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E-Verify to Lock Theft-Ridden SSNS: We Should All Worry

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E-Verify, a semi-voluntary online program by which employers can confirm the identity and work authorization of workers as they are hired, is being programmed to "lock out" social security numbers (SSNs) that have been repeatedly used by imposters, generating "tentative nonconfirmations" (TNCs) for authorized workers assigned to those SSNs and requiring them to resolve the TNC with potentially understaffed Social Security offices.

U.S. Citizenship & Immigration Services (USCIS), which operates E-Verify, has announced that it will lock SSNs that appear to have been misused based on "a combination of algorithms, detection reports and analysis." Presumably, USCIS will identify an SSN as "misused" by finding patterns of use of the SSN by different workers for whom E-Verify queries have been made by employers. This identification probably is trickier than it seems, because a worker to whom a SSN belongs might maintain more than one job at a time with employers whose E-Verify querying offices are in dispersed locations, and the worker might change one or more of those jobs frequently. USCIS might at least initially limit the lockdown to SSNs with blatantly impossible frequency and geographic breadth of use in E-Verify.

But it appears that the lockdown is a crude tool that will affect the proper owner of the SSN as well as the imposters who have stolen it. The lockdown apparently will cause anyone– even the worker to whom the SSN properly is assigned– to be given a "tentative nonconfirmation" (TNC) that must be resolved at an office of the Social Security Administration (SSA).

While the goal of deterring SSN fraud is laudable, this approach gives rise to serious questions, and USCIS' sudden announcement fails to provide the information and opportunity for comment and consideration that people should expect of a government imposing such burdens.

How will SSA determine who is real? With hope, the real SSN owner will be able to convince the people in the local SSA office that he is genuine. USCIS has given no details about how SSA officers will carry out this function, and people must worry if they will be able to prove their identity or face some kind of Orwellian nightmare.

What happens when the real SSN owner then moves to a new job with an employer who uses E-Verify? Will he have to go through the entire ordeal at SSA again every time he gets hired? USCIS has not disclosed any mechanism to "lock in" the real SSN owner while locking out imposters.

What if an imposter convinces a SSA worker that he is real while the real SSN owner works away with a longstanding employer and has no awareness of the lockdown? What will happen when the real SSN owner takes a new job with an E-Verifying employer? Will he face a heightened standard to dislodge the identity "locked in" by the imposter?

How many hours a day will employers using E-Verify and the real SSN owners spend dealing with these TNCs and resolutions? We all know that E-Verify has in fact spurred a shift from counterfeit documents using

fictitious identities to counterfeit documents embodying stolen real identities. The volume of this problem could be very significant. USCIS has not disclosed any numbers of SSNs it expects to lock down.

Are SSA offices sufficiently staffed with properly trained officers to handle this function so critical to the working status of so many people? SSA staffing has been a major concern in discussions about a mandatory rollout of E-Verify to all employers. USCIS' announcement fails to mention any coordination with SSA or any workload and staffing assessments and plans by SSA.

The amount of burden on the economy and the potential confusion among legitimate people should have triggered a public "notice and comment" rulemaking process in which these questions would be worked out before implementation of a well-intentioned policy.

How We Can Help

Baker Donelson's Immigration Group regularly counsels employers on I-9 compliance. We perform private audits of I-9 documents, prepare compliance programs, and train managers and workers in implementing those programs. We evaluate particular questionable documents and situations. We help employers decide whether and how to create or store I-9 forms electronically, to use Social Security Administration's Number Verification System, or to participate in the Department of Homeland Security's "E-Verify" program. We defend sanctions actions by ICE for paperwork and "knowingly hire" violations of I-9 rules. We work with our strong Litigation Department to bring and defend claims against competitors based on employment of unauthorized aliens. We advise and defend employers and managers in the increasingly common criminal investigations and proceedings relating to employment of aliens. We coordinate our Team's services closely with our firm's well-respected Labor and Employment Law Group and with our firm's White Collar Crime Group. We provide advice and coordinate with U.S. and foreign preparers concerning U.S. taxation of international companies doing business in the U.S., and concerning the U.S. taxation of international workers placed in the U.S. and abroad.