

March 10, 2011

The Honorable Lamar Smith
2138 Rayburn House Office Building
U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515

The Honorable John Conyers, Jr.
2426 Rayburn House Office Building
U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515

Dear Chairman Smith and Ranking Member Conyers:

We, the undersigned free-market advocacy groups and public interest organizations, write to share our concerns about the possible implementation of the electronic employment eligibility verification system.

Known as E-Verify, this system will fail to substantially reduce the employment of unauthorized immigrants. More importantly, mandating that employers nationwide use this ineffective and error-prone system would seriously harm small businesses, greatly expand unwarranted government intrusion into Americans' private lives, and push hundreds of thousands of Americans out of the workforce due to systematic bureaucratic errors.

E-Verify Errors Threaten Legal American Workers

E-Verify is not effective in preventing unauthorized workers from being hired. According to a major audit performed in 2009 by Westat, a major research service, 4.1% of the E-Verify system's initial responses to employment verification queries were inaccurate.¹ Of the 6.2% of workers unauthorized to work, 54% were incorrectly approved by E-Verify.

Worse, E-Verify produced false positives for 0.7% of legal authorized workers. If the employment status of the entire U.S. workforce of approximately 200 million were contingent on E-Verify, up to 1.4 million legal American workers would be unable to work due to their having an E-Verify status as tentatively non-confirmed (TNC) for employment. Even if the United States Citizenship and Immigration Services (USCIS) succeeds in dramatically lowering E-Verify's error rate, the prospect of hundreds of thousands of legal American workers failing to gain and maintain employment because of bureaucratic incompetence is unacceptable, especially at a time of 9% unemployment.²

In fact, even government agencies charged with using E-Verify on their own employees fail to comply with the system's standards. For instance, the Social Security Administration (SSA) is required to operate an E-Verify system to screen its own employees, but the agency has failed to use E-Verify on 20% of its new hires. Of those employees who were successfully verified, 49% did not have their processing completed on a timely basis.

Mandating that all businesses use E-Verify on their employees would create a massive bureaucratic nightmare for hundreds of thousands, if not millions, of Americans. In 2007, the SSA estimated that under E-Verify, 3.6 million Americans per year would be required to visit or contact one of its field offices in order to keep their jobs.³

E-Verify Hurts Businesses

Just as the Social Security Administration has struggled with E-Verify, business will also encounter major hurdles in obtaining accurate results from the system. For instance, when Intel Corporation submitted numerous E-Verify queries in 2008, over 12% of its workers received a tentative non-confirmation.⁴ These workers were all eventually cleared as authorized to work, but "only after significant investment of time and money, lost productivity and, for our affected foreign national staff, many hours of confusion, worry, and upset."⁵

Another firm, MCL Enterprises, which owns 24 Burger King restaurants in Arizona, reported that over 14% of its E-Verify queries resulted in a TNC result. Worse, the TNC rate for foreign-born workers was 75%.⁶ E-Verify's database is not updated often enough to be acceptably accurate.

Mandating E-Verify use by private employers has already been tried at the state level – and the results have been disastrous. In 2008, under the Legal Arizona Workers Act, Arizona began requiring businesses to use E-Verify on all employees. It has since been widely reported that Arizona employers are hiring employees “off the books” in record numbers to avoid E-Verify's errors and other hurdles.⁷ The Congressional Budget Office has estimated that mandating E-Verify would decrease federal revenues by \$17.3 billion over 10 years due to lower tax receipts resulting from a larger black market in employment.⁸

E-Verify Runs Counter to Worker Freedom and Limited Government

Supporters of electronic employment verification claim that it is the only solution to unauthorized immigration in America. But E-Verify is fundamentally antithetical to the principles of economic liberty and individual rights upon which this country was founded. **U.S. citizens should not have to ask the federal government for permission to earn an honest living.**

Sincerely,

Fred L. Smith, Jr.
President
Competitive Enterprise Institute

Andrew Langer
President
Institute for Liberty

Berin Szoka
President
TechFreedom

Mario H. Lopez
President
Hispanic Leadership Fund

Tom DeWeese
President
American Policy Center

J. Bradley Jansen
Director
Center for Financial Privacy and Human Rights

Ronald Trowbridge
Founder
Maine Heritage Policy Center

Michael Ostrolenk
Co-Founder and National Director
Liberty Coalition

¹ Westat, December 2009, “Findings of the E-Verify Program Evaluation.” http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.

² Bureau of Labor Statistics, Employment Situation Summary, February 4, 2011. Available at <http://www.bls.gov/news.release/empsit.nr0.htm>.

³ Frederick G. Streckewald, Assistant Deputy Commissioner for Program Policy Office of Disability and Income Security Programs, Social Security Administration, Testimony before the U.S. House Ways and Means Subcommittee on Social Security, June 7, 2007, at 21. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:47008.wais.pdf

⁴ National Immigration Law Center, “Expanding E-Verify Will Undermine Job Growth and Cripple Small Businesses,” January 2011. Available at <http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-2011-01-26.pdf>.

⁵ Immigration Policy Center, “Deciphering the Numbers on E-Verify's Accuracy.” Date accessed: February 9, 2011. Available at <http://www.immigrationpolicy.org/just-facts/deciphering-numbers-e-verify-accuracy>.

⁶ National Immigration Law Center “BASIC PILOT/E-VERIFY REALITY CHECK: Businesses Challenge DHS's Claims,” October 2008. Available at <http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-reality-check-2008-10-27.pdf>.

⁷ Nowrasteh, Alex, *The Wall Street Journal*, “Arizona's Immigration Surprises,” July 28, 2010. Available at http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052748704684604575381561053396180.html.

⁸ Congressional Budget Office letter to U.S. Representative John Conyers, Jr., Chairman of the House Judiciary Committee, April 4, 2008. Available at <http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf>.