

E-VERIFY: TALKING POINTS

Why Mandating E-Verify Is Ill-Advised

- **Database Error Rates Make E-Verify Unworkable**

Any employment verification system will only be as effective as the database supporting it. Unfortunately, E-Verify is supported by the Social Security Administration's (SSA) database, a system that the SSA Inspector General found to contain a 4.1% error rate.¹ This means that there are discrepancies in the files of 17.8 million persons (including 12.7 million native-born U.S. citizens and up to 10% of foreign-born U.S. citizens) which could lead to the loss of their jobs. If E-Verify was implemented nationwide today, 1 in every 25 new hires would be misidentified as an unlawful worker. All told, as many as 3.6 million workers a year could experience misidentification.²

- **E-Verify Could Lead To Discrimination**

Concerns about the potential for discrimination in E-Verify are well-founded given the U.S. experience with the Immigration Reform and Control Act of 1986 (IRCA). In three separate reports following implementation of IRCA, the Government Accountability Office (GAO) found that one in five employers self-reported some form of employment discrimination against "foreign-sounding" or "foreign-looking" employees.³

- **E-Verify Would Lead To An Expanded Cash Economy**

The response of many employers and employees to a mandatory E-Verify system would be to work outside the tax system in the "underground economy". According to the Congressional Budget Office (CBO), E-Verify could cause just such a trend, leading to a loss of up to \$22 billion over 10 years from the Social Security Trust Fund.⁴

To Become Viable, E-Verify Must Be Revamped And Situated Within CIR

- **Comprehensive Immigration Reform is the Necessary Context For E-Verify**

Unless Congress legalizes a broad section of undocumented immigrants, any employment verification system will begin with a handicap of 8 million unauthorized workers and thus be overwhelmed at the start. In addition, many undocumented immigrants would simply shift into the underground economy or obtain false identity documents enabling them to work on the books, as was seen following passage of IRCA.

- **Accuracy and Feasibility Must Be Improved**

The error rates in the SSA's database must be significantly reduced. A nationwide verification program would have to expand from its current size of less than 100,000 employers to about 6 million employers. This would require the federal government to process 65 million verifications each year and check the records of 130 million existing employees. Thus, nationwide verification should be phased-in at a reasonable rate with objective benchmarks regarding database accuracy.

- **Employer Misuse of the Verification Program Must Be Curbed**

Some employers have illegally misused the verification program by: (1) verifying the employment status of only foreign-looking job applicants *before* hiring them; and (2) reducing the pay or even

firing employees who challenge the SSA's finding that they are working illegally. These abuses can be corrected by enacting tough civil and criminal penalties for employers who misuse the program; by educating employers on the proper uses of the program; and by more frequently enforcing labor laws.

- **Misidentified Employees Must Have Legal Recourse**

Lawful workers must be enabled to swiftly and effectively correct errors when E-Verify mistakenly flags them as unlawful. The following means would enable them to challenge negative findings: (1) an adequate administrative and judicial review process that provides for remedies such as back pay and attorney's fees if a worker was fired due to a SSA or DHS error; (2) time off of work to visit a SSA field office and challenge a finding that the worker is unauthorized.

Comprehensive Immigration Reform Is An Urgent Priority

Comprehensive Immigration Reform (CIR) is an urgent priority that should be addressed immediately by the 111th Congress. Any CIR proposal should include:

- **Broad-based legalization:** a legalization program which provides an opportunity for permanent residency. "Earned" legalization should be achievable and independently verifiable.
- **Smart and Humane Enforcement:** border and interior enforcement that is targeted, proportional, and humane, focusing on the most dangerous and fairly enforcing immigration law.
- **Temporary Worker Program:** provides a path to permanent residency, enables family unity, offers job portability and labor protections, and protects domestic workers
- **Family-Based Immigration Reform:** provisions which reduce backlogs in 2A category— immediate family of legal permanent residents--without harming other preference categories.
- **Restoration of Due Process Protections:** provisions repealing the 3 and 10-year bars and restoring judicial discretion in deportation proceedings.
- **Detention Reform:** provisions amending mandatory detention laws, expanding alternatives to detention, offering parole to families, codifying and improving detention standards, and increasing oversight of detention facilities.
- **Addressing Root Causes of Migration:** an examination of root causes of migration, such as lack of development in sending countries, and a plan to seek long-term solutions.

¹ Congressional Response Report: Accuracy of the Social Security Administration's Numident File (Office of the Inspector General, Social Security Administration, Dec. 2006), www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm

² *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).

³ Charles A. Bowsher, Testimony Before the Senate Committee on the Judiciary, Immigration Reform: Employer Sanctions and the Question of Discrimination (General Accounting Office, Mar. 1990), <http://archive.gao.gov/d38t12/141005.pdf>, at 7.

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.