

PROVE YOURSELF TO WORK

The 10 Big Problems with E-Verify



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The 10 Big Problems With the “Prove Yourself to Work” E-Verify System

The E-Verify program seeks to prevent unauthorized workers from gaining employment by requiring that *everyone* in the United States seek permission from the government when starting a job. In order to detect the small percentage of job seekers who are unauthorized workers, a mandatory E-Verify system creates a whole new level of intrusive government oversight of daily life—a bureaucratic “prove yourself to work” system that hurts ordinary people. There are numerous problems with this system already. Those problems will be vastly compounded if it is turned into a national, mandatory system as is currently being contemplated.

How E-Verify works

E-Verify is an Internet-based system under which employers check with the Department of Homeland Security to verify that a prospective employee is eligible to work. The program is already being used by the federal government and for state government hiring in 16 states..¹ Federal legislative efforts to overhaul the immigration system would make it a requirement for all workers and employers.

Here is how the E-Verify program currently works:

- A. When an employer hires someone, the employer not only must ask the new employee to fill out an I-9 form (as is always required for all workers), but must also enter the applicant’s personal information (such as name, data of birth, social security, and citizenship or immigration status) into the E-Verify web site.
- B. The E-Verify program compares that information to Homeland Security and Social Security Administration databases.
- C. If there’s a match, the E-Verify system notifies the employer that the applicant has permission to work. If there isn’t a match, it issues a “tentative nonconfirmation” (TNC) notice.
- D. If the government confirms that a worker has permission to work, then the employer will be provided with an electronic image of the worker’s ID, and the employer must confirm that it “reasonably” matches the worker’s actual ID. (Currently this program is limited to passports and certain immigration documents, but expansion is being sought.)

¹ Jon Feere, “An Overview of E-Verify Policies at the State Level,” Center for Immigration Studies, July 2012. Online at <http://cis.org/e-verify-at-the-state-level>.

- E. If a worker receives a TNC, he or she has eight federal working days to contact the SSA or DHS to try to sort out the problem. If he or she does not do so within eight days, the employee receives a *Final* Nonconfirmation notice (FNC), and the employer is required by law to fire the employee.

This system—especially if made mandatory at a national level—is problematic for many reasons. Here we discuss ten of the biggest problems.

1. Rampant Data Errors Will Hurt Ordinary People

Perhaps the most significant problem with requiring the entire nation to obtain permission from the government when starting a job is that the government is going to make a lot of mistakes that affect innocent people. And when a bureaucratic error can prevent a person from making a living, that is an enormous problem and should not be treated lightly.

In November 2010 Jessica St. Pierre, a U.S. citizen working for a telecommunications company in Florida, was told there was a problem with her work authorization and that she should visit her local Social Security office to iron it out. When she went to that office, she was told everything was correct in their system, and they gave her a print-out showing that.

But her employer then told her they were using E-Verify, and that the system still indicated there was an error.

After contacting several other government offices, she was told to call the E-Verify hotline, and after waiting online for almost an hour, was told once again that her information in the system was okay. The E-Verify representative also promised to contact her employer.

St. Pierre was eventually fired from her job: “Despite the call from the E-Verify program, my employer still could not straighten out this mess.” She was told, “there was nothing I could do to get my job back.”

After being out of work for three months, St. Pierre took a new job with “significantly lower pay.”

Later, with the help of the National Immigration Law Center, she discovered the problem: “As it turns out, the employer had placed two spaces after my last name.”

Recent government reports make it clear that the government’s databases contain huge numbers of errors. Citizenship and Immigration Services reports that in fiscal year 2012, about 1 of every 400 cases submitted to E-Verify resulted in a TNC determination that

was subsequently reversed after appeal by the worker.² We have seen what many of those people likely go through to get those errors corrected. And while 1 in 400 may not sound high at first blush, in a nation of more than 300 million people and 154 million workers, that would be about 400,000 people improperly deprived of the right to make a living.

And that number doesn't include the nearly 1% of workers—1.3 million people—who received TNCs and didn't contest them according to CIS. Many probably don't contest the determinations because they are not informed of their right to do so, or are unable to do so. Another sizable number of workers (about 1 in 560) receive TNCs that are never resolved. Many of the eligible workers in both of those groups simply find work at places that don't use E-Verify instead of being forced to resolve their issues with the program. If E-Verify becomes mandatory, that option will no longer exist, further straining the system and the workers caught up in it.

Errors are often caused by a wide variety of routine factors including name changes, transliteration problems from non-Roman alphabets, or simple typos. One woman, a U.S. citizen living in Florida, was fired by a national department store chain because she had recently remarried and changed her name. The local SSA office told her that the problem was resolved, but when she returned to work she was told that she was “suspected as a terrorist” and that DHS had ordered the company to fire her.³

The GAO has predicted that if E-Verify is made mandatory for new hires nationwide, approximately 164,000 citizens per year will receive a TNC just for issues related to name changes.⁴

Some proponents of E-Verify no doubt imagine that it will burden no one except for a few unauthorized workers—that native-born Americans will have nothing to fear. That's simply wrong. In the name of stopping such immigrants from obtaining employment, it will impose an intrusive,

bureaucratic burden on *every* American, and those caught up in the system will include many native-born Americans, legal immigrants, and naturalized citizens.

Great news! I got a new job today. And just in time, too—it's been four months since we were all laid off, and I've got a lot of payments due. It looks like it will be a wonderful position, exactly what I've wanted to do. The HR person said there was some hitch with this new “E-Verify” system, but he was so nice about it. He said I should get my hiring letter within a few days.

² U.S. Citizen and Immigration Services, E-Verify Statistics and Reports, online at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD>.

³ National Immigration Law Center, “How Errors in E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants,” Feb. 2011; online at www.nilc.org/document.html?id=337.

⁴ GAO, “Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain,” p.19.

2. Lack Of Sufficient Due Process Protections

If the government wants to block a person from working, the burden should be on it to establish that the person is ineligible. “Innocent until proven guilty” is a core principle in the criminal justice system, but it’s not just the law, it’s also a good idea. And it’s a basic requirement of fairness in any system where people may suffer harmful consequences from wrong decisions.

While some current legislative proposals attempt to fix this, right now there is no formal redress process for workers who receive an erroneous FNC resulting in a bar from employment. In some cases, CIS or the Office of Special Council for Immigration-Related Unfair Employment Practices (OSC) has intervened to correct erroneous FNCs, but this is not a meaningful substitute for a formal process. While there is a DHS employee hotline, it is only available from 8:00 a.m. to 5:00 p.m. and has representatives who speak only English and Spanish. Because many low-wage workers often work long hours at multiple jobs and speak languages other than English or Spanish, the hotline must be made more accessible.

Still waiting for confirmation on that new job. Apparently E-Verify is saying that I’m not authorized to work. Not allowed to work in my own country—imagine! Where else in the world am I going to work? I’m trying to figure out what the problem is but you know how it is dealing with a federal bureaucracy, everybody tells you something different and everybody tells you that you need to talk to someone else!

Delays in resolving problems are common. One man—a U.S. citizen who’d been a Navy officer with 34 years of service and a security clearance—was flagged by E-Verify as ineligible for employment. It took him and his wife, an attorney, two months to resolve the discrepancy so that he could work.⁵

Those who receive a “nonconfirmation” are thrown into a situation where they must affirmatively reach out to the giant bureaucracies at the Social Security Administration or the Department of Homeland Security (it will be up to them to figure out which) and set about fixing whatever bureaucratic problem is blocking them from getting a job. Experience has already shown that correcting a record or contesting a determination is a difficult and sometimes impossible task.

A U.S. citizen from Arizona named Francisco Romero, for example, was fired from jobs as a construction worker not once but twice after E-Verify said he wasn’t approved to work. He spent months shuttling between Social Security and human resource offices trying to fix his problem, but wasn’t able to confirm his permission to work until a community advocate took on his case and found the error in his files.⁶

⁵ National Immigration Law Center, “How Errors in E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants,” Feb. 2011; online at www.nilc.org/document.html?id=337.

⁶ Ibid.

Many workers never learn they have the right to contest their determinations and are forced to just find another job. Others don't have the time, education, or ability to tackle the problem effectively. One U.S. citizen who was hired by a poultry company in Georgia wanted to contest the TNC she received, but the company wouldn't grant her time off to do so, so she was fired.⁷

Ultimately the threat is that this system will result in the creation of a de facto employment blacklist—a “No-Work List” that will consist of would-be employees who are blocked from working because of data errors and government red tape.

The Citizenship and Immigration Services has taken one step toward ameliorating the due process problems with E-Verify: a “self-check” system that allows workers to check on their E-Verify data. Unfortunately the identify check that allows workers to access self-check online is based on inaccurate commercial information, and as a result has proved difficult to access and use for many people.

3. E-Verify Will Become Even More Susceptible To Misuse By Employers

Government bureaucracies are not the only obstacles to workers who are unfairly affected by E-Verify. Many employers may not follow the rules E-Verify has put in place to protect workers—and right now the only penalty for employers who violate the E-Verify rules is: you can't use E-Verify. That, of course, is not much of a penalty. As a result, employers can take steps that harm workers with few repercussions.

From the inception of the program, the GAO and DHS studies have repeatedly documented various types of misuse of E-Verify by employers. The CIS's own report also confirmed that many employers were engaging in various activities that are prohibited under E-Verify in order to protect workers' rights.⁸ For example:

Still struggling with my E-Verify problem—you wouldn't believe how screwed up they are. They tried to tell me I wasn't born in the United States! I've had to spend hours on the phone, and send them all kinds of documents. I feel like I'm guilty until I prove my own innocence—just to make a living!

- 17.1% of the employers they contacted admitted to restricting work assignments until authorization was confirmed.
- 15.4% reported delaying training until employment authorization was confirmed.
- 2.4% reported reducing pay during the verification process.

⁷ Ibid.

⁸ Westat on behalf of the U.S. Department of Homeland Security, “Findings of the E-Verify Program Evaluation,” December 2009; online at http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf

- As discussed above, many employers won't tell flagged workers that they have the right to appeal—or even that they were flagged.

Studies from cities and states where E-Verify has been implemented confirm that employers are not treating people fairly. A survey of immigrant workers in Arizona found that a third were fired immediately after receiving a Tentative Nonconfirmation, and not one was notified by the employer that they had the right to appeal the E-Verify finding—even though that notification is required under the terms of E-Verify.⁹

4. E-Verify Errors Will Have Discriminatory Effects

Not only are many employers likely to treat E-Verify victims unfairly, the effects of such treatment will be discriminatory.

The GAO found that from April through June of 2008, the TNC rate for employees who were eventually authorized to work was approximately 20 times higher for foreign-born employees than for U.S.-born employees.¹⁰ As the Migration Policy Institute points out, erroneous nonconfirmations will disproportionately affect “citizens with foreign names, naturalized citizens, and legal immigrants.” And “errors related to misspelled names and name-order mistakes... are more common with foreign names.” Biased implementation of E-Verify is “more likely to affect recent immigrants and other workers whom employers suspect of being unauthorized.”¹¹ What employer wants to take a chance on a worker who has a problem with his or her record?

This problem reinforces the long history of employment eligibility systems resulting in rampant discrimination in hiring. When the Immigration Reform and Control Act of 1986 required employers to verify the identity of potential employees and their eligibility to work in the U.S., one result was widespread discrimination against foreign-looking American workers, especially Asians and Hispanics. A 1990 General Accounting Office (GAO) study found that almost 20 percent of employers engaged in such practices.¹²

As E-Verify has been introduced, we have seen the same kind of discriminatory results.

⁹ National Immigration Law Center, “Expanding E-Verify Will Undermine Job Growth and Cripple Small Business,” Jan. 2011; online at www.nilc.org/document.html?id=327.

¹⁰ GAO, “Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain,” p.40, online at: <http://www.gao.gov/products/GAO-11-146>.

¹¹ Migration Policy Institute, “E-Verify: Strengths, Weaknesses, and Proposals for Reform,” mpi Insight, online at <http://www.migrationpolicy.org/pubs/e-verify-insight.pdf>.

¹² GAO, “Immigration Reform: Employer Sanctions and the Question of Discrimination,” March 1990, p. 38, online at <http://archive.gao.gov/d24t8/140974.pdf>.

5. E-Verify Will Create Significant New Privacy and Security Threats

A nationwide mandatory E-Verify will create new privacy and security risks for Americans. The current E-Verify system, implemented in a small fraction of the country's workplaces, contains an enormous amount of personal information, including:

- names
- social security numbers
- phone numbers
- email addresses
- workers' employers and industry
- immigration information like country of birth
- photographs in some cases

There are several problems with setting the gears in motion for the creation of such a large-scale repository of private information on Americans' lives.

I'm really getting worried that they're going to give the job to someone else. I even applied for another position in case this one falls through—but I'm worried they will run the E-Verify check there too and won't even give me a chance. Why do I have to prove myself to some giant bureaucracy just to make a living? I don't know who these people are, I never asked to deal with them—yet I have to prove myself to them just to get a job!

First, the data in E-Verify, especially if combined with other databases, would be a gold mine for intelligence agencies, law enforcement, licensing boards, and anyone who wanted to use this vast trove of detailed information for other purposes.

This happens whenever large collections of data are assembled—all sorts of new,

unanticipated uses for that data crop up. And the more purposes to which this data is put, the worse the consequences become when there is an error. Ultimately, E-Verify could replace the current systems for identification that are used across society. Imagine if everywhere you had to show identification became an E-Verify check. Not only would there be detailed log of your movements (as more and more data flows *into* E-Verify from these checks), the government or others could also check E-Verify to make sure you have approval to do things like travel.

Some of the databases linked to E-Verify are already mined for data—for example, the CBP's TECS database uses the Automated Targeting System (ATS) to search for suspicious travel patterns. Such data mining would be even further enhanced by the inclusion of E-Verify information.

Second, this kind of data “honey pot” will inevitably attract identity thieves. A December 2010 GAO Report on E-Verify repeatedly references the risk of identity theft associated with the system. Unfortunately, the government's record at securing citizens' private information is very poor, and there are many unanswered questions about E-Verify's

security. Fraudsters will hack into legitimate accounts, or create false but valid accounts as “employers.” (DHS has itself highlighted this risk, and noted that no real system is currently in place to protect against this.¹³) And there is no system for informing people when their information is checked against the e-verify system—an important anti-fraud measure that has been implemented, for example, by consumer credit monitoring services.

Data breaches continue to be a contributing factor to identity theft. Hundreds of millions of records have been hacked, lost or disclosed improperly in recent years—including e-verify databases.¹⁴ In October 2009, and again in December 2009, Minnesota state officials learned that the company hired to process their E-Verify forms had accidentally allowed unauthorized individuals to gain access to the personal information of over 37,000 individuals due to authentication practices and web application vulnerabilities in their system.¹⁵

If DHS and states are unable to provide proper data security, we can hardly expect small business will be able to do so.

6. Lack Of Government Readiness For This Program Will Worsen Other Problems

The government is woefully unprepared to implement a mandatory nationwide E-Verify system. As government reports have repeatedly made clear, neither SSA nor DHS is ready to implement it, and in order to do so, both agencies would need to significantly expand their administrative capacity—to hire hundreds of new, full-time employees and train staff at every SSA field office.

- AARP, which watches the Social Security Administration like a hawk, has expressed concern about the “further expansion of SSA’s administrative burdens” that E-Verify would represent. “In light of insufficient funding for the SSA to perform its core functions now,” AARP wrote in 2011, “expanding the agency’s duties will further diminish the ability of SSA to deliver timely services to beneficiaries.” The AARP also points out that, at a time when claims for retirement and disability benefits have risen to record levels due to the recession, and when the agency is facing an influx of retiring Baby Boomers, the enormous additional strain posed by E-Verify would be even more problematic.¹⁶

¹³ DHS, “Privacy Impact Assessment for the E-Verify Program,” May 4, 2010, p. 29, online at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_everify.pdf.

¹⁴ Privacy Rights Clearinghouse, “Chronology of Data Breaches,” at <http://www.privacyrights.org/data-breach>.

¹⁵ John Fay, “FTC Settlement Highlights the Importance of Protecting Sensitive I-9 Data in an Electronic World,” Guardian I-9 And E-Verify Blog, May 4, 2011; online at: <http://www.lawlogix.com/electronic-i9/data-security/ftc-settlement-highlights-the-importance-of-protecting-sensitive-i-9-data-in-an-electronic-world/>.

¹⁶ AARP, letter to Reps. Sam Johnson and Xavier Becerra, April 14, 2001, online at www.nilc.org/document.html?id=343.

- Businesses seeking to comply with any newly imposed system would also put additional strain on these government agencies. Problems are likely in attempting to respond to employers' requests, and in establishing connectivity for businesses located in remote regions or that do not have ready access to phones or the internet. These agency deficiencies will surely wreak havoc on independent contractors and the spot-labor market for short-term employment.

The bottom line is that scaling up the existing software platform for E-Verify to respond to the enormous task of verifying the entire national workforce is likely to be a very difficult task, and the government's unreadiness to tackle it will worsen other problems with E-Verify, such as its effects on victims of errors. It makes little sense to adopt a system that is pre-destined to cause chaos within these agencies.

7. It Will Cost a Fortune

Reliable government estimates of a mandatory E-Verify system show that it would be extremely expensive.

The GAO has found that estimates prepared by CIS do not reliably depict current E-Verify's cost and resource needs for mandatory implementation, and that they fail to fully assess the extent to which their workload costs could increase in the future.¹⁷

An analysis of mandatory E-Verify legislation prepared by the nonpartisan Congressional Budget Office found that the legislation would increase federal spending by about \$23.4 billion over 10 years, while decreasing federal revenues by \$17.3 billion, due largely to "an increase in the number of undocumented workers being paid outside the tax system."¹⁸

Those costs, according to the CBO, would be created by additional workers for DHS, increased detention capacity, grants to local governments, and new costs to the SSA for E-Verify verification. The CBO also found that the legislation would impose unspecified but significant costs on the private sector.

E-Verify, though supposedly "free" to employers, will also prove costly to small businesses. According to government data analyzed by Bloomberg, mandatory nationwide use of the program would cost employers with fewer than 500 employees about \$2.6 billion a year.¹⁹

¹⁷ Amy Peck, "Latest Report on E-Verify: the Good, the Bad, and the Unresolved," January 20, 2011, online at <http://www.lawlogix.com/electronic-i9/everify/latest-report-on-e-verify-the-good-the-bad-and-the-unresolved/>.

¹⁸ Congressional Budget Office, "Estimate of the Budgetary Effects of H.R. 4088," April 4, 2008, online at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9100/hr4088ltr.pdf>.

¹⁹ Jason Arvelo, "'Free' E-Verify May Cost Small Businesses \$2.6 Billion: Insight," Bloomberg, Jan. 27, 2011, available at <http://www.globalimmigrationcounsel.com/uploads/file/bloomberg.pdf>.

At a time when joblessness, recession and budget deficits are highly contested issues in Washington, it would be surprising if Congress enacted a mandatory E-Verify system and spent so many resources for so little gain and so many problems.

8. It Will Inevitably Be Expanded

E-Verify could very quickly evolve into a comprehensive national identity system that would be used to track and control Americans in ways that have never been done before. When the Social Security Number was first introduced, there was great concern that it would be used as a national ID number—and Congress actually banned such a use. Still, over time it has expanded to become precisely that. Now, some current federal proposals would provide funding to make every state driver's license record, including photographs, available through E-Verify. Within a few years E-Verify could replace the current widespread identification practice of checking drivers' licenses. Imagine if every situation where you now have to show your driver's license instead became an E-Verify check.

Now things are getting really bad. I got turned back at the airport today, because when they ran my ID against E-Verify, it came back "non-confirmed" and they wouldn't let me fly. I looked into renting a car to drive to see you but of course that didn't work either because when they ran my driver's license it was rejected.

As the uses of E-Verify expand, there will be two consequences:

- 1) The collection and centralization of information about Americans' activities

would increase. Not only would records of all job applications be stored in this database, but so too could any other activities that might draw upon the E-Verify database, from travel to financial to communications to any other kind of information—turning E-Verify into the backbone for a system of surveillance profiles of every US worker.

- 2) It would raise the stakes for errors and problems with E-Verify. A person who was having trouble with false results would not only become unable to get a job, but perhaps also unable to travel and unable to do anything else the system came to rely upon.

As E-Verify expands—especially if it contains photos of every US worker—it is easy to imagine local police or government officials, equipped with an E-Verify app, running instant database checks on anyone, anytime. We need to decide whether we really want to shift that amount of power to government officials in the name of trying to stop undocumented immigrants from working.

9. E-Verify Won't Be Effective

Although it will no doubt throw up some new hurdles for undocumented workers seeking employment, and will make it harder for employers to pretend ignorance of their workers' undocumented status, E-Verify will do nothing to stop many small businesses and individuals from hiring undocumented workers under the table—and in fact, as the CBO report cited above²⁰ found, is likely to greatly increase the incidence of such employment. The economic and market incentives for undocumented workers and their employers are extremely powerful, and many on both sides of that division will exercise the full range of human ingenuity to undermine E-Verify.

In one example, Immigration and Customs Enforcement (ICE) found that 1,340 employees of a meat processing plant were unauthorized workers even though each had been processed through E-Verify. Of the 1,340 unauthorized workers, 274 were charged with identity theft, including using valid Social Security numbers of others in order to work.²¹

The same employers who are ignoring or subverting the ID checks currently in place will do so with E-Verify.

The fact that a certain enforcement mechanism will inevitably be undermined, of course, does not mean that it should not be implemented. But the strength of resistance to E-Verify will be considerable, and in the end, when all the other the problems with the system discussed in this paper are taken into account, it is clear that the benefits will not be worth the costs.

10. E-Verify Represents A Move Toward A “Permission Society”

E-Verify turns the relationship between the government and the people upside-down. In order to stop the tiny percentage of those starting jobs in the United States each year who are unauthorized workers, E-Verify would force *everyone* in the nation to obtain affirmative permission from the government before performing work and earning money. For hundreds of years, workers were free to go about their careers, presumed to be acting legally unless the government obtained specific evidence that they were not. E-Verify, however, implicitly assumes that citizens are guilty (not legally able to work) unless proven otherwise.

²⁰ Congressional Budget Office, “Estimate of the Budgetary Effects of H.R. 4088,” April 4, 2008, online at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9100/hr4088ltr.pdf>.

²¹ GAO, “Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain,” December 2010, p. 24, online at <http://www.gao.gov/new.items/d11146.pdf>.

Some bureaucrat screwed something up and now I can't work, I can't travel—I can't even buy beer at the Quicky-Mart because they won't recognize my ID! I'm starting to feel like I'm a non-person in my own country. This is such a nightmare. I called my members of Congress, I'm hoping maybe they can help me. I found out yesterday that our Senator voted for this thing!

We've seen this troubling trend elsewhere.

For example, the Department of Homeland Security now requires that each passenger on a plane or ship departing or arriving in the U.S. to receive advance permission from the government—including citizens exercising their constitutional

and human right to return home.²² Banks and other financial institutions are similarly required to check with the government before allowing anyone to open an account, take out a loan, obtain a credit card, or perform any other financial business.²³

We don't want the United States to become a "mother may I" society where every exercise of basic rights and life functions can be carried out only with the permission of some government bureaucracy. Unfortunately, E-Verify is one big step in that direction.

²² See Edward Hasbrouck, "Permission to Travel," Practical Nomad blog post, Oct. 15, 2006, online at <http://hasbrouck.org/blog/archives/001156.html>.

²³ See Jay Stanley, "The Surveillance Industrial Complex," ACLU Report, August 2004, p. 18, online at www.aclu.org/surveillance.