



Seen and (Mostly) Unseen

The True Costs of E-Verify

Philip E. Wolgin, Ph.D. June 2011

Introduction

E-Verify—the federal government’s Internet-based system that verifies work eligibility—is slated to become the epicenter of the legislative battles over immigration reform this summer. House Judiciary Committee Chairman Lamar Smith (R-TX) introduced the Legal Workforce Act of 2011, H.R. 2164, on June 14, 2011, which would make E-Verify mandatory for all workers in the United States. It is likely to see a vote in the House by the summer recess.¹

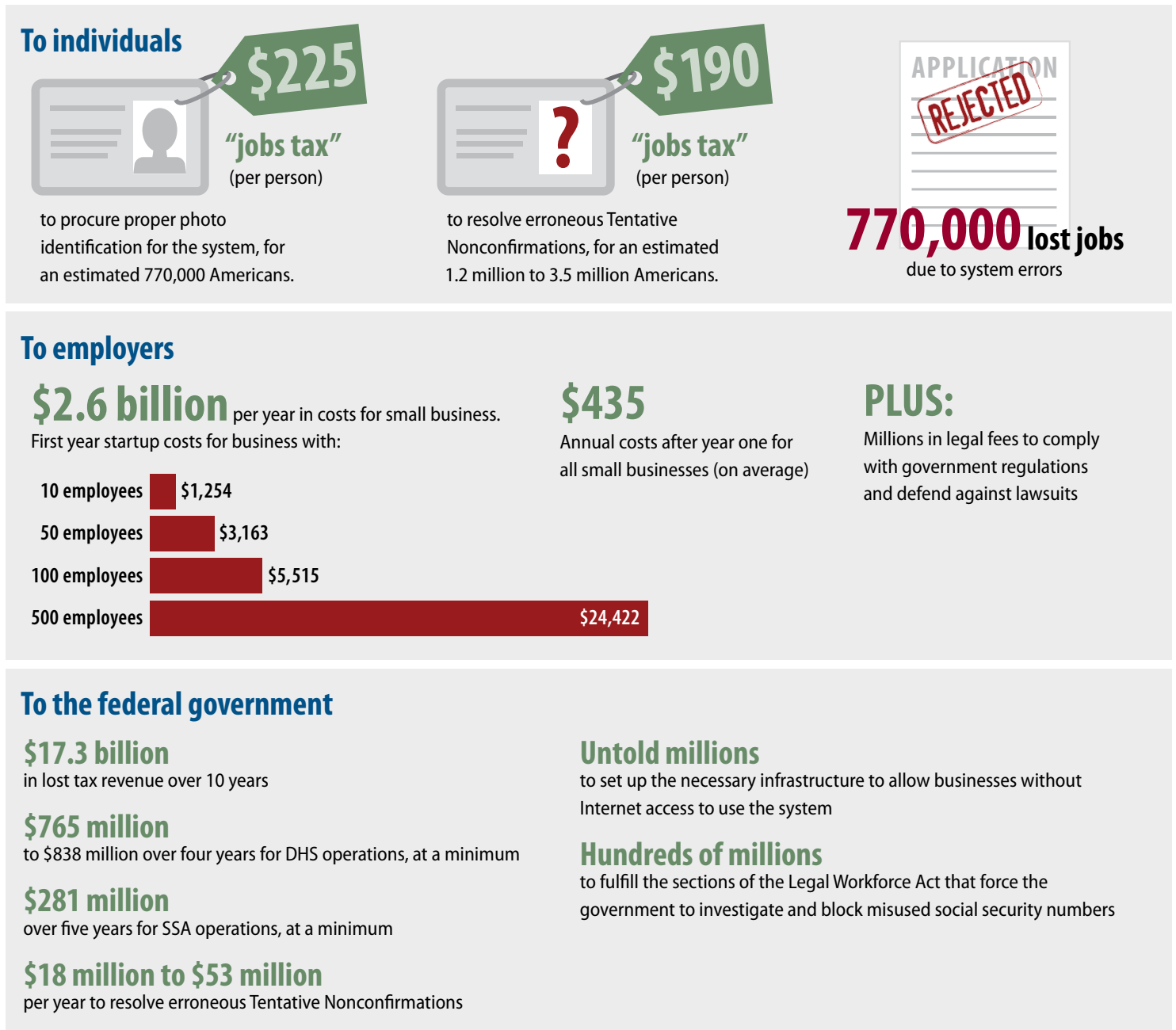
E-Verify is already in use by an estimated 4 percent of American employers,² but expanding it for use by all U.S. businesses, from the mom-and-pop grocery store, to the biggest employers in the nation, presents onerous and expensive challenges. The inherent technical hurdles to scaling a system up from 4 percent to 100 percent of all employers include building the necessary infrastructure to process E-Verify requests and operating it without error.

This brief seeks to arm policymakers and the public with a better understanding of the true costs of E-Verify. It explains the system’s known costs, such as lost tax revenue and monetary burdens on small businesses, and estimates the cost of additional fiscal burdens—to individuals verified through the system, to employers utilizing the system, and to the federal government in running the system—that have been absent from much of the dialogue surrounding it. (see Figure 1)

In particular, we focus on the added costs that do not get scored in government revenue estimates, such as the high legal costs to employers to defend their use of the program, the “jobs tax” that will be needlessly applied to American workers, and the increased burdens on federal agencies from new mandates. All of these numbers add up to one simple conclusion: **Mandating E-Verify without legalizing all workers is too expensive, especially in these fragile economic times.**

FIGURE 1

The costs of E-Verify



We begin with an overview to the system and its current operations, and then detail the costs to individuals, employers, and the federal government that will accrue if E-Verify is made mandatory. Finally we offer some additional notes of caution, as well as suggestions for how to improve the system before it becomes the law of the land for all U.S. employers. Our calculations are based on the present E-Verify system. While some parts of the program may be changed if the Legal Workforce Act is passed, we have based our assumptions on what we know now.*

* The Legal Workforce Act, for example, only applies E-Verify to new hires and certain groups, such as government employees, workers in critical infrastructure, and employees who receive a mismatched information notice. There are 60 million new hires in the United States each year, 10 million no-matches, and 22 million government workers at the federal, state, and local levels. Already, then, 92 million people will have to use the system at the outset, not even counting employers who voluntarily decide to reverify their workers. Thus we base our calculations on the entire working population—just over 154 million people—assuming that most individuals will encounter the system sooner or later. The number of new hires is based on United States Government Accountability Office, "Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain," December 2010, p. 19, available at: <http://www.gao.gov/new.items/d11146.pdf>.

The system

E-Verify is an Internet-based system that checks the work authorization status of an individual against data held by the Department of Homeland Security and Social Security Administration. The Illegal Immigration Reform and Immigration Responsibility Act of 1996, or IIRIRA, created the Basic Pilot Program, which later became known as E-Verify, and its usage has grown ever since. According to U.S. Citizenship and Immigration Services, or USCIS, more than 225,000 employers use E-Verify, with an additional 1,000 businesses signing up each week.³

Since 2007, all newly hired federal employees are required to be screened through E-Verify, and since 2009, many federal contractors and subcontractors are required to use the system as well.⁴ Five states—Arizona, Georgia, Mississippi, South Carolina, and Utah—have made E-Verify mandatory for all public and private employers, and eight additional states mandate its use for some portion of their employers (mainly for hiring at state and local agencies, as well as state contractors.) Two other states—Pennsylvania and Tennessee—encourage use of E-Verify, although it is not mandatory.⁵ The Supreme Court recently upheld Arizona’s right to make E-Verify mandatory across the state, in the case *Chamber of Commerce v. Whiting*.⁶

How it works

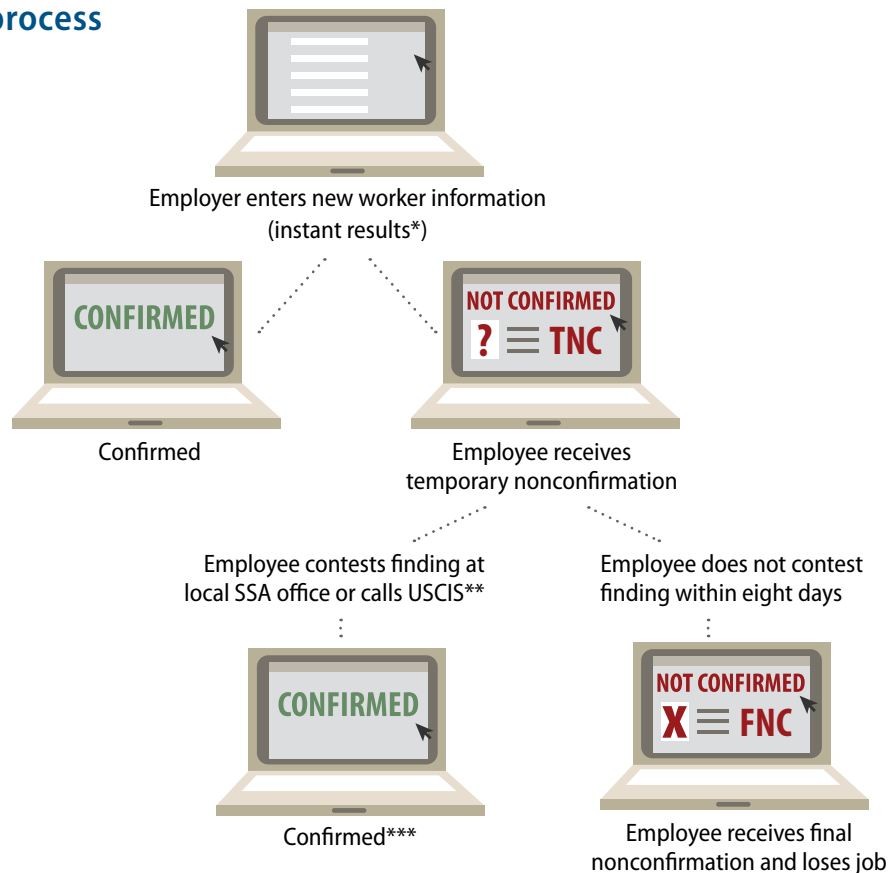
Businesses that enroll in E-Verify submit each employee’s eligibility information, currently found on the I-9 form—which includes, but is not limited to Social Security number, name, date of birth, citizenship status, and alien number—over the Internet. SSA and USCIS then check the data against their records. (see Figure 2) If the information matches the government records, the employer receives instant proof of authorization. If there is a mismatch, the employer first has the opportunity to check that the information was entered correctly, and then receives a Tentative Nonconfirmation, or TNC, which indicates that the worker has the right to contest the finding. (Noncitizens with pictures on file in the DHS database have their picture sent to the employer for confirmation that the employee is who they say they are—i.e. that there is no identity fraud.)

Under the current system, after a TNC has been issued, the employer is legally obligated to inform the employee, who then has eight working days to contact SSA and/or USCIS to sort out the matter.⁷ If the worker fails to contest, or cannot correct his or her records, E-Verify sends a Final Nonconfirmation, or FNC. Employers are expected by law to fire anyone who receives a FNC.⁸

Expanding E-Verify for use by all U.S. businesses, from the mom-and-pop grocery store, to the biggest employers in the nation, presents onerous and expensive challenges.

FIGURE 2

The E-Verify process



* 1.1 percent of all cases require immigration status verification, which usually occurs within 24 hours.

** SSA for name or Social Security Number mismatch, USCIS for noncitizen immigration document mismatch. Some people will be required to confirm with both agencies.

*** .01 percent contest, but are still found to be unauthorized.

Source: Westat, "Findings of the E-Verify Program Evaluation," December 2009.

Large numbers of errors and limited effectiveness

A 2008 Government Accountability Office report found significant challenges to implementing E-Verify, primary among them error rates and privacy concerns with use of federal government database information. Error rates have improved since 2008, but the system is still not foolproof. A December 2009 independent estimate commissioned by USCIS and undertaken by Westat found that E-Verify had an overall error rate of 4.1 percent, significantly down from the 8.4 percent error rate of 2004.⁹ This overall rate tells only one part of the story. To get a true sense of E-Verify's operational capacity, we must look at the accuracy rate for authorized and unauthorized workers.

Authorized worker errors

If E-Verify was made mandatory more than three-quarters of a million legal workers—including U.S. citizens—would lose their jobs because of the system's error rate. Approximately 0.8 percent of all U.S. residents who are citizens or legally eligible to work in the country receive an erroneous TNC. A small portion of these workers, about 0.3 percent, are able to successfully contest their findings, and gain proof of work authorization. The remaining 0.5 percent are unable to correct their records and receive an equally erroneous FNC.¹⁰

These are American workers, legally authorized and otherwise innocent, who will ultimately lose their jobs. A final error rate of only 0.5 percent may not seem like a particularly large number, but with an estimated 154,278,000 workers across the country, that translates out to just over 770,000 jobs lost.¹¹

And there is every reason to suggest that the true error rate for E-Verify is far higher than that reported by Westat's statistical modeling. While Westat's figures are reliable, they utilize only a small sampling of E-Verify queries (between April and June of 2008) to build their theoretical models.¹² Actual results may vary widely, and if so, would significantly increase the costs and number of ordinary Americans affected by E-Verify.

Unauthorized worker errors

The system has far poorer results when it comes to unauthorized workers, catching only 46 percent of such workers. That means that **more than half of all unauthorized workers have no problem getting through E-Verify**, a finding Westat chalks up to identity fraud. E-Verify only has the capacity to match legal records with those submitted by the employee—it does not detect identity theft. If a worker submits a valid Social Security number, but not his or her own number, the system returns a work authorization.¹³ We as a nation have to ask ourselves: can we accept three-quarters of a million Americans losing their jobs for a system that catches unauthorized workers less than 50 percent of the time?

And, there is every reason to believe that places with a high percentage of immigrant and naturalized citizens would have a higher number of problems with a system like E-Verify. According to Westat, **naturalized citizens are more than 30 times more likely to receive a TNC than U.S.-born workers.**¹⁴ What these findings tell us is that areas with higher concentrations of immigrants and new Americans will have a harder time coping with the effects of E-Verify.

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Higher error rates in Los Angeles County

Los Angeles County provides a serious note of caution that the real error rates may be far higher than those found by Westat. The county began using the Basic Pilot Program (rebranded as “E-Verify” in 2007) for all new public employees in September of 1998. A recent study of the county’s experiences under E-Verify found that for the vast majority TNCs issued, and even the majority of FNCs issued, E-Verify, rather than the employee, was in the wrong.¹⁵

In 2008 for example, 2.6 percent of all hires (254 out of 9,958) received a TNC. Most of the employees who received a mismatch were able to resolve their status, so only 27 total employees received an FNC. Still, L.A. County ultimately only terminated six employees because of work ineligibility; the other 21 FNCs were found to be in error. In 2009, there were 79 TNCs issued, (1.8 percent of the 4,397 queries) but only one person was terminated because of ineligibility.¹⁶

Averaging out the percentage of incorrect TNCs from 2008 and 2009 brings the error rate for legally authorized workers in L.A. County to 2.3 percent—far higher than the 0.8 percent figure Westat found. **If the national error rate ends up being closer to LA County’s than to Westat’s, 3,548,601 total individuals—almost three times as many as previously estimated—would receive an erroneous TNC.**¹⁷

We now turn to the costs from E-Verify for individual Americans, employers, and the federal government.

The costs of E-Verify

High costs are a “jobs tax” on workers

The E-Verify system imposes what is effectively a “jobs tax” on ordinary Americans, who shoulder the burdens of acquiring the proper documentation needed for E-Verify processing, as well as resolving TNCs. While the current employment verification process, using I-9 forms, allows for a range of documents to prove identification, the E-Verify system requires that employers accept only identification that contains a picture.¹⁸

According to a 2008 federal government regulatory impact analysis, or RIA, on a proposal to mandate E-Verify use for federal contractors, 0.5 percent of all people run through E-Verify do not currently have a photo ID, and would need to acquire one to use the system.¹⁹ Using the RIA calculation, **we estimate that more than 770,000 people²⁰ will be required to spend a minimum of \$128 (for workers at the federal minimum wage,) on average \$225 (for workers at the national average hourly wage,) and as much as \$429 (for workers at the average government contract salary) in lost wages and transportation costs to get a proper ID card.** These costs would come out of the

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employee's own pocket, and do not take into account ancillary costs, such as arranging for childcare needs.²¹ As a Brennan Center for Justice report argues, poor and minority workers disproportionately lack photo identification, and as such will be especially affected by mandatory E-Verify.²² While not all workers will make as much as government contractors, or as little as the federal minimum wage, most Americans lacking a photo ID will have to spend close to \$225 of their own money.

Once the check is run through the system, 0.8 percent (using Westat's error rate) to 2.3 percent (using LA County's error rate) of all legally authorized employees will receive a TNC, alerting them that their submitted information does not match the official government records. Most TNCs must be resolved in person at a Social Security Administration office.²³ Using the RIA calculations, **we estimate that it will cost each of the 1.2 to 3.5 million legally authorized workers on average \$190 of their own money in lost wages and travel time to resolve.**²⁴ Unlucky individuals who need a photo ID and receive a TNC could end up spending \$415 just to gain access to a job that they have already secured.

Estimates of the cost to resolve a TNC at an SSA office will also be far higher for certain individuals. The RIA estimates are based on the average distance that it would take an individual to travel to the nearest SSA office, calculated at 60 miles round trip. If, for example, you lived in a more remote area of the country, say Camp Wood, Texas, the closest SSA office would be in Kerrville, Texas. Resolving a TNC in Kerrville would require traveling more than 90 miles *in each direction*, adding an additional cost of \$70. If you live in Hyannis, Nebraska, the nearest SSA office is in North Platte, Nebraska, requiring roughly 110 miles of travel *in each direction*, adding an additional cost of \$94.²⁵

Now imagine that you are one "99ers,"²⁶ one of the thousands of Americans who have exhausted the maximum number of weeks allowable on unemployment insurance. Imagine you have managed to scrape by without a steady income, and have finally secured a job, only to now be told that you must spend at least \$415 just to be eligible to work. Clearly this is the worst-case scenario, but how many Americans are we prepared to tax in order to expand a government program that works less than half the time for unauthorized workers?

Additional concerns for workers

An individual cannot legally be fired for receiving a TNC, and must be retained pending final verification of his or her work status. We worry, however, that unscrupulous employers will either demote, fail to pay, or otherwise discriminate against an employee who receives a TNC. Indeed, 42 percent of workers who received a TNC in 2009 were not notified of the status by their employers, robbing employees of the ability to contest, and of the ability to ultimately keep their job. Westat further found that a portion of those employers who did inform their workers about TNCs did not explain to them the procedures for contesting, or the eight-day window in which an employee may contest.²⁷

42 percent of workers who received a Tentative Nonconfirmation in 2009 were not notified of the status by their employers, robbing employees of the ability to contest, and of the ability to ultimately keep their job.

Since the Legal Workforce Act of 2011 requires employers to verify the status of their employees prior to, or on the date of hiring, we believe that many employers will simply choose the more expedient route of not hiring an employee who receives a TNC, rather than informing them of their status.²⁸ When verification is part of a pre-screening process, the incentives to notify the employee are far lower.

Losing your job over an erroneous TNC or FNC has real consequences: If the Social Security Administration deems you to be an ineligible employee, you would also be ineligible for unemployment benefits. On top of the hardship of losing your job, you would not even be able to rely on the unemployment insurance safety net while sorting out your information within the SSA system, or searching for a new position.

Implementation costs are crushing for employers

Employers would shoulder much of the burden of implementing E-Verify if it was made mandatory for all businesses in the United States. A recent Bloomberg Government study found that **E-Verify would have cost small businesses \$2.6 billion had it been mandatory in 2010.**²⁹ These companies represent 99.7 percent of all employers, and have created 64 percent of net new jobs over the past decade and a half, according to the U.S. Small Business Administration.³⁰ With an unemployment rate at 9.1 percent in May 2011, and the economic recovery of small businesses still precarious, does it really make sense to burden our nation's jobs creators with an additional \$2.6 billion per year?³¹

Bloomberg estimates that the average cost to run E-Verify for a small business will be around \$435 per year. The start-up costs, however, can be much higher. The government's Regulatory Impact Analysis identified a number of costs associated with implementing E-Verify, including costs due to:

- Hiring a human resources manager to enroll the business in E-Verify
- Retaining legal counsel to review the Memorandum-of-Understanding required for access to E-Verify
- Paying employees for time needed to review existing I-9 employee information
- Acquiring the necessary computer equipment, printer, and Internet access
- Training employees to run the system³²

The RIA also estimated costs incurred for the first year in which government contractors (covered under the rule subject to analysis) used E-Verify:

- Businesses with 10 employees would have to pay on average \$1,254
- Businesses with 50 employees would pay \$3,163
- Businesses with 100 employees would pay \$5,515
- Businesses with 500 employees would pay \$24,422

The initial year, the RIA points out, “is expected to be the year with the highest compliance cost, as the contractor is incurring both the start-up costs of enrolling in E-Verify as well as the costs of vetting new employees through the E-Verify system.”³³

All businesses using E-Verify face serious costs and challenges to implementing the system, although the system’s costs to small businesses are potentially more debilitating. How many small businesses and mom-and-pop shops will have to close, or will be unable to open in the first place, because they cannot afford to spend more than a thousand dollars just to start verifying the work status of their employees?³⁴

Additional costs for employers

Both the Bloomberg and RIA estimates only include the direct costs to employers for setting up the system and running employees through it. They do not, however, take into account any of the ancillary costs associated with E-Verify, such as lost productivity from employees who have to take time off of work to fix a TNC at a local Social Security Administration office. They also do not take into account the cost of retraining a new employee a business would have to hire if a legally authorized American worker already on staff receives an erroneous FNC and must be fired. These costs may be diffused among many workers for large businesses, but for the 60 percent of small businesses with fewer than five employees, the retraining expenses can be devastating.

Importantly as well, E-Verify is not a magical pill that immunizes companies from prosecution, from Immigration and Customs Enforcement raids, or from costly legal fees. Take the case of Pilgrim’s Pride Corporation, the largest chicken producer in the United States. ICE raided five Pilgrim’s Pride sites in April of 2008 and arrested more than 300 individuals on suspicion of identity theft and unauthorized presence in the United States. The company “prided” itself on having each and every one of its plants enrolled in E-Verify, and had “relied on the ICE Best Hiring Practices in designing its immigration compliance practices.” Since E-Verify does not detect identity fraud, the company was still open to charges of hiring unauthorized workers. **Even with high standards and E-Verify usage, Pilgrim’s Pride ultimately settled with the federal government to avoid criminal charges—to the tune of \$4,500,000.**³⁵

While E-Verify does not protect employers against raids or audits, it also has resulted in added legal burdens to employers. One lawyer experienced in E-Verify claims, who wished to remain anonymous, stated that the system “is a gold mine for lawyers” because of the high costs of setting up a compliance system, and of fending off federal government audits. Arranging an internal system to comply with work verification requirements is one of biggest and most costly aspects to implementing E-Verify. The U.S. clothing retailer Abercrombie & Fitch, for example, was fined just over \$1 million in 2010 for discrepancies in the company’s electronic I-9 record keeping system—a process similar to that

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which would be necessary for using the E-Verify system—illustrating that keeping the type of records necessary for E-Verify is no simple matter, and can become quite costly.³⁶ The same lawyer pointed out that even the threat of an audit can affect the workforce, as employees get wind of a federal government action and leave the worksite, harming production and ultimately costing the employer significantly.³⁷

More basically, as an Internet-based system, E-Verify requires that businesses actually have the capability to access the Internet. While President Obama made broadband Internet access a hallmark of his 2011 State of the Union Address,³⁸ the fact of the matter is that many homes and businesses in the United States still lack Internet connectivity. Exact figures are not available, but we do know that high-speed Internet coverage is lower in rural areas, and that many small businesses will struggle to comply with the new demands.³⁹ In West Virginia, for example, only an estimated 75 percent of households and businesses are connected to broadband, while in Michigan only 70 percent are connected. In Tennessee, only 65 percent of businesses subscribe to broadband.⁴⁰

We believe that the government will ultimately be forced to find a solution for these Internet-less employers, which will cost significant amounts of money. As an example of a proposed solution, the “Conceptual Proposal for Immigration Reform” put forth by Sens. Harry Reid (D-NV), Chuck Schumer (D-NY), and Robert Menendez (D-NJ) in April of 2010, proposed that United States Post Offices and other government offices be fitted with the technological capability for employers to come in and verify the status of their workers. One can only imagine how much that would cost the federal government.⁴¹

E-Verify would slash tax revenue and require massive federal spending

The costs to the federal government of mandating E-Verify are twofold: the revenue lost from undocumented workers no longer paying taxes, and the amount of money needed to operate the system.

Revenue lost due to E-Verify

An estimate by the nonpartisan Congressional Budget Office of the SAVE Act of 2008, H.R. 4088, found that **mandating E-Verify across the nation without legalizing the undocumented workforce would result in \$17.3 billion in lost revenue over 10 years.** According to the CBO, the decrease “largely reflects the judgment that mandatory verification... would result in an increase in the number of undocumented workers being paid outside the tax system.”⁴²

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Rather than accomplish the restrictionist goal of “attrition through enforcement”—of making life so difficult for unauthorized immigrants that they leave the country⁴³—the CBO estimated that a good number of the people currently paying taxes and contributing to the economy would be paid off the books in the underground cash economy, with no federal government tax gains. And this revenue is not trivial. A study by the Institute for Taxation and Economic Policy found that unauthorized immigrants paid a total of \$11.2 billion in state and local taxes in 2010.⁴⁴ The high cost of the mandatory E-Verify provision was one of the primary factors that sank the SAVE Act.⁴⁵

Costs to operate E-Verify

In a 2008 Government Accountability Office report, **the Department of Homeland Security estimated that mandating E-Verify for all employers would cost between \$765 million** (if only new hires were run through the system) **and \$838 million** (if all employees, current and new, were verified) for FY 2009 to FY 2012. **The Social Security Administration estimated it would cost \$281 million**, and require 700 additional employees between FY 2009 and 2013.⁴⁶

A more recent GAO report, citing statistics from U.S. Citizenship and Immigration Services, or USCIS, argues that even retaining E-Verify as a *voluntary* system—without a mandate that E-Verify be used across the country—will cost \$508 million through FY 2020. The GAO report deemed even this high estimate to be only “partially accurate” and “minimally credible” because of the lack of independent cost estimates and because the figure fails to account for a range of other potential costs to the federal government.⁴⁷ The GAO specifically stated that “USCIS’s cost estimates do not reliably depict current E-Verify cost and resource needs or cost and resource needs for mandatory implementation.” SSA did not fare much better, with the GAO concluding that “while SSA’s cost estimates substantially depict current E-Verify costs and resource needs, SSA has not fully assessed the extent to which its workload costs may change in the future.”⁴⁸

In actuality, it will probably cost the government far more to set up the massive bureaucracy needed to service and maintain E-Verify across the country. The government will be forced to create this unwieldy new bureaucracy to identify just 46 percent of unauthorized workers.⁴⁹ This increase in the size of the federal government and in government spending will come at a time when Congress claims to want to cut back and reduce the deficit.

The costs to hire new personnel, increase technological capacity, and verify new hires have been factored into the cost estimates reported in the above GAO report. But making E-Verify mandatory across the United States will unquestionably trigger costs above and beyond those that directly affect the E-Verify sections of the U.S. Citizenship and Immigration Services and the Social Security Administration.

DEPARTMENT OF HOMELAND
SECURITY COSTS

\$765 million

SOCIAL SECURITY
ADMINISTRATION COSTS

\$281 million

First and foremost are the costs to the government of individuals fixing their SSA TNCs and procuring photo IDs. If E-Verify is made mandatory, anywhere from 1,234,296 Americans (using Westat’s error rate of 0.8 percent) to 3,548,601 Americans (using LA County’s error rate of 2.3 percent) will receive an erroneous TNC, and be required to go to an SSA office to resolve it.⁵⁰ We estimate that it will take one full hour of time on the part of an SSA worker to fix a TNC.⁵¹ Conservatively estimating the hourly wages of SSA Claims Representatives, the officials who establish Social Security eligibility, it will cost the government \$14.90 of work time to resolve each individual claim.⁵² **Multiplying that by the total number of erroneous claims brings the total cost to the federal government just to resolve TNCs between \$18,391,010 and \$52,874,155.**⁵³

Hourly pay rates for employees at Departments of Motor Vehicles, one of the locations where an estimated 770,000 Americans will be required to obtain photo ID, vary by state, but we can assume that costs will be similarly high. And additional work hours and salary costs are not the only variable—the burden of processing millions of SSA mismatches could easily overwhelm already overburdened SSA offices. These costs do not even take into account the necessity of defending the federal legislation against lawsuits, or of setting up and running a review board to ensure that errors are corrected in a timely fashion.

Finally, the Legal Workforce Act of 2011 significantly extends the mandate of DHS and SSA in operating E-Verify. Section 10 of the bill instructs both agencies to create a program “in which Social Security account numbers that have been identified to be subject to unusual multiple use ... [to] be blocked from use.”⁵⁴ In addition to blocking misused Social Security numbers, both agencies are required to create a system whereby individuals who suffer from identity fraud can petition for their Social Security number to be suspended for use in the system. SSA would also be required to:

- Issue no-match letters on every worker who it identifies as having a mismatch (over 10 million⁵⁵)
- Generate letters to every employer with a mistake on their W-2
- Send letters to workers when their Social Security number is used at more than one job
- Send letters to the employer of workers suspected of using a false Social Security number⁵⁶

While all of these provisions are admirable, they will heavily increase the workloads of both agencies, require many more federal employees to be hired to deal with the demand, and raise the already high costs of implementing the program by hundreds of millions of dollars.

If E-Verify is made mandatory, anywhere from 1,234,296 Americans to 3,548,601 Americans will receive an erroneous Tentative Nonconfirmation, and be required to go to an SSA office to resolve it.

The better solution: Phasing in E-Verify, adding triggers, and legalizing undocumented workers

Immediately implementing E-Verify for all employers across the country means mandating a program that will knock U.S. workers off the payrolls and into the underground economy, reward unscrupulous employers, encourage identity fraud, and fail to detect unauthorized workers. It will undermine the nation's core economic and security interests.

Here are our recommendations for a more pragmatic and effective solution.

- **Phase E-Verify in gradually over a period of five to 10 years.** This would ensure that the U.S. Citizenship and Immigration Services, or USCIS, and Social Security Administration, or SSA, are able to meet the technical and infrastructure challenges with scaling up the system while continuing to improve their accuracy rates.
- **Ensure that no small business would be required to join E-Verify until USCIS and SSA can prove an accuracy rate of 99.99 percent for legally authorized Americans.** We strongly believe that no small business should be required to use the E-Verify system until the error rate for legally authorized Americans is less than .01 percent. **No American should lose their job simply because of a government mandated system.** By putting a trigger into the bill, Congress will ensure that the system only catches those people without legal status, rather than ordinary, innocent Americans. The system must also have an easily accessible review process, so that mistakes are caught and fixed in a timely manner.

Furthermore, by beginning with large businesses (those with more than 500 employees, as defined by the Small Business Administration) Congress would ensure that all of the kinks are worked out of the system before small businesses—those that would incur the heaviest financial costs—would be required to join. We support granting hardship waivers for those businesses with fewer than 20 employees, as well as businesses in areas that lack substantial broadband Internet coverage.

- **Apply E-Verify only to new hires.** Limiting E-Verify only to new hires will similarly decrease the strains on USCIS and SSA, without sacrificing coverage.
- **Join E-Verify with a program establishing a legal workforce.** Mandatory E-Verify must be paired with a program that ensures the current workforce is authorized to work. Currently, the system has an error rate for undocumented immigrants of 54 percent, meaning that more than half of unauthorized workers have no problem making it through verification. A program requiring all of the undocumented individuals currently in the United States to register and undergo background checks will cut down on identity fraud and lead to higher accuracy rates.

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This legalization program would follow the guidelines that the president laid out in his recent “Blueprint on Immigration Reform,” would include tough but fair penalties, would require immigrants to pay back taxes, and learn English and civics, and would ensure that no undocumented immigrants “cut the line” by gaining legal status ahead of people already waiting for visas. As it currently stands, immigrants who are kicked off the legal rolls with mandatory E-Verify will simply move into the informal economy (at a cost to the federal government of \$17.3 billion, according to the Congressional Budget Office,) where they pay no income or payroll taxes. A program of earned legalization will bring all of these workers out of the shadows and will make sure that they, and their employers, contribute fully to the tax base.⁵⁷

As currently operated, E-Verify imposes a jobs tax on individuals and businesses, and costs the federal government a significant amount of money. It does not have to be so, nor do ordinary Americans have to lose their jobs in the service of catching unauthorized immigrants.

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Endnotes

- 1 Congressman Lamar Smith, "Chairman Smith Introduces Legal Workforce Act," Press Release, June 14, 2011, available at: <http://lamarsmith.house.gov/News/DocumentSingle.aspx?DocumentID=246558>.
- 2 Jason Arvelo, "Free E-Verify May Cost Small Businesses \$2.6 Billion: Insight," *Bloomberg Government*, January 27 2011, available at: [http://www.landsolutions.com/uploaded/file/%C2%B9Free%C2%B9%20E-Verify%20May%20Cost%20Small%20Business%20\\$2.6%20Billion_%20Insight.pdf](http://www.landsolutions.com/uploaded/file/%C2%B9Free%C2%B9%20E-Verify%20May%20Cost%20Small%20Business%20$2.6%20Billion_%20Insight.pdf).
- 3 United States Citizenship and Immigration Services, "What is E-Verify?" available at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=e94888e60a405110VgnVCM1000004718190aRCRD&vgnnextchannel=e94888e60a405110VgnVCM1000004718190aRCRD>.
- 4 United States Government Accountability Office, "Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain," GAO-11-146, December 2010, 2. Available at: <http://www.gao.gov/new.items/d11146.pdf>.
- 5 On state policies toward E-Verify, see the primers on the website of the National Immigration Law Center: <http://www.nilc.org/immsemplmnt/ircaempverif/eev023.htm>. Illinois passed a law in 2007 that limited the use of E-Verify within the state, but a lawsuit overturned much of the law. As it stands, Illinois preempts localities from requiring employers to use E-Verify, though they are welcome to do so on their own. *United States of America v. State of Illinois*, No. 07-3261, March 12, 2009 (U.S.D.C. Central District Illinois), available at: <http://www.verificationsinc.com/pdf/US-v-Illinois.pdf>.
- 6 *Chamber of Commerce v. Whiting*, 563 U.S. ___ (2011), available at: <http://www.law.cornell.edu/supct/html/09-115.ZS.html>. Note that the decision was a narrow ruling, which found the law consistent with Congress's intent to allow states to maintain their traditional role in licensing decisions. It does not speak to the larger issues of federal preemption of state and local immigration laws.
- 7 Note that some individuals will be required to confirm their status with both SSA and USCIS, for example, a naturalized citizen who may not have forwarded his or her information to the Social Security Administration.
- 8 In fact, 95.3 percent of all people run through the E-Verify system are instantly verified as work authorized, while another 1.1 percent are authorized by an Immigration Status Verifier (ISV) at DHS, usually within one business day. The remaining 3.6 percent receive a TNC. Most of those who receive a TNC do not contest the findings, and so 3.1 percent of all E-Verify queries result in an FNC. Under the current system, once issued a TNC the employee has eight working days to contact the appropriate government agency, and then the agency has 10 working days to resolve the problem. Westat, "Findings of the E-Verify Program Evaluation," December 2009, xxv-xxvi. Available at: http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.
- 9 Another .01 percent contest their TNCs, but are still deemed ineligible to work. Westat, "Findings," xxix-xxx. United States Government Accountability Office, "Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System, Statement of Richard M. Stana, Director Homeland Security and Justice Issues," GAO-08-729T, May 6, 2008, available at: <http://www.gao.gov/new.items/d08729t.pdf>.
- 10 Figures based on the findings of the National Immigration Law Center (NILC). "Statement of Tyler Moran, Policy Director, National Immigration Law Center, House Committee on Ways and Means, Subcommittee on Social Security, Hearing on the Social Security Administration's Role in Verifying Employment Eligibility," April 14, 2011, available at: http://www.nilc.org/immsemplmnt/SSA_Related_Info/SSA-subcommittee-Moran-testimony-4-14-11.pdf.
- 11 Ibid. NILC estimates that there are a total of 154,287,000 workers in the United States, so multiplied by 0.5 percent = 771,435. On E-Verify and error rates, see also: Doris Meissner and Marc R. Rosenblum, "The Next Generation of E-Verify: Getting Employment Verification Right," (Washington: Migration Policy Institute, July 2009), available at: http://www.migrationpolicy.org/pubs/Verification_paper-071709.pdf.
- 12 According to Westat, "Ideally, calculations of system accuracy would be based on the true employment authorization status of the workers verified, so that their true status could be compared with the E-Verify program finding. If this information were available, calculating accuracy and inaccuracy rates would be a simple ratio of the E-Verify program finding to the total number of workers with that status. However, since it is not available, it was necessary for Westat to use estimates of the number of workers in each status. The Westat evaluation team used models to develop estimates of these numbers." Westat, "Evaluation of the E-Verify Program: USCIS Synopsis of Key Findings and Program Implications," January 28, 2010, 3. Available at: <http://www.uscis.gov/USCIS/Native%20Docs/Westat%20Evaluation%20of%20the%20E-Verify%20Program.pdf>.
- 13 Westat, "Findings," xxx-xxxi.
- 14 Westat, "Findings," xxxv-xxxvi.
- 15 William T. Fujioka, Chief Executive Officer, "Report on [L.A.] County's Use of E-Verify System," March 10, 2010, available at: http://file.lacounty.gov/bc/q1_2010/cms1_143429.pdf.
- 16 Ibid.
- 17 Ibid. The County reported that 254 people out of 9,958 received a TNC in 2008, but only two employees had not resolved their work authorization status by the time of the report—one was terminated, and one was still in the process of fixing the problem. That leaves 252 erroneous TNCs. In 2009, 79 people received a TNC out of 4,397, but only one employee was terminated. The rest were ultimately deemed authorized, which leaves 78 erroneous TNCs. $(252 + 78) / (9,958 + 4,397) = 2.3\%$. Statistics on 3.
- 18 Note that many, but not all, of the documents that establish identity on the I-9 form contain a photo. Items such as a Voter's Registration Card typically do not contain a picture. Form available at: <http://www.uscis.gov/files/form/i-9.pdf>. On the E-Verify photo ID requirement see: United States Citizenship and Immigration Service, "Companion to Form I-9," available at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=b4059589cdb76210VgnVCM10000b92ca60aRCRD&vgnnextchannel=b4059589cdb76210VgnVCM100000b92ca60aRCRD>.
- 19 Regulatory Impact Analysis, "Employment Eligibility Verification (Federal Acquisition Regulation Case 2007-013)," Final Rule, October 1, 2008, 42.
- 20 See fn 12.
- 21 The RIA estimates that each person will have to travel an average of 60 miles, round trip, to get an ID, which they calculate at a rate of \$0.585 per mile, for a cost of \$35.10. They estimate that the average cost of a photo ID is \$35, and that an employee will have to spend 8 working hours to acquire the ID.

Using the federal hourly minimum wage data, we calculate that an individual in this group will spend \$58 in lost wages ($\$7.25 * 8$). Taken together, $\$58 + \$35 + \$35.10 = \128.10 .

Using the average hourly wage data for American workers from April 2011 provided by the St. Louis Federal Reserve Bank, \$19.37 per hour, we calculate that an individual in this group will spend \$154.96 in lost wages ($\$19.37 * 8$). Taken together, $\$154.96 + \$35 + \$35.10 = \225.06 .

Using the average hourly wage for a federal contractor, \$44.90 per hour, we calculate that an individual in this group will spend \$359.20 ($\$44.90 * 8$) in lost wages. Taken together, $\$359.20 + \$35 + 35.10 = \$429.30$.

Regulatory Impact Analysis, "Employment Eligibility Verification," 42 and 48. Data on average hourly wages available on the website of the Federal Reserve Bank of St. Louis Federal: <http://research.stlouisfed.org/fred2/data/AHETPL.txt>. Federal minimum wage data available on the website of the U.S. Department of Labor: <http://www.dol.gov/>.
- 22 Brennan Center for Justice, "Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification" (November 2006), available at: http://www.brennancenter.org/page/-/download_file_39242.pdf.
- 23 TNCs that come from USCIS, and deal with immigration document mismatch, may be confirmed over the phone with a USCIS office. Since this 0.8 percent refers to legally authorized workers, we believe that most of the errors will be with the SSA data, rather than the USCIS.
- 24 1.2 million, assuming the Westat error rate of 0.8 percent; 3.5 million assuming the LA County error rate of 2.3 percent. The RIA estimates that each person will have to travel an average of 60 miles, round trip, to get to an SSA office, which they calculate at a rate of \$0.585/mile, for a cost of \$35.10. They estimate that an employee will have to spend 8 working hours to resolve a TNC. Unlike with Photo IDs, where a disproportionate number of people without proper identification are without means, TNCs affect all Americans. Thus we use the average hourly wage for all Americans for April 2011 provided by the St. Louis Federal Reserve Bank, \$19.37 per hour. We calculate that the average individual will spend \$154.96 in lost wages ($\$19.37 * 8$). Taken together, $\$154.96 + \$35.10 = \$190.06$. Regulatory Impact Analysis, "Employment Eligibility Verification," 47-48. Data on average hourly wages available on the website of the Federal Reserve Bank of St. Louis Federal: <http://research.stlouisfed.org/fred2/data/AHETPL.txt>.
- 25 Estimates based on driving directions from Google Maps, and the Social Security Office Locator on the Social Security Administration's website: <https://secure.ssa.gov/apps6z/FOLO/Controller>. Additional costs based on the calculation of \$0.585 per mile above the 60 miles built into the baseline RIA assumption. See fn 22.
- 26 On the 99 week maximum, see, for example: Kelly Evans, "Unemployment Extension Adds Up to 99 Weeks of Benefits," *Real Time Economics Blog*, November 6, 2009, available at: <http://blogs.wsj.com/economics/2009/11/06/unemployment-extension-adds-up-to-99-weeks-of-benefits/>.

- 27 Westat, "Findings," 153-154. National Immigration Law Center, "Statement of Tyler Moran," 4.
- 28 *Legal Workforce Act of 2011*, H.R. 2164, Section 2(F).
- 29 The Bloomberg study defines a small business as having less than 500 employees. Arvelo, "Free! E-Verify."
- 30 Statistics from the website of the United States Small Business Administration, available at: <http://www.sba.gov/advocacy/7495/8420>.
- 31 Unemployment figures based on the Bureau of Labor Statistics website: <http://www.bls.gov/cps/>. United States Small Business Administration, "The Small Business Economy 2010: A Report to the President" (Washington: U.S. Gov't Printing Office, 2010). Available at: http://www.sba.gov/sites/default/files/sb_econ2010.pdf.
- 32 *Ibid.*, 29-39.
- 33 Regulatory Impact Analysis, "Employment Eligibility Verification," 8-9.
- 34 *Ibid.*
- 35 U.S. Immigration and Customs Enforcement, "91 Pilgrim's Pride workers face criminal charges in ongoing identity theft probe," Press Release, April 17, 2008, available at: <http://www.ice.gov/news/releases/0804/080417dallas.htm>. Pilgrim's Pride, "Pilgrim's Pride Issues Statement in Response to U.S. Department of Homeland Security's Immigration and Customs Enforcement Action at Five Company Facilities," Press Release, April 16, 2008, available at: [http://phx.corporate-ir.net/phoenix.zhtml?c=68228&p=irol-mediaNewsArticle&iD=1130817&highlight=-. Letter from John M. Bales, United States Attorney, Eastern District of Texas, to Carl Hampe, December 30, 2009. Available at: <http://www.law.virginia.edu/pdf/faculty/garrett/pilgrimspride.pdf>.](http://phx.corporate-ir.net/phoenix.zhtml?c=68228&p=irol-mediaNewsArticle&iD=1130817&highlight=-. Letter from John M. Bales, United States Attorney, Eastern District of Texas, to Carl Hampe, December 30, 2009. Available at: http://www.law.virginia.edu/pdf/faculty/garrett/pilgrimspride.pdf)
- 36 Note that Abercrombie and Fitch was not enrolled in E-Verify at the time of the fine. U.S. Immigration and Customs Enforcement, "Abercrombie and Fitch fined after I-9 audit," Press Release, September 28, 2010, available at: <http://www.ice.gov/news/releases/1009/100928detroit.htm>.
- 37 Phone interview with author, June 6, 2011.
- 38 The White House, Office of the Press Secretary, "Remarks by the President in State of Union Address," Press Release, January 25, 2011, available at: <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address>.
- 39 On broadband coverage in rural areas, see Michael J. Copps, "Bringing Broadband to Rural America: Report on a Rural Broadband Strategy," (Washington: Federal Communications Commission, May 22, 2009). Available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf.
- 40 HughesNet, "Broadband in West Virginia," (2006), available at: <http://business.hughesnet.com/resources/broadband-in-west-virginia>. Connect Michigan, "Broadband & Business," (2010), available at: http://connectmi.org/_documents/MI_BizAssessment.pdf. Connected Tennessee, "Tennessee's Technology Trends 2010" (2010), available at: http://connectedtennessee.org/research/Tennessee_Technology_Trends_2010.php.
- 41 Harry Reid, Chuck Schumer, and Robert Menendez, "Conceptual Proposal for Immigration Reform," April 29, 2010, 13. Available at: http://www.politico.com/static/PPM154_proposal.html. The "framework" uses a slightly different system than the current E-Verify, the "Biometric Enrollment, Locally-stored Information, and Electronic Verification of Employment (BELIEVE)" system, but the process would be the same, the only difference being that each employee would have a biometric Social Security card to present to their employers.
- 42 Letter from Peter R. Orzag to John Conyers Jr., April 4, 2008. Available at: <http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf>.
- 43 NumbersUSA, "Attrition Through Enforcement Is the True Middle-ground Solution," available at: <http://www.numbersusa.com/content/learn/issues/american-workers/attrition-through-enforcement-true-middle.html>.
- 44 Immigration Policy Center, "Unauthorized Immigrants Pay Taxes, Too," (2011), available at: <http://www.immigrationpolicy.org/just-facts/unauthorized-immigrants-pay-taxes-too>.
- 45 *New York Times* Editorial Board, "What Social Security Isn't Meant to Do," *New York Times*, May 12, 2008, available at: <http://www.nytimes.com/2008/05/12/opinion/12mon1.html?sq=e-verify&st=nyt&adxn1=1&scp=1&adxnlx=1306857930-y2EJraSEuNIAVScy+VobPA>.
- 46 GAO, "Employment Verification: Challenges Exist," 4.
- 47 Government Accountability Office, "Employment Verification: Federal Agencies Have Taken Steps," 48-49.
- 48 *Ibid.*, 43.
- 49 See: Westat, "Evaluation of the E-Verify Program."
- 50 *Ibid.* Fujioka, "Report on [L.A.] County's Use of E-Verify System."
- 51 According to the Social Security Administration, it takes 20 minutes to complete an in-person interview and to update the E-Verify system to reflect proper work authorization. But this 20 minute estimate is only for people who have all of their paperwork properly in order. For cases that require additional documentation, SSA estimates that the individual will require multiple visits. Westat also finds that while many workers can solve their TNCs in one visit, many others require multiple visits. Thus we have calculated work time at one hour, rather than only 20 minutes. Social Security Administration, "Statement of Marianna LaCanfora, Assistant Deputy Commissioner, Office of Retirement and Disability Policy, Hearing before Committee on Ways and Means, Subcommittee on Social Security, United States House of Representatives," April 14, 2011, available at: http://waysandmeans.house.gov/UploadedFiles/SSA_Testimony_-_E-Verify_-_Final.pdf. Westat, "Findings," 96.
- 52 Regulatory Impact Analysis, "Employment Eligibility Verification," 47-48. According to the SSA website for the San Francisco Region, SSA Claims Representatives start at either the GS-5 or GS-7 pay range. We have estimated daily wages using the more conservative GS-5, and using the 2011 base pay for GS-5, step 5 (right in the center of the GS-5 range,) which is \$14.90 per hour. Note that base pay is adjusted upwards depending on the location in the United States, and so these are the most conservative figures available. Federal government salary tables are available at: http://www.opm.gov/oca/11tables/pdf/gs_h.pdf
- 53 (Average Hourly Wage for SSA Workers at GS-5 Step 5 * Number of Americans with a false TNC) = (\$14.90 * 1,234,296) = \$18,391,010.40 at a 0.8 percent error rate (Westat), or \$14.90 * 3,548,601 = \$52,874,154.90 at a 2.3 percent error rate (LA County).
- 54 *Legal Workforce Act of 2011*, H.R. 2164, Section 10, 59.
- 55 Marielena Hinacpié, Tyler Moran, and Michele Waslin, "The Social Security Administration No-Match Program: Inefficient, Ineffective, and Costly," *Immigration Policy In Focus*, 6 (2)(2008): 5-6. Available at: <http://www.immigrationpolicy.org/sites/default/files/docs/InFocusSSANo-Match05-08.pdf>.
- 56 *Legal Workforce Act of 2011*, H.R. 2164, Sections 2(3)(C)(ii), 2(3)(B)(i), and 2(3)(B)(ii), respectively.
- 57 The White House, *Building a 21st Century Immigration System*, (The White House, May 2011), p. 28, available at: http://www.whitehouse.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf. On the CBO Score, see ftn. 42.