

E-Verify Creates Burdens for Small Businesses

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From urban centers to prairie fields, small businesses play a critical role in the nation's economy. They are credited with generating 64 percent of net new jobs and providing employment to over 50 percent of the U.S. workforce.¹ Proposals to mandate use of the E-Verify employment eligibility verification program, however, adopt a one-size-fits-all approach to unauthorized employment and ignore the effect the program will have on our nation's small businesses.

■ E-Verify places a disproportionate regulatory burden on small businesses.

- According to a study conducted by the Small Business Administration (SBA),² the annual cost of federal regulation in the U.S. increased to more than \$1.75 trillion in 2008. Small businesses bear the largest burden of federal regulations.³ As of 2008, small businesses faced an annual regulatory cost of \$10,585 per employee, which is 36 percent higher than the regulatory cost facing large firms.⁴ E-Verify would overwhelmingly add to this burden.
- Data compiled by Bloomberg Government show it would have cost the nation's employers \$2.7 billion if the use of E-Verify had been mandatory in fiscal year 2010. Small businesses would have borne the burden for \$2.6 billion of that amount.⁵ One small business in Maryland estimated that it would cost approximately \$27,000 for the company to use E-Verify for one year.⁶
- Employers enrolled in E-Verify are not representative of all U.S. employers. Although 89 percent of businesses in the U.S. have fewer than 14 employees, only 8 percent of E-Verify users are small businesses.⁷ Nationwide, fewer than 4 percent of the approximately 7 million employers in the U.S. participate in E-Verify.⁸
- Approximately 25 percent of employers who registered but never used E-Verify — or who started using it, then stopped — claimed the system was "too burdensome".⁹
- According to Jack Nelson, an Alabama small business owner, "I do not know of anything that I don't have to pay for the right to do it through a license or fee. The last thing we need as business owners is another fee put on us to ensure we don't hire illegal immigrants."¹⁰

■ Small businesses don't have the resources to use E-Verify.

- The challenges presented by enrolling in E-Verify are magnified for small businesses. Unlike large firms, they do not have human resources departments or large workforces to compensate for lost productivity while employees resolve errors. The start-up cost associated with technology purchases is spread out more in larger companies than in small "mom and pop" operations.
- In a survey of employers who currently do not use E-Verify, 25 percent of small employers said that they were not enrolled due to lack of resources, and 10 percent said that they lacked a computer with an Internet connection or they had a slow connection.¹¹ Nationwide, small businesses are roughly two and a half times as likely as the largest businesses to report insufficient access to high-speed Internet.¹² For example:

- Approximately 32 percent of Arkansas residents do not have access to high-speed Internet in their homes or workplaces.¹³
- Ten percent of Tennessee's 200,000 businesses don't have computers.¹⁴
- Small businesses also report that they spend, on average, over \$22 monthly per employee on broadband Internet access, which is more than twice what medium-sized businesses spend per employee and roughly three times what large businesses spend.¹⁵
- Concerns about how much it costs to train a business's staff to use E-Verify and to actually use it are understandable. Initial training includes studying an 82-page user's manual, completing a 3-hour tutorial, and being required to pass a mastery test. In the words of a participant in a survey of employers who currently do not use E-Verify, "With limited HR staff there is concern about how much additional time E-Verify may actually take including tutorials, testing, updates, etc."¹⁶

■ Using E-Verify does not protect businesses from immigration raids and audits.

- While the purpose of E-Verify is to detect unauthorized workers, E-Verify does not do its job: 54 percent of unauthorized workers for whom E-Verify checks were run were erroneously confirmed as being work-authorized.¹⁷
- This means that even though businesses follow the law and use E-Verify, they could have unauthorized workers in their company or business. Why? Because E-Verify is unable to detect whether an unauthorized worker is using an authorized worker's identity, since E-Verify can determine only if a document presented by a worker is valid and not if the document actually belongs to the worker.
- For example, in February 2011, nine unauthorized immigrants were found working as part of a construction team for a new Florida Veterans Hospital. The contractor who hired the workers used E-Verify.¹⁸
- Businesses that employ unauthorized workers whose work eligibility was checked through E-Verify may still be found liable for violating the employer sanctions law if Immigration and Customs Enforcement (ICE) discovers that the workers are not work-eligible. Such businesses also inevitably lose a core part of their workforce in which they have invested training and time. For example:
 - On March 4, 2011, approximately two dozen workers were arrested when Maricopa County, Arizona, Sheriff's Office deputies raided four Pei Wei restaurants. A Pei Wei spokesperson said the company had run E-Verify checks on all of its employees. The arrests resulted in the initial closure of eight locations because of a staff shortage.¹⁹
 - In April 2011, Yakima, Washington, grocer Fiesta Foods was forced to fire workers after ICE audited the company and identified at least 24 current and former employees carrying potentially fake documentation. Fiesta Foods uses E-Verify.²⁰

■ Errors in E-Verify databases make the program cumbersome for small businesses.

- If businesses were required to use E-Verify, 3-4 million U.S. workers would be forced to either go to a government agency to correct their records or lose their jobs.²¹

- If an employer receives a notice from E-Verify that there is an error in a worker's records, the time involved in resolving the error can be lengthy and also costly for the employer. The worker will need to take time off to correct the error, and the business owner will likely spend time assisting the worker — and more time interfacing with E-Verify. One small business owner in Arizona told a reporter that if a business doesn't enjoy the luxury of having a human resources staff, E-Verify takes time away from the core business.²²

Examples of challenges in correcting errors include:

- A U.S. citizen and former U.S. Navy captain with 34 years of service and a history of having maintained a high security clearance was flagged by E-Verify as not eligible for employment. It took him and his wife, an attorney, two months to resolve the discrepancy.²³
- An owner of a construction business in California had to wait 8 weeks for one worker to clear E-Verify. The business owner said, "He's a permanent resident who has been living here for 20-something odd years. It was frustrating for me and for (him) as well, but finally it took."²⁴

■ Small businesses want Congress to fix our broken immigration system.

- In responding to recent legislative initiatives, small businesses in Florida and other states have demonstrated their opposition to making use of E-Verify mandatory. In Florida, the state senate recently voted against making use of E-Verify mandatory for all employers after hearing from affected businesses and communities. As Florida State Senator and Budget Committee Chairman J.D. Alexander said, "[T]he issues are complex enough and difficult enough that the tools we have as a state to use are in many of our views too simplistic and don't allow a more thoughtful system. It is a federal issue that federal officials need to do something about."²⁵
- In a letter to the U.S. House of Representatives' Committee on the Judiciary, the Main Street Alliance stated the following: "Until Congress acts in a pragmatic fashion to restore order to our immigration system, forcing small businesses to enforce immigration law will directly impact our bottom line at a critical time."²⁶

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¹ *How Important Are Small Businesses to the U.S. Economy?* (U.S. Small Business Association, Office of Advocacy), www.sba.gov/advocacy/7495/8420.

² Nicole V. Crain and Mark W. Crain, *The Impact of Regulatory Costs on Small Firms* (Lafayette College for the SBA Office of Advocacy, Sept. 2010).

³ Defined as firms employing fewer than 20 employees.

⁴ Defined as firms with 500 or more employees.

⁵ Jason Arvello, “‘Free’ E-Verify May Cost Small Businesses \$2.6 Billion: Insight,” *Bloomberg*, Jan. 28, 2011.

⁶ *Chamber of Commerce of the USA v. Chertoff*, No. 08-CV-3444-AW (D.Md).

⁷ *Id.*, p. 29.

⁸ *The Practices and Opinions of Employers Who Do Not Participate in E-Verify* (Westat, Dec. 2010), www.uscis.gov/USCIS/Resources/Reports/E-Verify/e-verify-non-user-dec-2010.pdf, p. 1.

⁹ *Id.* p. 84, emphasis added.

¹⁰ “Two Sides Begin Fight Over Illegal Immigration,” *Montgomery Advertiser*, Mar. 3, 2011, emphasis added.

¹¹ Westat, *supra* note 8, p. 25.

¹² “Small Business & Broadband: Quick Fact Sheet,” SCORE, Nov. 7, 2010, www.docstoc.com/docs/46776238/43381-SCORE_Broadband_Consortium_Fact_Sheet_4_1_10.

¹³ Wayne Bryan, “Not Enough Internet Access: Many Rural Areas Still Without High-Speed, Affordable Internet,” *Arkansas Democrat Gazette*, Apr. 10, 2011, www.arkansasonline.com/news/2011/apr/10/not-enough-internet-access/.

¹⁴ Perla Trevizo, “Pressure Rises to ‘E-Verify’ New Hires,” *Chattanooga Times*, Mar. 19, 2011, www.timesfreepress.com/news/2011/mar/19/pressure-rises-e-verify-new-hires/.

¹⁵ SCORE, *supra* note 12.

¹⁶ Westat, *supra* note 8, p. 23, emphasis added.

¹⁷ *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%202012-16-09_2.pdf, p. 118.

¹⁸ “Veterans Angry That Illegals Worked on VA Hospital,” www.wftv.com/news/26864419/detail.html.

¹⁹ Max Jarman, “Some Pei Weis Able to Reopen,” *The Arizona Republic*, Mar. 27, 2011, www.azcentral.com/arizonarepublic/business/articles/2011/03/27/20110327biz-insider0327jarman.html.

²⁰ Mike Faulk, “Audit Flags Potential Fake Worker Documents at Fiesta Foods,” *Yakima Herald-Republic*, May 4, 2011, www.yakima-herald.com/stories/2011/05/04/audit-flags-potential-fake-worker-documents-at-fiesta-foods.

²¹ *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).

²² Jahna Berry, “Most Arizona Employers Aren’t Using E-Verify,” *The Arizona Republic*, July 28, 2010, www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728arizona-employers-ignoring-e-verify.html.

²³ Account related at a Jan. 24, 2009, town hall meeting in Ashtabula, OH, sponsored by Building Unity in the Community and billed as “Why We Need Comprehensive Immigration Reform.”

²⁴ Cindy Carcamo, “Economic Stimulus Prompts Debate over Illegal Workers,” *The Orange County Register*, April 2, 2009.

²⁵ Dara Kam, “Fla. Lawmakers Say Business Interests Played Major Role in Killing Immigration Control,” *Palm Beach Post*, May, 10, 2011, www.palmbeachpost.com/news/state/fla-lawmakers-say-business-interests-played-major-role-1467109.html, emphasis added.

²⁶ Main Street Alliance, Letter to U.S. House Committee on the Judiciary, Feb. 9, 2011, emphasis added.