

**HOUSE BILL 06S-1023**

**VERIFICATION OF LAWFUL PRESENCE  
ANNUAL COMPLIANCE REPORT  
CALENDAR YEAR 2011**

**COLORADO REVISED STATUTES—TITLE 24, ARTICLE 76.5**

**Submitted to the Colorado Senate State, Veterans, and Military Affairs Committee and the House of  
Representatives State, Veterans, and Military Affairs Committees**

**Colorado Department of Labor and Employment**

**Prepared in compliance with Colorado Revised Statutes Title 24, Article 76.5  
by staff of the Colorado Department of Labor and Employment**

**January 17, 2012**

**COLORADO REVISED STATUTES—TITLE 24, ARTICLE 76.5 REPORTING REQUIREMENTS**

Pursuant to Colorado Revised Statutes 24-76.5-101, et seq., the Colorado Department of Labor and Employment is required to provide the status of its compliance with the requirement to verify the lawful presence of individuals 18-years of age and older who apply for local, state, or federal public benefits. No later than January 17, 2012, this report must be submitted to the Senate and House committees on State, Veterans, and Military Affairs.

This report complies with this requirement.

## **PART I. STATUTE AND PROGRAM OVERVIEW**

### **Colorado Revised Statutes—Title 24, Article 76.5**

This statute requires each state agency or political subdivision to verify that each person 18 years of age or older who applies for “state or local public benefits” provide proof of being lawfully present in the United States prior to the receipt of public benefits. The law defines state or local public benefits by referring to U.S. Code 8, Section 1621.

This statute also requires a person applying for benefits to sign an affidavit affirming to being a U.S. citizen or legal permanent resident. The law prohibits state agencies or political subdivisions from providing benefits that are in violation of this statute. This statute establishes reporting requirements, and each state agency is required to subscribe to the U.S. Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE) Program, a Citizenship and Immigration Services Web site.

### **Colorado Department of Labor and Employment**

The Colorado Department of Labor and Employment administers the following programs that provide state public benefits.

**Workforce Investment Act Program.** The federal Workforce Investment Act of 1998 requires states to design and manage job training and employment programs at the local government level where the needs of businesses and individuals are best understood. Through the Workforce Investment Act Program, individuals receive core services, such as outreach, initial assessment of skills and needs, and job-search and placement assistance. Through one-stop centers, eligible individuals also receive access to intensive services such as comprehensive assessments and development of individual employment plans, and to training services such as occupational-skills training and on-the-job training.

**Trade Adjustment Assistance Program.** The Trade Act of 1974 provides benefits to workers whose job was lost, whose hours of work and wages were reduced because of increased imports, or whose jobs were exported offshore. Trade Adjustment Assistance benefits include a variety of reemployment services designed to help workers prepare for and obtain suitable employment. Workers may be eligible for job training, job-search allowance, relocation allowance, and health-coverage tax credit. Workers over 50 years of age may be eligible for alternative trade adjustment assistance.

**Unemployment Insurance Program.** The 1937 legislative declaration by the Colorado General Assembly provides that the purpose of the Colorado Department of Labor and Employment’s Unemployment Insurance Program is to provide economic security and stability to the citizens of Colorado by safeguarding the income and purchasing power of the unemployed worker. The Unemployment Insurance Program provides temporary and partial wage replacement to workers who have become unemployed through no fault of the worker, as determined under state law. The program is funded by employer-paid premiums and provides benefits to those who meet the eligibility requirements of the Colorado Employment Security Act.

## **PART II. VERIFYING LAWFUL PRESENCE TO DETERMINE PROGRAM ELIGIBILITY**

### **Workforce Investment Act and Trade Adjustment Assistance Programs**

To comply with the requirements of House Bill 06S-1023, the Colorado Department of Labor and Employment issued a policy letter on August 1, 2006, mandating verification of immigration status through the SAVE Program. This policy was implemented in the statewide system of local workforce centers, which are the providers of Workforce Investment Act and Trade Adjustment Assistance services.

In addition, the Colorado Department of Labor and Employment conducted an optional six-month pilot project at the state level to verify the license or identification number for Workforce Investment Act and Trade Adjustment Assistance applicants with the Colorado Department of Motor Vehicle’s database. Because the Colorado Department of Labor and Employment did not identify any invalid identification numbers during the pilot project and resources were not provided through legislation for full-time employees at the state level or for automation of the Department of Motor Vehicle’s match, the pilot project was suspended after six months.

There have been no denials of services for the Workforce Investment Act and Trade Adjustment Assistance programs based on immigration status since the implementation of House Bill 06S-1023.

The following processes were implemented as part of determining eligibility for the Workforce Investment Act or Trade Adjustment Assistance Programs:

- Obtain one of the required forms of identification authorized by the statute.
- Require the Workforce Investment Act or Trade Adjustment Assistance applicant to complete and sign an Affidavit of Immigration Status, affirming that the applicant understood that lawful presence in this country will be verified through the SAVE Program before workforce program services can be provided, and that the applicant is a U.S. citizen, legal permanent resident, or is otherwise lawfully present in this country.
- Check the type of identification the applicant possessed, and obtained the identification number and expiration date.

Provision of Trade Adjustment Assistance benefits was contingent upon the applicant providing the required documents and signing the Affidavit of Immigration Status plus the successful verification of immigration status through the SAVE Program.

<b>Number of Persons Receiving Workforce Investment Act Services</b>	<b>01/2011–12/2011</b>
Number of Workforce Investment Act applicants receiving services	9,761
Number of Workforce Investment Act recipients who are not U.S. citizens	294
Number of inquiries of immigration status through the SAVE Program	294
Number of applicants denied services	0

<b>Number of Persons Receiving Trade Adjustment Assistance Services</b>	<b>01/2011–12/2011</b>
Number of Trade Adjustment Assistance applicants receiving services	1018
Number of Trade Adjustment Assistance Act recipients who are not U.S. citizens	61
Number of inquiries of immigration status through the SAVE Program	61
Number of applicants denied services	0

Additional information regarding House Bill 06S-1023 policies and processes related to the administration of the Workforce Investment Act and Trade Adjustment Assistance Programs can be found in Policy Guidance Letter #06-07-WIA, on the Colorado Department of Labor and Employment’s Web site at:

- [www.coworkforce.com/PGL/pgl/PGL0607WIAGuidelinesHB1023.pdf](http://www.coworkforce.com/PGL/pgl/PGL0607WIAGuidelinesHB1023.pdf)
- [www.coworkforce.com/PGL/SupportingDocuments/PGL0607WIAHB1023attach1.doc](http://www.coworkforce.com/PGL/SupportingDocuments/PGL0607WIAHB1023attach1.doc).

### **Unemployment Insurance Program**

Under federal law and House Bill 06S-1023 only U.S. citizens and persons lawfully present in this country are eligible to receive unemployment benefits. The following processes were implemented as part of determining eligibility for the Unemployment Insurance Program:

## ***Initial Claim***

An unemployed individual can file a new unemployment claim via the Internet or with a customer-service representative over the telephone. The individual (claimant) is always asked to attest that he or she is a U.S. citizen. If the response is yes, the claimant must provide the identification number and expiration date of one of the following types of identification: Colorado driver's license or identification card; U.S. Military Card or dependent identification card; Native American Tribal Document; U.S. Coast Guard Merchant Mariner Card, or other state or Canadian driver's license or state identification card. If the claimant provides a Colorado driver's license or identification card number at the time the claim is filed, the identification number and the expiration date is added to the claim record. As part of the initial paperwork, the claimant is sent a form, which must be signed to verify that the information provided is correct. It also contains instructions for providing the information from the other acceptable forms of identification for the claim record.

If the response is no, the claimant is asked for his or her alien-identification number. If the claimant can provide the alien-identification number at the time of filing, it is included in the claim record. To ensure that the claimant is legally present in the United States, the claimant is asked to provide the same identifying information as discussed above.

In 2011 the Unemployment Insurance Program implemented a new Internet application, currently available to the public in limited release, that requires the applicant to affirm lawful presence and acknowledge the penalties for making false statements at the time an initial unemployment insurance claim is filed. All applicants are presented with the electronic affirmation. Additionally, the telephone scripts used by the customer-service agents were changed to match the affirmation presented in the new Internet application.

## ***New Claim Correspondence***

The business day following the day a claim is filed, correspondence is created and sent to each claimant (regardless of response to the citizenship question) and all affected employers (those employers reporting wages during the base period). This correspondence is as follows:

- Form UIB-1, Verification of Personal Information, is sent to the claimant. The claimant is instructed to verify the information, make any necessary changes or corrections, including the response to the citizenship question and provide his or her alien-identification number, and asked to provide information about the type of verifiable identification the claimant possesses. The form also requires a signature affirming that all information on the form is correct under penalty of perjury and that the claimant is a U.S. citizen or otherwise lawfully present in the United States.
- Forms UIB-290, Request for Job-Separation Information from Employers, and UIF-290, Notice of Wages Reported/Potential Charges, are sent to the interested employers requesting verification of the information about the claimant.

## ***Alien Status Verification Through the SAVE Program***

The business day following the day a claim is filed, a report listing the names of claimants that indicated non-U.S. citizenship is generated. If the claimants on this report provided an alien-identification number, the name, date of birth, and alien status are then verified through the SAVE Program by Unemployment Insurance Program staff members. If everything matches and the system does not indicate further verification is necessary, the documentation is placed in the claimant's file and the claim continues through the process.

If the system response to the SAVE verification indicates that any line of data does not match or it requests further verification, a "hold" is placed on the claim to prevent payment until further information is received from the claimant. In these instances, a Form B-521, Instructions for Claimants Who Are Non-U.S. Citizens, form is sent to the claimant. The form requests that the claimant return the signed form and copies (front and back) of the employment-authorization card. It may also be appropriate to request a copy of a marriage certificate. The claimant must be able to provide the requested information, and it must be verifiable with SAVE before benefits will be paid.

Additionally, if the claimant did not provide an alien-identification number a “hold” is placed on the claim to prevent payment until further information is received from the claimant. Form B-521, Instructions for Claimants Who Are Non-U.S. Citizens, is created and sent to the claimant. Under Colorado law, an unemployment claim cannot be processed until the claimant returns the signed form and copies (front and back) of the alien registration card. The claimant must be able to provide the requested information, and it must be verifiable with the SAVE Program before unemployment benefits will be paid.

**Statistics**

Because of excessive workload, lack of staff, and delays in payment to lawfully present applicants, in February 2009 the Unemployment Insurance Program Director elected to disable temporarily the programming that denied unemployment insurance benefit payments when the Verification of Personal Information was not received; the Director also discontinued the associated business processes.

Realizing that this practice was not in compliance with the spirit and intent of the law, the Unemployment Insurance Program is moving forward to find efficient and effective means to verify lawful presence. In December 2011 the Department of Labor and Employment executed an agreement with the Department of Revenue granting the Unemployment Insurance Program access to Department of Motor Vehicle records. This access allows the UI Program to verify the driver’s license and identification numbers provided by claimants who are Colorado residents. If a claimant provides an incorrect number, but the Department of Motor Vehicle records verify that the individual has a valid form of identification, the information from the Department of Motor Vehicle is included in the unemployment claim record. Working with the Department of Revenue, the UI Program is establishing procedures to verify that the identification information provided by the person applying for benefits belongs to him or her. Additionally, the Program will work with the Department of Revenue to develop and/or enhance the automated interface between the two departments’ information technology systems.

<b>Verification of Immigration Status</b>	<b>01/2011–12/2011</b>
Number of initial unemployment claims filed	199,376
Approximate number of claims paid (as of December 31, 2011)	112,830
Number of inquiries of claimants’ immigration status through the SAVE Program	9,854
Number of claimants who required a secondary inquiry of immigration status through the SAVE Program	1,367
Number of decisions issued pertaining to immigration status (allowing and disallowing benefits)	1,371
Number of claimants denied unemployment benefits based on immigration status	656

**STATE AUDITOR’S OFFICE RECOMMENDATIONS**

In 2011 the State Auditor’s Office completed an audit of the Unemployment Insurance Program, including its compliance with HB 06S-1023. Based on audit findings, recommendations were made to the Unemployment Insurance Program, which include:

- 1) The Department of Labor and Employment should ensure that unemployment insurance claimants meet the requirements of House Bill 06S-1023 and federal law for attesting to their lawful presence in the United States by:
  - a. Changing the language in the UI application form so that claimants are clearly affirming that they are legally present in the United States through the application.
  - b. Requiring all applicants to affirm legal presence before receiving benefits.
  - c. Eliminating the use of the current paper affidavit form for affirming legal presence.

- 2) The Department of Labor and Employment (the Department) should ensure that unemployment insurance (UI) claimants meet the requirements of House Bill 06S-1023 and federal law for affirming their lawful presence in the United States by:
  - a. Requiring all claimants to provide the number of their valid Colorado driver's license or Colorado identification card, or a copy of other documents acceptable under House Bill 06S-1023, before paying benefits. In addition, the Department should establish a process to collect acceptable forms of identification other than a Colorado driver's license or identification card and provide claimants with instructions on the application for submitting this documentation.
  - b. Establishing procedures to verify that the person applying for benefits is the same person depicted by the identification number or document that the person provides on his or her application. These procedures could include verifying all Colorado driver's license and identification numbers provided by claimants using Department of Revenue records. If necessary, the Department should seek legal counsel from the Office of the Attorney General to clarify the procedures that the Unemployment Insurance Program must follow to satisfy House Bill 06S-1023 while complying with federal requirements.

In response to the recommendations, the Unemployment Insurance Program completed recommendation 1a as described in "Initial Claim." Recommendation 1b is in place with the changes to the online applications and call-center scripts. Recordings are maintained for claims filed via telephone agents. Storage capacity limitations prevent the telephone-recorded affirmations from being maintained beyond a period of 11 months. As a result of this limitation, the UI Program continues to mail a paper affidavit to verify legal presence to every claimant filing a claim for benefits. The UI Program maintains the returned signed affidavit in the claim. Recommendation 2 is also in process. As noted above, the Unemployment Insurance Program executed an agreement with the Department of Revenue to verify Colorado driver's license and identification card information provided by each claimant.