

E-VERIFY

Why Mandatory Employer Participation Will Stall Economic Growth and Job Creation

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A mandatory electronic employment eligibility verification system will be part of any comprehensive immigration reform bill, but requiring employers to participate in E-Verify¹ without legalizing existing unauthorized workers would compound the already-severe problems of a struggling economy by imposing new costs on employers, preventing qualified workers (including U.S. citizens) from working, increasing unemployment, and depriving the government of revenue. As of January 2010, slightly more than 184,000 employers were enrolled in E-Verify² — representing only 2.5 percent of the approximately 7.4 million employers in the U.S. and accounting for less than 12 percent of all new hires.³ Mandatory E-Verify would drastically increase the burdens on the system and on the economy.

■ Mandatory participation in E-Verify will undercut economic recovery.

- According to the Congressional Budget Office (CBO), implementation of a mandatory program (without legalizing the current undocumented population) would increase the number of employers and workers who resort to the black market, outside of the tax system. This would decrease federal revenue by more than \$17.3 billion over ten years.⁴
- The *Arizona Republic* reported that a 2008 state law requiring businesses to use E-Verify has resulted in workers and businesses moving off the books into the cash economy. This shift is depriving the state of income-tax revenue at the same time the state is facing a \$1.6 billion budget gap.⁵
- Apart from lost tax revenues, the CBO estimates that implementation of a mandatory E-Verify program would cost \$3 billion over 5 years and \$6.1 billion over 10 years.⁶
- According to the author of a Cato Institute report, tighter interior immigration enforcement — including policies such as making E-Verify mandatory — would reduce U.S. “household welfare” by \$65 billion a year.⁷
- Imposing these costs on our federal government and U.S. households would be particularly unwise now as our economy struggles with a \$1.58 trillion deficit.⁸ In 2009, the Treasury Dept.’s revenue was down \$138 billion from the previous year, the largest April-to-April decrease since at least 1981.⁹

■ Mandatory participation in E-Verify will place burdens on all businesses, especially small ones.

- Small, family-owned businesses do not have the resources to meet the demands of an electronic verification system. Because most such businesses do not have staff dedicated exclusively to personnel matters, they will have to divert scarce management time to E-Verify’s training requirements and to tracking verification records. Many farms and other small businesses do not have high-speed Internet access, which E-Verify requires.¹⁰
- The exact impact of E-Verify on small businesses is still unknown because employers currently enrolled in



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E-Verify are not representative of all U.S. employers. Although 73 percent of businesses in the U.S. have fewer than 10 employees, only 12 percent of E-Verify users are small businesses.¹¹

- According to the American Council on International Personnel (ACIP), the reason most employers have not enrolled in E-Verify is not because they are hiring undocumented workers or shirking their employment eligibility verification responsibilities, but because E-Verify enrollment is “not easy or efficient.”¹²
- One small business in Maryland has estimated that it would cost approximately \$27,000 for the company to use E-Verify for one year.¹³
- According to a firm that provides financial analysis for private companies, small, privately held businesses will likely experience even more job losses in the near future.¹⁴ These already-struggling businesses will face additional burdens and unanticipated problems if they are required to use E-Verify, potentially harming their ability to create new jobs and revenue.

■ **Mandatory participation in E-Verify won't cure current high unemployment rates and will likely cause them to increase.**

- Some policymakers have simplistically and falsely asserted that participation in E-Verify will decrease unemployment because “there are almost as many illegal immigrants in the labor force as there are unemployed workers.”¹⁵
- But that’s not what the research shows. Unemployment rates among native-born workers are actually lower in areas with higher levels of immigration because spending by immigrants stimulates the economy and creates additional jobs. In fact, there is no statistically significant relationship between unemployment and recent immigration.¹⁶
- Imposing mandatory E-Verify will exacerbate high unemployment rates. The Social Security Administration (SSA) estimates that, if the system were mandatory, 3.6 million U.S. citizens and lawful immigrants would either have to go to an SSA office to correct their records or lose their jobs.¹⁷
- Deliberately doing something that will increase unemployment during a fragile economic recovery defies common sense. In the period comprised by December 2009 and January 2010, the economy shed 170,000 jobs because of economic anxiety.¹⁸ According to an economist for IHS Global Insight, “Businesses are still very cautious. . . .”¹⁹ Requiring employers to participate in E-Verify will discourage hiring in a market already devastated by lay-offs.

■ **E-Verify continues to be compromised by database errors — and these errors result in unjust firings, failure to hire qualified workers, delayed employment, and lost productivity.**

- In Arizona, where use of E-Verify is mandatory, the “concern most frequently identified” is that “tentative non-confirmation” notices, or “TNCs” (the notice employers receive when the federal databases cannot confirm a worker’s employment eligibility), are “issued on work-authorized individuals,” the U.S. Citizenship and Immigration Services Ombudsman found when it interviewed a variety of employers there.²⁰
- Although the Dept. of Homeland Security (DHS), which administers E-Verify, claims that the error rates are low, that is not what businesses report:
 - A large multinational employer reported that 15 percent of queries it submitted to E-Verify resulted in a TNC.²¹
 - MCL Enterprises, a company that owns 24 Burger King restaurants in Arizona, reported that over 14 percent of queries to E-Verify result in a TNC, and the rate for legal immigrant workers is 75 percent.²²

- Even using DHS’s conservative estimates, if E-Verify were to be made mandatory nationwide, at least 1.2 million workers (or about 25,000 per state) would lose their jobs if they didn’t correct their records.²³
- These rates could increase with a mandatory electronic employment verification system (EEVS), because each time a system grows even ten times larger, serious new technical issues arise that were not previously significant.²⁴

■ Mandatory participation in E-Verify will hurt U.S. workers — the very workers proponents of E-Verify say they want to protect.

- Although required by law to do so, employers do not always notify workers of a TNC. Workers who do not contest database errors lose their jobs.
 - According to a 2009 DHS-commissioned study, 42 percent of workers report that they were not informed by their employer of a TNC, resulting in the denial of their right to contest the finding.²⁵
 - A survey of 376 immigrant workers in Arizona found that 33.5 percent had been fired, apparently after receiving an E-Verify TNC, but that none had been notified by employers that they had received a TNC or given information to appeal the finding.²⁶
- Against program rules, employers prohibited 22.4 percent of workers for whom they had received a TNC from working; 17 percent of employers restricted such workers’ work assignments; and 15 percent of employers delayed job training for such workers.²⁷
- Qualified workers face significant burdens when they receive a TNC:
 - 49.5 percent of workers with TNCs lost partial or complete days at work as they attempted to resolve the issue, and 14 percent lost more than 2 days of work.²⁸
 - Challenging a TNC at a local SSA office may take more than one trip, and in 2009, the waiting times for SSA office visits were 61 percent longer than they were in 2002.²⁹
 - The number of people who leave SSA field offices without receiving service also is increasing. In 2009, 8.4 percent of people seeking services at SSA offices left them without receiving service. But for many individual field offices, the rate of people leaving the office without having received service is much higher. For example, in 2009, 33.7 percent of individuals seeking help at the North Las Vegas SSA field office left it without receiving service.³⁰
 - At least 57 percent of employers using E-Verify violate the program’s rules by using it to prescreen workers, evidence indicates.³¹ And it took workers who were prescreened and not offered a job at least three weeks to find other employment.³²

■ Mandatory participation in E-Verify would reduce employer compliance with program rules.

- According to a DHS-commissioned study, employer noncompliance with the program’s rules is already extremely high. For example, over 66 percent of employers took adverse actions against workers receiving a TNC.³³
- Current E-Verify users are disproportionately large businesses and federal contractors, and most users that have enrolled in the system have chosen to do so on a voluntary basis — all factors that make them *more likely* than a “typical” U.S. employer to approve of the system and use it successfully. Employer complaints, noncompliance with program rules, and error rates would all likely increase if all employers were required to use the system.

Arizona employers are less compliant with E-Verify procedures than other E-Verify employers.³⁴ The likely reason is that, unlike most E-Verify users, most Arizona employers did not volunteer to use the program.

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¹ For more information about E-Verify, see *Facts About E-Verify* (NILC, Oct. 2009), www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-about-2009-10.pdf.

² See the Dept. of Homeland Security's "E-Verify" webpage, www.dhs.gov/files/programs/gc_1185221678150.shtm (last visited Feb. 10, 2010).

³ *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. xxxii.

⁴ Letter to Chairman John Conyers, Chair, Committee on the Judiciary, U.S. House of Representatives, from Peter Orszag, Director, Congressional Budget Office, Apr. 4, 2008, www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.

⁵ Daniel Gonzalez, "Illegal Workers Manage to Skirt Ariz. Employer-Sanctions Law: Borrowed Identities, Cash Pay Fuel an Underground Economy," *The Arizona Republic*, Nov. 30, 2008.

⁶ Congressional Budget Office Cost Estimate: Senate Amendment 1150 to S. 1348, the Comprehensive Immigration Reform Act of 2007, www.cbo.gov/ftpdocs/81xx/doc8179/SA1150_June4.pdf, pp. 31, 33.

⁷ Peter Dixon and Maureen T. Rimmer, *Restriction or Legalization?: Measuring the Economic Benefits of Immigration Reform* (Cato Institute, Aug. 13, 2009), www.cato.org/pubs/tpa/tpa-040.pdf. Household welfare is measured by the amount of goods and services that can be consumed by U.S. households and by the U.S. government on behalf of U.S. households, according to Dixon (explanation provided to Tyler Moran via email, Feb. 14, 2010). The report states that household welfare would be reduced by .45 percent; Dixon calculated that this would translate into \$65 billion and provided this figure to Moran via the same email message.

⁸ Peter R. Orszag, "Mid-Session Review," White House Office of Management and Budget blog, Aug. 25, 2009, www.whitehouse.gov/omb/blog/09/08/25/Mid-SessionReview/. Orszag is director of the OMB.

⁹ Kerry Lynch, "Tax Revenue Plummet" (American Institute for Economic Research, May 20, 2009), www.aier.org/research/briefs/1488-tax-revenue-plummet.

¹⁰ "U.S. Pays the Price for Absence of National Immigration Law," INQUIRER.NET, Apr. 10, 2008, <http://globalnation.inquirer.net/news/news/view/20080410-129490/US-Pays-the-Price-for-Absence-of-National-Immigration-Law>.

¹¹ Westat, *supra* note 3, p. 64.

¹² American Council on International Personnel, "Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)," Aug. 11, 2008, emphasis added.

¹³ Chamber of Commerce of the USA v. Chertoff, No. 08-cv-3444-AW (D.Md.).

¹⁴ Matthew Scott, "Downturn Forcing Private Companies into Cost Cutting, Layoffs" (AoL Small Business, Dec. 24, 2009), <http://smallbusiness.aol.com/article/a/downturn-forcing-private-companies-into/20091221232209990001>.

¹⁵ Letter to U.S. House of Representatives Democratic colleagues from Lamar Smith, Feb. 4, 2010.

¹⁶ *Immigration and Native-Born Unemployment Across Racial/Ethnic Groups: Untying the Knot* (Part II of II), (produced for the Immigration Policy Center by Rob Paral and Associates, May 2009), www.immigrationpolicy.org/sites/default/files/docs/Part%202%20-%20Unemployment%20Race%20Disconnect%2005-19-09.pdf, pp. 3-5.

¹⁷ Transcript from Hearing on Employment Eligibility Verification Systems (Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, June 7, 2007).

¹⁸ Peter S. Goodman, "Labor Market Shows Signs of Rebirth in New Data," *New York Times*, Feb. 5, 2010, www.nytimes.com/2010/02/06/business/economy/06jobs.html. This article says that the economy lost 150,000 jobs in Dec. and 20,000 in Jan.

¹⁹ "Unemployment Rate Falls to 9.7%; 20,000 Jobs Lost," Unemployment Benefits in the United States of America blog, www.unemploymentbenefitsusa.com/2010/02/05/unemployment-rate-falls-to-9-7-20000-jobs-lost/.

²⁰ *Observations on the E-Verify Experience in Arizona & Recommended Customer Service Enhancements* (Office of the Citizenship and Immigration Services Ombudsman, U.S. Dept. of Homeland Security, Dec. 22, 2008), www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf; emphasis added.

²¹ American Council on International Personnel, Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008), Aug. 11, 2008.

²² Mitchell C. Laird, Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives: “Employment Eligibility Verification Systems (EEVS) and the Potential Impacts on the Social Security Administration’s (SSA’s) Ability to Serve Retirees, People with Disabilities, and Workers” (MCL Enterprises, Inc., May 6, 2008), <http://waysandmeans.house.gov/media/pdf/110/laird.pdf>.

²³ About 0.8 percent of work-authorized individuals receive a TNC. Westat, *supra* note 3, p. xxx. There are currently about 154,287,000 million workers in the U.S. The 1.2 million figure was arrived at by multiplying these two numbers.

²⁴ Peter Neumann, “Security and Privacy in the Employment Eligibility Verification System (EEVS) and Related Systems,” Testimony Before the Subcommittee on Social Security of the House Committee on Ways and Means, June 7, 2007, <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=6099>.

²⁵ Westat, *supra* note 3, pp. 154, 199.

²⁶ Caroline Isaacs, *Sanctioning Arizona: The Hidden Impacts of Arizona’s Employer Sanctions Law* (Washington, DC: American Friends Service Committee, 2009), www.afsc.org/tucson/ht/a/GetDocumentAction/i/74700.

²⁷ Westat, *supra* note 3, pp. 157, 204.

²⁸ Westat, *supra* note 3, p. 204.

²⁹ Richard Warsinsky, Immediate Past President, National Council of Social Security Management Associations, Testimony Before the U.S. House Committee on Ways and Means, March 24, 2009, <http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=2107>.

³⁰ *Id.*

³¹ Westat, *supra* note 3, p. 149.

³² *Id.*, p. 140.

³³ Westat *supra* note 3, p. 157. Thirty-seven percent of employers self-reported that they took adverse actions against workers receiving a TNC, and workers reported that an additional 29 percent of employers took adverse action against them, with a total of over 66 percent of employers take adverse action.

³⁴ *Id.*, p. 237.