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E-Verify Mandate Is Costly for Businesses and Workers

By David Bier[*]

As Congress revisits comprehensive immigration reform, one aspect deserves close attention: electronic employment verification. Both the White House's leaked draft legislation, the Comprehensive Immigration Reform Act of 2013, and the Senate's proposed Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) would make the current verification system, known as E-Verify, mandatory for most newly hired employees.[1]

Under this system, employers must check each new employee's information against a federal government database that attempts to encompass all legal U.S. workers. If E-Verify is fully implemented, it will levy major costs on the U.S. economy. The Senate bill would impose about *$4.1 billion in initial setup costs* and *$8.5 billion in ongoing annual costs to government, businesses, and employees*.[2] This study estimates the costs of the Senate proposal using publicly available federal government data.

How Does E-Verify Work? E-Verify requires employers to compare the information that each new hire submits on his or her U.S. Citizenship and Immigration Services (CIS) Form I-9 against a government database run jointly by the Social Security Administration (SSA) and the Department of Homeland Security (DHS) within three days of the employee's start date. The information includes employees' names, addresses, dates of birth, Social Security numbers, and available citizenship or visa information. If the employee's information fails to match that in the database, the system issues a Tentative Non-Confirmation (TNC). The employee may then contest this determination before the system issues a Final Non-Confirmation (FNC). If a FNC issues, the employer must terminate the employee or face civil penalties.

E-Verify Will Cost Taxpayers. E-Verify would cost taxpayers *$1.45 billion in operational and enforcement costs*. The Congressional Budget Office (CBO), in 2008, estimated that E-Verify would impose implementation costs of $12.2 billion over 10 years. This estimate does not include the costs associated with hiring new DHS personnel to cover the added workload.

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However, the Senate bill specifically calls for the hiring of 5,000 new special agents "dedicated to administering the system, and monitoring and enforcing compliance." Given that federal immigration agents receive annual compensation, including salary and benefits, starting at $45,416 per year, these new hires will likely cost taxpayers at least $2.27 billion over the next decade. This brings E-Verify's total cost to taxpayers to $14.47 billion over 10 years.[3]

E-Verify Will Harm Workers. E-Verify will result in at least *1.8 million erroneous initial non-confirmations over the next decade*, requiring legal employees to sort out these errors at federal offices.[4] This process will, on average, cost legal employees who receive initial non-confirmations *$280 per error* to resolve—or nearly *$50.5 million* per year.[5] Errors often occur due to data entry mistakes by agency officials or employers, as well as employees failing to update their information at the SSA or DHS or entering it incorrectly on their I-9 forms. Employees who receive a TNC must resolve it at their own expense and on their own time, a burden that is especially costly for workers living in rural areas.

Based on USCIS testimony, E-Verify would cause an estimated *40,000 authorized workers to lose their job* annually due to erroneous Final Non-Confirmations,[6] costing affected workers around *$134 million in lost wages per year*.[7] The White House proposal will increase opportunities for error as the system expands to cover more workers and employers.

Furthermore, E-Verify would have a disproportionate impact on legal immigrants. USCIS's official E-Verify auditor Westat found in 2009 that naturalized citizens and authorized foreign-born workers are 26 times more likely than native born citizens to receive a system error. Extrapolating from this finding, foreign-born individuals can expect to receive 82 percent of all errors.[8] This may encourage employers to discriminate against foreign-born applicants.

E-Verify Will Cost Employers. For employers, implementing E-Verify will be neither simple nor inexpensive. Extrapolating from DHS's estimate of the costs incurred by federal contractors in using E-Verify, businesses required to use the system will face *$4.1 billion in setup costs* and *$2.55 billion in annual compliance costs* thereafter.[9] Employers must learn an 88-page compliance manual and undergo training before they can participate in the E-Verify program. Under the White House proposal, which exempts businesses with fewer than five employees from the system, initial setup costs would be lower, at about *$1.7 billion*.

Moreover, both the Senate and White House bills will increase turnover by requiring employers to retain employees who receive temporary non-confirmations for six or more weeks to give them time to appeal. This means that many employers will have to train employees whom they later will have to fire. Replacing these workers will be expensive. Two recent studies—by economist Heather Boushey and consulting firm Sasha Corp.— peg an employer's cost of replacing a worker at $2,640 to $9,444, respectively. Mandatory

Annual Projected E-Verify Costs, in millions $		
	White House Bill	**Senate Bill**
Audits	$376	$376
Operational	$2,420	$2,550
TNCs	$48	$50
FNCs	$125	$134
Turnover	$3,940	$3,951
Fiscal	$1,404	$1,447
Annual Total	**$8,313**	**$8,509**
Setup	**$1,760**	**$4,068**

E-Verify will return non-confirmations to about 650,000 unauthorized workers per year at the current rejection rate, ***costing businesses about \$3.95 billion per year*** to replace them.[10]

The Senate bill also would impose ***\$376.4 million in annual E-Verify paperwork audit costs***.[11] Audits threaten all employers regardless of whether they use E-Verify or have ever made an illegal hire. For example, an ongoing multi-year audit of Chipotle's Form I-9 records by Immigration and Customs Enforcement (ICE) and the Securities and Exchange Commission has already cost the restaurant chain over \$1 million in attorney fees—never mind the staff time to catalogue and ship 300,000 employment-related documents to ICE.[12] Under this bill, employer audits will increase, as the bill requires 5,000 specially designated ICE agents to audit and enforce the system, compared to a few dozen currently.

E-Verify Will Not Stop Illegal Employment. President Obama claims that E-Verify will help prevent illegal immigration by ending unauthorized employment,[13] but there are numerous avenues to evade the system. Employees could become independent contractors, who are not subject to verification. Workers can also avoid the mandate through identity theft. In 2009, Westat's independent review of E-Verify for DHS estimated that ***54 percent of unauthorized immigrants were erroneously confirmed***, primarily due to identity theft.[14]

Research shows that employers who hire workers illegally are not easily deterred by penalties. According to a 1999 study by economists Douglas Massey and Julia Philips, after Congress prohibited the employment of unauthorized workers in 1986, immigrants continued to enter illegally; they simply accepted lower paying jobs in the underground economy.[15]

Conclusion and Reforms. A nationwide E-Verify mandate would cost the U.S. economy up to ***\$8.5 billion per year.*** It also will decrease federal tax revenues by driving many immigrants further underground, beyond the reach of taxation. In 2011, the CBO found that an E-Verify mandate would lower federal revenues by \$1.7 billion annually.[16] E-Verify would produce billions in economic losses and deliver almost no benefits. However, if the system were to be implemented, Congress should adopt some common sense reforms to mitigate some of its negative effects:

- ***Tie implementation to mitigation of erroneous non-confirmations***. Errors can be limited, but not eliminated, so the implementation schedule for E-Verify, which starts with businesses with 1,000 or more employees, should be tied to the error rate. If the error rate for legal workers is anything but minimal, 0.15 percent for example (a figure that would still result in false positive Non-Confirmations for tens of thousands of American workers each year), the system rollout should be suspended until the error rate can be lowered to an acceptable level.
- ***Streamline the appeals process***. Require the SSA and DHS to resolve Tentative Non-Confirmations in one month or less.
- ***Prevent discrimination.*** To avoid encouraging discrimination against naturalized citizens and foreign-born U.S. residents, system implementation should be suspended if the error rate for foreign-born legal workers is more than 200 percent greater than that for native-born citizens.

At $8.5 billion per year, this program will cost businesses $141 per E-Verify check. In a recent poll that asked people whether they would favor a "verification requirement if business owners have to pay $150 to verify the legal status of every worker they are considering hiring," just 37 percent of respondents favored the program, while 58 percent opposed it.[17] Americans recognize that the country needs solutions to illegal immigration that do not involve imposing the costs of enforcement on American citizens and businesses.

Experience shows that sanctioning employers who hire unauthorized immigrants does not end illegal employment. Instead, it forces it further underground. The most important reforms that Congress could enact are those that would render E-Verify unnecessary by ending the black market in labor—securing the border and creating viable legal alternatives to illegal entry.

Notes

[1] Border Security, Economic Opportunity, and Immigration Modernization Act, Title III, Section 3101(a)(8), p. 401, http://www.schumer.senate.gov/forms/immigration.pdf; The Comprehensive Immigration Reform Act, Title X, White House Discussion Draft, 2013, http://media.miamiherald.com/smedia/2013/02/18/19/48/10ARxu.So.56.pdf.

[2] Author's estimates based on federal government data and reports listed below.

[3] Author's estimate based on Congressional Budget Office, Letter to Rep. John Conyers and the Committee on the Judiciary, Congressional Budget Office, April 4, 2008, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9100/hr4088ltr.pdf.
Bureau of Labor Statistics, "Police and Detectives—Pay," March 2012, http://www.bls.gov/ooh/protective-service/police-and-detectives.htm. Adjusted for compensation (1.4 times) using Bureau of Labor Statistics, "Employer Costs for Employee Compensation," December 2012, p. 1.

[4] Author's estimate based on, Statement of Soraya Correa, USCIS, at U.S. Congress, House Committee on the Judiciary, "How E-Verify Works and How It Benefits American Employers and Workers," February 27, 2013, http://judiciary.house.gov/hearings/113th/02272013/Correa%2002272013.pdf.

[5] Author's estimate based on Regulatory Impact Analysis, "Employment Eligibility Verification" (Federal Acquisition Regulation Case 2007-013), Final Rule, October 1, 2008, p. 42.

[6] Statement of Soraya Correa, p. 3: "94 percent of Final Nonconfirmations (FNCs) were issued correctly."

[7] Author's estimate based on Westat, "Findings of the E-Verify Program Evaluation," December 2009, p. 140. Federal Reserve Bank of St. Louis Economic Research, "Average Hourly Earnings of Production and Nonsupervisory Employees: Total Private (AHETPI)," http://research.stlouisfed.org/fred2/series/AHETPI/; Compensation multiplier calculated from Bureau of Labor Statistics, "Employer Costs for Employee Compensatoin," December 2012, p. 1.

[8] Author's estimate based on Westat, p. 235.

[9] Author's estimate for setup costs based primarily on assumptions in: Regulatory Impact Analysis, "Employment Eligibility Verification," p. 42.

[10] Average of: Heather Boushey and Sarah Jane Glynn, "There are Significant Business Costs to Replacing Employees," Center for American Progress, 2012;
Sasha Corporation, "Compilation of Turnover Cost Studies," 2007, http://www.sashacorp.com/turnframe.html.

[11] Author's estimate, based on $10,000 per audit attorney estimate and tenfold increase in audit under this bill.

[12] Lisa Baertlein, "SEC joins probe of Chipotle hiring practices," *Reuters,* 2012, http://www.reuters.com/article/2012/05/19/us-chipotle-idUSBRE84H16820120519.

[13] The White House, "President Obama Speaks on Comprehensive Immigration Reform," January 29, 2013, www.whitehouse.gov/photos-and-video/video/2013/01/29/president-obama-speaks-comprehensive-immigration-reform#transcript.

[14] Westat, p. 208.

[15] Julie A. Phillips and Douglas S. Massey, *The New Labor Market: Immigrants and Wages after IRCA,* May 1999.

[16] CBO.

[17] Emily Ekins, "Americans Oppose E-Verify if Costs are Considered," Reason-Rupe Poll, April 2013, http://reason.com/blog/2013/04/01/americans-oppose-everify-if-costs-are-2.