

Mandatory E-Verify Will Harm U.S. Citizens and Other Legal Workers

From: The Honorable Pedro R. Pierluisi

Bill: H.R. 2885

Date: 9/14/2011

Dear Colleague,

The House Judiciary Committee will hold a markup on Thursday to consider H.R. 2885, which will mandate nationwide implementation of an untested employment verification system modeled after the flawed E-Verify program. Still struggling with database errors, E-Verify is deficient in performing its central mission of verifying whether workers are authorized. Every year, E-Verify harms thousands of U.S. citizen and legal permanent residents who seek employment but are wrongfully identified as unauthorized because of errors in their personal records. Given these problems, it would be imprudent to create a new employment verification program based on E-Verify.

If E-Verify becomes mandatory for all employers, it is estimated that over 1.2 million U.S. citizen and legal workers will be incorrectly flagged as having errors in their records, which would need to be fixed before they could work. Moreover, error rates are 30 times higher for naturalized U.S. citizens and 50 times higher for lawfully present nonimmigrants than for native-born U.S. citizens. The Government Accountability Office called challenging a database error “formidable,” leaving erroneously flagged workers with a difficult process to navigate to correct the error and obtain the job they are seeking.

E-Verify is also ineffective at identifying unauthorized workers. In a study funded by the Department of Homeland Security, researchers found that E-Verify failed to catch 54 percent of unauthorized workers. Thus, participation in E-Verify does not guarantee a legal workforce.

Finally, H.R. 2885’s lightning-fast implementation schedule—which requires the largest employers to implement the system within six months of the date of the law’s enactment—is unrealistic and will be exceedingly difficult for federal agencies to execute. Such a rushed approach guarantees that the new system will be poorly implemented and fraught with the same kinds of database errors that plague E-Verify.

Before being implemented nationwide, any employment verification program, including the one proposed in H.R. 2885, should be tested thoroughly to ensure that no harm is done to businesses and their employees. And to truly solve our nation’s broken immigration system, we should move beyond an enforcement-only approach. Instead, we should pair an effective employment verification program with a pathway to legalization of status for the undocumented workers who help our economy by performing jobs that would otherwise largely go unfilled.

I respectfully urge you to support the protection of our nation’s workers and businesses by opposing H.R. 2885.

Sincerely, /s/

Pedro R. Pierluisi

Member of Congress

September 14, 2011

DO THE MATH:

Mandatory E-Verify = Millions of Jobs Lost

Dear Colleague:

Judiciary Committee Republicans claim that E-Verify's error rate is approximately 0.5% percent. However, when the program was used in Los Angeles County, the results were dramatically different. The actual error rate was more than four times higher. Unfortunately, if implemented nationally, this would mean as many as 4 million workers would be in danger of losing their jobs—an entirely unacceptable scenario in the current economic environment.

Polls repeatedly show that the vast majority of Americans believe job creation should be Congress' top priority. It is therefore inexplicable that Majority members of the Judiciary Committee are so intent on making the flawed E-Verify program mandatory for every employer. Let's reject this job-killing proposal and return to the difficult task of growing our economy and putting Americans back to work.

Sincerely,

LUCILLE ROYBAL-ALLARD
Member of Congress

Dear Colleague:

On Thursday, the House Judiciary Committee will mark-up a bill that would make e-verify mandatory for all employers to check the background of potential and existing employees to determine if they are legal resident. This bill - H.R. 2885, the "Legal Workforce Act" - raises numerous, very serious issues on the devastating impact the program could have on the workforce in our Nation's agricultural industry; the inadequate due process protections in the legislation for workers that unjustly lose their jobs due to errors in the e-verify system; and massive backlogs that would result at the Social Security Administration caused by people having to make corrections to out-of-date or incorrectly recorded personal information. Yet, this bill also raises profound privacy concerns.

As you are aware, the e-verify system collects personal information including names, photos, social security numbers, phone numbers, email addresses, workers' employer industry, immigration information, and in some instances drivers' license information. Participating employers then match a prospective employee's information with the information in the e-verify database to determine if the prospective employee is a legal resident. Currently, employer participation in e-verify is voluntary. Under, the "Legal Workforce Act" employer participation would be mandatory.

Mandating employers to use the e-verify system will lead to an exponential increase in the amount of personal information gathered and stored in the system. In fact, e-verify will become a storage site for the personal information of almost 154 million workers in the U.S. Such an information trove will become a prime target for cyber attacks and a risk for identity theft.

Moreover, the bill would make it easier to access an individual's personal information. Under the bill, employers will be able to access e-verify information on a prospective employee through a toll-free telephone line and other toll-free electronic media. Accessing the personal information of millions of people through non-secure toll-free means raises serious concerns for protecting this information from theft. Indeed, once personal information – such as a social security number or drivers' license information – is stolen from the e-verify system, it is impossible to retrieve it and the victim suffers irreparable harm.

The massive amount of stored personal information in the e-verify system that will occur under H.R. 2885 also could be mined for personal data by government intelligence agencies. In fact, protections against using e-verify for other purposes have been removed from the bill and a new provision has been inserted. Under the new provision e-verify use would be expanded to include any purpose related to protecting critical infrastructure. Without adequate and clearly defined restrictions on the use of e-verify information, this information could become a source for surveillance of U.S. citizens and other intelligence investigations by the government without any safeguards or court oversight.

For these reasons, I urge my colleagues to oppose H.R. 2885, the "Legal Workforce Act."

Sincerely,

Theodore E. Deutch
Member of Congress

Dear Colleague:

Next week the Judiciary Committee will mark-up H.R. 2164, Chairman Smith's Legal Workforce Act, which would make E-Verify mandatory. E-Verify is an internet-based system that allows an employer to determine whether an employee is legally authorized to work in the United States and is operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration.

A functioning and efficient employment verification system is necessary to ensure workers have authorization to work. However, the current E-Verify system suffers from serious privacy, civil liberties, budgetary and technological concerns. Requiring the use of E-Verify will prevent millions of American and work authorized foreign workers from getting jobs and even job opportunities.

Independent evaluation of the E-Verify Program by Westat Corporation submitted to DHS in December 2009 indicated that "foreign-born workers are more likely than U.S.-born workers to receive TNCs (Tentative Non-Confirmations), thereby subjecting a greater percentage of work-authorized foreign-born workers to potential adverse actions arising from the E-Verify process." Furthermore, the report found the erroneous TNC rate for workers who were eventually found to be work authorized was approximately *20 times* higher for foreign-born workers than for U.S.-born workers (2.6 percent versus 0.1) in April through June 2008. According to the report:

One likely reason for the higher rates for foreign-born workers, in addition to those noted above for noncitizens, is that employers are more likely to make mistakes when entering foreign-sounding names than in entering names with which they may be more familiar, causing more nonmatches during the verification process for foreign-born workers. Additionally, despite instructions to the contrary, many foreign-born workers may list their date of birth in day-month order, resulting in nonmatches on that variable.

Clearly a mandatory E-Verify system would harm the Asian American and Pacific Islander community, which includes more than 8 million foreign-born lawful workers, and unless and until this disproportionate impact can be addressed, we must oppose any effort to expand the E-Verify program. Furthermore, many AAPIs will experience difficulties in contesting and resolving TNCs because of language barriers, since nearly 50% of the AAPI community speaks English less than very well – and this is on top of the time and cost it can take to resolve a TNC.

At a time when many Americans are desperate for jobs, we cannot put roadblocks up that will hurt workers from getting the jobs they need by expanding E-Verify. I urge my colleagues to oppose H.R. 2164.

Sincerely,

REP. MIKE HONDA