FEDERATION FOR AMERICAN IMMIGRATION REFORM
30 Years
1979 – 2009

December 7, 2009

The Honorable Dave Agema
Michigan House of Representatives
Anderson House Office Building, N-1093
Lansing, MI 48933
Via E-Mail: daveagema@house.mi.gov

Dear Representative Agema:

E-Verify was created by Congress in 1996 and has a proven track record of effectiveness in helping employers verify that new hires are legally authorized to work in the United States. According to the Department of Homeland Security (DHS), more than 8.5 million new hires across the country were verified through E-Verify as legally able to work in the U.S. during Fiscal Year 2009.

According to the *Boston Globe*, last year 1,222 Michigan employers, representing 5,073 jobsites, voluntarily participated in the E-Verify program. Last year, nearly 60,000 new hires in Michigan were verified work eligible as a result of E-Verify. Accordingly, we know that E-Verify helped 60,000 Michigan workers secure a new job instead of having those jobs go to illegal aliens.

As I am sure you are well aware, Michigan is suffering from the highest unemployment rate in the nation. According to the Bureau of Labor Statistics, in less than a decade, Michigan unemployment has risen from 3.7 percent in November 1999 to 15.3 percent in September 2009. During that same period, Michigan has lost more than 838,000 jobs (with total employment falling from 4,932,220 in November 1999 to 4,093,933 this September), while at the same time the number of unemployed people in Michigan has risen by nearly 550,000 (increasing from 189,814 in November 1999 to 739,089 in September 2009).

Clearly, the people of Michigan are suffering due to the state's jobs crisis. Having seen the benefits of the use of E-Verify in other areas of the country, enacting House Bills 4969 and 4355 would be one small step that the State of Michigan could take to protect jobs and put Michiganians back to work. This bill would have the added benefit of reducing the strains on the state budget. For each legal, work-authorized Michigan worker that is hired, Michigan would necessarily see a reduction in the costs that the state is currently incurring to provide social services to an out-of-work citizen or legal alien and his or her family.

In addition to describing the benefits of E-Verify, it is important to address some of the misinformation and misleading claims that have been put forth in opposition to HB 4969 and HB 4355, including those claims by the Michigan Chamber of Commerce ("Chamber") in their November 30, 2009 memorandum. This letter will address each of the points raised by the Chamber and demonstrate how each of these claims is false.

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1. Contrary to the Chamber's assertion, expanding the use of E-Verify is not a "piecemeal" approach. Instead, it is an integral component in the nation's overall effort to ensure workplace compliance. E-Verify will not "create headaches for firms operating in multiple states." More than 160,000 employers nationwide are currently using E-Verify. Many of these employers include large companies that have business operations in multiple states, and many are even multi-national companies.

The Chamber also suggests that immigration is only a federal concern, but this ignores a pressing reality. The truth is that state and local governments have the right to enforce immigration law and to work in tandem with the federal government in doing so. Nothing prohibits or precludes states and localities from *enforcing* those laws, or from *enacting* supplemental legislation so long as those laws are not incompatible with existing federal law. It is precisely the federal government's failure to enforce immigration law that has necessitated states and localities to step in to fill the void.

The federal government's failure to adequately address immigration and secure our borders places a significant burden on states and local governments who are on the front lines of dealing with the social costs of these failures. The unvarnished truth is that Michigan taxpayers are asked each and every day to pay the price for illegal immigration, including costs related to education for illegal alien children, health care, and law enforcement, in addition to the cost to provide for residents displaced from their jobs by illegal immigration.

2. The Chamber asserts that E-Verify somehow makes employers the "immigration police." In our experience, those businesses and special interest groups that make this argument are most often the same businesses and groups that rely on illegal alien labor which puts businesses that follow the law at a competitive disadvantage. The best way to level the playing field would be to help ensure that all businesses follow the law and that no businesses hire illegal aliens.

Also, the Chamber's statement ignores existing federal law. Since 1986, employers have been required to follow the I-9 requirements and review documentation that proves new hires are authorized to work in the United States. At the time that requirement was put in place, so-called "business interests" made the same argument that the Chamber is making today. The reality is that E-Verify simply updates this process from a paper-based format to a digital system and makes illegal employment practices much less likely. E-Verify is actually a benefit to employers because it gives employers the tools to make sure they are complying with the requirements of federal law that prohibit them from hiring illegal aliens – requirements that have already been on the books for more than 23 years.

The bottom line is that if the argument of the Chamber is to be taken at face value, the Chamber opposes not just E-Verify, but any type of employee verification or any other immigration program that is not solely and exclusively the responsibility of the federal government. As outlined above, this is not only impracticable, but fails to recognize the broad-based benefits to employers, employees and to entire communities when everyone is following the law and no one is using illegal alien labor.

3. The Chamber has suggested that E-Verify "is intended to be voluntary," as if to suggest HB 4969 and HB 4355 are somehow in conflict with federal law. Such an assertion is not only misleading - it is patently false.

Earlier this year, the U.S. Chamber of Commerce challenged the "federal contractor rule" – a rule that requires federal contractors to use E-Verify in a fashion similar to one of the bills under consideration in the Michigan House. In its lawsuit, the U.S. Chamber made the same argument the Michigan Chamber has made in its November 30 memorandum. **The federal court, however, rejected the U.S. Chamber's argument wholesale**. On August 25, 2009, the U.S. Federal District Court for the District of Maryland upheld the federal E-Verify regulation and dismissed the U.S. Chamber's lawsuit. Writing for the court, Judge Alexander Williams, Jr. rejected the argument that the federal contractor rule violated the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) by mandating use of E-Verify (the same argument the Michigan Chamber put forth in their November 30, 2009 memorandum). Instead, Judge Williams wrote that "the decision to be a government contractor is voluntary." The Michigan Chamber should be well aware that the federal courts have rejected the very same argument they made in the November 30th memorandum, yet they chose to make this misleading argument to the Michigan House of Representatives anyway.

Additionally, Michigan would not be the first state to recognize the merits of E-Verify. Arizona and Mississippi currently require that all employers in the state use E-Verify. In July 2010, all employers in South Carolina with 100 or more employees will be required to use E-Verify. Ten more states require either state agencies or public contractors to use the system. Worth noting is that the United States Court of Appeals for the Ninth Circuit upheld Arizona's mandatory E-Verify rule for all employers, a law that is far more reaching than the bill before the Michigan House of Representatives. (See *Chicanos Por La Causa, Inc.* v. *Napolitano*, 544 F.3d 976 (9th Cir. 2008)).

HB 4355 simply would require that employers who *choose* to contract with the State of Michigan comply with the law as a condition of the contract, and that taxpayer dollars will not go to pay illegal workers. In 1996, President Clinton implemented an executive order denying federal contracts to businesses that knowingly employ illegal aliens (though the requirement to use E-Verify was not finalized until November 2008, and not fully implemented until September 2009). In this respect, the Michigan House of Representatives is proposing – with HB 4355 – to merely follow the same standard that the Federal government has said it would follow for the past 13 years.

4. Contrary to another Chamber assertion, when an employer receives a tentative non-confirmation (TNC) through E-Verify, the employer and employee are not in "limbo." Instead, they work together to correct any errors including, possibly, the employee's record with the Social Security Administration. The Chamber has failed to mention that employers who use E-Verify are required to post a conspicuous notice of this fact at the jobsite. Evidence exists to demonstrate that this posting alone helps to reduce the number of illegal aliens who will attempt to apply for jobs at worksites that use E-Verify because the illegal aliens know that they won't be hired.

The benefits of E-Verify are obvious. Those employees who receive a final non-confirmation are not eligible to work in the United States, and their termination opens up a job for an American worker. It should go without saying that this would save the State of Michigan money as it would reduce the strains placed on the government's social safety nets. In addition, the Chamber is simply wrong in its claim that "an employer cannot fire, demote, delay training, withhold pay or take any other adverse action against the employee" after a TNC. Such an employee is not immune from termination for legitimate reasons. The truth is that an employer cannot fire an employee solely on the basis of a TNC. This protects workers who are legally authorized to work but who have an error in their Social Security records. For example, under E-Verify, a woman who has recently married and taken her husband's last name but failed to notify the Social Security Administration of her name change would be hired and given a chance to correct her records.

5. The Chamber argues that E-Verify is not "fool-proof." We would concede that point simply because nothing is fool-proof. Can E-Verify be improved to more effectively detect document fraud and identity theft? Certainly. But the Chamber's argument boils down to this: HBs 4969 and 4355 should not pass because E-Verify cannot prevent every single occurrence of illegal employment. This is a ridiculous suggestion, akin to arguing that all criminal laws should be abolished because some people still commit those crimes.

The error rates mentioned by the Chamber are likewise misleading. Earlier this year, our organization sent a letter to the Oakland County Commission (OCC) explaining how similar statistics were being used by the ACLU of Michigan to mislead and discourage the county from passing an E-Verify rule. We find no need to repeat those arguments here but have instead enclosed a copy of our letter to the OCC for your review. We hope you will find the facts in that letter enlightening.

In addition, we want to make you aware of some additional facts about E-Verify. To begin with: 99.6 percent of all employees who are authorized to work in the United States are immediately verified as work-eligible through E-Verify. This verification occurs without the employer or employee receiving even so much as a tentative non-confirmation (TNC) or having to take any type of corrective action at all. The less than one-half of one percent of applicants who are not immediately cleared are given the opportunity to correct any records discrepancies with the Social Security Administration while they continue to work.

Also, 96.9 percent of all persons checked with E-Verify are confirmed work-authorized within 24 hours, requiring no further action (this number includes those who are authorized to work and illegal aliens who are not work-authorized). Of the 3.1 percent who are not immediately verified, 0.3 percent (who receive a TNC) are later authorized to work after they resolve the record discrepancy (i.e., such as the example of the married woman we provided above). That leaves only 2.8 percent of all new hires who receive a final non-confirmation (FNCs), which indicates that they are not authorized to work in the United States.

It bears mentioning that, notwithstanding the Chamber's scare tactics, not a single worker, native or foreign-born, who was authorized to work in the United States has ever been denied employment due to an E-Verify database discrepancy. We challenge the Chamber to find such a person and are confident that they will be unable to do so. As a result, the charge that discrimination against foreign-born workers would result is completely meritless. In fact, exactly the opposite has proven to be the case, because E-Verify frees employers from having to make subjective judgments about an individual's documentation and their work status.

6. The last point noted by the Michigan Chamber cites a U.S. Chamber cost study that alleges the federal contractor rule will cost $10 billion per year. It is interesting that the Michigan Chamber uses this number without providing any transparency or justification as to how they arrived at this figure. The Chamber should not be allowed to throw around unsubstantiated cost figures and should be challenged to explain the number. Regardless of whether they explain this or not, this number is completely irrelevant to consideration of either of the House Bills as the Chamber's number relates to a federal regulation that is already in place and which has no bearing on the bill being considered by the Michigan House.

What does it cost an employer to run an E-Verify check? Nothing. Use of the system is free. The program generally takes less than an hour to set up, and once up and running takes only a few minutes to enter and submit an employee's information. At least 96 percent of all employees run through the system are cleared to work within 5 seconds. And because E-Verify requires employees to complete the I-9 form as part of the E-Verify process, the paperwork associated with E-Verify also poses no additional cost on employer. After all, the E-Verify paperwork is the exact same paperwork employers have already been required to use when hiring new employees since 1986. Given these facts, it is hard to see how the Chamber can assert that use of E-Verify would impose any additional costs on employers at all.

I hope you find this information useful as the Legislature considers House Bill 4969 and/or 4355. Should you need any further information regarding the information contained in this letter, please feel free to contact our office.

Sincerely,

Christopher M. Jaarda
Director of Government Relations

Enclosure
cc: Michigan House GOP Caucus Members (via email)

For the past thirty years, the Federation for American Immigration Reform (FAIR) has worked nationally to improve border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest. FAIR is non-partisan and our publications and research are used by academics and government officials alike. FAIR has been called to testify on immigration bills before Congress more than any organization in America. Our organization has extensive experience in helping elected officials address immigration issues including with respect to the E-Verify program.

FEDERATION FOR AMERICAN IMMIGRATION REFORM

30 Years
1979 – 2009

May 29, 2009

Oakland County Board of Commissioners
1200 N. Telegraph Road
County Service Center, Building 12 East
Pontiac, MI 48341

RE: Resolution 09116 (Requiring Oakland County Contractors and Vendors to Register and participate in the Federal E-Verify Program)

Dear Oakland County Board of Commissioners:

For the past thirty years, the Federation for American Immigration Reform (FAIR) has worked to improve border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest. FAIR is non-partisan and our publications and research are used by academics and government officials alike. FAIR has been called to testify on immigration bills before Congress more than any organization in America.

Our organization has extensive experience in helping elected officials address immigration issues including with respect to the E-Verify program. E-Verify was created by Congress in 1996 and has a proven track record of effectiveness in helping employers verify that new hires are legally authorized to work in the United States. According to the Department of Homeland Security (DHS), more than 6.6 million new hires across the country were verified as legally able to work in the U.S. during Fiscal Year 2008.

According to the *Boston Globe*, last year 1,222 Michigan employers, representing 5,073 jobsites, voluntarily participated in the E-Verify program. Last year, nearly 60,000 new hires in Michigan were verified work eligible as a result of E-Verify. Accordingly, we know that E-Verify helped 60,000 Michigan workers secure a new job instead of having those jobs go to illegal aliens. As you know, Michigan is suffering from the highest unemployment rate in the nation (13.4% according to the Bureau of Labor Statistics) and the Detroit-Warren-Livonia metropolitan region's unemployment rate is even higher (14.0%). Enacting Resolution 09116 is one small step that the Commission could take to ensure that contractors that are hired by the county do their part by hiring only legal American workers.

We are aware that the American Civil Liberties Union of Michigan (ACLU) sent a letter on May 28, 2009 to the Oakland County Commission (OCC) in regards to Resolution 09116. In their letter, the ACLU makes several statements that do not tell the whole story concerning the E-Verify program. Other statements are misleading and simply cannot go unchallenged.

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First, the ACLU contends that E-Verify is "riddled with errors that erroneously will prevent numerous Americans from working." It is worth noting that the ACLU has failed to identify even a single American who has been prevented from working as a result of any errors due to E-Verify. The Commission should challenge the ACLU to identify Americans who have been harmed in the manner suggested by the ACLU in their letter.

Second, the ACLU contends that reliance on E-Verify "will actually increase the costs to our local businesses" and that Resolution 09116 would "put undue costs on businesses...." It is worth noting that E-Verify is free to employers and using the system will not require employers to incur any out-of-pocket costs to use the program. Additionally, the fact that more than 1,200 Michigan employers (and 124,000 employers nationwide) are using E-Verify undermines the ACLU's assertion that E-Verify would unduly burden local businesses. If that were true, those businesses already using E-Verify in Michigan would have discontinued using the program.

Third, the ACLU letter states that "the Social Security Administration... recently reported that 17.8 million of its files contain incorrect information, 12.7 million of which concern U.S. citizens." The Social Security Administration (SSA) report cited by the ACLU was issued by the SSA's Office of Inspector General (OIG) in December 2006. (See Report: A-08-06-26100). In that report, the OIG actually praised the accuracy of SSA's data, saying: "we applaud the Agency on the accuracy of the data we tested." There are two things of note in relation to the OIG report that are worth mentioning:

(1) The OIG report was not based on an exhaustive analysis of SSA's database. Rather, the 17.8 million number cited by the ACLU is merely an estimate of the possible number of discrepancies, out of a total of 435 million records, based on an OIG sample survey of just over 2,400 records.

(2) Despite the OIG's estimate of potential database discrepancies, many of these discrepancies will never result in actual harm to anyone. The OIG report alludes to examples of records discrepancies:

Death of Numberholder. The OIG report notes that in many records they surveyed, the "records had no indication that the numberholder was deceased" and in others that a "report of death was received by SSA, but the death was not confirmed." In these cases, a numberholder is deceased, but the SSA database erroneously reflects he is still living. Certainly this form of discrepancy will not impact anyone who might actually apply for a job.

Change of Name of Numberholder. Another possible example of a record discrepancy could involve the record of a woman who has married but failed to notify the SSA that she has legally taken her husband's last name. In the event she is hired by an employer subject to Resolution 09116, E-Verify would advise her that her married name does not match her SSN. She would then realize she failed to notify SSA of her marriage, file the appropriate form with SSA, and SSA would correct her record. It is critical to understand that, contrary to the ACLU's suggestion, at no point in this process would this woman lose out on an employment opportunity!

The OIG report concluded that several other variations of records discrepancies are also easily correctable. The report states that even though certain "individuals' employment eligibility may not be initially verified through [E-Verify, some] numberholders may need to correct their information with SSA."

The OIG is not alone in concluding that the majority of database discrepancies are easy to correct or that the cause of these discrepancies is often the result of the numberholder's failure to advise SSA of life changes that impact their record. On June 10, 2008, the *Government Accountability Office* (GAO), the oversight agency of

Congress, issued a report regarding E-Verify. The report explained the basis for most E-Verify "erroneous tentative non-confirmation" errors occurred "because employees' citizenship or other information, such as name changes, is not up to date in the SSA database, ***generally because individuals do not request that SSA make these updates.***" (*Emphasis added*) (See Report: GAO-08-895T).

Fourth, the ACLU letter fails to advise the Commission that the United States Citizenship and Immigration Service (USCIS) reports that E-Verify is able to confirm work eligibility 99.6% of the time, without the employee having to take any further action. In the remaining cases, some form of corrective action on the part of the employee is necessary, like in the example of the married woman cited above.

Any suggestion that the Social Security database's discrepancies will result in lost employment opportunities is nothing more than a red herring. It serves no purpose to inform the Commission about the effectiveness of the E-Verify program. Rather, that issue is often used by opponents of E-Verify to distract from the program's actual record of effectiveness.

I hope you find this information useful as the Commission considers adoption of Resolution 09116. Should you need any further information regarding the information contained in this letter, please feel free to contact our office.

Very truly yours,

Christopher M. Jaarda, Esq.
FAIR, Director of Government Relations
Member, State Bar of Michigan

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