for employment (40 percent).

The current document-based system is prone to fraud, forgeries and identity theft, making it difficult, if not impossible, for an employer to differentiate between the legal and illegal worker in this process.

U.S. employers, whether large or small, cannot be expected to consistently identify unauthorized workers using the existing system, but they are liable for severe sanctions if these workers find their way onto the payroll. Conversely, they are subject to claims of discrimination if they question the validity of documents too much.

The proliferation of false or stolen documents can and does cause reputable employers to mistakenly hire individuals who are not eligible to work. At the same time, the lack of certainty and threat of government-imposed penalties may lead some employers to delay or forego hiring legal workers who are eligible. In either case, the costs are high for both U.S. employers and legal workers.

In an attempt to address the shortcoming of the paper-based system, Congress created the Basic Pilot program for employers to voluntarily confirm an employee's eligibility to work using an electronic verification system. Under the Basic Pilot program, employers are required to review an employee's identity and work authorization documents consistent with IRCA requirements, including completing all Form I-9 paperwork. Employers are then required to check each new employee's work eligibility using the electronic verification system.

The Basic Pilot system is supposed to respond to the employer within three days with either a confirmation or a tentative non-confirmation of the employee's work eligibility. In the cases of a tentative non-confirmation, a secondary verification process lasting ten days is initiated to confirm the validity of the information provided and to provide the employer with a confirmation or non-verification of work eligibility. Employers are not permitted to terminate individuals that have received a tentative non-confirmation until the employer has received a final non-verification or the ten-day period has elapsed.

Although the Basic Pilot has been operational since 1997, and despite the best efforts of the men and women who administer this program in the USCIS, we believe it is inadequate to meet the needs of all U.S. employers in the employment verification process. According to the Government Accountability Office (GAO), in June of 2005, only 2,300 out of 5.6 million U.S. employers participated in the Basic Pilot in 2004. Even with the relatively low participation rate, the GAO found that about 15 percent of all queries required additional verification because the automated system was unable to provide confirmation responses on the initial attempt.

In April 2007, the United States Citizen Immigration Services (USCIS) testified before the House Judiciary Subcommittee that the total number of participating employers has risen to about 16,000 employers and that "over 92 percent of inquiries from employers receive an instantaneous employment authorized response."

However, these numbers represent only a fraction of the nearly 6 million employers in the United States. According to USCIS, if all employers were required to enroll in the Basic Pilot within 18 months, as called for by some proposals in Congress, USCIS would need to enroll approximately 20,000 employers a day. Expanding this system to cover all employers as proposed – absent federal certification that the system is adequately staffed and prepared to handle the increased workload – will undoubtedly cause confusion, harm productivity, and deny eligible workers employment opportunities.

Since a significant percentage of the Basic Pilot queries require human intervention, substantial resources will be needed to purge the various agency databases and improve communication between agencies. This problem is likely to be exacerbated if participation increases from 16,000 to all 6 million-plus employers. As we have seen in other aspects of immigration adjudication, a substantial increase in immigration-related caseload without corresponding increases in resources can lead to major processing delays. Using USCIS's own numbers of a 92 percent verification rate, millions of authorized employees' verification for employment could be in jeopardy.

As evidenced in several recent high profile situations, there are major concerns that the Basic Pilot's accuracy is severely limited by the proliferation of fraudulent identity documents. This is because the Basic Pilot system does not verify the authenticity of the identity being presented for employment purposes, only that the identity presented matches information in the Social Security and DHS databases.

In testimony to House Judiciary Subcommittee in April, Jack Shadley, Senior Vice President for Human Resources for Swift & Company detailed the shortcomings of the “Basic Pilot” employment verification system. Despite the company’s hiring processes, which included participation in Basic Pilot, the government raided six Swift production facilities on the morning of December 12th, 2006, and detained 1,282 employees. Many were using stolen identities that could not be detected by Basic Pilot. This event cost the company more than \$30 million and disrupted communities that Swift has worked hard to enrich. As Mr. Shadley stated in his testimony:

“It is particularly galling to us that an employer who played by all the rules and used the only available government tool to screen employee eligibility would be subjected to adversarial treatment by our government. These ICE raids once again highlight significant weaknesses in the Basic Pilot program.”

In addition to concerns with premature expansion of the Basic Pilot, several Congressional proposals also expose employers to liability for actions beyond their control, such as the actions of subcontractors. We strongly believe that U.S. employers should be liable for their own hiring decisions, not those made outside their control. Enforcement needs to be vigorous and fair, and should focus on employers that blatantly ignore the law as opposed to employers who commit paperwork or technical violations in their attempt to comply.

Employers need the right tools to verify a legal workforce. However, HR cannot – and should not – be America’s surrogate border patrol agents. Rather, employers are entitled to an unambiguous answer to the query whether an employee is authorized to accept an offer of employment. Unfortunately, mandating the current Basic Pilot system will meet the needs of employers or employees.

We believe that Congress must transform the current paper-based verification process into a state-of-the-art electronic system that is accurate, reliable, cost-efficient, easy-to-use, and shares responsibility among government, employers and employees. Specifically, we advocate a system that would verify identity through additional background checks and the voluntary use of biometric enrollment conducted by government certified private vendors. According to *SHRM’s 2006 Weapons in the Workplace*, 85 percent of responding HR professionals indicated their organizations conduct background checks of potential employees.

This system would build upon background checks currently conducted by many employers, to include forensic document examination and tailored data mining in publicly available databases. An individual’s identity could be “locked” to biometric or other secure identifiers through this process. Employees would not need to present a card as some have advocated, just themselves.

Under our proposal, employers would be required to participate in one of two electronic employment verification systems:

EEVS - A completely electronic employment verification system (EEVS) which improves upon the current Basic Pilot system and permits employers to access the system via phone and internet. Employers would verify identity by visually examining a limited number of documents presented by the employee. Employers would verify work authorization by submitting employee data to the SAVE system. The verification process can be initiated either post offer or acceptance of a job by an employee but prior to the commencement of work or within the first 3 days after work commences. The databases feeding into the SAVE system must be upgraded to ensure all information is accurate and updated and that secondary verifications are completed within 10 days. Employers would continue to make subjective determinations that the person presenting the documents is who he claims to be and that the documents are valid on their face. The current I-9 form would be eliminated. Employers in this system would be subject to the current range of enforcement efforts and penalties.

SEEVS - A more secure electronic employment verification system (SEEVS) that guard against identity theft would be available to employers on a voluntary basis. This state-of-the-art system would verify identity through additional background checks and voluntary biometric enrollment conducted by private vendors. The employee's work authorization would continue to be verified through the SAVE databases. By eliminating subjective determinations of work authorization documents, this system will eliminate discrimination and simplify enforcement. There will be only two enforcement questions for the government: 1) Did you check every employee through the system in a fair and equal manner? 2) Did the employer make his/her hiring decisions consistent with information they received through the system. Employers participating in this system would be deemed to be in compliance absent a showing of bad faith.

The proposed SEEVS system would prevent identity fraud by automatically recognizing an individual based on measurable biological (anatomical and physiological) and behavioral characteristics. The new system would be able to answer two vital questions:

1. Is the person identified by name, date of birth, and social security number **authorized** to accept the employment being offered?
2. Is the person actually who he or she claims to be?

We also believe that any such secure electronic employment verification system as described above needs to meet standards set by the National Institute of Standards and Technology (NIST) from a technology and a privacy standpoint. The SEEVS model for prevention of identity theft lies in authorizing competing private entities, certified by the government with the involvement of NIST, to develop and conduct the process necessary to verify the identity. The privately held databases would be protected from disclosure

by law and held in a segregated fashion that would prevent linking of identity to biometrics without the enrolled person presenting his or her biometrics as the key.

We do not believe a biometric card is necessary to have an effective employment verification system. A new biometric card, such as a Social Security card, would cost billions of dollars to create, foster visions of a national ID card, and would tax the current capabilities of the Social Security system. Finally, as we have discussed and has been demonstrated before through cases such as the Swift, government-issued identity and work authorization cards eventually can be counterfeited by those who want to circumvent the system.

If adequately funded and fairly administered, SHRM and the HR Initiative believe this new system could eradicate virtually all unauthorized employment – thereby eliminating a huge incentive for illegal immigration. It will also eliminate discrimination by taking the subjectivity out of the verification process.

Finally, we strongly recommend that the federal government, specifically the Department of Homeland Security, take sole ownership of enforcing immigration laws at the worksite. Recently, partially due to an understandable frustration on the part of state and local governments over the lack of immigration control, many jurisdictions have enacted their own laws on employment eligibility verification. With all due respect to these states and municipalities, it is the U.S. Congress that has plenary authority, and the expertise, to deal with this issue. Moreover, it is extremely hard on employers, especially ones with presence in several states, to keep up with the various requirements. Ironically, while law-abiding employers risk exposure because of inadvertent mistakes or confusion over the different and possibly contradictory requirements, unscrupulous businesses can continue to hire off the books with virtual impunity. We suggest that worksite enforcement must be vigilant, and that the federal government must hold all employers to the same standards and same set of requirements.

True employment verification is the only way to ensure fair and equitable treatment for those individuals who should have access to legitimate jobs. It is essential for a legal workforce and for America's national and economic security.

Both SHRM and the HR Initiative coalition look forward to working with the committee on a new verification system that is effective, secure easy to use, and in which both employees and employers can place their trust.