

**TESTIMONY OF
CONGRESSMAN LUIS V. GUTIERREZ
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,
BORDER SECURITY, AND INTERNATIONAL LAW**

**"Hearing on Proposals for Improving the Electronic Employment Verification and
Worksite Enforcement System"**

**Thursday, April 26, 2007, 9:30 a.m.
2141 Rayburn House Office Building**

Chairwoman Lofgren, Ranking Member King and my colleagues on the Subcommittee, thank you for this opportunity to testify on my and Congressman Jeff Flake's proposal in the STRIVE Act, H.R. 1645, to improve the electronic employment verification and worksite enforcement system.

Like a number of witnesses who have recently come before this Subcommittee, I want to begin my comments with what I think is the most essential element in crafting an employment verification system that works. That is, the system must be part of comprehensive immigration reform. If such a system is not implemented with strengthened, coordinated border security, a new visa program that provides the future workers our economy needs, and a tough, but fair, earned legalization program for the estimated 12 million unauthorized individuals currently living and working underground, we will be setting ourselves up for continued failure on this front.

I would like to focus my testimony today on addressing how the employment verification system proposed in STRIVE would address or fix the shortfalls of the current system, as identified by recent witnesses' testimonies before this Subcommittee.

Any Employment Verification System Must Prevent Document Fraud

The Electronic Employment Verification System (EEVS) in the STRIVE Act, first and foremost, would require the creation of a biometric, machine readable, tamper-resistant social security card. In addition to this fraud-proof card, the only other documents an employer could accept to prove identity and work eligibility under the new system are a U.S. passport; a state driver's license or identity card that meets the requirements of PL 109-13 (REAL ID); a permanent residence or green card; or a tamper-proof employment authorization card issued by the Department of Homeland Security.

Requiring a limited number of secure documents would be a great step forward in eliminating the lucrative market of false documents, but we need to do more. To prevent individuals from using valid documents that are not, in fact, their own, the STRIVE Act also requires the Secretary of the Department of Homeland Security to establish reliable and secure ways under the new verification regime to determine if the information in the system's databases match the hired employee whose eligibility is being verified.

EEVS Must Maintain and Provide Accurate Data and Otherwise Be Reliable Enough to Instill Confidence in the System

Establishing an employment verification system that will apply to all workers in the U.S. is a massive undertaking and must be approached prudently, under a realistic timeline and with a roll out plan to the entire workforce that is contingent upon the system's accuracy. STRIVE phases in the use of the EEVS, starting with critical infrastructure employers, followed by large, then small, employers.

H.R. 1645 also requires the Comptroller General to certify on an annual basis that the verification system is responding accurately and effectively to employer queries before it can be expanded. It is essential to build in performance benchmarks so that employers have confidence in the system, and are not tempted to circumvent it. We also want to prevent U.S. citizens, legal residents and others work-authorized from being denied eligibility to work.

Individuals will also be allowed to check their own EEVS record for accuracy.

If the verification process results in a tentative nonconfirmation or a final nonconfirmation of a worker who is, in fact, work authorized, STRIVE ensures recourse for the worker.

In the case of a tentative nonconfirmation, a worker is granted 15 business days to contest it. If a worker is wrongfully denied work eligibility ("final nonconfirmation") by EEVS they will have a right to administrative review, lost wages in the case of an error caused by the system itself, and, if necessary, judicial review.

EEVS and the Protection of Privacy and Security of Information

The mandatory expansion of such a system also raises legitimate privacy concerns. DHS, in consultation with the Social Security Administration (SSA), would have to design and operate the system so that privacy is safeguarded by the technology used (use of encryption, regular testing of the system and implementing regular security updates). Information to be stored in the databases would also be limited to the individual's name, date of birth, social security number, employment authorization status, the employer's name and address and record of previous inquiries and outcomes.

Such information could be used for employment verification purposes only, and the bill prohibits and levies stiff penalties for the unlawful access or modification of EEVS information.

In its annual report reviewing benchmarks for the system's roll out, the Comptroller General must also certify that the EEVS is protecting the privacy of records in the system.

Protection of Individuals from Discrimination

Recent witnesses before this Subcommittee have discussed how employment discrimination has been an inherent problem under the current employer sanctions regime and the Basic Pilot

program. The STRIVE Act forbids employers from using the new system to discriminate against job applicants or employees on the basis of nationality; terminating employment due to a tentative nonconfirmation; using the system to screen employees prior to offering employment; reverifying the employment status of an individual in violation of the law; or, using the system selectively. Civil fines for unfair immigration-related employment practices are also increased and additional funding is authorized for the dissemination of information to employers, employees and the general public about the rights and remedies of these protections.

The Need for Robust Enforcement

Of course, we cannot have a robust employment verification system without equally robust enforcement. H.R. 1645 creates significant criminal penalties for individuals who falsely attest to being authorized to work, civil penalties for employers who do not comply with the new system's requirements and criminal penalties for knowingly hiring unauthorized workers. Our bill would also debar employers who repeatedly violate these provisions from government contracts, grants, and agreements.

In addition, the bill requires DHS to establish a complaint and investigation process regarding potential violations related to hiring or continuing to employ unauthorized workers.

With regard to enforcement resources, the STRIVE Act requires Immigration and Customs Enforcement (ICE) to spend at least 25 percent of their time on worksite enforcement.

In sum, the Employment Eligibility Verification System in the STRIVE Act would address a number of the shortfalls of the current system as created by the immigration laws passed in 1986 and 1996. As we all know, the current system does not work, and perhaps most troubling, it does nothing to prevent illegal immigration or the employment or exploitation of unauthorized workers. As part of a comprehensive solution to our broken immigration system, I believe that the EEVS in STRIVE will provide us with a system that is tough, fair and works to bring both employers and workers under the rule of law.

Thank you, Madam Chairwoman.