

August 12, 2009

The Honorable Daniel Inouye  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable David Obey  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Thad Cochran  
Ranking Member  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Jerry Lewis  
Ranking Member  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairmen Inouye and Obey and Ranking Members Cochran and Lewis:

The undersigned organizations are concerned with how a new employee verification system would impact the day-to-day activities, obligations and responsibilities of U.S. employers. We stand ready to support an electronic employment verification system that is fair, efficient and workable for businesses of all sizes under real life conditions.

In its current form, an amendment added by the Senate during consideration of the Department of Homeland Security (DHS) FY 2010 appropriations legislation (HR 2892) requiring all federal contractors to enroll in E-Verify and mandating the reverification of current workers, fails to address the well documented concerns raised by employers. If the four areas outlined below are addressed in the final legislation, we stand ready to support a statutory E-Verify requirement on federal contractors.

First, mandatory verification should be limited to new hires only, as is required in current law. Existing employees have already been verified under the applicable legal procedures in place when they were hired. Reverifying an entire workforce is an unduly costly proposition and unnecessary given how often workers change jobs in the United States. Reverification by E-Verify should be allowed but not required. It is instructive that every time the federal government considered a program in which it is in charge of verifying work authorization, it limits the system burdens to only new hires.

Second, it is critical to the employer community that contractors do not bear vicarious liability for subcontractor actions unless the contractor knew of the actions of the subcontractor, as in current law. Without such protection, an employer could be open to liability even for the violations of its peripheral contractors—e.g., a water delivery company or landscaping contractor—for actions taken without the employer's knowledge.

Third, in order to limit the burdens and costs on federal contractors, some exceptions must be made and a reasonable threshold set that take into account the different types of employers and federal contracts involved. Thus, we recommend excluding contracts for

commercial items, contracts under the simplified acquisition threshold (currently set at \$100,000), and contracts for a period of performance of less than 120 days. It should be clearly defined in the bill that only contracts covered by the Federal Acquisition Regulations are impacted by this requirement. We also recommend allowing institutions of higher education the option, at their discretion, to verify only new hires assigned to the contract. Since many colleges and universities have large numbers of students with intermittent employment, a mandate that they verify all new hires would seriously complicate the efforts of colleges and universities to comply with E-Verify requirements.

Finally, any Federal mandate requiring private employers to use E-Verify must include a preemption provision insofar as they relate to the employment verification of workers. While there are already preemption provisions in current law, we are concerned with states and localities that may attempt to circumvent them to impose onerous and differing requirements on federal contractors participating in E-Verify.

We, therefore, urge conferees on the DHS FY 2010 appropriations legislation to address the real concerns of employers, and federal contractors in particular, and make the improvements requested above, so we can support an E-Verify requirement on federal contractors.

Sincerely,

Aerospace Industries Association  
American Council of Engineering Companies  
American Council on Education  
American Hotel & Lodging Association  
American Moving and Storage Association  
American Staffing Association  
Associated Builders and Contractors  
Associated General Contractors of America  
Business Council of New York State  
Coalition for Government Procurement  
College and University Professional Association for Human Resources  
Express Association of America  
Independent Office Products & Furniture Dealers Association  
International Franchise Association  
Irrigation Association  
National Association of Manufacturers  
National Defense Industrial Association  
National Roofing Contractors Association  
Professional Services Council  
TechAmerica  
Texas Association of Business  
U.S. Chamber of Commerce

CC: Members of the Senate Appropriations Subcommittee on Homeland Security  
Members of the House Appropriations Subcommittee on Homeland Security