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# PAYROLL CURRENTLY

Inside Washington

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## Ask Your Representative to Co-Sponsor H.R. 3359 to Ease Multi-State Withholding

The Mobile Workforce State Income Tax Fairness and Simplification Act has picked up a few more co-sponsors in the U.S. House of Representatives since our last report (see ["Inside Washington" for January 2008](#)), but it still needs more support if it is going to get on the agenda for a vote on the House floor. This bill is vital to easing your burden of withholding income taxes for the states and localities to which your employees may temporarily travel.

We need your help. Please write your representative in the House, asking him or her to co-sponsor the bill, H.R. 3359. On the APA website ([www.payroll.org/login.cfm?nextpage=/i4a/pages/index.cfm?pageid=151](http://www.payroll.org/login.cfm?nextpage=/i4a/pages/index.cfm?pageid=151)), you'll find a sample letter, which you can print on your company letterhead, a one-page description of the problem and the solution under H.R. 3359, and a list of House members who have already signed on as co-sponsors. The one-page description should be sent along with your letter, and you can also use it in discussion with anyone at your company from whom you need permission to send the letter. *Note:* In particular, co-sponsors from California are important due to the size of the state's congressional delegation and its influence on the House Judiciary Committee. New York is also especially important because of its aggressive stance on nonresident withholding.

To find your representative, just enter your full ZIP code (ZIP + 4) at [www.house.gov](http://www.house.gov). You can find your full code at <http://zip4.usps.com/zip4/welcome.jsp>.

After you write your representative, please fax a copy of your letter to Scott Mezistrano, CPP, APA's Senior Manager of Government Relations, at 210-630-4386.

### Background

H.R. 3359 "would enhance compliance with state personal income tax laws and greatly simplify the onerous burdens placed on employees who travel outside of their resident states for temporary periods and on employers that have corresponding withholding requirements."

Of the 41 states with income tax withholding, most tax all wages earned within their borders by residents of other states, and some have varying de minimis amounts, or thresholds, to be exceeded before withholding is required. The thresholds differ widely for days worked and amounts earned within the state.

Under H.R. 3359, wages paid to an employee who performs duties in more than one state or locality would be subject to the income tax laws of the state or locality of the employee's residence and any state or locality in which the employee is physically present and performing duties for more than 60 days during the calendar year. Professional athletes, professional entertainers, and nationally prominent public figures would not be covered by this legislation.

APA has testified before the House Subcommittee on Commercial and Administrative Law and has provided additional information in response to members' follow-up questions. ■

## Report on E-Verify Reveals Many Issues to Work On

*Note: This article is based on the official report of the meeting described below and on follow-up comments from APA's representatives at the meeting: Karen Cole, CPP, Payroll Manager, Baker Concrete Construction; Dave Fowler, Senior Director, TALX Corporation; and Rob Smith, Manager, Government Relations, Ceridian Corporation.*

The number of employers registered to use E-Verify has grown by more than 50% over the past year, but those 23,000 registered employers still represent only a small percentage of the more than six million employers in the U.S.

The Office of Policy and Strategy, U.S. Citizenship and Immigration Services (USCIS), hosted a stakeholder workshop on November 27, 2007, to consider why more employers don't use E-Verify and how the program would need to be enhanced if it becomes mandatory, as proposed by a number of bills introduced in this session of Congress.

Some of the challenges, further described below, include:

- 10% rate of false tentative nonconfirmations of naturalized

citizens,

- Strict three-business-days deadline for verifying new employees,
- Confusion about how to resolve tentative nonconfirmations, and
- Lack of opportunity to experience it until one actually commits to it.

### Background

E-Verify (formerly known as the Basic Pilot) is an Internet-based program operated by USCIS and the Social Security Administration (SSA), which allows participating employers to electronically verify the employment eligibility and name-SSN match of newly hired employees. More information is available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

The purpose of the November 2007 workshop was to identify, discuss, and prioritize topics for further study in an upcoming evaluation of E-Verify (see below). The workshop was attended by over 120 stakeholders, including representatives from employers, law

firms, labor organizations, and professional associations (including APA), as well as staff from USCIS, Congress, and other government agencies. The Stakeholder Meeting Report is available on the APA website at [www.payroll.org/login.cfm?nextpage=/i4a/pages/index.cfm?pageid=151](http://www.payroll.org/login.cfm?nextpage=/i4a/pages/index.cfm?pageid=151), and will be discussed at APA's Capital Summit, March 26-27, in Washington, DC ([www.americanpayroll.org/course-conf/conferences/capital-summit](http://www.americanpayroll.org/course-conf/conferences/capital-summit)).

A published evaluation of E-Verify, based on topics raised at the stakeholder meeting, is due by September 2008. Unless extended by Congress, authorization for the E-Verify program expires in November 2008.

### Obstacles to employer recruitment

The biggest public relations obstacle to employer participation in E-Verify is its 10% rate of false tentative nonconfirmations (TNCs) of naturalized citizens, explained Karen Cole. A naturalized citizen is someone who was not born a U.S. citizen, but became a citizen later on. A TNC is a response from the E-Verify system saying that it cannot verify the employee's work eligibility and that the employee must follow up with USCIS and/or SSA to resolve the issue. The high rate of TNCs for naturalized citizens stems from a slow interface between various federal agencies with the data used in the E-Verify system. If the situation is not promptly resolved, it can become a final nonconfirmation, and there is currently no established process for appealing such a determination, Cole said.

Another obstacle is the perception that the government does not have enough staff to provide customer service to employers that use E-Verify, Cole asserted. Kathy Lotspeich, Acting Chief of USCIS's Verification Division, noted that in just one year the number of staff working on E-Verify has grown from 18 to 154 people, "which is an excellent indicator of the importance of the program."

The strict deadline for using E-Verify poses another obstacle. According to Dave Fowler, "E-Verify requires the employer to (1) verify all new hires in any given location at which it uses E-Verify and (2) verify all new hires within three business days of hire. If the employer is not able to submit the initial E-Verify query on a particular employee within three days, it will violate both of these rules. Employers need direction as to what to do in such a situation to avoid being labeled 'noncompliant.' USCIS has agreed to develop some guidance and include it in the E-Verify User Manual but said the language first needs to be approved by their legal counsel. It is anticipated that the language will require the employer to document why the verification data on a particular employee was submitted after the three-day deadline."

Fowler also pointed out the lack of an efficient batch submission process for employers with high volumes of new hires.

### Resolving tentative nonconfirmations

Rob Smith took part in a break-out session on resolving TNCs. "We found that there was a lot of confusion among employers

regarding how the TNC process works and that USCIS does not do a good job of explaining the steps employers should take to resolve a case. The group suggested that the evaluation should closely examine USCIS's training materials and how effectively employers use them to educate employees for whom they submit E-Verify queries. After several employers in the session reported that they have had issues with SSA and USCIS employees who lack either the training or understanding necessary to provide assistance to employees who receive a TNC, we recommended that the evaluation should examine the training these agencies provide to their own employees, as well."

### Make it easier to learn about E-Verify

"One of the points I raised was that there is currently no easy way for employers to evaluate the E-Verify program without actually going through the process of signing up," Smith explained. "USCIS does have an E-Verify tutorial, but employers can only access the tutorial after they enroll in E-Verify. Ceridian's government relations office held over 50 employer training sessions on E-Verify in 2007, and we've found this lack of readily available information to be one of the chief concerns of those considering enrolling in the program. I suggested that the tutorial should be publicly available on the E-Verify website to give employers an opportunity to go through the program mechanics before they commit to enrolling and consistently using E-Verify. A USCIS employee in the session said that the department is planning to make a demonstration available on the website in the near future and that it would be open to adjusting the service to provide a more interactive experience if necessary."

### Getting input from employers that haven't signed up

"One of our main recommendations was that the evaluation should include input from employers that choose not to enroll in the E-Verify program," suggested Smith. "Given that only a small fraction of employers have voluntarily signed up so far, we determined that valuable data regarding how the program is perceived and adjustments USCIS could make to its marketing and education efforts could be gleaned from this group. We suggested that Westat, the consulting company hired to complete the evaluation, send detailed questionnaires to employer associations, such as APA, the Society for Human Resource Management, and others, to get a representative overview of what factors contribute to employers' relatively cold response to the E-Verify program."

Lotspeich closed the day's discussions by reiterating the importance of this stakeholder meeting and the evaluation. She reminded participants that USCIS is already implementing changes based on the most recent evaluation. She said that, for her, the main "take home message" from the conference was the need for better communication among government agencies and between USCIS and employers. ■

## Submit Your Payroll Questions for the 2008 Federal Forum

One of the most popular workshops at the APA's Annual Congress is the *Forum on Federal Payroll Issues*, which features a panel of representatives from six federal agencies answering challenging payroll questions posed by our members. The questions are provided to the panelists about a month in advance, so they can do any necessary research and deliver complete answers.

If you have a question about a federal payroll law or regulation, or how it should be applied in your particular setting, please send it by March 14 to [smezistrano@americanpayroll.org](mailto:smezistrano@americanpayroll.org). You may pose a question to the Internal Revenue Service,

the Social Security Administration, the Office of Child Support Enforcement, the Department of Labor, U.S. Citizenship and Immigration Services, or Immigration and Customs Enforcement.

In addition to being presented at the Congress workshop, many of the questions and answers will be transcribed for publication in future issues of PAYROLL CURRENTLY. Last year's Congress Q&A appeared in Issue Nos. 13, 14, and 15.

APA's 26th Annual Congress will be held May 13-17 in Austin, Texas. For more information, visit [www.americanpayroll.org/congress](http://www.americanpayroll.org/congress). ■