AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

ELECTRONIC EMPLOYMENT VERIFICATION SYSTEMS: NEEDED SAFEGUARDS TO PROTECT PRIVACY AND PREVENT MISUSE

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 10, 2008

Serial No. 110–132

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

42–826 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
LINDA T. SÁNCHEZ, California
STEVE COHEN, Tennessee
HANK JOHNSON, Georgia
BETTY SUTTON, Ohio
LUIS V. GUTIERREZ, Illinois
BRAD SHERMAN, California
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota

LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
CHRIS CANNON, Utah
RIC KELLER, Florida
DARRELL ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio

PERRY APELBAUM, *Staff Director and Chief Counsel*
SEAN MCLAUGHLIN, *Minority Chief of Staff and General Counsel*

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

ZOE LOFGREN, California, *Chairwoman*

LUIS V. GUTIERREZ, Illinois
HOWARD L. BERMAN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
LINDA T. SÁNCHEZ, California
ARTUR DAVIS, Alabama
KEITH ELLISON, Minnesota
ANTHONY D. WEINER, New York

STEVE KING, Iowa
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
J. RANDY FORBES, Virginia
LOUIE GOHMERT, Texas

UR MENDOZA JADDOU, *Chief Counsel*
GEORGE FISHMAN, *Minority Counsel*

CONTENTS

JUNE 10, 2008

Page

OPENING STATEMENTS

The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Chairwoman, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law 1
The Honorable Steve King, a Representative in Congress from the State of Iowa, and Ranking Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law 2
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary 4
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary 6

WITNESSES

The Honorable Ken Calvert, a Representative in Congress from the State of California
Oral Testimony 7
Prepared Statement 10
The Honorable Heath Shuler, a Representative in Congress from the State of North Carolina
Oral Testimony 11
Prepared Statement 13
The Honorable Sam Johnson, a Representative in Congress from the State of Texas
Oral Testimony 15
Prepared Statement 19
The Honorable Gabrielle Giffords, a Representative in Congress from the State of Arizona
Oral Testimony 21
Prepared Statement 27
Mr. Jonathan "Jock" Scharfen, Acting Director, United States Citizenship and Immigration Service
Oral Testimony 45
Prepared Statement 47
Ms. Carolyn F. Shettle, Ph.D., Senior Study Director, WESTAT
Oral Testimony 58
Prepared Statement 60
Mr. Timothy Sparapani, Senior Legislative Counsel, Washington Legislative Office, American Civil Liberties Union
Oral Testimony 68
Prepared Statement 70
Christopher J. Williams, Esquire, Director, Working Hands Legal Clinic
Oral Testimony 81
Prepared Statement 82
Ms. Glenda Wooten-Ingram, Director of Human Resources, Embassy Suites Convention Center
Oral Testimony 84
Prepared Statement 85

Page

APPENDIX

Material Submitted for the Hearing Record 93

ELECTRONIC EMPLOYMENT VERIFICATION SYSTEMS: NEEDED SAFEGUARDS TO PROTECT PRIVACY AND PREVENT MISUSE

TUESDAY, JUNE 10, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to nall, at 10:05 a.m., in room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, Jackson Lee, Waters, Sánchez, Conyers, King, Gallegly, Goodlatte, Lungren, and Smith.

Staff Present: Traci Hong, Majority Counsel; Andrés Jimenez, Majority Professional Staff Member; George Fishman, Minority Counsel.

Ms. LOFGREN. The hearing on the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

I would like to welcome our Subcommittee Members, our witnesses, and members of the public to the Subcommittee's hearing on Electronic Employment Verification Systems, otherwise known as EEVS, systems which, if made mandatory as some have proposed, would affect all 163 million United States workers and 7 million employers in the United States.

In this hearing, I look forward to examining how U.S. Workers may be impacted by a mandatory EEVS and explore ways to protect U.S. Workers from unintended consequences of EEVS error and/or potential misuse.

Last year, the Immigration Subcommittee held two hearings on Employment Eligibility Verification Systems in the context of comprehensive immigration reform. The first hearing, on April 24, 2007, examined problems with the current paper-based system as well as the Electronic Employment Verification System. And the second hearing, on April 26, 2007, explored proposals to improve employment eligibility verification with emphasis on the EEVS. At the time, four bills mandating the use of an EEVS had been introduced in the House of Representatives in the 110th Congress. There are now 11 bills pending before this Congress that would mandate the use of EEVS.

Currently, the only functioning EEVS is known as Basic Pilot or E-Verify. It is a voluntary program. Less than 1 percent of all employers in the U.S. are currently enrolled to use E-Verify. In addition, the Government Accountability Office says that only half of the registered employers are active users who have used the system at least once. At the current level of use, according to DHS, in August last year, E-Verify received approximately 2 million queries a year. If E-Verify is made mandatory for all employers, it would be 63 million queries a year for new employees. And there are many proposals that would go beyond verification of new employees to include existing, and there are 163 million estimated workers in the United States at this time.

As we consider mandatory EEVS for all employees, we should consider problems in the existing program to avoid problems on a larger scale. Some of the issues we hope to consider today stem from reports produced by our own Government, a nongovernmental research corporation, and university. These reports raise concerns about U.S. workers being wrongfully denied work authorization under E-Verify.

In April 2007, the Service Employees International Union testified before this Committee that, unless database errors are cured, 24,000 of the 300,000 estimated workers in each congressional district would be erroneously denied the eligibility to work by E-Verify. That did catch our attention, because all 24,000 of those American citizens will be calling our offices.

The reports have also documented some employer misuse of E-Verify. A 2007 Westat report states that 16 percent of employers reported that they had failed to train all of their relevant staff on their system. In addition, although E-Verify prohibits registered employers from using E-Verify for pre-employment screening of job applicants, this practice is common among employers. Almost one-third, 31 percent, reported using E-Verify to verify employment eligibility before the employee's first day of paid work, including many who used pre-screening at the time of the employee's application.

Employers also reported significant difficulty meeting the requirement of verifying a new employee's information within 3 days of the employee's first day of work. According to Westat, GAO, and other outside experts, anyone who claims to be an employer can sign up to use E-Verify by signing an MOU with DHS and FSA, thereby obtaining the ability to access very private information. So we want to make sure that whatever we do as we move forward does keep secure the private information of our Americans.

These are just some of the issues that have been raised. Before the Congress moves forward on an effort to expand this system, we want to consider the issues thoroughly so that they may be appropriately addressed. And I hope that this hearing will provide us with a thorough understanding of these issues and the opportunity to identify ways to address them successfully.

I recognize our Ranking Member, Steve King, for his opening statement.

Mr. KING. Thank you, Madam Chairman.

For the past decade, the Basic Pilot Program has given American employers a fast and easy method to ensure that their new employ-

ees are genuinely eligible to work in this country. Employers are signing up in droves, about 1,000 new employers per week, and that is also being inspired because some States have mandated that their home State employers use the Basic Pilot Program now referred to as E-Verify by DHS.

Basic pilot allows employers to check the Social Security numbers and alien identification numbers of new employees against Social Security Administration and DHS records in order to ensure that they match. This is what the American people want; 79 percent of Americans polled believe the Federal Government should require all employers to verify U.S. citizenship or lawful presence for each job applicant by a telephone or online check of a Federal database.

The Basic Pilot Program reduces—and I am going to repeat that—the Basic Pilot Program reduces job discrimination. The 2007 Westat report on the Internet-based Basic Pilot Program found that most users reported that the Web-based Basic Pilot Program made them neither more nor less willing to hire illegal immigrants—or hire immigrants, excuse me, legal workers. However, when change was reported, it was almost always in the direction of making employers more willing hire more immigrants.

Now, the requirements of Basic Pilot Program do not always make sense for employers. For example, the way it prohibits employers from verifying individuals before they are offered a job; no employer wants to be forced to keep an illegal immigrant on the payroll for perhaps weeks while they go through secondary verification, and that is a burden. Employers should be able to check all job candidates before they are hired as long as they do so in a nondiscriminatory manner. Employers should also be able to verify their existing employees that they are work-authorized, not just for new hires. Not only will this give employers peace of mind, it will ensure that we don't simply allow all 7 million employed illegal immigrants to keep their current job.

This being said, USCIS does need to ensure that all employers who use the Basic Pilot Program adhere to the Memorandum of Understanding that they signed. USCIS is on the right track in beefing up its monitoring and compliance programs to better detect and deter potential misuse and abuse of the program by employers.

The accuracy of the Basic Pilot Program is remarkable. The 2007 Westat report revealed that just about 99 and a half percent—actually, it was 99.4 percent—of all work-authorized employees are immediately verified. Immediately verified.

And the Basic Pilot Program is going to get even better. The system now automatically checks naturalization records before issuing a citizenship status mismatch. In addition, naturalized citizens who receive a mismatch are now able to contact DHS by phone to address the discrepancy. So it is getting better.

U.S. Citizenship and Immigration Services is also dealing with the potential for identity theft in different ways. First, it has added a photo-screening capability. This allows employers to compare the photos of employment-authorized documents and permanent resident cards, and those that are presented by employees through the employers, and compare those pictures against the images stored in the USCIS databases. DHS's long-term goal is to allow employ-

ers to verify the photo on all identity documents that employees present.

Second, in the future, the Basic Pilot Program will provide information on the suspicious multiple use of Social Security numbers in the context of Basic Pilot Program to ICE for investigation.

Basic Pilot has proven its worth. It deserves to be made permanent, and employers deserve the right to be able to check the work eligibility of their entire workforces, not just new hires. I will shortly introduce legislation called the New IDEA Act. In fact, it is a refreshing of a bill that I introduced in the 109th Congress. That bill eliminates the deductibility of wages and benefits paid to illegals. It gives the employer safe harbor if he uses Basic Pilot/E-Verify, and it also extends Mr. Calvert's legislation and makes it permanent and allows employers to verify current employees as well as job applicants.

I want to thank Mr. Calvert for introducing this legislation and having the vision more than 10 years ago to get us to this point where we are today. And I would ask this point, how do you perfect a system? We have a system that is almost perfect now. By a standard of measure, 1 out of 200 legitimate job applicants is rejected by the system, and generally that is because they have failed to register a name change. That is not a Government problem, except that Government needs to cooperate and facilitate the correction of that. And I think soon we will see it will be 1 out of 400. And maybe we will hear that testimony today.

So how do you correct a system? You use it. And the comment about access to very private information, I am signed up on Basic Pilot. I have used it in my office, and I don't have access to any private information except job applicant information. So perhaps we will get that issue illuminated a little bit as that hearing goes on.

And then with regard to only 1 percent of employers use it and only 2 million hits a year compared to 63 million, we can grow this system to address this. We know how to do that, and it is—the answer is to use it.

So, with that, I thank the witnesses for being here today. And, Madam Chairman, I look forward to their testimony, and I yield back the balance of my time.

Ms. LOFGREN. I understand that the Ranking Member of the full Committee would like to make a opening statement.

Mr. SMITH. Thank you, Madam Chair, I would.

In 1986, Congress made it unlawful for employers to knowingly employ illegal immigrants. Congress also required employers to check the identity and work eligibility documents of all new employees. Unfortunately, the easy availability of counterfeit documents soon made a mockery of this process. Employers who didn't want to hire illegal immigrants had no choice but to accept documents they knew were likely to be false.

Congress took action in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The act created the Basic Pilot Program. For the last decade, this program has provided American employers who want to do the right thing with an effective tool to ensure that they are hiring a legal workforce. It ensures that new

employees are not providing their employers with fake Social Security numbers.

As the Basic Pilot Program has grown more popular, over 69,000 employers Nationwide now participate, it has been the subject of some very unfair criticism, and I want to set the record straight.

Participating employers are very happy with the Basic Pilot Program. Last year, an outside evaluation found that, "most employers found the Web Basic Pilot to be an effective and reliable tool for employment verification, and 96 percent did not believe that it overburdened their staffs."

The accuracy of the databases that lie at the heart of the Basic Pilot Program has been unfairly maligned. However, the facts about these databases could not be better. Last year's outside evaluation found that in less than 1 percent, actually only 0.6 percent of cases, do employees who are briefly determined to be work-authorized receive a tentative nonconfirmation and undergo further review. This means, as the Ranking Member of the Subcommittee mentioned a while ago, that persons eligible to work receive immediate confirmation 99.4 percent of the time. For the native born, 99.9 percent receive immediate confirmation. And for employees born outside the United States, it is 97 percent receive immediate confirmation.

A common misperception is that secondary verification means error by a Federal agency. This is simply not the case. Secondary verification most often means that an illegal immigrant has been caught providing bogus information or that an employee has failed to update their records with the Social Security Administration. This fact is seldom acknowledged.

Even when persons eligible to work have to go through secondary verification, they are largely satisfied with the services providing by SSA. Of the employees who contacted local SSA offices as part of the verification process, 95 percent said their work authorization problem was resolved in a timely, courteous, and efficient manner.

Finally, it has been specifically alleged that the Social Security Administration's Inspector General has found the Agency's database to be inaccurate. However, the Inspector General actually stated that, "we applaud the agency on the accuracy of the data we tested."

The Basic Pilot Program has worked well. In the vast majority of cases, employers find out immediately their new employees are work-authorized over 99 percent of the time, and legal workers receive instantaneous confirmation. We will hear testimony today from U.S. Citizenship and Immigration Services that they are putting improvements into place that will make the Basic Pilot Program even more responsive.

Finally, I want to applaud the Administration's decision to require companies who contract with the Federal Government to use the Basic Pilot Program. This protects the American worker by ensuring that all Federal jobs, both direct and indirect, are reserved for legal workers.

Thank you, Madam Chairman.

Ms. LOFGREN. Mr. Smith, thank you very much.

I would now recognize the Chairman of the Committee, Mr. Conyers, for his opening statement.

Chairman CONYERS. Thank you, Chairwoman Lofgren, and Ranking Member Steve King.

This is an important hearing on Electronic Employment Verification Systems, and we have a very distinguished panel. Representative Calvert started this, and then Representative Shuler wants to improve upon it. And now comes Representative Sam Johnson of Texas with his cohort, Representative Giffords, and they have got plan B.

And so I want to commend the Chairwoman of the Committee and the Ranking Member for putting this kind of a hearing together today. It is very important.

We are looking to sort out some of the facts and fictions about the way this program is operating and how we can improve the system. It sounds so simple, but there are 11 bills before this Committee already. They are basically plan A or plan B; but everyone's interest I think is commendable, because what we are trying to do is see how we can improve the Electronic Employment Verification System.

It starts out so simple, and solutions seem quite logical: How do we deal with illegal immigration? All new hires must be checked against Social Security and Homeland Security databases to see if they are legally entitled to work in the United States. What is the problem? Well, the problem is, how does the system really work?

Essentially, we can become a super giant Government database on all Americans and require American workers to be registered and checked for hiring. True or false? Well, we will get the answers from you four this morning.

It will impose a burden on small businesses, whether their workforce is 100 percent American or includes some immigrants. True or false?

It will drive immigrant workers even further underground. True or false?

It will cost $17 billion in lost tax revenue. True or false?

It will constitute a significant step toward a national identification card. Boo.

So, let's get it on, Madam Chairman, and I thank you for this time.

Ms. LOFGREN. Thank you, Mr. Chairman.

In the interest of proceeding to our witnesses, and mindful of our busy schedules, the opening statements of all other Members, without objection, will be made part of the record. And we will now go to our first panel.

All four of our colleagues sitting before us have been active and leaders in this issue. We appreciate their being here with us here today.

I am going to first introduce Congressman Ken Calvert, who was elected in 1992 and represents California's 44th Congressional District, which includes Riverside and Orange County. He is a former small businessman, and currently serves on the House Appropriations Committee. In 1996, he authored a bill that was included in the 1997 omnibus appropriation bill which created the Basic Pilot Program, which is now known as E-Verify.

I think you were the first, Ken.

Next, we have Congressman Heath Shuler who represents North Carolina's 11th District. Congressman Shuler received his B.A. From the University of Tennessee in 2001 and is a former professional athlete and business owner. He is married and has two children, Navy and Island, and he remains an active member in the Fellowship of Christian Athletes.

We are also pleased to welcome Congressman Sam Johnson, who represents the people of Texas's Third District. Mr. Johnson serves on the Committee of Ways and Means and is the Ranking Member on the Social Security Subcommittee. He returned home to Texas after serving in the U.S. Air Force for 29 years as a highly decorated fighter pilot. He flew combat missions in both the Korean and Vietnam wars, and was a prisoner of war in Hanoi for nearly 7 years. After his distinguished military career, Congressman Johnson started a home-building business from scratch, and served in the Texas legislature.

And, finally, I would like to introduce Congresswoman Giffords, who represents Arizona's Eighth District, a diverse area that includes a 114-mile border with Mexico. She serves on the House Armed Services, the House Foreign Affairs Committee, is a third-generation Arizonan, and the youngest woman ever elected to the Arizona State Senate. Congresswoman Giffords represented her hometown of Tucson in the Arizona legislature from 2000 to 2005. During her service in both the Arizona House and Senate, she worked on legislation to expand health care coverage for Arizona families, and to protect Arizona's environment and open spaces.

You are all welcome to submit your full statements for the record. You know that we ask that oral testimony consume about 5 minutes. I know that Congressman Calvert has a competing obligation in the Transportation Committee, so we are going to ask Congressman Calvert to go first. And if you need to leave before we get to questions, we have all been there; we will understand.

So let's begin with you, Congressman Calvert.

TESTIMONY OF THE HONORABLE KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. Thank you, Chairwoman Lofgren, Chairman Conyers, Ranking Member King, and Members of the Committee. Good morning. Thank you for inviting me here to testify today.

Several years ago, I was happy to work with Chairwoman Lofgren to help improve our legal immigration system with a bill that allowed legal permanent resident applicants to name a new sponsor if their original sponsor died during the process of becoming a United States citizen, and I look forward to working with the Chairwoman on the two bills I have introduced regarding E-Verify.

H.R. 19 would make the program mandatory. H.R. 5596 would provide a straightforward 10-year extension to the current program.

When I first wrote the bill that created E-Verify, I intentionally created it on a limited basis for the very reasons we are here today: to ensure that it would not be abused or be a source of misinformation. It is vital that participating employers who volunteer to use

this program and the new employees who are hired are not disenfranchised.

From its humble beginnings in just five States, E-Verify is now available Nationwide, with approximately 70,000 employers participating. A recent Westat report shows that 94.2 percent of all checks to the system are automatically verified as authorized to work. The remaining 5.8 percent are employees that receive an initial mismatch and need to take further action to prove that they are authorized to work in the United States.

For many people, this means their Social Security records are in need of an update. Perhaps they have a new marital status or have become naturalized citizens. For 90 percent of those individual cases, the process takes less than 2 days of the 8 business days allowed to work out either DHS or SSA to correct that discrepancy.

It is important to point out that if an individual's personal information is out of date or incorrectly reported with SSA, this information must be rectified anyway to ensure that their Social Security credits are properly recorded.

Just a few weeks ago, E-Verify introduced software changes that will automate the correction process which reduce the number of visits to the Social Security offices from five presently to two or three per thousand, a 50 percent improvement.

Of the 5.8 percent of queries that do not receive instant verification, 0.55 percent resolve the mismatch, and the remaining 5.3 percent walk away from the process entirely. Why do they walk away? Because E-Verify is denying jobs to people here illegally.

I would also like to point out that the protection is already in place to specifically protect workers from employers abusing this system. First, employers must check all new employees. It is against the law to use it as a screening tool. When an employee is notified there is a mismatch, they are provided with instructions on how to correct the information. That instruction sheet also provides a toll free number to the Office of Special Counsel for Immigration Related Employment Practices. E-Verify also has launched an information campaign aimed at informing and promoting employees of their rights within the program. Participating employers must also post a notice visible to prospective employees of their rights and a phone number to the Special Counsel.

E-Verify has also an Office of Compliance, and a monitoring branch has begun monitoring employer usage of the program.

After a recent hearing held by the Subcommittee on Social Security, I met with the people who run E-Verify to ask them about some of the questions raised at the hearing about the program and problems employers in Arizona have encountered.

E-Verify has never notified an incorrect final nonconfirmation. This is good news for the both the employers and employees who are in increasing numbers being required to use the program. The State of Arizona and Mississippi require all employers to use E-Verify. And Friday, President Bush signed an executive order requiring all Federal contractors to use the program.

E-Verify is not perfect. No system is. But it is a very good system that has safeguards to ensure that employers' and employees' rights are being protected in accordance with the law.

I thank you for inviting me here today, and I apologize that I must leave, as I mentioned to you, Madam Chairman, for the Transportation and Infrastructure Committee. I appreciate your time. And if anybody would like to have questions later on, I would be more than happy to attempt to answer them.

Thank you very much.

[The prepared statement of Mr. Calvert follows:]

PREPARED STATEMENT OF THE HONORABLE KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

TESTIMONY OF CONGRESSMAN KEN CALVERT

June 10, 2008

Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law

Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse

Chairwoman Lofgren, Ranking Member King, and Members of the Committee:

Good morning and thank you for inviting me here to testify today.

Several years ago, I was happy to work with Chairwoman Lofgren to help improve our legal immigration system with a bill that allowed legal permanent resident applicants to name a new sponsor if their original sponsor died during the process of becoming a U.S. citizen. Now I look forward to working with the Chairwoman on two bills that I've introduced regarding E-Verify: H.R. 19 would make the program mandatory and H.R. 5596 would provide a straight-forward ten year extension to the current program.

When I first wrote the bill that created E-Verify, I intentionally created it on a limited basis for the very reasons we are here today: to ensure that it would not be abused or be a source of misinformation. It is vital that participating employers who volunteer to use the program, and the new employees who are hired, are not disenfranchised. From its humble beginnings in just five states, E-Verify is now available nationwide with approximately 70,000 employers participating.

A recent Westat report shows that 94.2% of all checks to the system are automatically verified as authorized to work. The remaining 5.8% are employees that receive an initial mismatch and need to take further action to prove they are authorized to work in the U.S. For many people this means their Social Security records are in need of an update perhaps they have a new marital status or have become naturalized citizens. For 90% of these individual cases, the process takes less than two days, of the eight business days allowed, to work with either DHS or SSA to correct the discrepancy.

It is important to point out that if an individual's personal information is out of date, or incorrectly recorded with SSA, this information must be rectified anyway to ensure their Social Security credits are being properly recorded. Just a few weeks ago, E-Verify introduced software changes that will automate the correction process which should reduce the number of visits to Social Security offices from five presently - to two or three per thousand -- a fifty-percent improvement.

Of the 5.8% of queries that do not receive instant verification, **point five percent** resolve the mismatch and the remaining 5.3% walk away from the process entirely. Why do they walk away? Because E-Verify is denying jobs to illegal workers.

I would also like to point out the protections already in place that specifically protect workers from employers abusing of the system. First, employers must check **all new employees** – it is against the law to use it as a screening tool. When an employee is notified that there is a mismatch, they are provided with instructions on how to correct their information. That instruction sheet also provides a toll free number to the Office of Special Counsel for Immigration-Related Unfair Employment Practices. E-Verify has also launched an informational campaign aimed at informing and promoting employees of their rights within the program. Participating employers must also post a notice visible to prospective employees of their rights and a phone number to the Special Counsel. E-Verify also has an Office of Compliance and Monitoring Branch that has begun monitoring employer usage of the program.

After a recent hearing held by the Subcommittee on Social Security I met with the people who run E-Verify to ask them about some of the questions raised at the hearing about the program and problems employers in Arizona had encountered. E-Verify has never been notified of an incorrect final non-confirmation. This is good news for both employers and employees who are, in increasing numbers, being required to use the program. The state of Arizona and Mississippi require all employers to use E-Verify and Friday President Bush signed an Executive Order requiring all federal contractors to use the program.

E-Verify is not perfect – no system is – but it is a very good system that has safeguards to ensure that employers and employees rights are being protected in accordance with the law.

Thank you again for inviting me here to testify today and I apologize that I must leave now to testify at a Transportation and Infrastructure Committee hearing. I truly appreciate your time and look forward to working with all of you in the future.

Ms. LOFGREN. Thank you very much, Congressman Calvert.

And if we do have questions, we will forward to them in writing. We thank you very much. And good luck over in Transportation.

Congressman Shuler, we would be pleased to hear from you now.

TESTIMONY OF THE HONORABLE HEATH SHULER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. SHULER. Thank you, Madam Chair.

Chairman Conyers, thank you for being here.

Madam Chair, thank you for hosting this Committee.

Ranking Member King, thank you for all your hard work on many legislations dealing with immigration.

Madam Chair, Members of the Subcommittee, last year I introduced H.R. 4088, the bipartisan SAVE Act, with 44 Democrats and 46 Republicans. Today, 245 Members of Congress from 44 States have joined their constituents in calling for a debate and a vote on the SAVE Act.

We are committed to stopping illegal immigration through improved border security, employment verification, and interior enforcement. We cannot continue to ignore our immigration crisis by passing it on to future Congresses and future Presidents.

U.S. Customs and Border Protection estimates that over 12 million people are currently here illegally, and as many as 6,000 illegal aliens are crossing the borders every day. The vast majority of these individuals come to our country in good faith, to find work and better their family's life.

The SAVE Act recognizes that America is a Nation of immigrants and a Nation of laws. Our country must have a welcome mat to those who are here legally. It must also consider the rules of entry, the cost of illegal immigrants placed on the local and State governments, and the effect of millions of unemployed Americans.

While the SAVE Act has a strong emphasis on border security and interior enforcement, the real thrust of my legislation deals with employer verification. Dishonest employers who seek to exploit low-skilled immigrant labor and the Government's inability to secure its borders are the major reasons for the rapid increase in our illegal population. In most cases, the job offered acts as a magnet, drawing people over 20-foot walls and through inhumane desert conditions to find work.

Two decades ago, our Government tried to stop illegal hiring through the form I-9 for all new employees hired after 1986. While employment verification is current law, form I-9 compliance alone requires business owners to be document experts, as they determine that an ID is valid. This places serious liability on them if they make a mistake. To deal with these concerns, Congress created the Basic Pilot Program in 1996. That is now known as E-Verify.

The SAVE Act would expand the pilot program nationwide over a 4-year period, affecting 40,000 larger businesses in the first year and slowly including smaller businesses in the final 3 years. E-Verify is free, easy to use, and it allows participating employers to successfully match 93 percent of new hires to DHS and SSA databases in less than 5 seconds.

For every 1,000 workers running through the system, 942 workers are instantly verified by the system; 53 workers don't bother to contest the mismatch, likely because they are here illegally; only 5 workers successfully contested this mismatch. Therefore, E-Verify's error rate is less than one half of 1 percent. DHS is unaware of one case since 1996 where a U.S. Citizen was denied employment because of an error in the E-Verify system.

According to the Department of Labor, there were 7.8 million new hires in the U.S. during the first 2 months of 2008. In that same period of time, over 1 million new hires were checked through E-Verify. On that basis, E-Verify is handling at least one in eight new hires already. Based on a recent load testing, the system has the capability of handling 240 million inquiries per year. That is four times the number of people in the U.S. who are usually hired in a given year.

E-Verify outlines a fair and proper method of using the system in multiple languages to protect employees from discrimination of hiring practices. E-Verify gives employers the tools that they need to follow the Nation's immigrationlaws and to avoid the penalties that result in hiring illegal aliens.

Madam Chairman, I have the utmost confidence in this program, as does the Secretary of Homeland Security, who just yesterday stated that E-Verify should be used by all Government contractors based on the present executive order. The Secretary has also testified that E-Verify is ready for national rollout. And, additionally, the Democratic Governor of Arizona who recently signed E-Verify into law says her State has not experienced major problems with E-Verify.

Every congressional staffer and employee of a Federal agency has passed through the E-Verify system over the past decade. E-Verify is required by law in various degrees in Arizona, Colorado, Georgia, Idaho, Minnesota, Utah, Mississippi, Oklahoma, and my home State of North Carolina.

Prior to each State making this effort, several interest groups warned of the impacts or disaster that E-Verify would have if it became law. Yet, the spokeswoman from the Arizona Chamber of Commerce, a group who opposed the E-Verify in its State legislation last year, said: Fewer problems have been reported than originally feared; companies have not left the State in reaction to E-Verify; and employers have not reported major problems with the database.

Madam Chair, thank you for the opportunity to speak on E-Verify and the SAVE Act today. It is a pleasure just to testify today with my friend Ken Calvert, Gabbie Giffords, and a true American hero, Sam Johnson.

Mr. Calvert and I agree that mandatory employment verification is a solution to this problem.

I am happy to answer any questions you may have on the SAVE Act today.

[The prepared statement of Mr. Shuler follows:]

PREPARED STATEMENT OF THE HONORABLE HEATH SHULER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

HEATH SHULER
11TH DISTRICT, NORTH CAROLINA

512 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE (202) 225-6401
FAX (202) 226-8422

355 BILTMORE AVENUE, SUITE 400
ASHEVILLE, NC 28801
PHONE (828) 252-1651
FAX (828) 252-8734

Congress of the United States
House of Representatives
Washington, DC 20515–3311

DEPUTY AT-LARGE WHIP

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS

COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON RURAL AND URBAN ENTREPRENEURSHIP
CHAIRMAN

Madam Chair, Members of the Subcommittee:

Last November I introduced H.R. 4088, the bipartisan SAVE Act, with 44 Democrats and 46 Republicans. Today, 245 Members of Congress from 44 states have joined their constituents in calling for debate and a vote on the SAVE Act.

We are committed to stopping illegal immigration through improved border security, employment verification, and interior enforcement. We cannot continue to ignore our immigration crisis by passing it on to future Congresses and future Presidents.

U.S. Customs and Border Protection estimates that over 12 million people are currently here illegally and as many as 6,000 illegal aliens are crossing our borders every day. The vast majority of these individuals come to our country in good faith to find work and a better life for their families.

The SAVE Act recognizes that America is a nation of immigrants and a nation of laws. Our country must have a welcome mat to those who come here legally. We must also consider the rules of entry, the costs illegal immigrants place on local and state governments, and the effect on millions of unemployed Americans.

While the SAVE Act has a strong emphasis on border security and interior enforcement, the real thrust of my legislation deals with employment verification. Dishonest employers who seek to exploit low-skilled immigrant labor are the primary cause for the rapid increase in our illegal population. In most cases, the jobs they offer act as a magnet, drawing people over 20 foot walls and through inhumane desert conditions to find work.

Two decades ago, our government tried to stop illegal hiring through the Form I-9 for all new employees hired after November 1986. While employment verification is current law, Form I-9 compliance alone requires business owners to be document experts as they determine if an ID is valid. This places serious liability upon them if they make a mistake.

To deal with these concerns, Congress created the Basic Pilot Program in 1996 that is now known as E-VERIFY. The SAVE Act would expand this pilot program nationwide over a four year period, affecting 40,000 larger businesses in the first year and slowly including smaller businesses in the final three years. E-VERIFY is free, easy to use, and it allows participating employers to successfully match 93% of new hires to DHS and SSA databases in less than 5 seconds.

For every one thousand workers run through the system:

- **942** workers are instantly verified by the system
- **53** workers don't bother to contest the mismatch, presumably because they are illegal

PRINTED ON RECYCLED PAPER

- Only **5** workers successfully contest the mismatch

Therefore, E-Verify's error rate is less than one-half of one percent, a far cry from the 4% error rate that most critics cite. Another common criticism of E-Verify is that only 70,000 businesses are registered while there are 6 million employers in the U.S. This is an example of using an accurate statistic to produce a misleading result.

According to the Department of Labor, there were 7.8 million new hires in the U.S. during the first two months of 2008. In the same time period, over a million new hires were checked through E-Verify. On that basis, E-Verify is handling at least one in eight new hires already. Based on a recent load testing, the system has the capacity to handle 240 million queries a year---that's four times the number of people in the United States who are usually hired in a given year.

E-VERIFY outlines fair and proper methods of using the system in multiple languages to protect employees from discriminatory hiring practices. E-Verify gives employers the tools they need to follow our nation's immigration laws and to avoid the penalties that result from hiring illegal aliens.

Madam Chair, I have the utmost confidence in this program, as does the Republican Secretary of Homeland Security and the Democratic Governor of Arizona who recently signed E-Verify into law. Every Congressional staffer and employee of a federal agency has passed through the E-VERIFY system over the past decade.

E-VERIFY is required by law in varying degrees in Arizona, Colorado, Georgia, Idaho, Minnesota, Utah, Mississippi, Oklahoma, and my home state of North Carolina. Prior to each state making this effort, several interest groups warned of impending disaster if E-VERIFY became law---yet the disaster never came. DHS is unaware of one case since 1996 when a U.S. citizen was denied employment because of an error with the E-VERIFY system.

Madam Chair, thank you for the opportunity to speak on E-VERIFY and the SAVE Act today. It is an honor to testify here with my colleagues. We all agree in a mandatory verification system, but we disagree on the details. I would like to submit to the record a list of my concerns with Mr. Johnson and Ms. Giffords' New Employee Verification Act and would be happy to elaborate on my opposition to this legislation during questioning.

I am pleased that your committee is taking on this vital issue with a common sense approach.

I am happy to answer any questions you might have.

PRINTED ON RECYCLED PAPER

Ms. LOFGREN. Thank you very much, Congressman Shuler.

Now we will turn to Congressman Johnson.

TESTIMONY OF THE HONORABLE SAM JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. JOHNSON. Thank you, ma'am.

I appreciate Chairman Lofgren and the Chairman, Mr. Conyers, and Ranking Member King, Members of the Subcommittee. I appreciate you holding this hearing.

You know, protecting the privacy of American citizens is vitally important to me and America. As the Ranking Member of the Social Security Subcommittee, we've spent years studying that issue. There are certain guiding principles we must respect in order to craft a truly effective, secure, reliable, Electronic Employment Verification System.

These are: one, prohibit unlawful employment; two, protect workers; three, partner with employers; four, reduce the risk of identity theft; and, finally, protect Social Security.

I have a bipartisan bill, H.R. 5515, the New Employment Verification Act, or NEVA, with Congresswoman Giffords. First, NEVA prohibits unlawful employment by eliminating the paper-based and error-prone I-9 process. The employee's name, Social Security number, and date of birth instantly would be checked against the Social Security database.

Second, NEVA protects workers. In my bill, Social Security verifies American citizens, and DHS verifies legal immigrants. The Social Security Administration, not DHS, has the responsibility to track the earnings history of every worker to ensure they receive the correct amount of disability or retirement benefits. Americans trust the Social Security Administration, and they believe the agency does a good job. I do, too.

An agency responsible for tracking terrorists and securing our border should not be keeping tabs on when and where Americans work. Yet, according to their own privacy documents from February 2008, the Department of Homeland Security is building databases and maintaining data on the work history of American citizens and American employers.

Over 2 weeks ago, Social Security Subcommittee Chairman Mike McNulty and I sent a letter to Secretary Chertoff asking about privacy protections provided by Homeland Security in its E-Verify system.

I ask that a copy of this be inserted in the record.

Ms. LOFGREN. Without objection, it will be entered.

[The information referred to follows:]

MICHAEL R. McNULTY, NEW YORK, CHAIRMAN
SUBCOMMITTEE ON SOCIAL SECURITY

SANDER M. LEVIN, MICHIGAN
EARL POMEROY, NORTH DAKOTA
ALLYSON Y. SCHWARTZ, PENNSYLVANIA
ARTUR DAVIS, ALABAMA
XAVIER BECERRA, CALIFORNIA
LLOYD DOGGETT, TEXAS
STEPHANIE TUBBS JONES, OHIO

SAM JOHNSON, TEXAS
RON LEWIS, KENTUCKY
KEVIN BRADY, TEXAS
PAUL RYAN, WISCONSIN
DEVIN NUNES, CALIFORNIA

Congress of the United States
House of Representatives
COMMITTEE ON WAYS AND MEANS
WASHINGTON, DC 20515

SUBCOMMITTEE ON SOCIAL SECURITY

CHARLES B. RANGEL, NEW YORK, CHAIRMAN
COMMITTEE ON WAYS AND MEANS

JANICE MAYS, CHIEF COUNSEL AND STAFF DIRECTOR
KATHRYN OLSON, SUBCOMMITTEE STAFF DIRECTOR

BRETT LOPER, MINORITY STAFF DIRECTOR
KIM HILDRED, SUBCOMMITTEE MINORITY

May 22, 2008

The Honorable Michael Chertoff, Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

At a recent Committee on Ways and Means Social Security Subcommittee hearing, Representative Heath Shuler provided to each member of the subcommittee a list of employers, in their respective congressional districts, who are registered to participate in E-Verify. We were extremely concerned to see this information distributed. We believe employers, who are voluntarily using E-Verify, deserve the highest levels of privacy protection in return for their good efforts to help ensure a legal workforce.

Recognizing that employer E-Verify information is not protected from disclosure by the Privacy Act and may be disclosed under the Freedom of Information Act, the following language included in "The E-Verify Program for Employment Verification Memorandum of Understanding" (MOU), which sets forth the agreement between the Social Security Administration, the Department of Homeland Security, and the Employer regarding their participation in the E-Verify program, raises a number of concerns:

> "The employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA)."

In light of the preceding paragraph, we have a number of questions for your consideration and response regarding employer and other information disclosed related to E-Verify:

1. Please provide the Department's definitions for "Congressional oversight," "E-Verify publicity," "media inquires." What information disclosures may be allowed that are not within the scope of these definitions?

2. Please explain the process by which requests for information are screened and approved within the Department, including what approval is required by management.

3. Please describe how information is protected by the Department.

4. Within the last three years, what information has been disclosed, and to whom, under the category of "E-Verify publicity"? Within the last three years, what information has been requested, and by whom, but was not disclosed under the category of "E-Verify publicity"?

5. Within the last three years, what information has been disclosed, and to whom, under the category of "media inquiries"? With the last three years, what information has been requested, and by whom, but was not disclosed under the category of "media inquiries"?

6. Within the last three years, what information has been disclosed under the Freedom of Information Act? Please provide an overview of the information that has not been disclosed under the Freedom of Information Act within the last three years.

7. Are employers' Employer Identification Numbers collected and stored? Are these numbers ever released to the public and if so, under what circumstances?

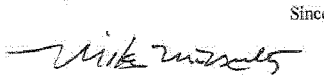
8. While employers may choose not to join the program if they find the terms of the Memorandum of Understanding objectionable, there are many employers who are mandated to participate under Federal, State or local laws, or because of DHS enforcement actions resulting in employer sanctions. What proportion of currently participating employers are required by law or by employer sanctions to participate, and how many are fully voluntary participants? What privacy protections exist for employers required to participate in E-Verify and how do those protections differ for employers who voluntarily participate in the program?

9. We understand the E-Verify Memorandum of Understanding has evolved over time. How has this impacted the sharing of program information over time?

10. The Privacy Impact Assessment for the Verification Information System (VIS) Supporting Verification Programs, dated February 22, 2008, included the statement that certain public outreach materials include notification that VIS collects and stores information on both U.S. citizens and U.S. non-citizens. Please provide detailed information as to what information is collected and stored (including whether Social Security numbers are collected and stored), how this information is used, how this information is protected, who has access to this information, and the privacy protections that apply to this information.

Your reply by close of business June 6, 2008 is most appreciated. Should your staff have any questions, they may contact Kathryn Olson, Staff Director, Subcommittee on Social Security, at 225-9263, or Kim Hildred, Chief Social Security Advisor for Committee on Ways and Means Republicans, at 225-4021.

Sincerely,



Michael R. McNulty
Chairman

Sam Johnson
Ranking Member

Mr. JOHNSON. Thank you.

This letter resulted from an incident that occurred during a May Subcommittee hearing where the Customs and Immigration Service provided information to Representative Shuler, who then shared with each Member of our Subcommittee through our staff, a copy of employers in our congressional districts that are registered to participate in E-Verify. The questions we posed to Secretary Chertoff are important and must be answered before E-Verify is extended. We have got a privacy problem here, and we ought to do something about it, in my view.

Third, NEVA makes employers part of the solution. The critical difference between E-Verify and NEVA is that employers would transmit their newly hired employee's information through a system 90 percent of them already use to help States track down deadbeat dads. Only 1 percent of employers today use E-Verify.

NEVA also provides liability protection to employers who unknowingly hire illegal workers through a subcontractor and provides an exemption for penalties for initial good-faith violation.

Fourth, NEVA will reduce identity theft. As the highly publicized raids in the meat-packing industry have illustrated, we know a simple check of names, Social Security number, and date of birth will still be subject to document fraud and identity theft. To address this problem, NEVA allows employers to voluntarily take the additional step of using Government-certified private-sector experts to authenticate the identity of a new employee and harden the identity with a biometric.

Finally, NEVA would protect Social Security by requiring the Congress to provide the Social Security Administration with advanced funding to get the job done.

Social Security is integral to employment verification, and I will be working to ensure it is not relegated to the status of an afterthought. After years of inaction by the Congress, the American people are fed up with broken laws and broken promises, and I think it is time for a new direction.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF THE HONORABLE SAM JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Chairman Lofgren, Ranking Member King, and Members of the Subcommittee, thank you for holding this hearing on the crucial employee verification component of the immigration reform debate. Protecting the privacy of American citizens is a great concern to me.

Over the last several years, the Committee on Ways and Means and the Ways and Means Subcommittee on Social Security, on which I serve as Ranking Member, have held a number of hearings on employment verification and its impact on citizens and workers. After years of studying this issue, I believe there are certain guiding principles that we must respect in order to craft a truly effective, secure, reliable, electronic employment verification system. These are: 1) prohibit unlawful employment, 2) protect workers, 3) partner with employers, 4) reduce the risk of identity theft, and 5) protect Social Security.

This past February I, along with several of my Republican Social Security Subcommittee colleagues, introduced H.R. 5515, the New Employee Verification Act, or NEVA which now has bipartisan support, including my distinguished colleague Congresswoman Giffords from Arizona. NEVA represents an innovative and comprehensive approach to worksite enforcement and I would like to take a few minutes to explain how NEVA represents those key principles.

First, NEVA prohibits unlawful employment by eliminating the paper-based and error-prone I-9 process with an electronic verification system that builds upon the lessons learned from E-Verify. The employee's name, Social Security number and date of birth would be instantaneously checked against the Social Security database in much the same way that E-Verify does currently. The critical difference is the entry of data using a platform already used by employers which I will discuss shortly.

Second, NEVA protects workers by ensuring that no U.S. citizen seeks permission to work from a federal law enforcement agency. The Social Security Administration (SSA) has always had the responsibility to track the earnings history of every worker to ensure they receive the correct amount of disability or retirement benefits. Americans trust the Social Security Administration and they believe the agency does a good job—I do too. I believe that these earnings should be accurate and a mandatory electronic employee verification system would help increase accuracy sooner and maintain accuracy through workers' lifetimes.

An agency responsible for tracking terrorists and securing our borders should not be keeping tabs on when and where U.S. citizens work. Yet the Department of Homeland Security (DHS) is building databases and maintaining data [1] on the work history of American citizens and American employers.

Over two weeks ago, Social Security Subcommittee Chairman Mike McNulty and I sent a letter to Secretary Chertoff asking about privacy protections provided by Homeland Security in its E-Verify system. I ask that a copy of that letter be inserted in the record. This letter resulted from an incident that occurred during a May Subcommittee hearing where the Customs and Immigration Service provided to Representative Heath Shuler (D-NC), who then shared with each member of our Subcommittee, the employers in our Congressional Districts that are registered to participate in E-Verify. The questions we posed to Secretary Chertoff are important and must be answered before this E-Verify program is extended when it expires in November.

NEVA puts the Social Security Administration in charge of employee verification because it is their fundamental job to track earnings and because the vast majority of those who work in this country are American citizens who should not be tracked by DHS. Under NEVA, Social Security verifies U.S. citizens and the DHS verifies non-citizens. Also, DHS maintains its essential role in worksite enforcement, bolstered by increased penalties for those employers who do not comply.

To further protect workers, NEVA also provides extensive administration and judicial reviews so workers can challenge any decision they believe is in error, creates penalties for unauthorized use of information, and establishes an advisory panel of public and private experts to ensure the highest degree of efficiency, accuracy, and privacy.

Third, NEVA makes employers part of the solution. NEVA partners with employers and creates an easy-to-use system. Employers would transmit their newly hired employee's information through a system 90 percent of employers already use to help states track down dead beat dads, each State's new hire reporting system. The information would be routed to the SSA and would provide nearly instantaneous work authorization. NEVA also provides liability protection to employers who unknowingly hire illegal workers through a subcontractor and provides an exemption from penalties for an initial good faith violation.

Fourth, NEVA will reduce identity theft. As the highly publicized raids in the meat packing industry have illustrated, we know that a simple check of name, number of date of birth would still be subject to document fraud and identity theft.

NEVA allows employers to voluntarily take the additional step of using government certified private sector experts to authenticate the identity of the new employee and to then harden the identity to a biometric, such as a finger print. After the employer verifies that the same person who went through the screening is the same person who shows up to work, the employee may then ask that their personal information be erased.

Finally, NEVA would protect Social Security by requiring that employers use the system for newly hired employees only. From what we know about the illegal immigrant population, where they work, and the annual rate of new hires in key industries, this will minimize the additional burden placed upon an already strained agency, while preventing unlawful employment. Also, NEVA would require the Congress to provide the SSA with the financial resources needed before the agency can perform employment verification.

---

[1] U.S. Department of Homeland Security, "Privacy Impact Assessment for the Verification Information System Supporting Verification Programs." February 22, 2008. Pages 2, 3.

Proponents of a mandatory E-Verify system rarely acknowledge the need to properly fund this expanded mission of the Social Security Administration. In fact, the DHS has not even paid the SSA for their cost of E-Verify for two recent years of their efforts for that pilot program. The SSA is integral to employment verification and I will be working to ensure that it is not relegated to the status of an afterthought.

Today, thousands of immigrants enter the country seeking the life a job in the country has to offer, but too many do so by breaking the law. And we cannot enforce the law with the broken enforcement system we currently have. After years of inaction by the Congress, the American people are fed up with broken laws and broken promises. It is time for a new direction.

I am confident, after looking at this issue a great deal during my time in Congress, I and my bipartisan cosponsors, have created a workable solution to a critical component of immigration reform. The large and diverse group of employers who agree with us include: the National Association of Manufacturers; the Society for Human Resource Management; the National Association of Home Builders; and the National Federation of Independent Business.

Thank you and I look forward to answering any questions you may have.

Ms. LOFGREN. Thank you very much, Congressman Johnson, for your testimony and your leadership.

Now we will turn to our final panelist, Congresswoman Giffords. It is a pleasure to have you here.

TESTIMONY OF THE HONORABLE GABRIELLE GIFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Ms. GIFFORDS. Good morning, Chairwoman Lofgren.

Good morning, Ranking Member King, and Chairman Conyers. It is an honor to be here testifying before your Committee today.

I believe the reason why I was selected is that I come from Tucson, Arizona, the Eighth Congressional District, where we have about a 114-mile part of the 2,000 U.S.-Mexico border.

To give you some context about how difficult illegal immigration is in my district, last year, the Tucson Sector of the Border Patrol apprehended 387,000 illegal immigrants in just 1 year. So, clearly, when you look at approximately 1,000 immigrants a day, we are shouldering the burden of this illegal immigration crisis.

And in addition to knowing a lot about border security, my constituents have a broad understanding of the immigration crisis as a whole. They know, and I agree, that an enforcement-only approach to immigration will not fix our problem. This Congress has to improve our visa programs; upgrade and expand the Federal Government's capacity to verify documents; give employers the tools they need to check the citizenship of employees; and take a thoughtful look at our economy and the real workforce need that our businesses have.

As you know, the Arizona legislature in January chose to take action in response to the Federal Government's inaction to fix our system, and we became the first State to mandate that all Arizonans use the E-Verify system.

As the first State, I believe that the Arizona experience is of great interest here in Washington. I believe that the Arizona experience should inform the ongoing debate about employment verification and whether the current E-Verify program administered through DHS should be extended and/or mandated Nationwide.

Some of the businesses that have signed up have reported a variety of challenges and problems using E-Verify. They are finding it complicated, unreliable, and burdensome. They are having great difficulty getting answers from DHS to their problems about the system.

I have heard from employers, employees, and privacy rights advocates who are very vocal that nationally mandating E-Verify as it is would be potentially disastrous for our Nation. They are all experiencing the downfalls of using an inaccurate database with inadequate privacy protections.

Between October of 2006 and March 2007, roughly 3,000 foreign-born U.S. citizens were initially flagged as not work-authorized. These errors have specifically impacted Arizona workers who have their ability to work wrongfully impacted. The experience of Arizona employers and employees makes it clear that we can do better and that action is needed.

And Madam Chairman, I would like to enter into the record a document of the Immigration Policy Center about E-Verify for Arizona, because I think it would be important for Members to look at.

Ms. LOFGREN. Without objection, that will be made a part of the record.

[The information referred to follows:]

IMMIGRATION POLICY CENTER

...providing factual information about immigration and immigrants in America

E-Verify and Arizona: Early Experiences for Employers, Employees, and the Economy Portend a Rough Road Ahead

On July 7, 2007, Arizona passed the Legal Arizona Workers Act, which requires all employers in the state to enroll in and use the E-Verify system to verify the employment eligibility of all new hires. The law also creates penalties—including suspension or revocation of business licenses—for employers who "knowingly" or "intentionally" hire unauthorized immigrant workers. The law went into effect on January 1, 2008.

Some have claimed that E-Verify is working well in Arizona—that employers are signing up for the program and not experiencing any problems with the system. However, multiple reports point to the opposite conclusion. E-Verify is not yet fully implemented in Arizona and already there are significant signs of trouble. Before other state and federal lawmakers jump on the bandwagon and blithely seek expansion of E-Verify, they should heed the warning signs that the program is not ready for roll-out. Read below about the experiences of Arizona's employers and employees with E-Verify, and early signals of its impact on the state's economy.

Arizona Employers: Fewer than 15 Percent Have Taken the Plunge and Signed Up

- Roughly 20,000 of Arizona's 150,000 employers have signed up for E-Verify—less than 15 percent of the state's employers. Given the small number, it's not yet possible to make definitive statements about the impact that E-Verify will have on employers in general, especially when those who have already signed up are likely to be the most eager and willing to comply. More problems may occur as more recalcitrant employers begin to use the system.

U.S. Citizens: Learning the Hard Way that Database Errors Can Stop Their Employment

- The Social Security Administration (SSA) database that E-Verify taps into has a 4.1 percent error rate, and approximately 10 percent of naturalized U.S. citizens are initially told they are not authorized to work.[1] Between October 2006 and March 2007, roughly 3,200 foreign-born U.S. citizens were initially flagged as not-work-authorized.[2] As a result of these problems with E-Verify, Arizona workers—including U.S. citizens—have been erroneously flagged as non-work-authorized.[3]
- Ken Nagel, a restaurant owner in Phoenix, recently hired one of his daughters—a *native-born U.S. citizen*—to work in his restaurant. When he put her information through E-Verify, he received a "tentative nonconfirmation," meaning the system could not verify that she was authorized to work in the United States.[4]

Innocent Arizona Workers: Wrestling a Government Agency to Correct Database Errors

- Workers who receive tentative nonconfirmations and must go to government agencies to clear their records in Arizona have limited opportunities to do so because of the locations

and business hours of government offices. Workers must often take time off from work to resolve database problems, and sometimes must go repeatedly to a government agency in order to bring all of the necessary documents.

- There are 16 SSA field offices located throughout Arizona, which are open between the hours of 9 a.m. and 4 p.m., Monday through Friday.
- There is only one U.S. Citizenship and Immigration Services office in Arizona—in Tucson. Walk-ins are not allowed and appointments can only be made online.

Arizona Small Businesses: E-Verify is Expensive and Not Easy

- Small businesses have reported that using E-Verify is difficult, particularly businesses that do not have dedicated Human Resources staff or internet access. Enrolling in the system, taking the tutorial, and passing the necessary test takes precious time and may require costly computer upgrades.[5]
- Out-of-state businesses are concerned about how the new state law will interact with federal laws that regulate commerce. Out-of-state employers who may have branches or even a single employee in Arizona are subject to competing laws, and a single mistake could lead to tough penalties.

Arizona Economy: E-Verify Lands a Punch in the Purse

- One national restaurant chain spent $100,000 planning to open a restaurant in Arizona, but decided not to invest the additional $4 million needed to do so because of problems associated with the new law.[6]
- An Arizona Chamber of Commerce spokesperson believes the new law has had a "significant impact" and that workers are leaving the state: "I can't emphasize enough that the labor shortage has been severe and continues to be severe."[7]
- According to an Arizona Farm Bureau spokesperson, growers cannot find enough workers. In Yuma, where agricultural workers earn up to $19 an hour, growers can't find enough workers to harvest the lettuce crop, some farmers have stopped planting labor-intensive vegetables, and other farmers are considering getting out of the agriculture business. "If the agricultural industry can't get laborers, the land will be converted to other uses and we'll put our food production at the mercy of other countries."[8]

Frustrated Arizona Lawmakers: Oops, We Need More Workers

- Some have begun to see how the new E-Verify law has been harmful to the state's economy, which may lose as much as $10 billion. With its low unemployment rate, there are not enough workers in Arizona to take the jobs abandoned by immigrant workers. The agricultural, tourism, and construction industries have been particularly hard hit. In an astounding turnaround, some Arizona policymakers -- including the leading proponent of the E-Verify law -- want the immigrant workers back, and have now proposed a new guestworker program.

May 2008

Endnotes

[1] Westat, *Findings of the Web Basic Pilot Evaluation* (Rockville, MD: Westat, September 2007), http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf.
[2] Nicholas Riccardi, "Arizona slams Door on Illegal Immigrants: Some Citizens Have Been Bruised, Too, as the State Cracks Down," *Los Angeles Times*, April 5, 2008.
[3] Becky Pallack, "Small Businesses Bump into E-Verify Obstacles," *Arizona Daily Star*, April 8, 2008.
[4] Ronald J. Hansen, "Economy Serves Up Unhappy Meal: Worst Lull in 2 Decades is Hurting Valley Restaurateurs," *Arizona Republic*, March 3, 2008.
[5] Becky Pallack, "Small Businesses Bump into E-Verify Obstacles," *Arizona Daily Star*, April 8, 2008.
[6] *INQUIRER.net*, "U.S. Pays the Price for Absence of National Immigration Law," April 10, 2008, http://globalnation.inquirer.net/news/news/view_article.php?article_id=129490.
[7] Terry Greene Sterling, "Crossing the Line? The Economic Price of Arizona's Crackdown on Illegal Immigration," *Newsweek*, April 15, 2008, http://www.newsweek.com/id/132231/.
[8] Ibid.

Ms. GIFFORDS. Thank you.

Having reflected on what is happening in my State of Arizona and the challenges that we have seen, I think that we need a system that incorporates three primary elements: one, explicit preemption of State laws such as the one in Arizona so that the business community has an even playing field across the country; two, real privacy protections for U.S. citizens and for legal workers; and, three, liability protections for employers who play by the rules.

That is the reason why I have joined with Ranking Member Johnson with H.R. 5515, the New Employee Verification Act, or NEVA, because it provides a simplified, effective, and balanced alternative to the E-Verify system. NEVA is carefully crafted to ensure a legal workforce, safeguard workers' identities, and protect Social Security.

It is also realistic, Madam Chair.

Under NEVA, U.S. Citizens would be verified through the Social Security database and not funneled through DHS, as currently occurs under E-Verify. Only noncitizens would be verified through DHS.

This bill protects the Social Security Administration's privacy mission and trust funds by authorizing employment verification only through funds appropriated in advance. And as we testified before in the Social Security Subcommittee, that is critical. By making Social Security the agency with primary responsibility, it acknowledges that the Social Security database is crucial to a functioning system. We do not take the risk that funds intended for Social Security get bottlenecked in another agency.

NEVA fights identity theft by allowing the use of private-sector contractors certified by the Federal Government to authenticate the identity of employees. And this is a defining characteristic of the legislation that makes it functional and unique when compared to other employment verification legislation.

NEVA has been widely well received in Arizona. The Chamber and CEO/president of the Tucson Metropolitan Chamber, the Sierra Vista Area Chamber of Commerce, the Marana Chamber of Commerce, all the business chambers that actually have to deal currently with the E-verify system are turning to NEVA as a very good alternative.

As this Subcommittee considers the current employee verification proposals, please take the Arizona experience to heart. Southern Arizonans, just like all Americans, expect their elected officials to find solid sensible solutions to the greatest challenges of our day, and we know that is our broken immigration system. The fact that this system has become polarized, radioactive, divisive, and ugly is evidence that our Congress has to act responsibility.

Only by developing a realistic long-term solution for undocumented populations living in our United States with a targeted, effective enforcement of the realistic laws will we restore legality and legitimacy to our immigration system.

Madam Chair, just in closing, if Congress does nothing or simply extends the E-Verify system without much needed reform, such as State preemption or employee protections, we will have failed.

Thank you for this opportunity, allowing me to testify before all of you today.

[The prepared statement of Ms. Giffords follows:]

PREPARED STATEMENT OF THE HONORABLE GABRIELLE GIFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Chairwoman Lofgren, Ranking Member King, and members of this Subcommittee, thank you for allowing me to testify today. It is an honor to be given this opportunity to talk an issue of deep concern to Southern Arizona—employee verification.

I am from Tucson, a community that is directly impacted by the effects of illegal immigration. My district includes about a 114 mile section of the 2,000 mile U.S.-Mexico border. It includes the "Tucson Sector," which is the most heavily trafficked sector of the border in the country. To give you some context, last year, 387 thousand illegal immigrants were apprehended in Arizona. That's approximately 1,000 illegal immigrants every single day.

In addition to knowing a lot about border security, my constituents have a broad understanding of the immigration crisis as a whole. They know, and I agree, that an enforcement-only approach will not fix the problem. We must improve our visa programs, upgrade and expand the federal government's capacity to verify documents, give employers the tools they need to check the citizenship of employees, and take a thoughtful look at our economy and workforce needs.

As you know, the Arizona legislature has chosen to take action in response to the federal government's failure to fix the system. As the members of this Committee know, Arizona was the first state to mandate that all Arizonan employers use of E-Verify.

As the first state, our experience in Arizona is of great interest here in Washington, D.C. I believe the Arizona experience should inform the on-going debate about employment verification and whether the current E-Verify program administered through the Department of Homeland Security should be extended and/or mandated nationwide.

Some of the businesses that have signed up have reported a variety of challenges with using E-Verify. They are finding it complicated, unreliable, and burdensome. They are also having difficulty getting answers from DHS to their questions about the system.

I have heard from employers, employees and civil rights advocates who are very vocal that nationally mandating E-Verify AS-IS for ALL employees would be *disastrous.*

They are all experiencing the downfalls of using an inaccurate database with inadequate privacy protections. Between October 2006 and March 2007, roughly 3,000 foreign-born U.S. citizens were initially flagged as not-work-authorized. These errors have specifically impacted Arizona workers who have had their ability to work wrongly impacted.

The experience of Arizona employers and employees makes it clear that we can do better and that action is needed.

Having reflected on what is happening in Arizona and the challenges we have seen, I think we need a system that includes these three key elements:

1. Explicitly pre-emption of state laws such as the one in Arizona;
2. Privacy protections for U.S. citizens and legal workers;
3. Liability protections for employers who play by the rules; and

That is why I am a cosponsor of legislation introduced by Ranking Member Sam Johnson. H.R. 5515, the New Employee Verification Act, or NEVA provides a simplified, effective and balanced alternative to E-Verify.

NEVA is carefully crafted to ensure a legal workforce, safeguard workers' identities, and protect social security. It is also realistic.

Under NEVA, U.S. citizens would be verified through the Social Security database and not funneled through DHS as currently occurs under E-Verify. Only non-citizens would be verified through DHS.

This bill protects the Social Security Administration's primary mission and trust funds by authorizing employment verification only through funds appropriated in advance. By making SSA the agency with primary responsibility, it acknowledges that the social security database is crucial to a functioning system. We do not take the risk that funds intended for SSA get bottle-necked in another agency.

NEVA also fights identity theft by allowing the use of private sector contractors, certified by the federal government, to authenticate the identity of employees. This is a defining characteristic of this legislation that makes it functional and unique compared to other employment verification legislation.

NEVA has been received well-received in Arizona, largely because it takes a responsible approach. For example, the following local business organizations and

CEO's have endorsed NEVA: the Tucson Metropolitan Chamber of Commerce, the Greater Sierra Vista Area Chamber of Commerce, the Marana Chamber of Commerce, Stanley P. Abrams, President of The Stanley Group, Mark Clark, President & CEO of CODAC Behavioral Health Services, Inc., and Dr. Peter Likins, Chair of the Southern Arizona Town Hall, and Retired President of the University of Arizona.

As this Subcommittee considers the current employee verification proposals, please take the Arizona experience and lessons to heart.

Southern Arizonans, like most Americans, expect their elected officials to tackle not just the easy issues—but the tough ones. The fact that immigration has become polarized, radioactive, divisive, and ugly is evidence, *in fact,* that Congress **must** responsibly confront it.

Our broken immigration system is simply not an insurmountable problem. However, if Congress does nothing or simply extends E-Verify without much-needed reform, we will have failed.

Only through a realistic, long-term solution for the undocumented population living in the U.S., and targeted, effective enforcement of realistic laws will we restore legality and legitimacy to our immigration system.

Thank you for the opportunity to testify today and for considering NEVA as an important alternative to the current and burdensome employee verification system.

Ms. LOFGREN. Thank you very much, Congresswoman Giffords.

And thanks to all of you for your testimony.

At this time, we will move to questions, if there are any, for the Members.

I would turn first to Chairman Conyers for his questions.

Chairman CONYERS. Thank you, Madam Chairman.

Well, Mr. Shuler, when the gentle lady takes a shot at your bill, I ought to let you say something in your own defense before the firing squad opens up on you. What would your last words be? We'll remember them in your memoriam.

Mr. SHULER. Absolutely.

It is a proven system that has been in place for quite some time. And to put a new system into place that hasn't been vetted and gone through the process—and as we have all stated, over the last 14, 16 years, the system has continued to upgrade its system. And saying that, why recreate, why spend millions and millions of dollars to create something that is already working effectively? And if you look at some of the people who have problems with it, it's the people who have been exploiting illegal immigrants for quite some time.

Chairman CONYERS. And we are not going to let him get away with the notion that they have got an effective Social Security system. They have got a 4 percent error rate that translates into 17 million errors. What about that?

Mr. SHULER. Every week in my office I have people who become eligible for Social Security, and we have the problems. And so fixing it earlier in life is the solution. And we have to make sure that we do have the funding in Social Security in order to fix some of those problems. And using E-Verify will help fix some of those problems before they come of age for Social Security.

Chairman CONYERS. Have you ever tried to call a Social Security office in your life?

Mr. SHULER. Yes, we have a back line now that we can actually get through that is working pretty well.

Chairman CONYERS. You do?

Mr. SHULER. I'll let you know what that is, yeah.

Chairman CONYERS. Please. I will see you immediately after the hearing. Lawyers can't even get through, much less poor citizen constituents.

Mr. SHULER. The error rate on E-Verify is actually 0.5 percent.

Chairman CONYERS. Well, Sam Johnson, we've been waiting to get you before this Committee for many years. What do you have to say?

Mr. JOHNSON. Well, I think the error rate is misstated.

But you know, the thing is, Social Security errors are caused by, in most cases, ladies getting married and forgetting to change their names. And, really, it is important that they fix that in the Social Security system for retirement purposes, and notwithstanding immigration. But I think that can happen regardless of what kind of system you have in place as soon as the people become aware of it.

Addressing the Social Security office problem, you know, the problem exists in a lot of veins, not just immigration. We are working that problem and trying to get more law judges in place so we can address that part of the problem, and it seems to be working. And you know, I spoke with you earlier about a hearing on those administrative law judges so we could get to the bottom of it maybe a little quicker. It is a real problem, and that is stuffing up the Social Security offices.

I'll bet we could get you a private number, too.

Ms. LOFGREN. I think all Members want one.

Chairman CONYERS. How can we protect Americans from—what happens when there is a wrongful denial of work authorization? You know, it averages out to 24,000 workers in my, in every district being denied because of false negatives.

And then we come to our friendly Department of Justice, the Civil Rights Division. They have got maybe 24 lawyers trying to check a workforce of 163 million people. Why doesn't your Judiciary Committee get on the ball and get a lot more lawyers here to handle this? They can't police that kind of discrimination.

And, finally, this is it for me. What about those exploitative employers that are going to misuse this system, submitting the names of union organizers, for example, or people who look foreign, whatever that might mean, which would be a tempting way to mess up what would otherwise be a good system?

Mr. JOHNSON. Well, there is an appeals process in Social Security that works far better than the one that you are talking about in Justice. And I feel like that we need to address the Social Security part of the equation so that it is safe and secure for eternity.

You know, we do have a problem with that fund. And, right now, the agreement with Homeland Security was to pay Social Security for the first 2 years, and they haven't yet done that. I think funding is terribly important, and it needs to be focused on getting Social Security funds so they can make it work right.

Ms. GIFFORDS. Mr. Chairman, the database issues have the greatest problem with naturalized U.S. citizens, and there is a problem of about 10 percent that is being reported; people that are being told that they are not authorized to work, but they are legally authorized to work. According to the Census Bureau, in Arizona, there is about 274,000 naturalized citizens in my State,

which of course means that's about 27,000 U.S. citizens that are initially flagged just, again, in the home State of Arizona that are not allowed to work.

What we are seeing in Arizona is that this law, although it is framed as a purely employment-driven verification system, is now carrying into all virtually other aspects of life. Our media outlets are reporting increased racial profiling, discrimination against lawfully present immigrants. So this E-Verify system has taken on a life of its own, and that is why I have joined with Congressman Johnson for an alternative that goes with a database that we currently have that currently works, that would not subject U.S. citizens to the Department of Homeland Security. It would be faster. It would be more reliable, and it would be financially accountable as well.

Mr. JOHNSON. And the I-9 system which we now use would be junked. And you know, people forget to check boxes, so they are stalled out at the start.

Ms. GIFFORDS. And one other thing, too, Mr. Chairman.

The E-Verify system requires everyone apply through the Internet. Well, in my district, rural Arizona, there are a lot of people that don't have Internet access, that don't have the ability to do that, so I really believe——

Ms. LOFGREN. We hope to change that.

Ms. GIFFORDS. Yes, and we are getting there. But currently, I mean, this is the reality of the employment climate in our State.

Ms. LOFGREN. Mr. Conyers' time has expired, but I see Mr. Shuler wants to add something, and then we'll turn to the Ranking Member.

Mr. SHULER. I just want to add that the error rate in the database is much different than the error rate on E-Verify. It is 0.5 percent on E-Verify, not 5 percent or 4 percent or some other number. It is 0.5 percent.

Ms. LOFGREN. We turn now to the Ranking Member, Mr. King, for his questions.

Mr. KING. Thank you, Madam Chairman.

And I do want to thank the witnesses here.

First, I would just go down through a list of things that came across my mind. The question of new hires versus current employees, and I do believe that it is inappropriate to ask an employer to comply with a law and discourage the hiring of illegals if you don't allow them to use E-Verify on current employees.

The only question back then was, did we have the ability with the database to process that many job applicants or that many workers? I think today it is clear that database will handle, as the testimony from Mr. Shuler said, 240,000 within that period of time, multiple times our workforce. So that I think is answered here today in the testimony, and I want to point that out.

The second thing, the question the Chairman of the full Committee asked at the beginning, would it cost $17 billion in lost tax revenue? I would submit that there are $60 billion in wages that are transferred into places outside the United States from workers in the United States, and that $60 billion that goes out of the country, a significant portion of it and no one really knows how much, is wages from illegal workers. So if it is only half, then we've got

$30 billion to work with there. If they are right on the $17 billion, we are going to have a net savings regardless that will hold this money in the United States, and it will go to legal workers. So I want to make that point.

Another point is that we have seem to have two choices here. One of them is to use E-Verify to verify new hires; and the other one is to make it mandatory under Mr. Johnson's bill to use new hires. I'd submit we ought to let it be voluntary, and then let the IRS decide whether you get to deduct your wages and benefits or not if you are hiring illegals and give a safe harbor for the utilization of E-Verify. That is other the alternative. Let it be voluntary, and then let the incentive be in place when the IRS steps in.

That's a number of things that come across my mind, but it seems to me, as I listen to this testimony, that a lot of us are talking about the same thing. And I am looking at a pie chart here that shows 84 percent of E-Verify goes off to the Social Security database and another 9 percent goes to USCIS's database and DHS within that.

I would just ask the question of Representative Giffords, what is the distinction between an E-Verify query of Social Security Administration and, under the NEVA bill, a query that would go to the same database? Why do we care? If we are cleaning up the Social Security database by using E-Verify, as Mr. Shuler testified, why wouldn't that be a good way to get that done early?

Ms. GIFFORDS. Ranking Member King, we have the bill's sponsor here to answer any more detailed questions. But, there is a fundamental difference for U.S. citizens being driven through a security-type database, Department of Homeland Security.

Our system, the new Employee Verification Act, would require U.S. citizens to go through the current existing database that 95 percent of all employers use, which are the States' deadbeat dad database. The system is already in effect. It works. I think it is preferable to use that database for U.S. citizens rather than requiring all U.S. Citizens to go through the Department of Homeland Security.

Mr. KING. Yeah, but I understand we are going through the Social Security database regardless of whether it is E-Verify or whether it is under NEVA.

Is that correct, Mr. Johnson?

Mr. JOHNSON. Right.

Mr. KING. And I thank you for that.

And I will make another quick point. And that is that, Social Security, I have had some frustration with them. There is no match. Letters don't seem to come for people who are sending off, hiring people that have Social Security numbers that aren't valid. When they do, they seem to be in the most egregious cases. We have at least 11,000 people in America that are working for Government using no-match Social Security numbers.

I want to get the Department of Homeland Security working together with the IRS, working together with the Social Security Administration. Can we get our agencies to work together, to team up like a company would instead of the right hand doesn't know what the left hand is doing, Mr. Johnson.

Mr. JOHNSON. I would hope so, yes.

Could I ask to be excused for another meeting that I really——

Ms. LOFGREN. Of course, Mr. Johnson.

Mr. KING. It might just be the note that my time has expired, Madam Chairman.

And I especially thank all the witnesses here today, and my good friends on the panel——

Mr. JOHNSON. I have an able representative right here.

Ms. LOFGREN. We understand, and we appreciate the time you were able to spend with us this morning.

The gentleman's time has expired.

Mr. KING. Thank you, Madam Chair, I yield back——

Ms. LOFGREN. We will turn now to——

Ms. GIFFORDS. Madam Chair, can I clarify something for the record?

Ms. LOFGREN. Yes.

Ms. GIFFORDS. The NEVA legislation would have U.S. Citizens go through the Social Security database first. Now, if they are flagged, at that point, they would kick to DHS. It wouldn't be that everyone would start with the DHS database.

Ms. LOFGREN. Thank you for that clarification.

We will turn now to our colleague Luis Gutierrez for his questions.

Mr. GUTIERREZ. Thank you very much.

Well, let me say, so we are going to use the Social Security database. And the Social Security database, as referenced by Chairman Conyers, has a 4.1 percent error rate. Now, DHS—and only DHS says this about themselves, that they have virtually none.

So if I understand this right—and since our bill is very similar, the STRIVE Act is very similar, in that we want verify people through Social Security, one says they don't have any error rate. I don't know of a governmental institution that doesn't have an error rate. But we are soon to hear from Homeland Security that they virtually have no error rate in all of their files.

Now, it takes them forever to verify a name to help someone become a permanent resident or citizen, including years to verify a simple name check with the FBI, but they have no error rate, and they can quickly tell us who all these employees are.

I am just amazed to hear somebody that we know who is lawfully in the United States, paying and petitioning the Government, cannot get their name checked for years, and yet they can get an employment check as quickly as 5 seconds. I just find that a little incongruent, one thing with the other.

But having said that, let's just suppose it's a 1 percent error rate—and a 4 percent. I just did some numbers here. I didn't have a calculator, so I could be a little wrong. If there are 63 million queries a year, and 4 percent of that, right—and currently we have 66,000 under the E-Verify. That is how many employers. And we are going to go to 7 million employers. So we are going to jump from one thing to the other in 4 years. Then they want us to look at this and to say that each of us, if I did this right—I missed a piece of paper here—so 4 million, 2.8, so that is 6.8 million people.

If you took the total number, there are about 165 million employees in the United States, and at 4 percent, 4.1—and I am adding another percent for the people who don't make mistakes, only going

to give them a 1 percent error rate—that means, as we go through the next 4 years, nearly 7 million people will have to visit, call, visit their Congressman to fix the 4 percent error rate, which Social Security—we asked Social Security, what is your error rate? They said 4.1.

I mean, think about that one moment. Wouldn't it be wiser to phase this in and take infrastructure 1 year and then verify it, come back, meet with Chairwoman Lofgren, and come back and have the Chairwoman have the information. Don't you think it would be better to phase it in?

Mr. SHULER. And the SAVE Act actually does that. And let me repeat my opening statement. In the first 2 months of this year, 7.8 million people were newly hired at a new location, new job. One million of those went through E-Verify. And they went through a testing overload, and they were able to handle 240 million queries per year.

So it is a phased-in program over 4 years, the first year being Government employees, which all of our staffers, all of us on the Hill, all of our Government employees——

Mr. GUTIERREZ. I understand that. But just so that we understand, I know you do it in 4 years, but shouldn't we have accuracy? Shouldn't we come back and make sure that—I am just trying to share with you. Couldn't we have accuracy?

And that is, we roll it out to certain industries. We all know we are going to get to everybody, so we take on new hires, we bring them into the system. We come back and we verify that these industries and these employers have an accuracy level of—and then we roll it out to another piece of industry.

I am with you, Shuler, on much of this. It is just that if you roll it out and you jam it, there is going to be a lot of people. It is now, in my office alone, after immigration, you know what we have got? Social Security. People are waiting years, American citizens are waiting years, for when they apply for Social Security benefits and disability benefits, for someone to make the adjustment, years. And now we are going to throw on the Social Security system 165 million people who are going to be queried over the next 4 years. That is a mammoth undertaking.

And, secondly, let me just share, because we can work—if you look at the STRIVE Act, we talk about a biometric, readable Social Security card that is tamper-proof. So we are into making sure that our system is safe. It is just how we do it and how we roll it out and whether or not we shouldn't do it a la Sensenbrenner, which you do, which is enforcement only, or do we do it in a comprehensive manner. That is really the debate we are going to have.

And I look forward to working with my friend, Mr. Shuler, and my good friend, Congresswoman Giffords.

Ms. LOFGREN. The gentleman's time has expired. I think Representative Giffords wants to say just a quick thing before we go to Mr. Gallegly.

Ms. GIFFORDS. Thank you, Madam Chair.

I just wanted to let you know that our legislation, the NEVA bill, requires that Social Security and DHS certifies the accuracy of the system in advance of the full implementation. It also requires that

the GAO evaluate the accuracy, the efficiency, and the impact of electronic verification before it is rolled out.

So that is incorporated into our bill, because we are concerned as well. I mean, we don't talk a lot about it, but in Arizona we don't have even the fuller number of employers that are on the system yet. So rolling this out on a large scale could be devastating

Ms. LOFGREN. Thank you.

We turn now to Mr. Gallegly for his questions.

Mr. GALLEGLY. Thank you, Madam Chairman.

I would like to take a step back just for a second, if we can. I know we are here on E-Verify, but I think we need to take a step back and really look at the magnitude of what the problem really is.

Currently, we have all been reading the statistics in the last few days about what the unemployment rate is in the United States. We are really concerned. It is up to 5.5 percent. That translates, according to my math, somewhere around plus or minus 8 million people that are unemployed in the United States. Are we pretty much in agreement on that?

Ms. Giffords, are you aware of how many people are working in the United States today with an invalid Social Security number?

Ms. GIFFORDS. Mr. Gallegly, I am not. I am not sure, no.

Mr. GALLEGLY. Well, I am not either, but I know that 3 years ago it probably wasn't as bad then as it is today. That is a pretty safe guess, I think. Three years ago, it was 10.5 million people.

Now, if we figure, from a simple math situation, if there is a 5 percent error in the way Social Security deals with their numbers, if you take 5 percent off of the 10.5 million, we could say probably safely that there are 10 million people working in this country with an invalid Social Security number.

And that is what we are dealing with here, is people—the purpose of E-Verify or your program is to see that the people that are working in this country have a legal right to be working in this country.

So, I mean, with simple math, I would say with the people that are illegally working in this country, we have 2 million people working in this country above what it would take to wipe out all of the unemployment. Maybe that is not a perfect analogy, but it is a very serious issue when you have over 10 million people working in a country that have no right to work here.

I would like to hear your response to that.

Ms. GIFFORDS. Mr. Gallegly, you weren't here for my opening comments——

Mr. GALLEGLY. I apologize for that.

Ms. GIFFORDS [continuing]. When I talked about southern Arizona being the most heavily impacted district. The Board Patrol Tucson sector apprehended 388,000 people last year.

Mr. GALLEGLY. Wasn't enough.

Ms. GIFFORDS. My district is the most heavily trafficked area along the 2,000 miles. So we understand that in southern Arizona. We deal directly with the impacts, through crime, through violence, through homicides. We are the most heavily trafficked corridor in terms of marijuana. So we understand it in southern Arizona.

But southern Arizona is also a microcosm for the country in terms our economy. My district has a very heavy agricultural component, over 9,000 square miles. Willcox, Benson, parts of that State have a real demand when it comes to finding people that are willing to go and work in the fields and pull in crops. Then we have a construction industry that is a little depressed right now, but Arizona is the second fastest growing in the State—booming construction industry. I used to run my family's tire and automotive company. I know how difficult it is to find a tire tech that wants to work for $7 or $8 in 115-degree heat.

So we have some real employment challenges of getting our folks to want to work. Kids these days don't have that desire to get out there, like we used to do, frankly.

We have a microcosm of a lot of things going on——

Mr. GALLEGLY. Reclaiming my time, I really respect and appreciate what the gentlelady is saying, but I might remind her that I have one of the largest agricultural districts in the United States. I have probably, on a dollar basis, certainly in the top four or five in the United States, as far as dollar volume. We rotate three crops a year in California, row crops. Strawberry capital of the world—Calavo, Sunkist. I can go on and on. So I am pretty familiar with how the agricultural business works.

But I am also very familiar with how the rule of law should work, and that is what we are dealing with here. If we are going to talk about needs, unmet domestic needs for labor, that is a separate issue, and that should be addressed accordingly. If we have an unmet domestic need, that is what our immigration policies have been about since the beginning of time, certainly since the turn of the previous century. So let's not mix apples and oranges.

Mr. Shuler, I appreciate all the hard work that you have put into this issue. It is my understanding that we have currently over 64,000 employers participating in E-Verify. Do you believe the system can handle the additional capacity now, the way we are set up?

Mr. SHULER. Well, the Secretary obviously has come out to say that the system is prepared for a national rollout. We are seeing that from several States, Arizona being one, Mississippi actually implementing that. Legislation that just went into the State of North Carolina was just dropped. I think we are going to continue to see more and more States taking a front-line approach, and we have to make sure that the system is prepared.

We are seeing that it is prepared, and we will hear testimony later in this hearing that talks about how prepared that they are. This has been a system that has been vetted well over a decade. And the error rate has certainly decreased. Being able to query the data quicker is obviously being invented. And the number of visits that will have to go to the Social Security Administration because of other databases that they are actually going to be pulling the information from is going to be less.

So I feel very strong about it. I have spent a lot of time, as you and others have, of looking at how E-Verify has really, from its conception to now, how strong and accurate the system really is.

Mr. GALLEGLY. Thank you for your leadership.

I yield back.

Ms. LOFGREN. Thank you. The gentleman yields back.

I recognize now the gentlelady from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you, Madam Chair.

Let me say to the witnesses, first, I appreciate your presence here today. And knowing the mindset of at least the two remaining Members on the panel, I agree that we have to do something as it relates to immigration reform, and I know that enforcement is very important.

I have spoken to the distinguished gentleman from North Carolina. He knows of my interest in ensuring that those who are here undocumented have the ability, who are now working, paying taxes, to pay more money, either by way of fines, to legalize their status or to access legalization—that is a better terminology—but also to pay for benefits, whether it the utilization of the public hospital system, the utilization of an education system, the utilization of the highways and byways that we use.

And I can assure you my constituents in Texas want to do that. They want to be in a system of legalization that allows them to become additionally contributing members of this society.

So they always say, expose your cards. And my cards are that I believe in the comprehensive approach—albeit I would like to call upon another name, maybe the "Americanization" approach—for people who are here, who want to be part.

And I must say to the Chairwoman, let me thank her for her consistent journey toward that, and the Chairman of the full Committee, as we worked together in the minority reaching the same point.

But I do want to applaud you for finding some aspect that needs to be addressed, and I would like to approach it in that context.

Before I do so, let me just quickly say, in the verification effort, the Westat report of 2007 made a number of points that I think is important to put on the record: that, in this E-verification, we have had employers who are not trained employees. We have had employers who have used the process for pre-assessing or pre-consideration of employees, so they have this used this for the—they have used this, if you will, for the idea of screening their employees.

We have 22 percent of employees reported that they restricted work assignments while employers were contesting their particular predicament. And then there are employers didn't fire these employees, and there were also those who didn't explain to the employees.

So we know we have some weaknesses in this process.

Congresswoman Giffords, what I like about what you are proposing is the idea of separating U.S. citizens from those who are immigrants. They go under DHS, is that correct?

Ms. GIFFORDS. That is correct.

Ms. JACKSON LEE. And citizens have another process.

I heard my colleagues' questions. So let me ask you, what are the privacy protections that we would have in the system that you are purporting in your legislation?

Ms. GIFFORDS. Well, there are quite a few privacy protections, and the legislation is quite a bit different, of course, from the E-Verify system.

First of all, it creates an alternate voluntary secure electronic verification system to identify employees' identity and eligibility through a lock, basically, once it is verified.

It also establishes a network of private-sector, Government-certified companies to authenticate new employees' identities utilizing existing background check and document-screening tools.

Ms. JACKSON LEE. So this is out sourcing, if I might? What protections in terms of those outsourced companies, what kind of vetting would they go through? And let me recall, of course, the loss of records by the Veterans Administration and others.

Ms. GIFFORDS. They would be certified through a process, as well, so that these firms, if the employer chooses to go through them, would go through a certification.

Now, in follow-up to Congressman Gutierrez's, comments, there also would be an ability of a use of a biometric identifier if employers chose to present that information and go that route. But there is more protection under Social Security. There is a better ensurement under the workforce. Plus, it fundamentally shifts where U.S. citizens, where our databases should be held.

Ms. JACKSON LEE. And would you support, if I might, with this system, working a comprehensive approach or an Americanization approach, however we want to address it, to have those who are here find a vehicle, a pathway into legalization status?

Ms. GIFFORDS. I am not sure I understand your question. Could you repeat it?

Ms. JACKSON LEE. If this was to go forward, would you also see a complement to that a comprehensive approach to immigration?

Ms. GIFFORDS. Congresswoman Jackson Lee, I was a cosponsor of the STRIVE Act because I believe that the enforcement portion of illegal immigration is critical. I talked about the impacts illegal immigration has to southern Arizona. But we need to fix the system as a whole.

And I am not happy that our Senate and this Congress has not moved forward faster. I know it is complicated. And I want to congratulate and compliment Chairwoman Lofgren for moving as much as we possibly can. But, yes, we need to have an overall fix, which requires a lot of different aspects.

The illegal immigration system that we have, our system for immigration is broken in this country. But I believe that this portion, this small portion for employee verification is much better than we currently have in Arizona.

Ms. JACKSON LEE. Well, let me congratulate both of you. And certainly I want to congratulate Mr. Shuler, who I think has done a very hard task. And we have had some legislation like that, Mr. Shuler, in the past, that even Democrats have supported. So let's find our way to a compromise, and we can work through these issues of enforcement and work with some of the issues that you have raised. And let me thank you very much.

And I yield back.

Ms. LOFGREN. The gentlelady's time is expired.

I recognize now Mr. Goodlatte for his 5 minutes.

Mr. GOODLATTE. Thank you, Madam Chairman.

I would like to thank both of our colleagues for their contribution today and ask them both if they would tell me if they think that—while I think we can acknowledge that the current system is not perfect, Mr. Shuler, do you believe that, in general, verification or E-Verify provides a useful tool for willing employers to identify whether employees are legal or illegal?

Mr. SHULER. Yes, it does. It goes through the screening process. And also, to kind of follow up on Ms. Jackson Lee, it is not to be used for a prescreening process. You hire the person, and then you fill out the appropriate forms, whether it be online or call in and go through the E-Verify process. So, in doing that, it will actually—it is you are qualifying the person based on their skills, and then you follow that up with the E-Verify portion of it.

And, in saying that, we are actually making sure everyone is actually on a level playing ground

Mr. GOODLATTE. Thank you.

Ms. Giffords?

Ms. GIFFORDS. Congressman Goodlatte, Arizona—and I don't think you were here for my initial testimony—became the first State to roll out a mandatory requirement for employers to use E-Verify. We have heard from our business community in not just southern Arizona but around the State—I had over a dozen Chambers of Commerce from the State of Arizona here last month to come and present their information—that it has been burdensome and unreliable and very difficult to maneuver through with their employees. A lot of documentation to talk about that.

So I am urging Congress, before we move forward with a national requirement to use the E-Verify system, that we look at Arizona's example. And there are some real issues.

I have cosponsored legislation with Congressman Sam Johnson as an alternative to the E-Verify system, which would instead require U.S. citizens to use the Social Security database, the deadbeat database that 95 percent of all employers are currently using. Now, foreign-born workers would be required to go through the Department of Homeland Security, but—you know, there are significant differences with the bill. I think this approach is better

Mr. GOODLATTE. In that regard—because I certainly favor verification technologies. Whether we agree on a particular one to use or not, I think it is worthy of further exploration. But, in general, do you believe that the use of these verification technologies has resulted in more or less hiring of illegal aliens by those employers that use them?

Ms. GIFFORDS. Congressman Goodlatte, I support verification technology as well. I believe that all employers should be required to verify the status of the workforce. I think that is critical.

Mr. GOODLATTE. Do you think what has been done thus far has resulted in hiring fewer illegal aliens?

Ms. GIFFORDS. Congressman, it is difficult to say, because in Arizona, for example, we have about 15 percent of our employers that are using the E-Verify system. We really don't know yet, because we don't have everyone currently using the same system. For those employers that are choosing to use it, I believe that they are complying with the law.

Now, whether or not the documentation that is being provided to them is legal documentation, the I-9 form, I am not sure. Again, NEVA takes away the I-9 form and uses better forms of documentation, more solid, three forms, instead of what the E-Verify system allows. I think, again, that is a better system.

Mr. GOODLATTE. Let me ask Mr. Shuler. Obviously, our effort here is to protect U.S. workers and to make sure that employers have the workforce they need, but that they are workers that are legally in the United States.

Do you believe that if we made it mandatory, the net result would be fewer illegal aliens getting hired in violation of the law?

Mr. SHULER. Yes. I think so many companies now are using E-Verify. They are actually seeing that they are not having to be document experts. The I-9 form is a perfect example. When they look at the information, if a potential employee comes in, they don't have to be able to say, is this documentation that they are giving me, is this correct or is it false documentation?

So utilizing this, the people who are abiding by the laws, the rule of the law, if they are abiding by it, they are seeing that in a thousand employees, 942 get instantaneous verification; 53 of them are nonconfirmation mismatch; and 5 percent, only 5 of those thousand are actually contesting it.

So we are seeing that 53 out of a thousand are actually walking away because they are here illegally. So I think the proof is there with the companies who are abiding by the laws we presently have on the books.

Mr. GOODLATTE. Madam Chair, if I might just ask one more follow-up.

Ms. LOFGREN. Yes.

Mr. GOODLATTE. So, in other words, when we utilize some form of a verification system—and I appreciate both of your efforts to come up with one. But even the E-Verify system, which clearly has some error rate, there——

Mr. SHULER. —0.5.

Mr. GOODLATTE [continuing]. Is no doubt that some people are going to experience something there, that nonetheless gives the employer and our Government, our citizens, if you will, with regard to our policy of not hiring illegal aliens, a much more sophisticated additional check to the documents that are presented to the employer, which we know are often fraudulent and cannot be by themselves often verified on their face by the employer, who is not an expert in these documents.

So, taking it to the next step, even if it does raise question with a certain percentage of those who are checked, the remainder of the people are either cleared through or are found to be illegally in the country, and those that are in the question-mark area, well, we need to take further steps beyond that to figure that out. But at least we have significantly improved upon the process of simply relying upon the paper that is in front of the employer.

Mr. SHULER. Absolutely. And it takes the liability off of the employer once they verify and they download, they print out the copy of the E-Verify form. It will take the liability off the employer if there were to happen to be an error rate.

Mr. GOODLATTE. Thank you.

Ms. LOFGREN. The gentleman's time is expired.

We do have two panels after this panel, so I am going to recognize my colleague from California for 5 minutes.

Ms. WATERS. Thank you very much, Madam Chairman, again. Let me thank you for the tremendous work you are doing trying to deal with the serious problem that confronts this Congress, that we are having difficulty dealing with the comprehensive immigration reform. But you certainly are getting into all aspects of it through this Committee.

I am just wondering, there are several articles in today's newspapers about the FBI's inability to do the screening and that you have a lot of legal immigrants who are waiting for years to get their citizenship.

Now, as I understand it, if these legal immigrants are in the system and they cannot get, I guess, their visas and their citizenship, how are they treated in the E-Verify system? Mr. Shuler, do you know?

Mr. SHULER. Through DHS. If they are here legally, they are confirmed through DHS.

Ms. WATERS. What does that mean?

Mr. SHULER. When we go through E-Verify and put the information in, you either come back confirmed, basically, they have the right to work in the United States, or a mismatch, nonconfirmation. And in those processes, DHS, obviously, you will have the confirmation that they have the right to work in the United States.

Ms. WATERS. Well, I question all of these systems. I question the fact that the FBI cannot do the verifications. They are backed up. You don't have enough employees. The technology is outdated.

I question whether or not we really know whether or not there is a .5 percent error or a 4 percent error in the E-Verify system. How can you be so sure that it is only a .5 percent error in the E-Verify system? What makes you so confident?

Mr. SHULER. Well, first and foremost, it has been proven. It has been since 1996 when, actually, E-Verify was in place. It is not a system that we are having to rethink or revamp. It is actually a system that has been in process for quite some time. The statistics show—Westat, an independent audit of E-Verify, said it was a .5 percent error rate that would happen.

DHS also says there is not one person to have ever been denied employment, of their knowledge, based upon an error, to their knowledge, not one. And every one of our staffers, everyone that works on the Hill goes through E-Verify. That is all of the employees here. I don't know if they E-verified us as Members, but certainly the staff who works with us.

Ms. WATERS. I think that the inspector general would disagree with you because of the audit that it did. They are the ones who came up with the 4 percent error.

Mr. SHULER. Well, that is just on the Social Security database. You have to separate the Social Security database and the E-Verify system, because it goes through two systems, and it is in the process of going through multiple systems.

And, remember, E-Verify is similar to, like, Googling. When you type in the information, you get the verification back. Actually, in my office, I did myself, and it came back confirmed for eligibility

of employment. And it was less than 5 seconds. You know, it was very similar to Googling. You type in a search word or something, and it comes back in less than 1 second. That is how the confirmation came back in our office.

Ms. WATERS. Well, Congresswoman, if it is that good, what are you complaining about?

Ms. GIFFORDS. Congresswoman, we have numerous examples, including the GAO, including the inspector general, that said that the basic pilot of the E-Verify system has significant weaknesses, which includes reliance on these Government databases that have an unacceptably high rate of error.

My colleague, who I applaud for his hard work, continues to talk about how every Member here in the Congress is able to just fly through the system. Yet, we have one of our important staff members, Traci Hong, who is with us, who herself had an issue when she went to go apply through the system. There is an article here in the *USA Today* that talks specifically about the problem that Traci had.

Ms. LOFGREN. It is a good picture of her, too.

Mr. SHULER. But I think it was fixed. I think it was—obviously it was fixed, a couple of times, because of the name change.

Ms. GIFFORDS. And, Congresswoman, as well, if the E-Verify system relies on the Social Security database, you can't talk about one and not the other. You can't pull out part of the database. It's fuzzy math to say that the E-Verify only has a .5 percent reliability rate if it requires the use of a Social Security database.

I think what we all want is the same system. Again, what I am saying is that, you know, I have a case model in my State where the system is not working as well as it needs to be. And there are some philosophical differences with the system as well, as far as protections for U.S. citizens.

Ms. LOFGREN. The gentlelady's time has expired.

Ms. WATERS. If I may——

Ms. LOFGREN. Yes?

Ms. WATERS [continuing]. Thirty more seconds?

Ms. LOFGREN. Okay.

Ms. WATERS. Let me just say this, that there has been a lot of talk about the Social Security system here. And, of course, in our office we do get Social Security complaints, and we work on them. But I am a big supporter of the Social Security system, and I think it does a good job for the millions of Americans here. And I would just disagree with those who think that somehow the Social Security system is so flawed that it could not do a good job with this. So I just want to speak up for Social Security here today.

Ms. LOFGREN. All right. Well-noted.

We will turn now to Congressman Lungren for his 5 minutes.

Mr. LUNGREN. Thank you very much, Madam Chair.

As one of the key authors of the Simpson-Mazzoli bill in 1986, I am one of those responsible for making it illegal for employers to hire illegal aliens. We put that in as a balance to the other side of the bill, which was the legalization program, the most successful and largest-scale legalization program in the history of the country. The legalization part worked; the enforcement part never did.

I hope my friend, Mr. Shuler, understands what the term "slow-walking" means. We can postpone this, and we can find every problem, and we can understand that every pebble is a boulder, and we can make sure that we don't put something in until the system is perfect, and we will be right in the situation 20 years from now that we are in right now. We never enforced it. We never enforced it. If we wait until the Social Security system is perfect, we will never put this in.

There are imperfections involved, but, as the gentleman from Virginia suggested, the purpose of this is to make sure that American workers who are here legally, whether they are native-born or whether they have been legalized or whether they have a permanent resident alien card, have the right to get a job and the people here illegally do not have the right to get a job. I mean, that is what we are talking about. And we are talking about millions of jobs that are taken by those who are here illegally. So I hear, well, we might have a couple thousand people that will be, on initial check, turned down. But, as you suggest, on secondary check, almost all of those are taken care of. So I hope we put it in the proper context.

As I sit here, I am reminded this is the week of D-Day and the follow-on that my dad was involved in. And had Eisenhower faced D-Day the way we seem to be looking at this problem, we never would have left England, because we would have waited for absolutely perfect weather, we would have made sure everybody had their assignment, we would have made sure no one was dropped in the wrong place, we would have made sure that the Germans absolutely were asleep in every single situation, and we never would have succeeded.

Sometimes Government has to rise to the challenge. And it seems to me, Mr. Shuler, you suggested to us that the time is now for us to rise to the challenge. Would you have any problem in your proposal to have one element of the other bill put on—that is, that we move toward biometric as we move along with this system, biometric identification in the Social Security system?

Mr. SHULER. I couldn't agree more with you about moving along. One of the things that we have to do, it can't be a voluntary basis like the other piece of legislation. It has to be a mandatory. If not, no one is going to use the system, and we are going to be just like we are today 20 years from now.

Mr. LUNGREN. It has kind of been a voluntary system for the last 20 years.

Mr. SHULER. Yes, it has been that way, so why go through a voluntary system like the other piece of legislation? It has to be mandatory.

But we have that process. It is complete. The Secretary says it is ready for a national rollout. So I feel very comfortable, very confident in the system proceeding forward.

Mr. LUNGREN. And, Congresswoman Giffords, you suggested that there was an error rate or a decline of 3,000 per 100,000 or whatever it was. Is that correct? But that was on initial check, was it not?

Ms. GIFFORDS. Congressman, I am talking specifically about the problems we have with non-U.S. workers.

Mr. LUNGREN. No, no, but I am asking, you gave a figure of 3,000, but that was on the initial review, right?

Ms. GIFFORDS. Ten percent. But not authorized——

Mr. LUNGREN. I am just trying to ask you whether that is the initial check.

Ms. GIFFORDS. Yes, sir.

Mr. LUNGREN. So then what is the decline rate after the secondary check? If you are starting with 3,000, what do we go down to?

Ms. GIFFORDS. We don't know. It is actually closer to 30,000 for the State of Arizona. And we don't know because——

Mr. LUNGREN. Well, then what is it on the secondary?

Ms. GIFFORDS [continuing]. There are 8 days then to be able to follow up and clear up your paperwork. And if you don't resolve the error within 8 days, you may be fired. So whether or not that resolution happens, we don't know, because——

Mr. LUNGREN. So we don't know what that number is.

Ms. GIFFORDS. We don't know.

Mr. LUNGREN. Now, I was also interested in your comment about agriculture. I happen to believe that the case for agriculture is proven. I mean, we have had it in your State, in my State of California for well over 100 years. We rely heavily on foreign workers. We ought to have a program that allows them to come in legally when we establish that.

But then you went on to talk about it is tough to get people making $7, $8 an hour working in 115-degree temperature, working—I forget in what situation it was. Do you really think we can't get American workers to work in construction and these other areas?

Ms. GIFFORDS. Congressman, I was making a point about how challenging it is in southern Arizona for our——

Mr. LUNGREN. No, I understand, but my question is: Do you think we can't get American workers in construction or these other areas where you say it is difficult to get someone making $7 an hour working in 100-and-whatever-it-is-degree temperature?

Ms. GIFFORDS. Congressman, we have a lot of U.S. citizens that are not working that should be working, and the construction industry is a good place for them to be.

Mr. LUNGREN. I absolutely agree——

Ms. LOFGREN. The gentleman's time has expired, unless he wants an additional few minutes?

Mr. LUNGREN. Well, I would like the same indulgence others have had, if you don't mind.

Ms. LOFGREN. We will give you an additional minute.

Mr. LUNGREN. I mean, I have been here back and forth over a 30-year period of time, and one of things that has absolutely bedeviled me is how we don't do something affirmatively to increase job opportunities for our inner-city youth, for African American males between 18 and 30. And it just seems to me that the construction trade is a tremendous opportunity for them. And I have seen over the last 20 years the presence of illegal aliens in the construction industry grow and grow and grow and grow. And now I hear arguments that somehow we need to legalize people who came here illegally for the construction trade.

And while I am very sympathetic to the fact that American employers need to have an available workforce, and that ought to be proven, I just look at what has happened over the last 25 years and I have to throw up my hands and say, "Don't we have an obligation to take care of Americans first?"

Ms. GIFFORDS. Absolutely.

Mr. LUNGREN. As generous as we are to the rest of the world, and when we have high unemployment rates, particularly among African American males age 18 to 35, don't we have some obligation to think about them first before we start thinking about others?

And maybe that is an unconventional thought, but I think that ought to be wrapped into the process of why we want to have E-verification, and then move on perhaps to a biometric which allows us to bring those mistakes down. But we have to get started somewhere.

I thank both of you for testifying, and I thank the Chairwoman for her indulgence.

Ms. LOFGREN. The gentleman's time has expired.

I will just make a couple of statements, and I have just one question for Ms. Giffords.

I think this has been a useful morning. We do appreciate the time you have spent with us. I know how busy everyone's schedule is.

I think that, to some extent, really in defense of what we are doing, there was no examination of this subject by my predecessor as Chair. I think we had more hearings in the first month of my Chairmanship than we had in the prior Congress. But we do need to examine where we are going before we leap, it seems to me.

And I think there are some things that need to be pointed out. I mean, the fact that someone walks away from a mismatch doesn't mean that they are illegal. Right now this is a voluntary system, and if you are going to be a bus boy at one restaurant that is using E-Verify, and it is a problem, instead of going to the Social Security system five times, you can just be a bus boy at the restaurant next door that doesn't use E-Verify. So we can't make assumptions based on that. We need data. It is hard to get.

I would note also that we don't know exactly what the percentage of mistakes are in the database at Social Security. But if we have 5 percent unemployment and we have got, let's say, 4 percent of the U.S. citizens get wrong information, we could have unemployment go to 9 percent of American citizens, if some of the information we are being told is correct. So we want to make sure that we know what we are doing before we move forward.

And I will just mention, Ms. Giffords, as you did, that we have a Texas lawyer here sitting to my right, Traci Hong. She is a naturalized American citizen, has been an American citizen for several decades. And the House of Representatives uses E-Verify, and so when I hired Ms. Hong, she went down and she got a report that she wasn't authorized, which came as quite a surprise to her. I mean, she gets, like all of us do, her Social Security sent to her once a year, how much you can expect in your benefits and the like, but Social Security Administration just had it wrong. I mean, it took her six separate trips to try and straighten this out. And she

is an immigration lawyer working for the Chair of the Immigration Subcommittee.

So we need to make sure that the rights of Americans are protected in whatever system we do. I give both of you loads of credit for the time and effort that you have put into this subject. It is an important one. I think we all agree that we need to have a system in place, and your contribution is going to be very material as we move forward in this effort.

So I said I just had one question, and it is for you, Congresswoman Giffords. As you described the outsourcing, for lack of a better word, I was reminded—I am a Clear Pass member. I have a little biometric card. Whenever I go to the airport, I put it in, and I put my index finger—are you thinking something along those lines?

Ms. GIFFORDS. Madam Chair, yes, a biometric identifier is an option that employers can choose to take, if they go that route. We have a lot of flexibility. It is a mandatory requirement that you go through the verification system, but that would be an additional step of protection that employers could have.

Ms. LOFGREN. So the Government wouldn't necessarily have all of that, and there would be that level of protection, is what you are proposing.

We have two panels following. I am going to thank you both for coming, for your hard work on this, and for the information you have given us here today.

Mr. SHULER. Thank you, Madam Chair.

Ms. GIFFORDS. Thank you.

Ms. LOFGREN. Thank you very much.

We will now ask our next witness to come forward.

I am pleased to welcome Jonathan Scharfen, who is the acting director of the U.S. Citizenship and Immigration Service.

Mr. Scharfen retired from the United States Marine Corps in August 2003, after 25 years of active-duty service. He then served as chief counsel and deputy staff director of the House International Relations Committee until July 2006.

Mr. Scharfen received his bachelor's degree from the University of Virginia, his juris doctorate degree from the University of Notre Dame, and his LLM from the University of San Diego. He also attended the U.S. Army War College in Carlisle, Pennsylvania, where he studied national security strategy.

He is married and has three children.

As you know, Mr. Scharfen, your full statement will be made part of the official record of this hearing. We would ask that you give your testimony in about 5 minutes, if you would, please.

TESTIMONY OF JONATHAN "JOCK" SCHARFEN, ACTING DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE

Mr. SCHARFEN. Thank you very much, Chairwoman Lofgren, Ranking Member King, Members of the Subcommittee. I am grateful for the opportunity to be here before Congress to discuss our shared goal of effective employment eligibility verification.

At DHS, USCIS is responsible for administering the E-Verify program in partnership with the Social Security Administration.

Any participating company can access E-Verify through a user-friendly Government Web site that verifies information submitted by employees with more than 449 million records in the Social Security Administration database and more than 60 million records in DHS immigration databases.

E-Verify is the only available tool for employers to gain quick and easy verification information for their new hires. Over 69,000 employers, representing over 269,000 work sites, use the E-Verify program. And the number of registered employers is growing, on average, over 1,000 per week. The number of employers enrolled this fiscal year has already more than doubled since November. Since 2004, E-Verify has been available to employers in all 50 States and in most U.S. territories.

Last August, the Administration pledged to commence a rulemaking process to require all Federal contractors and vendors to use E-Verify. And this proposed rule has been submitted to the Federal Register for imminent publication. Yesterday, Secretary Chertoff designated E-Verify as the system Federal contractors shall use.

In partnership with the Social Security Administration, we have made significant improvements to decrease mismatch rates and ensure data accuracy, ensure that the program is user-friendly, and protect employees' rights.

Over the past year, E-Verify automated its registration process, instituted a system change to reduce the incidence of typographical errors, incorporated a photo screening tool for DHS documents to combat document fraud, established monitoring and compliance units and privacy functions to maintain system integrity, added new databases that are automatically checked by the system, and established a new process for employees to call USCIS's toll-free number to address citizenship mismatches as an alternative to visiting the Social Security Administration, all in an effort to establish efficient and effective verification.

The most recent statistics appear to show that the share of legal workers who are not automatically confirmed by E-Verify as work-authorized is decreasing. Furthermore, USCIS plans to add the ability to query by passport number to E-Verify this fall, which will further reduce error rates, and is also working to add visa and passport photos to the photo tool function. Additional improvements seek to ensure that the data relied upon by E-Verify is as up-to-date as possible.

Independent studies show that E-Verify is an accurate and effective tool. Currently, 99.5 percent of all work-authorized employees queried through E-Verify were verified without complication or having to take any type of corrective action. Overall, the Westat evaluation found that over 94 percent of all cases are automatically found to be employment-authorized.

The E-Verify program has substantially increased its customer service and program staff over the past 2 years in an effort to work with employers and ensure that every question or difficulty that arises is addressed. The E-Verify program outreach staff has conducted numerous training programs and workshops across the country to inform employers about the system and the benefits of using E-Verify to verify the work authorization of their employees.

An effective electronic work authorization verification program is critical to reducing the jobs magnet that encourages illegal immigration, but the program also must include robust tools to detect and deter employer and employee fraud and misuse. We are aware that some aliens without work authorization use identity fraud to obtain employment in this country. To help prevent this problem, the E-Verify program introduced the photo screening capability into the verification process last September. This tool allows employers to determine if the DHS document presented by the employee has been photo-substituted. Through use of the photo tool, several cases of document and identity fraud have been identified, and unauthorized workers have been prevented from illegally obtaining employment.

When Congress created what is now the E-Verify program in 1996, it initially set a 5-year time limit on the program. Recognizing the importance of electronic worker eligibility verification, Congress has twice chosen to continue the program since its initial authorization. The current language of the statute directs DHS to terminate the program at the end of November of this year. I respectfully urge the Committee to act immediately to extend E-Verify permanently.

Efforts to improve agency systems and policies related to E-Verify that have been on going since 2003 continue to show positive and tangible results. DHS will continue to work with the Social Security Administration to operate and enhance the E-Verify program.

Thank you for the opportunity to testimony today. I am grateful for the support of the Members of this Subcommittee, and ask for your continued commitment to the program. Thank you.

[The prepared statement of Mr. Scharfen follows:]

PREPARED STATEMENT OF JOHNATHAN "JOCK" SCHARFEN

INTRODUCTION

The E-Verify program (formerly known as Basic Pilot) is a Web-based system that electronically verifies the employment eligibility of newly hired employees. This initiative is a partnership between the Department of Homeland Security (DHS) and the Social Security Administration (SSA). U.S. Citizenship and Immigration Services (USCIS), the agency in DHS responsible for immigration services, administers the program.

E-Verify is an essential tool for employers committed to maintaining a legal workforce. Any participating company in the United States can access E-Verify through a user-friendly government Web site that compares employee information taken from the Form I-9 with more than 449 million records in the SSA database, and more than 60 million records in DHS immigration databases. Currently, 99.5 percent of all work-authorized employees verified through E-Verify are verified without receiving a Tentative Non-confirmation (TNC) or having to take any type of corrective action. Those employees whose work authorization cannot be instantly verified are given the opportunity to work with SSA or USCIS, as appropriate, to confirm their work authorization. USCIS estimates one percent of all queried employees choose to contest an initial, tentative result from E-Verify showing that their work authorization could not be verified, and only half of those who contest that result are ultimately found to be authorized. The most recent statistics appear to show that the share of legal workers who are not instantly confirmed by E-Verify as work authorized is decreasing further, but those numbers need more study. Furthermore, USCIS plans to add the ability to query using passport information this fall, which will reduce the rate of TNCs for U.S. citizens further, and is also working to add visa and passport photos to the photo tool function.

Over 69,000 employers, representing over 269,000 worksites, currently are signed up to use the E-Verify program, and the number of registered employers is growing

on average over 1,000 per week. E-Verify is the best available tool for employers to gain quick and easy verification information for their new hires, and we are committed to working with your Committee and other members of Congress to achieve our shared goal of effective employment eligibility verification.

HISTORY OF THE E-VERIFY PROGRAM

Congress established the Basic Pilot, now E-Verify, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to verify the employment eligibility of both U.S. citizens and noncitizens at no charge to the employer. The program was first made available on a voluntary basis in 1997 to employers in the five states with the largest immigrant populations: California, Florida, Illinois, New York and Texas. Originally set to expire in 2001, E-Verify has been extended twice, and is due for reauthorization by Congress by November 2008. Since 2004, it has been available to employers in all 50 states and in the U.S. territories where U.S. immigration laws apply.

Since 2006, the number of employers registered has doubled in size each year. We have seen a substantial increase in the number of states with legislation or Executive Orders that require E-Verify use for some or all employers under their jurisdiction. Arizona and Mississippi have laws requiring all employers in the state to use E-Verify; and Colorado, Georgia, Minnesota, Oklahoma, North Carolina, Rhode Island, South Carolina and Utah require some employers to use E-Verify. A directive issued last year from the U.S. Office of Management and Budget (OMB) required all Federal government agencies to sign up to use E-Verify by October 1, 2007. Last August, the Administration pledged to commence a rulemaking process to require all Federal contractors and vendors to use E-Verify and OMB recently concluded its review on this proposed rule. On June 6, the President signed Executive Order 12989 directing the Secretary of Homeland Security to designate an electronic employment eligibility verification system for Federal contractors to use. Yesterday, the Secretary designated E-Verify as the system Federal contractors shall use.

Additionally, in the past few months a number of DHS regulations were published that require employers to register with E-Verify before obtaining certain benefits. These include (1) a regulation enabling certain F-1 students in Optional Practical Training to apply for a 17-month extension of their employment authorization if they are employed by an E-Verify registered employer and (2) the proposed rule reforming the H-2A agricultural worker program, would allow H-2A workers who are changing employers to begin work with the new employer before the change is approved only if the new employer participates in E-Verify. Participation and usage of E-Verify is expected to grow significantly over the next few years.

HOW E-VERIFY WORKS

Within three days of hiring an employee, the participating employer is required to enter information from the Form I-9 (Employment Eligibility Verification form), including the employee's name, date of birth, Social Security number (SSN) and citizenship status, into E-Verify and submit a query. Within seconds, the employer receives a response.

SSA Verification

For all workers, the system transmits, in a secure manner, the new hire's SSN, name, and date of birth to SSA to verify that data against the information recorded in its NUMIDENT database. For those employees whose work authorization status can be verified automatically (i.e. whose SSA record matched and confirms U.S. citizenship), the process ends here with a confirmation response returned to the employer through the system within seconds. In the remaining small minority of cases where the SSA record does not match what the employer has put into the system, the system issues an SSA TNC to the employer. The form is available in English or Spanish.

When a TNC is issued, the employer must notify the employee and give the employee the opportunity to contest that finding. If the employee chooses to contest the SSA TNC, he or she has eight business days to visit an SSA office with the required documents to initiate the process to prove identity and support the correction of the SSA record. Until the TNC is resolved, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against him or her because of the TNC. If the employee fails to contact SSA within the eight-day period, the employee is considered a no-show and a final non-confirmation is issued by E-Verify. At this point, the employer should terminate employment. A recent electronic business process enhancement, EV-STAR, allows SSA to use the

E-Verify system to automatically inform the employer of the case resolution once the employee visits SSA and resolves the issue.

Correcting SSA records is a useful byproduct of the E-Verify process since it helps individuals identify and resolve problems with their Social Security records. The work done to update records in order to resolve an E-Verify mismatch may need to be done at a later time when the individual applies for Social Security benefits.

DHS Verification

If the query involves a noncitizen worker, the employee's name, date of birth and SSN are matched with SSA records as they are in U.S. citizen cases. If the information matches SSA records, then the DHS identification number and work authorization information are also matched against DHS databases. If the information cannot be verified electronically, the case is forwarded to a USCIS Immigration Status Verifier (ISV), who researches the case and provides an electronic response within one business day, either verifying work authorization or issuing a DHS TNC.

As with the SSA process described above, if the employer receives a TNC, the employer must notify the employee and provide him or her with an opportunity to contest that finding. An employee has eight business days to call a toll-free number (which provides support in ten different languages) to initiate the process to contest the finding. Until the TNC is resolved, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against them because of the TNC. Once the necessary information from the employee has been received by phone or fax, a USCIS Immigration Status Verifier resolves the case, typically within three business days, by issuing either a verification of the employee's work authorization status or a DHS final non-confirmation. If the employee fails to contact DHS or SSA within the eight-day period, the employee is considered a no-show and a final non-confirmation is issued by E-Verify. At this point, the employer should terminate employment.

THE CURRENT E-VERIFY SYSTEM

Under USCIS management and in cooperation with SSA, the program is continuously improving its processes to decrease mismatch rates and ensure that E-Verify is fast, easy to use, and protects employees' rights. Over the past year, E-Verify has automated its registration process, instituted a system change to reduce the incidence of typographical errors, incorporated a photo screening tool for DHS documents to combat more sophisticated forms of document and identity fraud, established Monitoring and Compliance staff to maintain system integrity, and added new databases that are automatically checked by the system. In addition, it has established a new process for employees to call USCIS' toll-free number to address citizenship mismatches as an alternative to visiting SSA, all in an effort to establish efficient and effective verification.

E-Verify is the most accurate and efficient way to verify employment authorization.

E-Verify generates "mismatches" (or TNCs) when the information supplied by the employee or employer does not match the information that either SSA or DHS has on file. In almost every case, a mismatch will occur either because the employee is actually not authorized to work (five percent of all queries based on the September 2007 Westat Evaluation); because the employee has not yet updated his or her records with SSA (for example, to reflect name or citizenship status changes); or because the employer made an error inputting information into the system. Where there is a TNC, E-Verify gives the employee the opportunity to take further action and correct his/her record with the appropriate agency if they believe the mismatch is an error. Once a record is corrected, it remains corrected. That employee will likely not face another TNC if he or she takes a different job with another employer unless the employee has a subsequent change in his or her information. As noted above, correcting these records is important for individuals to receive credit for their full work history when they file for Social Security benefits. Moreover, correcting these records reduces the chance that they or their employers will receive no-match letter from the SSA pointing out a discrepancy between the employees' personal information and the social security number reported for them.

The opportunity to contest an E-Verify finding is an important step that seeks to ensure that no employee who is in fact work authorized is prevented from working. All employers are required to ensure that employees who receive a TNC are given the opportunity to contest that finding and correct their records. Legal workers who contest will be found employment authorized after resolution of the initial mismatch and suffer no permanent adverse consequences.

Recent studies show that E-Verify is an accurate and effective tool for verifying the work authorization status of employees. For the past few years, E-Verify has

been independently evaluated by Westat, a social science research firm, which has monitored the effect of various changes made to the E-Verify system. Currently, 99.5 percent of all work-authorized employees verified through E-Verify were verified without receiving a TNC or having to take any type of corrective action. Though the 0.5 percent of all work-authorized employees who receive TNC is very small, our goal is to reduce it even further. Overall, Westat most recently found that over 94 percent of all cases queried through E-Verify are automatically found to be employment authorized

A large portion of the employees who successfully contest an SSA TNC are those who have recently naturalized. As of May 5, 2008, some of these mismatches no longer occur, as the system now automatically checks USCIS naturalization records before issuing a citizenship status mismatch. In addition, naturalized citizens who receive a mismatch are now able to contact DHS by phone to address the discrepancy. USCIS and SSA are also exploring enhancements, including a direct data share initiative that would update SSA's database with naturalized citizen information.

E-Verify also added the Integrated Border Inspection System (IBIS) real time arrival information for non-citizens to its databases as of May 5, 2008, which reduced E-Verify mismatches that resulted from noncitizen arrival information that had not yet been entered into the databases E-Verify previously verified against. The addition of this data to the E-Verify system is expected to reduce the number of mismatches that occur for newly arriving workers who entered the country legally and sought work immediately after having entered the country.

E-Verify plans to incorporate U.S. passport information into the employment verification process. The use of U.S. passport information will help instantly verify those employees who present U.S. passports as proof of employment authorization and identity and may have previously received TNCs since they derived citizenship as children when their parents naturalized or they were born abroad to U.S. citizen parents; both populations which currently receive a disproportionate numbers of TNC. We are grateful for the hard work of the Department of State in working towards this important data sharing initiative.

These improvements all seek to ensure that the data relied upon by E-Verify is as up-to-date as possible. In some cases, however, the only way for a person's records to be kept accurate is for that person to report name changes and the like to SSA. Because not everyone in the U.S. workforce is unfailingly diligent in this area, there will always be a small number of legal workers who will have to go through the TNC process. Nevertheless, we continue to work on the system to ensure that every error that can be prevented through government data processes will be avoided.

E-Verify is an efficient and easy system for employers to use.

Participating employers are largely satisfied with the E-Verify program. Last year, the Westat evaluation reported that "[m]ost employers found the Web Basic Pilot (E-Verify) to be an effective and reliable tool for employment verification" and 96 percent did not believe that it overburdened their staffs.

The E-Verify program has substantially increased its customer service and program staff over the past two years in an effort to work with employers and ensure that every question or difficulty that arises is addressed. The E-Verify program outreach staff has conducted numerous training programs and workshops across the country to inform employers about the system and the benefits of using E-Verify to verify the work-authorization of their employees.

E-Verify program staff is committed to maintaining the integrity of the system and effectively preventing discrimination and misuse.

An effective electronic work authorization verification program is critical to reducing the job magnets that encourages illegal immigration, but the program also must include robust tools to detect and deter employer and employee fraud and misuse. A recent independent evaluation of the E-Verify program found that employer compliance with program procedures is improving, but identified the methods by which some E-Verify employers may be using the program incorrectly. Failure to follow E-Verify procedures can result in discrimination and reduce the effectiveness of the program in decreasing unauthorized employment. We are dedicated to reducing E-Verify misuse through employer training, educational outreach, print and electronic resources, and our monitoring and compliance program.

USCIS has been conducting extensive outreach across the country to inform both employees and employers of their rights and responsibilities within E-Verify. The goal is to reinforce understanding of how to use the program correctly. Materials about employer and employee rights and responsibilities are currently available in

both English and Spanish, and will be available later this year in additional languages. Outreach efforts have included radio, print and billboard public awareness campaigns in Arizona, Georgia, DC, Maryland, Virginia, and soon Mississippi, as well as nationally available internet advertisements.

USCIS has also been working to further inform employers and employees on the proper E-Verify procedures through system materials. Information on employee rights and responsibilities is now included in the referral letters given to employees during the TNC process. We are also working to refine the training materials and online resources for users of the program to more clearly outline the methods for proper system use.

USCIS has begun preliminary monitoring and compliance of employer program usage to detect and deter potential misuse and abuse of the program. Among the behaviors we are looking out for are SSNs or alien numbers fraudulently being used, whether the employer is properly referring workers who receive TNCs, and or taking adverse actions against such workers, and whether an employer is improperly attempting to verify all existing employees. USCIS works closely with the Department of Justice Office of Special Counsel for Immigration-related Unfair Employment Practices (OSC) for Unfair Immigration Related Employment Practices to help ensure that employment authorized employees are not adversely impacted by the program.

The Monitoring and Compliance unit also works to safeguard personal privacy information; prevent the fraudulent use of counterfeit documents; and refer instances of fraud, discrimination, and illegal or unauthorized use of the system to enforcement authorities. Once fully staffed, the E-Verify Monitoring and Compliance unit will carry out its mission by educating employers on compliance procedures and guidelines and providing assistance through compliance assistance calls. The unit will also conduct follow-up with desk audits and/or site visits to unresponsive employers if necessary, and refer cases of fraud, discrimination and illegal use to OSC or U.S. Immigration and Customs Enforcement (ICE), as appropriate.

E-Verify prevents certain types of document fraud.

We are aware that some aliens without work-authorization use identity fraud to obtain employment in this country. To help prevent this problem, the E-Verify program introduced a photo screening capability into the verification process last September. This tool allows employers to determine if the DHS document presented by the employee has been photo-substituted. Through use of the photo-tool, several cases of document and identity fraud have been identified, and unauthorized workers have been prevented from illegally obtaining employment. The tool allows a participating employer to check the photos on Employment Authorization Documents (EAD) or Permanent Resident Cards (green card) against images stored in USCIS databases. The goal of the photo tool is to help employers determine whether the document presented reasonably relates to the individual and contains a valid photo. All employers registered to use E-Verify, with the exception of those who use designated agents or a web services application, are now using the photo screening process when the worker presents one of the documents currently available in the photo tool database. USCIS is currently working to change the business processes for designated agents and web services users of E-Verify to enable them to use this photo screening capability

We are also working to expand the types of documents for which the E-Verify system will allow photo confirmation. Currently, only DHS-issued identity documents are displayed in the photo tool. To this end, USCIS is working with the Department of State to add visa and passport photos to the photo tool database. The strength of this tool is directly dependent on the range of documents for which it can be used, and our long-term goal is for the E-Verify photo screening process be able to verify the photos on all identity documents that an employee may present as acceptable Form I-9 documentation.

USCIS is aware of the prevalence of identity fraud in this country, and is especially concerned with how this practice affects E-Verify. While we do not currently have any way to identify, upon initial verification, identity fraud by an employee who has stolen a valid SSN and identity information or has been supplied the information by their employer, we are examining ways to do so. What we are able to do with our Monitoring and Compliance unit is to identify indications that SSN fraud has taken place, and work with ICE, in cooperation with the SSA Inspector General, to deal with these cases. USCIS and ICE are currently finalizing a memorandum of understanding to identify instances where data sharing would be appropriate and we are currently identifying ways to assist each others' work.

The E-Verify program infrastructure is capable of handling the volume of queries that would be necessary for a nationwide mandatory employment verification system.

In September of 2007, DHS and SSA conducted cooperative end-to-end load testing between SSA's NUMIDENT database and the Verification Information System (VIS), which is the database that supports E-Verify. The results of the testing showed that E-Verify has the capacity to handle up to 60 million queries per year. This capacity is in line with the projected 60 million new hire queries per year that would result from mandatory E-Verify legislation applicable to all U.S. employers. DHS will continue to work with SSA to update the current pilot architecture to ensure that DHS and SSA can provide the most stable environment possible to the employer community and to create an independent environment for E-Verify queries, separate from SSA's other processing needs.

CONCLUSION—THE FUTURE OF E-VERIFY

We will continue to work with SSA to operate and enhance the E-Verify program. Thank you for the opportunity to testify before this Subcommittee and we appreciate this subcommittee's continued support of the E-Verify program as it goes through the reauthorization process in the fall.

Ms. LOFGREN. Thank you very much, Mr. Scharfen.

Now is the time when we can pose some questions. I will begin.

One of the things that I had really not thought about before the Westat report is this question: We have thought a lot about the employees being screened, but if they are correct, there is not really any screening of the employers. We have an agreement. And the issue of whether a miscreant could pose as an employer, sign a contract with DHS, and obtain personal information about Americans that then would be used for identity theft or crime, can you address that issue?

Mr. SCHARFEN. Yes, ma'am. First of all, the employer who would want to do such a scam would have to have an employment identification number that they have to first get from the Social Security Administration.

Ms. LOFGREN. That is not too hard to get.

Mr. SCHARFEN. I agree, it probably would not be that hard to get. But the system itself is designed in such a way that the employer isn't reaching up and grabbing personal information from the system and pulling into his possession. What he is doing is he is uploading names, Social Security numbers, date of birth, and that information that he has collected off of the I-9 program, which is already collected——

Ms. LOFGREN. So he is getting a yes-no. He isn't getting your data.

Mr. SCHARFEN. Yes, ma'am.

Ms. LOFGREN. I appreciate that answer.

Let me ask you about data security. It seems like every day we open the paper and there is some story about—you know, I never had the idea that Government employees would have entire databases of, you know, VA and everything on laptops that then go missing.

What steps are you taking to secure the integrity of the data that you have?

Mr. SCHARFEN. I am going to make two points on that, ma'am.

First of all, the E-Verify system is using an enterprise system service bus, which is a more modern approach to managing computer systems. And that enterprise service bus has more robust security features, computer security features, than earlier versions of

the computer systems. And so the enterprise service bus has more firewalls and other protections that a modern computer system has. That is number one.

Number two is that we have been doing routine privacy impact assessment studies. We have also been complying with the DHS computer security requirements and have been having reviews of the system consistently and periodically.

And then, finally, we have a management—clearly, this is of concern to DHS and CIS, and we have made it a focus of management to ensure that the E-Verify data that has been provided by different employers during their queries is given all the protections and safeguards it deserves, both under the law and as a prudential matter of what we can do as managers.

Ms. LOFGREN. Let me ask you this. It is sort of a philosophical question. I think the point made by Congressman Johnson and Congresswoman Giffords is that USCIS's job is to deal with immigrants; you don't have jurisdiction over Americans. I mean, and that there may be an issue here of whether we really want to turn over to the immigration part of our Government the whole function of clearing hundreds of millions of American citizens.

Do you have a thought on that?

Mr. SCHARFEN. I do, ma'am. The E-Verify, as I said in my oral statement, ma'am, the E-Verify system is a partnership between the Social Security Administration and DHS, and so we are not doing this alone. We already are working with the Social Security Administration in partnership.

And the system that we have now, if we were to redo that and somehow put the focus over to another agency, you would end up having to just reinvent that partnership again between the two agencies.

And I think that the answer to those concerns, your previous question, is how we work with the Social Security Administration and what safeguards we have in place to ensure that that information is given the protections it deserves and must have under the law.

Ms. LOFGREN. Thank you very much.

And my time is about to expire, so I will turn to Mr. King.

Mr. KING. Thank you, Madam Chair.

In response to the remark that actually, Madam Chair, you made with regard to we don't know whether they are legal or not if they walk away from following up on clarifying their records, for myself I reflect back to when I was 16 years old and just started paying taxes and there was a mistake by Social Security in transposing two numbers in my Social Security number. I was livid and determined, and I cleaned up those records, and it took me several years. But it is a lot easier today, I would think, than it was then, because at least we have some electronics record and we can get some more immediate response rather than waiting for long answers from letter. But I would think that it is a duty and a responsibility of someone who is lawfully present in the United States and can legally work here to clean up their records.

Is it true that either E-Verify is identifying people who are unlawfully seeking work in the United States, or, if there is a rejection, it identifies a record that needs to be corrected?

Mr. SCHARFEN. I think, as a basic proposition, that is generally accurate, yes, sir.

Mr. KING. And I thank you for that.

And then, as I look at these records, I know that we have had a conversation about linking your query to the database of naturalized citizens. And that brings another level of efficiency here that I don't think is reflected in this accuracy data that has been testified to today.

And I don't want to ask you to go on record for the results of that, but I would just ask you, what do you anticipate will be—what do you think is going to happen once that data is brought into this, the efficiencies that you will give back to us when that is credible?

Mr. SCHARFEN. Yes, sir, I think the two improvements that you are talking about are the ones that we made May 5th of this year. One is that we are including in the system a check of the CIS naturalization databases, as well as the real-time arrivals information from the port of entries. And so, the combination of those two new data sources that are now being included in the E-Verify system, we believe that that is going to reduce the .5 percent mismatch rate for eligible or authorized employees, that it will reduce it by half. So you will be going from one-half of 1 percent to one-quarter of 1 percent.

Mr. KING. If I might interject——

Mr. SCHARFEN. If I could just add one—those are just all kind of percentages, but if I could just give you a real number there. Our data shows that, since May 5th, we have identified 3,500 employees who were naturalized, in other words, are naturalized citizens. And they were identified through this new check.

Mr. KING. I thank you, Mr. Scharfen.

And then with the discussion about Social Security being, by some opinions, more efficient than USCIS with regard to this—and I asked the question of Ms. Giffords, and I don't know that—I just want to ask you this.

What is the distinction between E-Verify's database setting up a query—I mean, you don't house Social Security Administration data. That is not your database. So you send a query out to SSA, and it comes back and says verified or not. Then you send a query out to your records, and it says verified or not.

Mr. SCHARFEN. Yes, sir.

Mr. KING. So what would be the distinction between the proposal made by Mr. Johnson and Ms. Giffords about setting up a Social Security system, that under the Social Security, to send a query to their database and then a query to your database, how would that function differently than it does today?

Mr. SCHARFEN. I think that is a point, obviously, I agree with, is that if you are going to do away with E-Verify and come up with a new system, you are just going to have to reinvent E-Verify. You are going to have to have a partnership between the Social Security Administration and DHS/CIS to run this program. And I really think that the Congress was correct in initially authorizing this program. It was correct in its two instances of reauthorizing it. And it is the best available tool today to do employment eligibility

verification, and it is one that we are dedicated and committed to making it better as we go forward.

Mr. KING. Mr. Scharfen, I think, in Mr. Shuler's testimony, he stated that DHS knows of not one case where a U.S. citizen was denied employment because of an error with the Basic Pilot Program. I want to know if you can verify that or if you can comment on that particular statement.

Mr. SCHARFEN. Right. I think what Mr. Shuler was saying was that those individuals who have gone through to clarify, perhaps, a tentative nonconfirmation as a citizen, we have no reports that none of them were able to resolve that and be able to establish their eligibility.

One point that I think you know well, sir, is that while that is ongoing, that person gets to continue in employment and that they are employed, and there is no right to fire that person until it has been resolved.

Mr. KING. And just briefly, just to conclude, the statement that there has been no one denied employment who was a U.S. citizen, doesn't it come back to the basis that, actually, in the final analysis, you are the measure itself against whether this—against which everything else is weighed, in that you make that verification and you run that out against Social Security Administration, your own database, and then you clean up the records? So if there is going to be a measure in this, you would have corrected that in the process of cleaning up the records. So, by definition then, zero would be the number. Is that correct?

Mr. SCHARFEN. That is correct. We are dedicated to getting the right answer. And in fact, as you know, we've created a new call line where people can call directly to CIS to resolve these issues. And we are increasing that staff, and we are dedicated to doing this as quickly and as easily as we can.

Ms. LOFGREN. The gentleman's time has expired.

Mr. KING. Thank you, Madam Chair. And I yield back.

Ms. LOFGREN. I turn now to Mr. Conyers.

Chairman CONYERS. Thank you.

You have been on the job a couple years.

Mr. SCHARFEN. Yes, sir, I have.

Chairman CONYERS. And you have got 21 people trying to cover how many? What is this 250,000 or 66,000—66,000 employers who have 250,000 work sites but maybe millions of employees. Am I missing something here?

Mr. SCHARFEN. If I could just run through the numbers.

Chairman CONYERS. No, I am running through the numbers. Am I missing something here?

Mr. SCHARFEN. In all respect, yes, sir, I believe you are. If I could run through the numbers really quickly.

Chairman CONYERS. No, that is not going to be necessary.

How can you with a staff of 21 people even get to the front door of your own office, much less handle the challenge that you have been in for less than 2 years?

Mr. SCHARFEN. The numbers that we have that are working on this program, for the program staff, sir, this is E-Verify and SAVE, there is 360 employees. For just the outreach staff alone, we have 16 employees. For the privacy staff alone, we have eight employees;

five full time employees, three contractors. For the monitoring and compliance unit, sir, we have 28 located at headquarters alone. In the field, we have 30 monitoring compliance in the regional office. That is going to grow in the next year to 135.

So if you add all that up, it ends up being close to 500, sir.

Chairman CONYERS. Well, that takes care of everything. Then we can sleep more comfortably in our beds at night, now that I know that some day soon under a new Administration, there is going to be 500.

Some employers use E-Verify to screen job applicants reported by 16 percent of long-term users, and then presumably either deny applicants an opportunity to work or postpone their starting date. In other words, they pre-screen them. And what about other employers who get prohibited adverse action—look, this is all set up to get the employers off the hook, and we are not getting them off the hook. We keep looking at some poor desperate guy that wants a job here, and we are worried about him and where he came from, but the employers have got the upper hand in here. And, guess what? Do you know how many people you ever refer over to the Department of Justice for prosecution, employers?

Mr. SCHARFEN. We were just discussing that before the hearing, sir. And in fiscal year 2008, the cases referred to DOJ so far has been one case. In previous——

Chairman CONYERS. One case.

Mr. SCHARFEN. Yes, sir. Excuse me. Then you have to also include though cases referred to ICE. There have been over 40 cases referred to ICE at their request. Two cases have been identified by our new monitoring compliance team. The others were requested by ICE. And so if you add those up——

Chairman CONYERS. I can add. Those are single digits. I can add them up. You don't have to add them up for me.

In other words, the employers are walking away from this huge system, and anybody that they consider an organizer or troublemaker or finds there's a title 7 violation or anything else, they are dead meat under this system.

Mr. SCHARFEN. The system is based on automating an INI program that was already in existence. And I think that if you are going to have abusive employers who are going to violate the law, I think that they can probably do that even without E-Verify.

In fact, I think that the E-Verify adds us—gives us additional enforcement tools to deter and also to prosecute, in some cases, examples of unlawful conduct by employers, because you now have a database that you can analyze for employer misconduct. In fact, the monitoring and compliance——

Chairman CONYERS. You know what, if this wasn't so serious, I would think you are kidding me. You give me those puny numbers and tell me that this is strengthening you, that it would be—there would be even fewer employers prosecuted if you didn't have this system, and I am supposed to feel better about that. And then, next year, we are going to get—we may get up to 500.

Mr. SCHARFEN. I think that the monitoring compliance units that we are creating, sir, we are looking forward to creating an analysis system that would end up looking for patterns that would indicate

discrimination. And I think that is going to be a tool that is going to be useful to fight discrimination by employers.

Chairman CONYERS. Have you ever worked in a foreign affairs field?

Mr. SCHARFEN. I used to be the chief counsel of the House International Relations Committee.

Chairman CONYERS. I know. And I think you ought to begin looking at that position again.

Mr. SCHARFEN. Yes, sir. Thank you.

Chairman CONYERS. You are more than welcome.

Ms. LOFGREN. The Chairman's time has expired.

And all time has expired for this witness.

And we do thank you for your appearance here today, Mr. Scharfen. If we have additional questions, we will forward them to you and ask that you respond promptly.

Mr. SCHARFEN. Thank you, ma'am.

Thank you for the opportunity to testify. I appreciate it.

Ms. LOFGREN. We will now ask our third panel and final panel of distinguished witnesses to come forward.

First, I am pleased to welcome Dr. Carolyn Shettle, who is the senior study director at Westat, with over 30 years of experience in research design, survey methodology, data analysis, report writing, sampling, and research management. During the past 10 years, she has led evaluations of the E-Verify program and its precursor programs. Prior to her work at Westat, she worked at Temple University, the National Science Foundation, and the U.S. Department of Health and Human Services. She has a Ph.D. In sociology with a major in research methods and statistics from the University of Wisconsin, Madison.

Our next witness is Tim Sparapani—if I mispronounced your name, pardon me—senior legislative counsel for the Washington Legislative Office of the American Civil Liberties Union. Mr. Sparapani focuses on protecting the right to privacy, defending the rights of immigrants, and shielding civil liberties in national security matters. His effort focuses on preventing violations and unnecessary intrusions into Americans' privacy by both Government and private organizations and individuals. Mr. Sparapani also monitors the effect of Federal, State, and local national security policy on civil liberties to ensure that Americans remain both safe and free.

Next, I am pleased to welcome, Chris Williams, a Chicago attorney who is currently the executive director of the Working Hands Legal Clinic and has extensive experience in the areas of labor and employment law. Prior to practicing law, he worked for over a decade as director of organizing for Chicago area labor unions. He also served as director of the Chicago Workers Collaborative. Mr. Williams has worked extensively with worker centers on issues related to the abuse of Employment Eligibility Verification Systems and no-match letters.

And, finally, our the last witness is Glenda Wooten-Ingram, who has worked in the hospitality field for over 20 years, the vast majority of which she has spent as a human resources director in the Washington, D.C., area. Ms. Ingram has been with Embassy Suites for the last 4 years as its director of human resources. She has

been certified by the Society of Human Resource Management for over 9 years.

As with our other panel, your full written statements will be made part of our record. We would ask that your testimony be about 5 minutes, so that we will have an opportunity to ask questions.

And, Dr. Shettle, we will begin with you.

TESTIMONY OF CAROLYN F. SHETTLE, Ph.D., SENIOR STUDY DIRECTOR, WESTAT

Ms. SHETTLE. Madam Chairman and Members of the Subcommittee, I want to thank you for inviting me here today to talk about Westat's September 2007 evaluation report of E-Verify that we've conducted under contract to USCIS, though I have heard so much today about our report. I am not sure I have a lot to add.

Anyway, the focus of my remarks today are on the particular emphasis that this panel has, and I am going to talk about noncompliance, discrimination, and privacy. I will talk first about what we found at the time of this evaluation, which is some time ago, and then I will talk about observed and future trends.

As far as employer noncompliance goes, we did find substantial noncompliance, and the findings for the most part were based on employer self-reports which we have evidence to believe are underreported noncompliance. There is substantial noncompliance. In terms of a particular example, I think you already mentioned, 22 percent of the employees suffer some kind of adverse action to job restriction, and we have other examples of pre-screening and reduction in pay, and so on.

As far as discrimination goes, that is a complex issue that has been hotly debated since the beginning of employment verification. We did find evidence on both sides, and I think some of this has been quoted today.

As far as the good news in terms of reducing discrimination, we found that 19 percent of the employers we asked said they were more willing now than they were prior to the program and 4 percent said that they were less willing to hire immigrants. And this leads to the conclusion that there is a net decrease in discrimination at the hiring stage because of the program.

The bad news, though, which I think we've also been hearing, is that foreign born workers that are more likely to receive a tentative nonconfirmation prior to being work authorized. And this particular error rate has been quoted a lot today.

For those who were work-authorized, and only for them, what percentage go through a tentative nonconfirmation process before receiving a final confirmation as work-authorized; the error rates for all work-authorized employees would be higher. We know it spirals downward.

It is very difficult to estimate that, though, because for the ones that don't finish up the system, we don't know what percent are work-authorized and what percent are not. As you have heard, the rate is particularly high among naturalized citizens at around 10 percent compared to U.S. born folks where it is one-tenth of a percent, or one out of 1,000, and noncitizens are in between.

Even if employers were completely compliant, these discrepancies and error rates would be, de facto discrimination, maybe not by employer intent, but because employees have to go through additional hurdles to get their authorization verified.

We have seen over time a number of improvements in noncompliance and in terms of the error rate.

I skipped over the privacy issue, which we don't have so much of in terms of results. We did question the lack of security in the registration process, as you noted. And we also mentioned that employers do not consistently convey information in a private setting. And one example of that was employees who noted that their employer just posted a list of people who they said were not work-authorized.

As I said, there have been improvements. Some of the improvements can be attributable to changes in worker and employer characteristics as we go from a small program in five States with high immigration populations to the full volunteer program we have today. But there are also improvements that we believe are attributable to program changes, and we just heard from DHS about those.

In the future, we expect that there will be some more changes due to programmatic improvements. What we don't know is what will be the impact if we go to a mandatory program on the whole system, in particular employer compliance, since it is reasonable to believe that pulling in people involuntarily will create a worse problem than we have now.

Ms. LOFGREN. If you could wrap up, please.

Ms. SHETTLE. Yes, in sum, we do see problems that U.S. citizens and noncitizens with work authorizations are affected negatively. We've seen improvements over time, in part because of program changes that are ongoing. And the biggest question is the question of mandatory. Things may change. We can't predict what is going to happen there.

And, Madam Chair, I would like to thank you and the Subcommittee for listening to me. And if people want more information about this report or prior reports, I refer you to the USCIS Web site that has the report.

Thank you.

[The prepared statement of Ms. Shettle follows:]

PREPARED STATEMENT OF CAROLYN F. SHETTLE

Written Testimony of

Carolyn F. Shettle, Ph.D.
Senior Study Director, Westat
to the

House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse

Findings of the Westat September 2007 Report Evaluating E-Verify

June 10, 2008

Chairwoman Lofgren and Members of the Subcommittee:

Thank you for this opportunity to discuss some of the findings of Westat's September 2007 evaluation of the Web Basic Pilot program (now referred to as E-Verify) that we performed under contract to the U.S. Citizenship and Immigration Services (USCIS). My remarks today will focus on those report findings of relevance to this hearing, i.e., what did the evaluation find were the impacts of E-Verify on workers and what are the potential implications of these findings for a mandatory electronic verification program?

Research Methods

The results reported here are based on the following:

- Web surveys of 1,030 employers that had signed Memoranda of Understanding (MOUs) at least 1 year earlier and had used the system in specified months prior to the survey.
- Analysis of E-Verify system transaction data entered by employers and the Federal Government, supplemented by additional information from SSA records, for over 3.5 million verifications conducted between the start of E-Verify in June 2004 through March 2007.
- Case studies, including on-site in-person interviews with five employers, record reviews for 376 of their employees that the transaction database indicated had received tentative nonconfirmation findings and in-person interviews with 79 of these employees.

- Unstructured interviews with 18 employers that had either formally terminated use of E-Verify or had signed an MOU but never used the system.
- Meetings with Federal program officials knowledgeable about and experienced with E-Verify.
- Data analyses ranging from simple descriptive statistics to multivariate model-based estimates.

As is true for any social science study, the data are limited by a number of factors:

- The survey data are subject to inaccuracies due to factors such as respondent inability to understand questions or reluctance to provide accurate answers and to nonresponse that may have been especially high among noncompliant employers.
- The case study component of the evaluation and the interviews with nonusers were designed to give a more in-depth understanding of the program than can be obtained from structured interviews alone rather than to be statistically representative of all employers and employees. Information from small employers completing the Web survey and information from interviews with nonusers also cannot be considered statistically representative.
- The transaction database is subject to nonsampling errors resulting, for example, from data input errors.
- In some situations, it was not possible to obtain direct measures of key variables of interest. Where possible, the evaluation uses model-based estimates of these variables or indicators that can be considered indirect measures of the variables. For example, the erroneous tentative nonconfirmation rate for *all* work-authorized workers verified cannot be measured directly, since the evaluation team has no way to determine accurately which employees are work-authorized. Instead, the erroneous tentative nonconfirmation rate for employees found to be work-authorized at any stage of the verification process is used as an indicator of the rate for all work-authorized workers, even though the rate for ever-authorized workers underestimates the rate for all work-authorized workers.

Where possible, the evaluation uses multiple data sources to examine issues of interest. Since these data sources have different strengths and weaknesses, the evaluation is able to obtain more accurate findings than would be true if only one data source were available.

Employer Noncompliance

The rate of employer noncompliance with E-Verify procedures is substantial, diminishing the effectiveness of safeguards designed to protect the rights of work-authorized employees who obtain erroneous tentative nonconfirmations as well as diluting its effectiveness in meeting the program goal of deterring unauthorized employment.

The types of employer noncompliance range from fairly trivial "offenses" such as not meeting the three-day deadline for case entry during peak hiring periods to noncompliance that can result in citizens and work-authorized noncitizens not obtaining employment or being fired from jobs without due process. The more serious types of employer noncompliance include the following:

- Some employers used E-Verify to screen job applicants (reported by 16 percent of long-term users) and then, presumably, either denied applicants an opportunity to work or postponed their starting work until they resolved their tentative nonconfirmations. Although it is likely that most of the workers receiving tentative nonconfirmations are not work-authorized, some of these workers are citizens or work-authorized noncitizens.

- Some employers (9 percent of long-term Web Basic Pilot users) did not notify employees (or job applicants) of tentative nonconfirmation findings at all or did not notify them in writing, thereby making it difficult or impossible for them to contest the finding and denying them their right to due process. The case studies also indicated that most, but not all, interviewed employees who had received a tentative nonconfirmation had been notified of a problem with their paperwork, either in writing or orally.

- Other employers took prohibited adverse actions against employees while they were contesting tentative nonconfirmation findings. These actions included restricting work assignments (reported by 22 percent of long-term users), delaying training until the employment authorization was obtained (reported by 16 percent of long-term users), reducing pay, or requiring them to work longer hours or in poor conditions. For example, one of the work-authorized case study employees reported that he received harsher treatment because his supervisor assumed he was an illegal worker. Similar reports of mistreatment were reported by employees without work-authorization who worked for this employer, making it unlikely that this was just a misperception by the employee.

- A small number (7 percent of long-term users) of E-Verify employers reported discouraging employees with tentative nonconfirmations from contesting, which may have resulted in work-authorized employees unfairly losing their jobs. Employers did not consistently post the notice of their participation in E-Verify in an area where it is likely to be noticed by job applicants.

- Not all employers followed E-Verify procedures with respect to training their staff on the proper use of the E-Verify system, increasing the likelihood of more serious forms of noncompliance with pilot procedures.

Although substantial employer noncompliance exists, the evaluation also indicated that employer compliance with the rules has improved over time. For example, 9 percent of long-term employers interviewed for this evaluation did not always notify employees of tentative nonconfirmations compared to 18 percent in the evaluation of the original basic pilot report (2002). On the employer survey, only 7 percent of long-term users indicated that they did not encourage employees to contest tentative nonconfirmations because the process required too much time and/or because work authorization rarely results. This is significantly lower than the 14 percent of original basic pilot employers.

It is reasonable to believe that at least some of this progress is attributable to program modifications of E-Verify, such as improvements to the employer tutorial and information resources available over the Web that are designed to ensure that employers understand their responsibilities.

The evaluation also pointed out that USCIS has established a monitoring and compliance unit designed to reduce noncompliance; however, this unit was not fully operational at the time of the evaluation, so its effectiveness is could not be assessed.

One concern about the possible future trend in compliance is that compliance levels were lower among recently enrolled users than among long-term users. It appears that at least part of this difference can be attributed to the changing characteristics of these employers. As the program expands and E-Verify employers become increasingly like the national population of employers, it appears likely that this downward trend in compliance will continue unless counteracted by program changes.

What is not known at this point is whether employers mandated to use E-Verify will be more or less likely to be compliant than employers that use it voluntarily. As the report indicated, however, it is reasonable to believe that employers forced to join the program are more likely to look for ways around its requirements than are those who volunteer to use it.

Discrimination

Discrimination is a complex issue, and one that has been debated since the initial proposals for an electronic verification system. The evaluation has found evidence both favoring the hypothesis that the program decreases discrimination and favoring the hypothesis that the program increases discrimination.

Apparently, E-Verify leads to some employers being more willing to hire foreign-born workers. Although most (62 percent) long-term users reported that E-Verify neither increased nor decreased their willingness to hire immigrants, the percentage of employers (19 percent) saying that the program makes them more willing to hire immigrants is greater than the percentage saying it made them less willing (4 percent), presumably leading to a net decrease in hiring discrimination. As a recent quote from an employer believing that it made him more willing explains, "I feel more secure hiring immigrant workers now. I can lose my franchise by hiring illegal workers, so if documents looked strange I would not hire that person. Now I do not miss out on hiring great qualified workers, just because they were not born here."

However, the evaluation also demonstrated that foreign-born citizens and work-authorized noncitizens are more likely to receive tentative nonconfirmations than are U.S.-born workers, thereby subjecting a greater percentage of work-authorized foreign-born workers to potential harm arising from the E-Verify process. For U.S.-born employees authorized at some point during the verification process, 0.1 percent received tentative nonconfirmations prior to being found work-authorized. The rate was 1.4 percent for noncitizens and 9.8 percent for naturalized citizens.

Since employer noncompliance with E-Verify procedures can negatively impact workers, the high tentative nonconfirmation rates for naturalized citizens and work-authorized noncitizens compared to the rate for U.S. born-workers results in discrimination even in the absence of employer intent to discriminate.

Even in the absence of employer noncompliance, E-Verify may result in discrimination against work-authorized foreign-born workers, because there are burdens such as lost pay and transportation expenses associated with visiting an SSA office to resolve a tentative nonconfirmation; to a lesser extent, there also may be burdens when contacting USCIS to resolve tentative nonconfirmations. For example, one of the employers in our evaluation said, "The closest SSA office was 50 miles away, making the process a 'hassle' for both the employer and employees."

Over time, USCIS has taken a number of actions to reduce the erroneous tentative nonconfirmation rate for ever-authorized workers. At least partly for this reason, the erroneous tentative nonconfirmation rate for ever-authorized workers declined from 0.8 in the first half of FY2005 to 0.5 in the first half of FY2007. This reduction has presumably led to a decrease in discrimination due to erroneous tentative nonconfirmations. However, a substantial part of this change in accuracy appears to be attributable to changes in the characteristics of workers being verified. Examination of differences between the workers verified in the E-Verify program and the characteristics of new hires nationally indicates that employees currently being verified have become considerably more like new hires nationally. This suggests that future changes in the characteristics of workers verified will not result in the same substantial improvements in the erroneous tentative nonconfirmation rate without continuing programmatic improvements.

Privacy

The major evaluation findings about the impact of the E-Verify on privacy are as follows:

- There is little increased risk of misuse of E-Verify information by Federal employees.
- One possible weakness of the system is that under current procedures, anyone wanting access to E-Verify could pose as an employer and get access to the system by signing an MOU. Although the evaluation found no evidence that this has happened, SSA experience with the Social Security Number Verification Service program, which permits employers to verify the validity of their employees' Social Security numbers, suggests that it is a very real possibility, particularly as more employers join the program.
- Employers did not consistently convey information about E-Verify tentative nonconfirmations to employees in a private setting. Six percent of employers reported that at least sometimes they do not notify employees in private—down from 12 percent in the employer survey of the Original Basic Pilot. However, the case study showed that it is highly likely that employers underreport failing to notify employees in private. Among the four employers that reported employees were always notified in private, at least some of their employees reported that they were not informed in private. For example, a few employees of one of the employers reported that the employer posted a list of employees who were "not authorized to work."

Recommendations for Improving the E-Verify Program

The primary recommendations of relevance to this hearing are as follows:

- Address the high tentative nonconfirmation rate for foreign-born U.S. citizens by:
  - Improving the interface between USCIS and SSA databases to more easily share information on naturalized citizens already on the USCIS databases, as well as information about new citizens in the future.
  - Collecting Social Security numbers for all persons at the time they apply for naturalization, including children who derive citizenship from their parents' naturalization.
  - Obtaining citizenship information from the U.S. Department of State's Passport Agency when it first documents that a foreign-born person has derived U.S. citizenship.
  - Updating USCIS electronic records to reflect U.S. citizenship status by inputting pre-1996 naturalization and citizenship information, as well as Social Security numbers available in retired paper Alien files, and then sharing the information with SSA.

- Modifying the tentative nonconfirmation procedures to allow employees receiving initial SSA tentative nonconfirmations because their citizenship status could not be verified to provide their prior Alien numbers so that USCIS records can be checked.

- Determining how photographs, fingerprints, or other biometric checks can be incorporated into the E-Verify system for *all* employees rather than only for noncitizens.

- Modifying the algorithm USCIS uses in matching its records to records input by the employer so that those records are consistent with SSA's criteria and move toward a USCIS database that can be indexed by Social Security number as well as by Alien number.

- To reduce employee burden, consider revising SSA's procedures that require in-person visits to resolve tentative nonconfirmations.

- Continue implementing plans for a strong monitoring and compliance program to identify employers that are not adhering to E-Verify procedures.

- Undertake an outreach program to inform employees of their rights.

- Make employee documents available in multiple languages and as accessible as possible to employees with limited reading skills. In addition to having experts examine the documents and suggest ways to modify them, focus groups or other forms of usability testing should be conducted to ensure the readability of these documents.

- Make additional changes to the tutorial to further improve its effectiveness, thereby reducing employer noncompliance. For example, periodic retesting and, if needed, refresher training should be used to ensure that the material has not been forgotten and to discourage the observed practice of assuming another user's name and password to avoid the tutorial and Mastery Test.

- Revise the training materials and tutorial to clarify issues, such as the definition of a "new hire," that confused some of the case study employers.

- Develop training modules for staff other than system users and administrators to help prevent violations of program procedures that are the responsibility of staff that do not directly use the system.

- Make usability testing with employers a standard practice before implementing system changes to those aspects of the E-Verify system used by employers to ensure that materials are clear to those who will be completing the training and using the system.

- Carefully review and ensure independent evaluation of major procedural changes prior to implementation, based on existing data or a pilot program.

- Continue general E-Verify evaluation activities, as the program continues to evolve rapidly, since not all consequences of modifying the program can be anticipated.

Madam Chairwoman, I would like to conclude by thanking you and this Subcommittee for this opportunity to present the results of Westat's evaluation. If you want additional information about the evaluation, it can be found at:

http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf

Ms. LOFGREN. Thank you very much.

Mr. Sparapani.

TESTIMONY OF TIMOTHY SPARAPANI, SENIOR LEGISLATIVE COUNSEL, WASHINGTON LEGISLATIVE OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. SPARAPANI. Imagine the horror of a constituent who is unable to start any new job due to Government bungling and bureaucracy. This horror show would surely confront thousands of workers upon implementation of an E-Verify type system. Denied their right to work lawfully, these workers would quickly fall into economic distress.

Chairwoman Lofgren, Chairman Conyers, and Ranking Member King, the ACLU urges Congress to refuse to mandate a system that would create a new "no work list" like the infamous "no fly list" populated by thousands of Americans wrongly blocked from working by their own Government. The costs associated with mandatory electronic screening cannot be overstated, and any benefits are speculative at best.

Proponents tout electronic screening as a technological cure all for beleaguered American workers who fear for their jobs and wages. However, mandatory electronic screening would impose unacceptable burdens on America's workers and businesses without resolving the immigration dilemma, because it cannot prevent the hiring of undocumented workers.

I will focus on two reasons to oppose electronic screening. One, mandatory screening will invade American workers' privacy, vastly increasing, not decreasing, the incidents of identity theft and document fraud by turning identities into black market commodities. And, two, mandatory screening will entangle American workers in a massive knot of Government red tape, both to get hired and resolve data errors. And that is all because of the poor data quality we've heard so much about this morning and the problems with administrative judicial redress, which we haven't yet talked about.

Mandating electronic screening will endanger law-abiding Americans' privacy because it makes a work-eligible identity a highly valuable commodity and creates a black market for those identities. Requiring Government permission to work will leave some desperate undocumented immigrants and those smuggling and illegally employing them to steal work-eligible American identities. In short, E-Verify will increase, not decrease, identity theft.

Similarly, Government databases will be targeted by identity thieves because they contain workers' identity data. No database can be entirely secure from hackers. And the Government's information security track record is poor at best. This privacy threat is wholly unnecessary, because E-Verify and similar systems are so easily evaded by ineligible workers presenting fake documents. Neither employers nor Government databases would detect this fraud.

Congress should ask, why endanger Americans' privacy if it will not prevent the hiring of undocumented immigrants?

The ACLU also opposes electronic screening unless the Government is forced to rapidly correct data errors and compensate workers its errors injure. The ACLU again foresees a new "no work list"

consisting of those eligible employees who cannot work because of data errors and Government bureaucracy.

Congress should not mandate pre-screening, but it should require SSA and DHS to systematically review files to eliminate errors. Only after systematically improving data should Congress consider mandating pre-screening eligibility.

Workers injured by data errors will need quick, permanent resolutions so they do not become presumptively unemployable.

Any legislation must allow workers to easily access and correct erroneous Government data. SSA and DHS must hire sufficient staff to handle the millions of additional worker inquiries they will surely receive.

Congress must also provide fair administrative and judicial procedures to resolve errors promptly to get workers back to work. None of the pending proposals, unfortunately, promise real relief.

Any worker challenging erroneous Government data deserves a presumption of work eligibility. The Government should bear the legal burden to demonstrate a worker's ineligibility rather than forcing the worker to prove his or her eligibility. After all, no undocumented worker would fight two Federal agencies through administrative and judicial procedures for fear of being caught and deported. It is just simply illogical to imagine that kind of scenario. Therefore, administrative law judges should be empowered to order records correction and reimbursement of workers costs plus lost wages and interests. The Government should bear costs to minimize workers' injury. We recommend a strict liability standard for Government errors to encourage the Government to improve its data quality.

Finally, if the administrative process fails, then workers need court access. Because suing is expensive, the Government must bear costs for any judicial process, and workers should be reimbursed for lost wages and opportunities plus interest.

In conclusion, failure to mandate real administrative and judicial redress will surely result in a list of employees who are lawfully eligible to work but whom employers are unable lawfully to employ. This black list will truly be a "no work list" that will endanger American workers' privacy and their right to work. Thank you.

[The prepared statement of Mr. Sparapani follows:]

PREPARED STATEMENT OF TIMOTHY SPARAPANI

WASHINGTON
LEGISLATIVE OFFICE

Testimony of Timothy Sparapani
Senior Legislative Counsel, Washington Legislative Office

American Civil Liberties Union

AMERICAN CIVIL LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

Caroline Fredrickson
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Opposing the Creation of a "No-Work" List through Mandated Employment Eligibility Verification Prescreening

U.S. House of Representatives Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Hearing Regarding: Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse

June 10, 2008
2141 Cannon House Office Building

Chairwoman Lofgren, Ranking Member King and Subcommittee Members, on behalf of the American Civil Liberties Union ("ACLU"), America's oldest and largest civil liberties organization, and its more than half a million members and 53 affiliates across the country, we are pleased to submit this testimony. The ACLU writes to oppose any legislative proposal that would impose a mandatory, electronic employment eligibility verification pre-screening system on America's workforce. Under any name, the original Basic Pilot Employment Verification System (also known as E-Verify, hereinafter "Basic Pilot") or another mandatory employment eligibility prescreening system would impose unacceptable burdens on America's workers, businesses and society at large without resolving America's undocumented immigration dilemma. The costs associated with this program cannot be denied and cannot be overstated; any benefits are speculative, at best.

The numerous bills pending before Congress to mandate electronic employment eligibility verification prescreening are touted by proponents as a technological cure-all to assist beleaguered American workers who are fearful of a perceived threat to jobs and wages from undocumented immigration. Yet, this proposed legislative medicine may only cause the workers more harm without resolving the underlying societal problems. After close study, we conclude that the mandatory imposition of E-Verify or similar systems cannot prevent the hiring of undocumented workers and, therefore, will not resolve the nation's immigration dilemma. Proponents' claims to the contrary, we expect E-Verify and similar systems as currently proposed only to make life miserable for American workers. Mandatory electronic employment verification will entangle them in a massive knot of government red tape and bungling bureaucracy both to get hired and resolve inevitable data errors. During the period these unfortunate workers are wrongly denied employment, they will be unable to work lawfully, which will surely cause them severe economic distress. We thus urge Congress to refuse to mandate a system that will create a new "No-Work List" that causes problems similar to the infamous No-Fly List - to be populated by thousands of Americans who are wrongly blocked from working by their own government.

Mandating eligibility pre-screening of all workers will endanger the privacy of law-abiding Americans because it will create an entirely new market for identities. Reports estimate that American businesses currently employ more than seven million undocumented immigrants, with more arriving each day seeking employment. Tremendous economic pressure encourages each of these individualsto take on another person's identity, aided in many cases by their profiteering smugglers. This is an economic imperative for those individuals and their families in order to remain in the United States. Mandating pre-screening makes a work-eligible identity a highly valuable commodity. **In short, E-Verify or a similar electronic**

employment eligibility verification system will exacerbate, not decrease, the incidence of identity theft. Requiring each worker to present his or her identity to be granted permission to work will lead some desperate undocumented immigrants – and those who smuggle and illegally employ them – to steal the identities of work-eligible American workers. In short, the identities of work-eligible individuals will become commodities for borrowing and sale.

Worse still, this potential threat to Americans' privacy rights is wholly unnecessary because the E-Verify system and similar systems are so easily evaded. For example, all that will be needed to evade the system is for an ineligible worker to present forged or stolen identity documents of another eligible worker. Neither the employer nor government databases will be able to detect this type of identity fraud. Congress should ask itself: why endanger Americans' privacy rights if it will not prevent the hiring of undocumented immigrants or resolve our immigration problems? The best way to avoid creating this new identity-theft market is to block any legislation mandating the creation of such a system in the first place.

In addition to our concerns about law-abiding Americans' privacy rights, the ACLU opposes such a mandatory system for six reasons:

(i) **well-documented data error rates in both Social Security Administration ("SSA") and Department of Homeland Security ("DHS") files concerning work-eligible U.S. citizens, lawful permanent residents and visa holders will wrongly delay the start of employment or block the ability to work altogether for hundreds of thousands or millions of lawful American workers;**

(ii) **current proposals lack sufficient due process procedures for workers injured by such data errors;**

(iii) **current proposals provide no reasonable likelihood of redress to resolve such data errors and make workers wrongly denied the right to work economically whole;**

(iv) **both SSA and DHS are unprepared and ill-equipped to implement such a system and doing so would lead to the failure of SSA to continue to fulfill its primary obligations to the nation's retirees and disabled individuals;**

(v) **pre-screening for eligibility does not prevent unscrupulous employers from illegally employing undocumented workers and imposing such a system**

would expand, not contract, the black market labor economy; and

(vi) as the Westat report highlights, we can expect rampant employer misuse in both accidental and unintentional ways.

I. Mandating Electronic Employment Eligibility Verification Poses Unacceptable Threats to American Workers' Privacy Rights

Requiring workers to present themselves for work under a work-eligible individual's name will pose new, unacceptable privacy dangers for authorized American workers. Although we have had a similar statutory requirement for 20 years, nearly all observers believe this paper-based system is widely ignored or circumvented. Switching to an electronic system is at first blush a tempting approach to resolve the widespread circumvention of this requirement. Instituting such a mandate, however, will not stop undocumented immigrants from attempting to work to support their families. Instead, it simply will drive them to impersonate work-eligible individuals when attempting to be hired. The system under consideration rests solely on the presentation of a work-eligible identity by whomever arrives at the workplace to work. This heightens the value of every identity of each and every person who is authorized to work in the United States. By heightening the value of identity, the risk of identity misappropriation increases exponentially and those without such identities face increased pressure to choose between "borrowing" the identities of those who are permitted to work – or letting their families go hungry.

This is not "identity theft" in the classic sense that leads to the draining of bank accounts and the opening of credit accounts to achieve theft, but rather creates a threat of "identity imposters" who will only borrow another's identity to surpass this new threshold of electronic employment verification pre-screening. But, such identity imposters pose a new threat to law-abiding, work-eligible workers' privacy because the next time the authorized individual attempts to start a new job he or she will surely run afoul of E-Verify and could be wrongly deemed ineligible to work. In short, mandating worker pre-screening through a system such as Basic Pilot will dramatically increase the incidence of identity and document fraud.

Although identity theft has been heretofore committed primarily by criminal syndicates and thieves – in 2005 the Federal Trade Commission reported 8.3 million cases –E-Verify or a similar mandatory system will engender a new type of <u>document and identity fraud</u>. This new type of document and identity fraud - <u>not identity theft</u> - will be perpetrated not to obtain numbers to unlock others' financial accounts and obtain credit, but rather simply to evade detection at the moment of electronic employment

eligibility verification. After that instant, this "borrowed" identity becomes irrelevant and the wise undocumented immigrant would forgo taking additional action in that name for fear of increasing the chance of detection and deportion.

Similarly, the repositories of work-eligible employees' identities – including employers' databases and human resources files and the very government databases used for eligibility screening – will become increasingly inviting targets of attack for identity thieves. Recent experience shows us that no database can be entirely secured from dedicated hackers, and, that companies and the government are both poor protectors of the public's sensitive, private data. A number of pending bills also create new databases for pre-screening purposes, in part no doubt to resolve the inaccuracy rates that plague the current databases and make them virtually useless for enforcement purposes. These new databases will likely aggregate American workers' now somewhat disparate data held in numerous government databases into a large, central data repository. These new mega-databases will become especially inviting targets for identity fraudsters because they will contain troves of rich personally identifiable data.

II. Data Errors Will Injure Lawful Workers by Delaying Start Dates or Denying Them Work Opportunities

As the Subcommittee well knows, recent government reports acknowledge that huge numbers of SSA and DHS files contain erroneous data that would cause "tentative non-confirmation" of otherwise work-eligible employees and, in some cases, denial of their right to work altogether. SSA itself reports that approximately 17.8 million of its files contain erroneous data, 12.7 million of which concern U.S. citizens. The SSA's Office of Inspector General reports that the Social Security database has a 4.1 percent error rate. Even cutting this data error rate by 90% would leave approximately 1.78 million workers –more than 1.2 million of whom will be U.S. citizens – at the mercy of a system that provides no adequate due process for challenging and correcting erroneous data. DHS files fare no better. According to a DHS-commissioned report released in September 2007 undertaken jointly by Westat and Temple University, 0.1% of native-born citizens and 10% of naturalized citizens have erroneous data in their DHS files that would cause them to be tentatively nonconfirmed.[1] That report concluded that "the database used for verification is still not sufficiently up to date to meet the [Illegal Immigration Reform and Immigrant Responsibility Act] requirements for accurate verification."[2]

---

[1] Findings of the Web Basic Pilot Evaluation (Westat, Sept. 2007), www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf, at 50.
[2] Id., at xxi.

The causes of these data errors are similarly well known. First, legacy files produced on paper before the onset of the information age contained numerous inconsistencies or may have been lost or never updated. Second, women or men who changed their names at marriage, divorce or re-marriage may have inconsistent files or may never have informed either SSA or DHS of name changes. Third, simple key stroke errors contribute to the volume of erroneous data. Fourth, individuals with naming conventions that differ from those in the Western world may have had their names anglicized, transcribed improperly or inverted. Fifth, individuals with common names may have had their files wrongly conflated or merged with others sharing the same or similar name. Sixth, systems designed for one agency data function may not be readily adapted to sharing information with other systems designed to rapidly review and interpret work eligibility, thus leaving an incomplete data set to evaluate a prospective employee's eligibility or to clarify or resolve confused or erroneous data.

All of these problems make implementation of such a mandatory pre-screening system difficult, if not impossible. Congress should not mandate such a system unless and until these databases and the files they contain are substantially improved. A first step, however, to aid both SSA and DHS in carrying out their disparate but primary missions -- other than employment eligibility prescreening -- would be for Congress to mandate that both agencies systematically audit and review their files' data quality to eliminate errors. Only after such a systematic "scrub" to improve data is completed should Congress even consider mandating use of these files to pre-screen worker eligibility.

III. Pending Legislative Proposals Lack Meaningful Due Process Protections for Lawful Workers Injured by Data Errors

Workers injured by data errors will need a means of quickly and permanently resolving data errors so they do not become presumptively unemployable. Yet, all pending legislative proposals lack sufficient due process provisions to aid workers who are wrongly denied the right to start their next job. Congress must prevent the creation of a new employment blacklist – the ACLU foresees a "No-Work List" – that will consist of would-be employees who are blocked from working because of data errors and government red tape.

To resolve data errors, Congress must prevent the enactment of a mandatory pre-screening system unless it has meaningful due process provisions. Such procedures should mirror the Fair Information Practices that undergird the Privacy Act of 1974, 5 U.S.C. §§ 552, et seq. and control

how the government should handle data it collects about the public. Therefore, Congress should block any legislation unless it mandates that:

(i) the systems and databases used to collect and disseminate information about those attempting to work be publicly disclosed so that workers and employers are aware of them;

(ii) information collected by both government agencies and employers that is gathered for one purpose shall not be used for another purpose without individuals' consent;

(iii) workers can access information held about them in a timely fashion and without petitioning the government for access;

(iv) workers may correct, amend, improve or clarify information held about them by both the government and employers;

(v) information about employees be kept relevant, accurate, and up to date; and

(vi) information is protected against unauthorized losses such as data breaches or identity theft.

None of the legislation pending in Congress satisfies these Fair Information Practices, which can be summarized as assuring workers of the right to (i) transparency; (ii) single use; (iii) access; (iv) correction; (v) accuracy; and (vi) privacy.

Given the inordinately high database error rates described above, it is further incumbent upon Congress to prevent the imposition of a mandatory system that fails to provide workers with a fair and just set of administrative and judicial procedures to resolve data errors promptly and efficiently. Although some pending proposals take some steps towards erecting such a system, none provide the true due process required to make imposition of such a system workable for employees and their employers. True due process would require the creation of a system to expedite workers' inquiries at both agencies, in addition to the existing opportunity – too often not communicated to employees wrongly tentatively non-confirmed according to DHS' Westat report– to submit additional information to SSA and DHS.[3] In demanding due process for workers in such a system, any worker who challenges erroneous government data deserves a presumption of work eligibility. No undocumented worker would intentionally undertake the

[3] Id.

bureaucratic nightmare of dealing with at least two federal agencies and fighting the U.S. government through separate administrative and judicial procedures.

True due process requires congressional establishment of open, accessible, efficient and quick administrative procedures so as to get any aggrieved worker back to work and so as not to deprive an employer of its chosen employee. First, Congress must ensure that SSA and DHS hire and train sufficient staff to handle the millions of additional inquiries they will surely receive as workers try to resolve data errors. Those new government employees will be needed for the substantial increase in the manual verification workload, each verification often taking more than two weeks to complete. Thus, the ACLU urges the creation and full-staffing of 24-hour help lines at SSA and DHS. Second, when data provided by a worker conflicts with government files, the aggrieved worker must be provided a right to a quick, efficient, and fair review before an administrative law judge. Third, costs should be borne by the government for each such procedure so as to minimize injury to the worker. Fourth, the administrative law judge, or other arbiter, should be able to order the government to correct and supplement the government records at issue. Fifth, government employees should be required to correct data errors expeditiously. Sixth, the administrative law judge must be empowered to order the government to reimburse the worker's costs and to reimburse for lost wages plus interest. We would urge a strict liability standard so as to encourage the government to improve its data quality.

If the administrative process fails to resolve data discrepancies, then due process requires the right to a judicial process. Because of the costs of bringing suit, including filing fees, retaining counsel, obtaining documents, finding and presenting witnesses, and hiring experts, the government must bear the burden of any judicial process. What undocumented worker would contest a tentative nonconfirmation before a federal judge – toward what end? Congress should place the legal burden on the government's shoulders to demonstrate a worker's ineligibility rather than forcing the worker to prove his or her eligibility. The Federal Tort Claims Act does not provide an adequate procedure or remedy for the hundreds of thousands who would surely be aggrieved by the imposition of a mandatory procedure. The U.S. Court of Claims reported an extensive backlog of cases and requires a worker to exhaust a six-month long waiting period before filing suit. **During that entire period of a Federal Tort Claims Act administrative procedure, plus the pendency of the lawsuit, the worker would be barred from working.** Thus, Congress must mandate an expedited federal court procedure, and judges should be empowered to order the government to correct any erroneous files and to reimburse a worker for costs and fees for bringing suit, including attorney's fees. Furthermore, federal judges should be required to order agencies to reimburse a worker for any lost

wages and lost opportunity costs, plus interest. The legal standard should be one of strict liability, so that any government error leads to redress that makes the injured worker whole. Any lesser legal standard, such as negligence or recklessness, will fail to (i) assist the aggrieved worker and his or her family; and (ii) encourage the agencies to improve data quality so as to reduce the harm from such a system going forward.

IV. Congress Must Mandate True Redress for Workers Aggrieved by Government Data Errors

Imagine the horror of a constituent who has worked for years and who is suddenly unable to start a new job due to government bungling and bureaucracy, probably after the constituent has left his or her previous job. Such is the specter that would confront at least hundreds of thousands of workers upon implementation of an E-Verify type of system. Denied their right to work, many of these workers and their families would quickly fall into economic distress. Prudence and basic fairness dictate that Congress must insist that SSA and DHS provide true redress for any aggrieved worker, including the correction of erroneous data once and for all and making the aggrieved worker economically whole.

The first key to redress is ensuring that an aggrieved worker need only fight government red tape once. Thus, if Congress imposes a mandatory pre-screening system, that system must allow a worker to force federal agencies to correct all erroneous data. Further, Congress should require agencies to make notations in files should there be future questions about a worker's eligibility. Workers and employers will only have confidence in a mandatory prescreening system if bad data is actually corrected. Failure to mandate data correction will surely result in a list of employees who are lawfully eligible to work, but whom employers are unable to lawfully employ. This blacklist will truly be a No-Work List.

V. Government Agencies are Unprepared to Implement a Mandatory Employment Eligibility Prescreening System

As recent government reports evaluating Basic Pilot have made clear, both SSA and DHS are woefully unprepared to implement a mandatory employment eligibility pre-screening system. In addition to the data errors that plague their databases, both agencies are, in some cases, still using paper files. In order to implement such a system, both agencies would need to hire hundreds of new, full-time employees and train staff at every SSA field office. DHS has an enormous backlog of unanswered Freedom of Information Act requests from lawful immigrants seeking their immigration files. Those files, many of which are decades old, are the original source of numerous data errors. If DHS cannot respond to the pending information

requests in a timely fashion now, how much worse will the problem be when lawful immigrants, including naturalized citizens, lawful permanent residents, and visa holders need the documents immediately to start their next jobs? Consequently, DHS must hire hundreds more employees to respond to these FOIAs.

Businesses seeking to comply with any newly imposed system will also strain these government agencies. Additional problems can be anticipated in attempting to respond to employers' requests and in establishing connectivity for businesses that are located in remote locations or that do not have ready access to phones or the internet at the worksite. These agency deficiencies will surely wreak havoc on independent contractors and the spot labor market for short-term employment.

If history is our guide, agency officials will be unable to scale up the existing software platform for Basic Pilot to respond to the enormous task of verifying the entire national workforce and all the nation's employers. It makes little sense to adopt a system that is predestined to wreak havoc within these agencies, not to mention the lives of the thousands of Americans wrongfully impacted.

VI. Mandatory Employment Eligibility Prescreening Cannot Eliminate Unlawful Employment of Undocumented Immigrants and May Exacerbate the Growth of the Black Market Labor Economy

Already, by some reports, more than 7 million undocumented immigrants are working in the United States. No doubt many of these workers are part of the black market, cash wage economy. Unscrupulous employers who rely on below-market labor costs will continue to flout the imposition of a mandatory employment eligibility pre-screening system. These unscrupulous employers will game the system by only running a small percentage of employees through the system or by ignoring the system altogether. In the absence of enforcement actions by agencies that lack resources to do so, employers will learn there is little risk to gaming the system and breaking the law. Employers will, however, be forced to deal with the hassle and inconvenience of signing up for Basic Pilot, and then watching as they are blocked from putting lawful employees to work on the day they are to start their employment. The inevitable result will be more, not fewer, employers deciding to pay cash wages to undocumented workers. Similarly, cash wage jobs will become attractive to workers who have seemingly intractable data errors. Instead of reducing the number of employed undocumented workers, this system creates a new subclass of employee – the lawful yet undocumented worker.

VII. Employers Will Misuse a Mandatory Employment Eligibility Prescreening System

Employers have misused and will continue to misuse any mandatory employment eligibility verification system resulting in discrimination and anti-worker behavior. From the inception of the Basic Pilot, the U.S. Government Accountability Office and DHS studies have documented various types of misuse. Some employers have even self-reported that they screen out workers with "foreign" surnames or fail to explain tentative non-confirmations to employees. Other employers have self-reported that they have punished employees with tentative non-confirmations by withholding wages and assignments during the period until any discrepancy is resolved.

If Congress imposes a mandatory system, it will also need to create effective enforcement mechanisms that prevent the system from being a tool for discrimination in hiring. Such discriminatory actions will be difficult to prevent and even more difficult to correct. Congress should ask: how will the government educate employers and prevent misuse of the Basic Pilot or any similar system?

VIII. Conclusion: Congress Should Not Enact a Mandatory Employment Eligibility Pre-Screening System

The ACLU urges the Subcommittee on Immigration, Citizenship, Refugees, and Border Security to block the imposition of a mandatory employment eligibility pre-screening system. All pending legislative proposals are inadequate to protect American workers' privacy and their right to work. None of the pending legislative proposals would resolve the substantial database inaccuracy rates containing information on America's workforce that plague E-Verify. Congress must be careful not to create a No-Work List that would cause great harm to lawful workers and their families.

Ms. LOFGREN. Thank you very much.
Mr. Williams.

TESTIMONY OF CHRISTOPHER J. WILLIAMS, ESQUIRE, DIRECTOR, WORKING HANDS LEGAL CLINIC

Mr. WILLIAMS. Good morning. I want to thank you, Madam Chairwoman, and the Subcommittee for the opportunity to speak today.

As mentioned, I am an attorney in Chicago. I work with a nonprofit organization that assists low-wage workers predominantly in the temporary staffing industry. And I think the perspective I can bring today is how the E-Verify program and other employment eligibility verification systems are affecting people on the ground. And I submitted written testimony, so I won't repeat that here.

But we've heard a lot of numbers thrown around about accuracy rates and so forth, but I think there is something that has been given a little bit short shrift, which is the role of employers in this system. Because employers are a very important part of the verification system. They play a role, and then those numbers have to be counted in. You heard a claim that there was a 0.5 percent error rate. You heard a claim that not one person has been denied employment because of the E-Verify system, and that is just not accurate.

First of all, the system is based on the Social Security Administration database which, by all accounts, has 17 million or more errors. And I personally have a little history with that. I just received my newborn daughter's Social Security card, and my last name is her middle name, and it was spelled with three Ls, and my name is spelled Williams with two Ls. So it is very common to have an error in the Social Security database.

You couple that with employers not—being resistant to participating in these employment verification system programs. Right now it is voluntary. With all of the errors and problems we've heard about, these are employers who are voluntarily participating in this program. You mix that—you roll this out to be mandatory, you mix that with employers, small employers who do not want to participate, small employers who do not want to play this role, who do not have the resources to access the proper legal advice, you are going to have a disaster.

And I do know somebody who has been denied employment. His name was Fernando Tinoco. He was a client of mine. He went, and he applied for a job at a Chicago poultry plant. And he came back a tentative nonconfirmation. He was given the information. He went to Social Security Administration. He got the necessary documents to show he was eligible to work. The company didn't want to take him; it was too risky.

Then I know another person, Abel Pacheco. He lost his job, went out and applied at eight different locations. Finally, he applied at the eighth location, was told he got a tentative nonconfirmation. He never heard back from the first seven. Now, did they all check his status? Did they all check E-Verify, and did they determine that he was not eligible to work? Did they pre-screen him? This is a problem that is not to be reported. With all the problems we heard about in the Westat report, this is a problem we are not going to

hear about in any report. This is a serious problem where employers have the ability to check and pre-screen. We know this is happening, even from self-reporting, that the rate is high. Without self-reporting, we don't know how high the rate is. But employers who are resistant to participating in a mandatory program anyway and who are risk-averse are just going to make the decision, why bother? Just don't hire the person. And that is a problem.

Somebody mentioned earlier the Social Security no-match letters. And I realize that is a different thing. E-Verify is something done at the time of hire. Social Security no-match letters come out and when somebody is employed and working. But they both depend on the same flawed database. And I have dealt with literally thousands of workers who have been wrongfully terminated by employers, sometimes quite honestly innocently by employers who receive a no-match letter. And there are safeguards in place with the no-match letter. The no-match letter itself says, "this is not an indication of someone's immigration status." The employer just makes a determination. They see on the news. They read in the paper, employers are getting arrested. It is easier just to get rid of the employees than to deal with the mess.

Some of them find their way to me or other organizations like ours, and they get assistance, but most of them do not. Some employers, I have sat with them, and one employer fired 30 workers, all Hispanic. He told me, well, I got one of those no-match letters. So under Illinois law, we requested a copy of the no-match letter. Well, you know, we don't really have them. But there are other ways to check people's Social Security numbers.

Well, what are those other ways of checking those Social Security numbers? Did he use the E-Verify program? What is USCIS doing to make sure that he did not pre-screen, he did not check current employees? What are they doing to make sure that these employees are not being victimized by employers who are abusing the system? Do they even know? Is there a way to know? And I think the answer to that question is, no, there is really not a way to know.

The system should not be rolled out. It should not be made mandatory until the databases that it depends on are accurate. Thank you very much.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF CHRISTOPHER J. WILLIAMS

Good morning. My name is Chris Williams. I am the Executive Director of the Working Hands Legal Clinic in Chicago. Our Legal Clinic assists vulnerable, low wage workers confronting the most abusive and exploitative practices in the workplace, everything from stolen wages to discrimination. First, let me thank you for your invitation to speak before this distinguished committee.

I am here today to express our organizations concern about proposals to expand the use of Electronic Employment Verification Systems (EEVS), such as the E-Verify program. The E-Verify program, currently a voluntary program, requires participating employers to verify whether newly-hired employees are eligible to work in the United States through the use of an internet-based program. When a participating employer enters a worker's basic identifying data into the E-Verify system, the data is checked against databases maintained by the Social Security Administration ("SSA") and the Department of Homeland Security ("DHS"). The SSA database is supposed to tell whether a particular worker is a U.S. citizen or work-authorized immigrant. If a worker is not a citizen and does not appear on the SSA database, the DHS database is supposed to tell whether the worker is authorized to work in the United States. The E-Verify program is being touted as an effective means of eliminating employment by undocumented immigrants but too little atten-

tion is being paid to the negative impact the program is having on U.S. citizens and work-authorized non-citizens, a problem that will only be exacerbated by expansion of this or other EEVS programs.

The E-Verify program, formerly called "Basic Pilot", has been plagued by serious problems since it was first introduced in 1997. First, this EEVS program relies on government databases that have unacceptably high error rates, misidentifying work-authorized workers as not employment-eligible. Specifically, a December 2006 report by the Office of the Inspector General for the SSA estimated that *17.8 million* of records contained in the SSA database, the primary source of information for the E-Verify program, contain discrepancies related to name, date of birth, or citizenship status.[1] Such discrepancies result in a "tentative non-confirmation" of eligibility for employment under the E-Verify program. According to testimony from the GAO to a 2008 subcommittee of the House Ways & Means Committee, the E-Verify program was not able to automatically verify the work authorization of approximately 8 percent of workers whose information is submitted to E-Verify. This is the same error rate that was found in the Westat report commissioned by the Department of Homeland Security and released in September 2007.[2] The worker then becomes responsible for resolving the issue with Social Security or with DHS. If the worker does not resolve the problem quickly, he or she faces termination. When the E-Verify program's databases fail, U.S. citizens and work-eligible immigrants pay the price as they are put on what essentially amounts to a "no-work list."

Employer misuse or non-compliance with the E-Verify program rules is a second and, in my view, more insidious problem. The 2007 Westat evaluation of Basic Pilot/E-Verify found that the rate of employer noncompliance with the program rules is "substantial" and "diminishes the effectiveness of safeguards designed to protect the rights of work-authorized employees who obtain erroneous tentative non-confirmations."[3] The report found that "the rate of employer noncompliance [with the program rules] is still substantial." Specifically, employers engaged in prohibited employment practices, including: (1) pre-employment screening; (2) adverse employment action based on tentative non-confirmation notices; and (3) failure to inform workers of their rights under the program. And the effect is particular hard on work-authorized foreign-born workers, since, as the Westat report points out, these workers are 30 times more likely than U.S.-born to receive erroneous tentative non-confirmations (nearly 1 in 10) initially receive tentative non-confirmations).[4]

I believe the case of Mr. Fernando Tinoco, one of my clients, is illustrative of this problem. Mr. Tinoco is an immigrant from Mexico and became a citizen of the United States in 1989. He applied for a job with an employer in Chicago that used the E-Verify program. After submitting his information through the EEVS program, the employer received a tentative non-confirmation notice. Mr. Tinoco challenged the tentative non-confirmation and was required to go to the SSA himself to clear the matter up. But even after SSA acknowledged the error and provided Mr. Tinoco with the necessary documentation, the employer refused to employ Mr. Tinoco.

In Mr. Tinoco's case, we were eventually able to resolve the issue because his employer had informed him of the tentative non-confirmation from the E-Verify program and he was able to successfully challenge the determination. But, according to the Westat report, 47 percent of employers, nearly half, had pre-screened workers through E-Verify system and, unfortunately, there is no way to account for how many employers, when faced with a tentative non-confirmation, simply choose not to hire the person.[5] There is simply no way for a potential employee to know this and no effective safeguards to prevent this practice.

My experience with employers' reaction to "No-Match" letters from the SSA tells me that this type of problem is already underreported and will only be exacerbated by expansion of the E-Verify or other EEVS program. While SSA No-Match letters are different than the E-Verify program, both rely on the same flawed SSA database. (A No-Match letter is generated by SSA when a worker's identifying information remitted to the Social Security Administration does not match the information contained in the SSA database and, if not deliverable to the individual, is sent to the employer.)

Our legal clinic has had to respond to firings of literally thousands of workers in and around Chicago over the past two years based on misapplication or misunder-

---

[1] CONGRESSIONAL RESPONSE REPORT: ACCURACY OF THE SOCIAL SECURITY ADMINISTRATION'S NUMIDENT FILE (Office of the Inspector General, Social Security Administration, Dec. 2006).

[2] FINDINGS OF THE WEB-BASED BASIC PILOT EVALUATION (Westat, Sept. 2007).

[3] *Id.* at note 3, at xxi.

[4] *Id.* at 71–77.

[5] *Id.* at 71.

standing of the E-Verify program and/or SSA No-Match letters. One employer who fired 30 Hispanic employees initially told me that the terminations were based on receipt of a SSA No-Match letter, but later, after the employees had requested copies of the letters under Illinois law, admitted there were no such letters, stating instead that there were other ways to check the social security numbers of his employees. None of the affected employees was told the basis of the termination, much less given the opportunity to challenge any tentative non-confirmation. Another small employer of 50 homecare health workers fired fully half of her employees. When challenged on the basis of the terminations, she told me "Well, I've been reading the newspaper and I thought that is what I was supposed to do. I thought I had to get rid of anybody who might be working illegally."

There are over six million employers in the U.S., many of which are small, have no human resource staff and limited resources to get access to legally accurate information and even less time to become compliant with a mandatory EEV system. Many employers will be ill-equipped to be the frontline of immigration enforcement and by expanding the use of an EEVS system, the law will be applied in an uneven and, too often, unfair way. Coupled with the inaccuracies in the databases underlying the EEV system, the inevitable result will be that an unacceptably high number of legally authorized workers will lose their livelihoods. Simply put, employers should not be charged with the responsibility of enforcing immigration law through these EEV systems. Most do not want to expend the time and resources to do so, and have neither the expertise nor tools to do so correctly or legally.

Ms. LOFGREN. Thank you.

And now we turn to our final witness.

Ms. Ingram, we would like to hear from you.

TESTIMONY OF GLENDA WOOTEN-INGRAM, DIRECTOR OF HUMAN RESOURCES, EMBASSY SUITES CONVENTION CENTER

Ms. INGRAM. Well, it is afternoon.

I have been in the human resources department for almost 20 years, and I have also been using this system since it first came out. And for me, as an employer, it helped me because I am not an expert in looking at the documents. And we all look at the documents, and we can say they are legal or whether they are not, and this system it does help.

But the one thing that, from the employer and for the company that I have worked for, we have a system in place that you can't pre-screen. You can't tell someone, show me your documents before you interview them; show me your documents before I make an offer to you. That process is not done until after we sit down, we've interviewed the candidate, we verified their employment, they have gone through our background drug test, et cetera, and we make an offer.

And once they come in, they get their new hire paper, and that is part of their new hire paperwork. The new hire paperwork has the I-9 form attached, and it asks them—we don't tell them what document to choose, they have their choice from A, B, C, whichever document they choose. And then, once they fill the form out, then we put it into our Basic Pilot, or now known as E-Verify, system, and we wait for whether there is going to be a confirmation or a nonconfirmation. Those documents are kept in a file, confidentially, where no one can get access to them unless they are in the human resource department.

If we get a nonconfirmation for a—we call them team members instead of employees—we basically bring that individual into the office, into the privacy of our office, and we sit down with them, and we explain it to them: This is what we received. Here's what you need to do. You have a choice, you can make a phone call, or

you can go down. We read it to them. We tell them they have 8 days. They can still continue to work. This does not affect—they don't have to be suspended pending further investigation or anything. They continue to work. Once they get the document, we go back into the system and confirm, and then that is fine.

We have had some team members that have chose not to contest it, and so they leave. But we still encourage them, you know, if you feel that your documents are correct, please make the phone call. If it comes back that we still can't get a confirmation and we have to do a termination, we don't say, you can't come back here. We say, once you get your files together, your documents together, you are more than welcome to come back and reapply for the job. And that happens to every single person that comes in, after they fill out—they go through that process with us.

. So I am confident for the company that I work for and my colleagues that we do follow those procedures. And every year, we are audited by our own company to go into our I-9 files to make sure. And when you are printing that data off, it has a date. So you are going to look at the date to say that you couldn't have pre-screened because you have the date that the person actually hired; you have your PAF that shows the date that you hired the person; and you have the date the confirmation was done. But we are audited by our company as well to make sure that we are in compliance.

I think it is a great system to work with. And it is great, and I think that that is another tool to help you to ensure that you are in compliance.

Thank you.

[The prepared statement of Ms. Ingram follows:]

PREPARED STATEMENT OF GLENDA WOOTEN-INGRAM

Dear Distinguished Members of Congress, I am Glenda Ingram, Director of Human Resources for the Embassy Suites Convention Center. Thank you for this opportunity to come before you today to speak of my experiences with the E-Verify program. As a Hotel Director of Human Resources in the Washington, DC area for more than twenty years with the last four years at the Embassy Suites Convention Center I have seen the benefits and the need for this program.

Since the late 1990's I have been working with E-Verify, then a pilot program, it is very easy to use and relieves many Human Resources Departments and Companies of the burden of proving a potential new hire's eligibility to work in the United States. In fact, during the interview process we can not ask for proof of eligibility to work in the United States. Using E-Verify helps the employer to verify that a new hire's documents are in order and keeps the employer in compliance with the laws.

E-Verify provides documents to the employer to be used when an employer receives a non-confirmation notice regarding a new hire. The new hires document is stored in the system ready for the employer to print and present to the Social Security Administration and Department of Homeland Security upon request. We review this document with the new hire for them to make a decision to contest or not to contest the validity of the information.

In August 2005 when we were opening the Embassy Suites we hired 175 new employees using the E-Verify program. During the hiring process we posted notice and verbally told each potential new hire that we utilized the E-Verify program. I firmly believe that this helped us to eliminate hiring applicants who did not have the legal paperwork required to work for the hotel.

Currently this notice is posted in the Human Resources Department for all employees and applicants to read and ask questions. This deteriorates applicants from applying for positions knowing their paperwork is not legal. Using this procedure has saved our company a lot of money in time verifying information on the application, verifying past employment (which can sometimes take days), on drug tests, training and when found out, re-advertising the position.

Illegal paperwork is usually not found out until after they have been hired and completed the I-9 form. The E-Verify process takes less than 5 minutes to input and receive a confirmation or non-confirmation. If a non-confirmation is returned we bring the new employee into the private office, inform them of the results, explain the procedures, give them the opportunity to contact the authorities and rectify the paperwork. We ensure them that they are not being terminated and they can continue to work while working on the solution.

Once they return with the proper paperwork, we re-enter it into the system and in most cases they are confirmed. Many of the problems we encounter are data entry errors such as misspelled names, incorrect date of birth or social security numbers. This system does not discriminate against anyone since every new hire must provide proof they can work in the United States, complete an I-9 form and entered into E-Verifying.

In closing, I believe that in my 10 or more years of using E-Verify that it is an invaluable business tool; the cost is free; is easy to teach (including President Bush); is very user friendly and the support system is very helpful.

Beyond the most obvious reasons mentioned above I firmly believe that E-Verify has prevented us from hiring illegal's and staying in compliance with the law. This is a program all Companies should use.

Thank you for your time and this opportunity.

Ms. LOFGREN. Thank you very much.

Now is the time we will have a chance to ask a few questions before we conclude, and I will begin.

One of the things that struck me, we are all trying to get our heads around this subject and making sure it is right. But if you are an immigrant or a naturalized citizen, there's going to be records with pictures in DHS. But if you come in and you say you are Jane Smith and an American citizen, and you have got the Social Security number, and you stole that I D from the real Jane Smith, I don't see how the bills before us really uncover that fact.

Can you comment on it?

Mr. SPARAPANI. They don't, and they can't. And that is part of the problem with not only E-Verify but all the other pending legislative proposals. Despite the fact that this program concept has been around for 30 years, really since 1978, we really haven't been able to resolve this underlying problem of document fraud. And it is going to bedevil this program.

Ms. LOFGREN. There is no database of every American with a picture or biometrics.

Mr. SPARAPANI. And I say thank God for that.

Ms. LOFGREN. I am not arguing yea or nay. I am just noting that fact.

Mr. SPARAPANI. And that is exactly right.

Ms. LOFGREN. Let me ask, in terms of the one suggestion I think that Mr. Johnson and Gifford's bill is suggesting as a potential remedy for that is to use something like the Clear Path System that does collect biometrics but also has an ID fraud component to it. Do you think that would advance that effort? Whoever wants to answer.

Mr. SPARAPANI. I don't. And there are lots of reasons for that. One, every time we put private information into even private hands in this case, we run the risk that that data is going to be compromised. And, again, there is no database which has been proven to be secure. The hackers are always at least one step, usually many steps, ahead of the best information-security protocols, and that is because they have an economic incentive to breach them. Therefore, we can always expect that data is going to be com-

promised, that people's identities are going to be stolen. So we think that this is sort of a misdirection to go down, to try to focus on identity as the key to doing immigration enforcement. I think it leads you down a series of paths which sound promising but when they actually get to implementation are very difficult to actually pull off, and actually provide a weakness that has never been overcome conceptually.

Ms. LOFGREN. Ms. Shettle, do you want to comment?

Ms. SHETTLE. I don't really have a lot to comment on.

Ms. LOFGREN. Okay, that is fine.

It seems to me that we want to have a system that is enforceable, that works, where only those who are legally permitted to work are working. But we don't want to have the adverse consequences. We don't want Americans to be denied jobs or other people who are legally permitted to work to be denied jobs. We certainly don't want whatever system that we create to be used for improper purposes such as discriminatory purposes or the like.

I just was remembering, if the stakes are very high for an employer, they are going to fire people to protect themselves. I remember, we had Swift in here last year, and they sort of had the worst of both worlds. They were first charged with discrimination because they were looking at Latino employees, which they shouldn't have done. So they stopped doing that. And then they had employees that weren't lawfully permitted to work, and they lost $40 million after the enforcement action. So which way do you do?

We want to have a system that works well. Do you see any of these bills before us—I don't know if you have had a chance to study all of them—that might avoid the adverse consequences of either use for labor or discrimination, but also allow employers to have confidence that they are doing the right thing?

Mr. WILLIAMS. The one thing I would say, and this point was made earlier, is I think that there is a flaw in the idea that you can just deal with one aspect. There has to be comprehensive reform.

Ms. LOFGREN. I agree with that.

Mr. WILLIAMS. And so you are going to end up in these problems, because there is a lot of pressure on employers and employees in terms of getting work.

What I see, one of the things we see in Illinois is the increasing use of temporary staffing agencies as a way of kind of laundering people through.

Ms. LOFGREN. So the liability isn't to the employer.

Mr. WILLIAMS. Moving liability away, along with all other sorts of labor rights and standards that go along with it.

Just as my colleague said, the hackers are always one step ahead. There is always going to be a way to get around the system, and they are going to move around the system.

And so I think what we are trying to do is we are trying to fix one aspect of this without fixing the overall problem. You know, employers need the workers, and they are going to find a way to find them.

Ms. LOFGREN. Before turning to Mr. King, I will just note that I think, Mr. Sparapani, the burden-of-proof idea I find intriguing because I think you are right, Americans should have a right—I

mean, we have a right to go support our families. And I think your observation is probably correct. If there is a contested thing, I mean, people who are here without their documents tend to want to go underground. They don't want to be found. It is unlikely, I would guess, that they are going to walk into court and contest the finding. Instead, they are going to high tail it and try to find some other job. So that is an intriguing idea.

I turn now to Mr. King.

Mr. KING. Thank you, Madam Chairman.

You know, as I sit here and listen, a few thoughts cross my mind. And one of them is that for every single illegal person working in the United States of America, there is a corresponding disenfranchised American somewhere either looking for a job or earning less wages and benefits than they would otherwise, because the law of supply and demand certainly directs the value of labor and benefits.

And so we are here wallowing around and looking for some kind of guilt about maybe disenfranchising a single person when we know that for every illegal that slips through the system, there is at least one corresponding disenfranchised America or legal worker in the United States who is here lawfully and can work here lawfully.

Another point that I would give is that this self-imposed guilt about profiling is national idiocy. It has always been an important part of law enforcement. And if you put out the identification of a person who has committed a crime in the neighborhood and you can't use those characteristics to identify that person, we've opened ourselves up for those crimes to be committed over and over again.

No, I don't think we should go out and discriminate against people based upon their race or their ethnicity or those outward appearances. I think you ought to have a right to work in this country if you are legal. But we can't say to the American people, you can't be prudent. You cannot profile, you cannot stereotype someone. That is something that has been—that message gets sent constantly, and I think we need to be smart about what we do.

And with regard to the concern about the previous testimony, the Chairman's remarks about, well, the 40 prosecutions referred through ICE last year of employers that abuse E-Verify, one so far this year, that is 41. I think I can fix just about all of those, and I would say this: Let's legalize the use of E-Verify for employers so that if a job applicant presents their INI and information, it is implicit that they are asking you and giving you consent to go out and use E-Verify. If they are willing to give you the data on I-9, why aren't they willing to accept the data that comes back on E-Verify? We can solve a lot of these problems that way. It would be face to face up front. When I hire employees, I look them in their eye. I look at their drivers license. I look at their data, and I ask them questions, because they are the people that I am going to entrust the profitability of my company in.

And so I think that is the responsible thing. I presume the employer is responsible, not unethical, and I think we can operate with that presumption.

So then, Dr. Shettle, I wanted to ask this question to you. What percent of illegals are erroneously approved by E-Verify? That is a

subject that I don't think has been addressed today. Do we know the answer to that?

Ms. SHETTLE. We don't have a good estimate of that. The problem is that there is no way for us easily to say who is and who isn't work-authorized beyond what the system comes out with, which is why we are using this error rate based just on those found work-authorized. We are hoping to look a little more closely at this in our next evaluation where we are doing many more interviews with employees who received tentative nonconfirmations regardless of whether or not they were resolved.

Mr. KING. Let me ask, Would they fit in two categories, those approved erroneously by E-Verify? And one category we know about would be those who presented false documents that belonged to a person who was legally working in the United States. We know that that exists out there. We don't know that number, but it could be huge, and we think it is. And then another category perhaps we haven't talked about, could that be those who have—who would not be lawful to work in the United States who have somehow created a database that identifies them? Do we know anything about that particular category?

Ms. SHETTLE. That——

Mr. KING. Let's just say, are you aware of any creation of data that would support someone's employment who was illegal that might be unique to them? For example, a digital photograph on a green card of someone who has circumvented the system and gotten into the database that could then 1 day become a citizen, get a passport, because they have created the foundation for their false identity.

Ms. SHETTLE. I don't have an estimate of how frequently that happens. But we definitely know that some people not in the country legally do go get a drivers license using false breeder documents, which are documents that are much less reliable, like a birth certificate where you don't have a picture and so on. So, yes, definitely that can happen. How often it happens, I couldn't tell you.

Mr. KING. Thank you.

Ms. Ingram, I want to especially thank you for your testimony. I know when you took this job on, you surely didn't expect to be sitting before Congress testifying, and I understand that, and I appreciate that.

But the question that I have to ask you is, you mentioned that your company audits your attempts to use E-Verify. And is there a corresponding verification that records each of your attempts on the database of E-Verify that can be used to validate your company's audit to make sure that you are not using E-Verify until there is a legitimate job offer?

Ms. INGRAM. Yes, we have our own forms, and then the form that is printed from E-Verify to confirm or nonconfirm. We keep all the documents that we have attached to the I-9 form with any notes that we may have that we contacted this person, we talked to them, they came back, or whatever information we've had with the team member.

Mr. KING. And E-Verify has that data, too?

Ms. INGRAM. Yes.

Mr. KING. Thank you very much.

I yield back.

Ms. LOFGREN. The gentleman's time has expired.

We have been called to the floor for votes, but before we do, we want to turn to Chairman Conyers for any questions.

And also, I don't know if, Mr. Conyers, you weren't here when we did opening statements. If you wanted to do an opening statement, you are welcome to do that as well.

Chairman CONYERS. Well, thank you very much. I think this has been a very important hearing.

Let me ask you about verification. Should we make it mandatory, do you think, Ms. Ingram? Or are you ready to leave it optional?

Ms. INGRAM. I think it is a good option for me. In our company, everyone uses, all our properties use E-Verify. So, yeah, I do. That is my belief. I am not speaking on behalf of my company, but I believe that it is a good system to use.

Chairman CONYERS. Mr. Williams, what do you think?

Mr. WILLIAMS. Well, I applaud Ms. Ingram's company for having so many safety checks in place. I know that is not the standard, and I know if you roll it out past the voluntary use right now, you will have employers even more resistant.

And one little side note. I apologize if I wasn't clear. The people I was talking about, Mr. Tinoco, Mr. Pacheco, are legally authorized to work, are as American as Ms. Hong and my daughter is.

Chairman CONYERS. Dr. Shettle, where do you come down on the mandatory part of this discussion?

Ms. SHETTLE. As an evaluator, I feel that this is not something that I should be giving an opinion. As documented in our report, there are advantages and disadvantages. And I think that the trade-off decision is yours.

Chairman CONYERS. Mr. ACLU.

Mr. SPARAPANI. The consequences of doing mandatory screening are going to be extraordinary. And when we design big Government databases and systems that are going to apply to every worker in America, we have to write the law in such a way as to think about that odd case. We have to think about those extraordinary individuals whose data doesn't work, because those are the weaknesses that will be exposed.

When you take a system like this nationwide for every worker, it's going to be a huge set of problems, and Congress has to have that squarely in mind before it does anything at all.

Chairman CONYERS. Especially if you include everybody that works in America. I don't need a calculator to add 163 million and 12 million.

And so I am working on the Steve King theory. Well, he has got two theories here that he has left us to concern ourselves with. One is that every one of the 12 million people who have taken somebody else's job, or one for one, now, that presumes that there are a lot of people looking for stoop labor, that want to be seasonal employees, that want to work below minimum wage, without a union. And I am going to be learning more about that as the immigration theories continue.

Then he has the most challenging theory of all, the presumption of employers' good intentions in terms of hiring these people that

are the 12 million. I presume that most of these employers are trying to do what people in a capitalist system always like to accomplish. But we have found that where there are immigration circumstances involving employment, there are a lot of rascals that are employers. I hate to say this on the record, but these are—some of these folks, the things that they are pulling are shocking. And I used up all my shock quotients; my shock allotments for the month have all long gone. But we cannot—I don't know if we are ready to presume this theory of the presumption of good intentions of employers. That is going to have to be scrutinized by the Immigration Committee very carefully.

I yield back, Madam Chair.

Ms. LOFGREN. At this time, all of our time has expired, and we are required to go to the floor to vote.

Let me just thank each of the witnesses here for sticking with us. I know it has been a long day, but your information is very helpful. And a lot of people watching don't realize, you are volunteers. You are just here to help the Congress get this right, and we do appreciate your contribution.

If we have additional questions, we will forward them to you. And if that happens, we would request that you answer those questions as promptly as you can.

Chairman CONYERS. Madam Chair, and none of them required any subpoenas, either.

Ms. LOFGREN. That is correct.

And the record of the hearing will be opened for 5 legislative days for Members to submit additional questions, and that is without objection.

Now we will adjourn this hearing with thanks to all of the witnesses.

[Whereupon, at 12:57 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I would like to welcome the Subcommittee Members, our witnesses, and members of the public to the Subcommittee's hearing on electronic employment verification systems, otherwise known as EEVS, systems which if made mandatory as some have proposed, would affect all 163 million U.S. workers and 7 million employers in the United States.

In this hearing, I look forward to examining how U.S. workers may be impacted by a mandatory EEVS and explore ways to protect U.S. workers from unintended consequences of EEVS errors and/or misuse.

Last year, the Immigration Subcommittee held two hearings on employment eligibility verification systems in the context of comprehensive immigration reform. The first hearing on April 24, 2007, examined the problems with the current paper-based and electronic employment verification systems. The second hearing, on April 26, 2007, explored proposals to improve employment eligibility verification, with emphasis on EEVS. At the time, four bills mandating the use of an EEVS had been introduced in the House of Representatives in the 110th Congress. There are now eleven bills pending before this Congress that would mandate the use of EEVS.

Currently, the only functioning EEVS is known as Basic Pilot or E-Verify, and it is a voluntary program. Only less than 1 percent of all the employers in the United States are currently enrolled to use E-Verify. In addition, the Government Accountability Office (GAO) says that only half the registered employers are "active" users who have used the system at least once.

At the current level of use, according to DHS in August last year, E-Verify received approximately 2 million queries a year. In contrast, if E-Verify is made mandatory for all employers, there would 63 million queries a year just for new employees. There are many proposals that would go beyond verification of new employees to also include existing employees despite the fact that there are 163 million workers in the U.S. at this time.

Therefore, before we move forward on any mandatory EEVS to include all employers, we must be careful to ensure all the problems in the existing EEVS are addressed before we end up with the same problems, but on a much larger scale.

Some of the problems we hope to consider today stem from reports produced by our own government, a non-governmental research corporation, and universities. These reports raise serious concerns of U.S. workers being wrongfully denied work authorization under E-Verify.

In April 2007, the Service Employees International Union (SEIU) testified before this Subcommittee that "[u]nless database errors are cured, 24,000 of the 300,000 estimated workers in each congressional district" would be erroneously denied the eligibility to work by E-Verify.

The reports have also documented employer abuse and misuse of E-Verify. A 2007 Westat report states that sixteen percent of employers reported that they had failed to train all of their relevant staff on the system.

In addition, Although the E-Verify prohibits registered employers from using E-Verify for pre-employment screening of job applicants, this practice is common among employers. Almost one-third, 31 percent, reported using E-Verify to verify employment eligibility before the employee's first day of paid work, including many who used pre-screening at the time of the employee's application.

Employers also reported significant difficulty meeting the requirement of verifying new employees' information within three days of the employee's first day of work.

According to Westat, GAO, and other outside experts, anyone who claims to be an employer can sign up to use E-Verify by signing an MOU with DHS and SSA, thereby obtaining the ability to access very private information.

These are just some of the concerns raised about the existing E-Verify employment verification system. Before this Congress moves forward on any effort to expand this system, we must ensure that these problems are appropriately addressed. I hope this hearing will provide us with a thorough understanding of these problems and the opportunity to identify ways to tackle the concerns.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

A nationwide Electronic Employment Verification System seems so simple.

In fact, it sounds like an elegant solution to the problem of illegal immigration: all new hires must be checked against the Social Security and Homeland Security databases to see if they are legally entitled to work in the United States.

- But what does this System really do? Let me just cite a few issues:
- It will essentially become a giant government database on *all* Americans.
- It will require American workers—not foreign workers—to be registered and checked for hiring.
- It will impose a burden on small businesses, whether their workforce is 100% American or includes immigrants.
- And, it will constitute a significant step toward a national identification card.

There are several legislative proposals that mandate a national electronic verification system. These bills are well-intentioned, and represent a good-faith effort to address the problem of our dysfunctional immigration system.

But as we consider proposals to expand the verification program from 66,000 employers to 7 million, we must keep several important goals in mind.

First, American workers must be protected from wrongful denial of work authorization. The Social Security database is so error-prone that it results in the wrongful denial of more than 20,000 claims by Social Security claimants each year.

Second, all workers must be protected from discrimination. We are concerned that for many employers, it will be easier to just not hire employees with "unusual" names or who appear foreign.

There is a risk that discrimination on the basis of race or national origin will be covered up through claims that the employer was simply doing electronic verification screening, and there was a "problem."

Third, the system must not be misused. Even though pre-screening applicants is illegal under the current pilot program, nearly one-third of employers reported using the system in this manner.

And the temptation will be great to submit the names of workers who try to speak out about labor exploitation or abuse, so as to let the immigration service inadvertently do the unscrupulous employer's dirty work.

While I am skeptical of stand-alone EEVS bills, I am not opposed to an employment verification system that is part of a comprehensive solution to reforming our immigration system. But we are not going to enforce our way out of the current problem, no matter how well-designed an electronic monitoring system may be.

Forcing Americans to drive to the Social Security office and spend days trying to clear their name will not fix the policy or political pressures that immigration creates. Those pressures will only be resolved by ensuring legal and sustainable migrant flows that address the needs of workers, employers, and families.

Accordingly, I very much look forward to today's hearing, and I thank the witnesses for being with us.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Thank you, Chairwoman Lofgren, and ranking member King, for convening today's very important oversight hearing on electronic employment verification systems (EEVS) and the necessary safeguards to protect privacy and to prevent misuse.

With so many bills before this Congress, this hearing could not be more timely. I welcome the testimony of today's witnesses.

The subject of today's hearing is how U.S. workers may become impacted by a mandatory EEVS and explore ways to protect U.S. workers from the unintended consequences of EEVS errors or misuse. The Subcommittee will also hear from Members who have introduced EEVS bills and will hear how their bills would protect U.S. workers from such misuse or errors.

Last year, the Immigration Subcommittee held two hearings on employment eligibility verification systems in the context of comprehensive immigration reform. The first hearing was held on April 24, 2007. It examined the problems with the current paper-based and electronic employment verification systems. The second hearing was held on April 26, 2007, and explored the proposals to improve employment eligibility verification. Last year, there were four bills mandating the use of an EEVS had been introduced in the 110th Congress. Now, there are eleven bills pending before Congress.

Before 1986, the law allowed employers to hire undocumented workers. Employers were not required to verify the immigration or citizenship status of workers who they hired. However, in 1986, the Immigration Reform and Control Act (IRCA) made it illegal for employers to knowingly hire, recruit, or continue to employ undocumented workers. IRCA required employers to examine documents to verify their employees' identity and citizen or immigration status and to attest to the verification on Form I-9.

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act created a voluntary EEVS called the Basic Pilot Program, which operated in five states in November 1997. The program was extended to the fifty states in 2003. The reauthorization was extended until November 2008. The Department of Homeland Security renamed the expanded program "E-Verify" in 2007. In the same year, the Office of Management and Budget instructed federal agencies to use E-Verify for all new employees and encouraged all federal contractors and vendors to enroll in the program. States have now extended the program to private employers.

An employer wishing to use E-Verify must enter a Memorandum of Understanding with DHS and Social Security Administration. The MOU prevents an employer from pre-screening or using the E-Verify to check the citizenship or immigration status of workers before they are hired, selective screening of certain workers, or re-verifying the citizenship or immigration status of existing workers.

Under current law, all employers must complete a Form I-9 for each new employee within three business days of the start of employment. The employer must enter the new worker's name, social security number, date of birth, immigration status, and the type of documents that worker used to demonstrate the status. This information is then checked against the SSA and DHS databases. If the information does not match, the employers inform the worker of the mismatch and issue a "Notice to Employee of Tentative Nonconfirmation." If the worker chooses to contest the document, the worker has eight federal workdays to contact SSA or DHS to resolve the mismatch. SSA or DHS has ten federal workdays to address the notice. If it takes longer, the government will issue a "case in continuance" notice. Unless the employer receives a "case in continuance" notice, it must run the employee's information through E-Verify after ten federal days to receive a confirmation of the worker's authorization to work or a final nonconfirmation.

If the worker chooses not to contest the Notice to Employee of Tentative Nonconfirmation, the TNC will become final and the employer will be required to fire the worker. This system is fraught with problems. EEVS currently only affects a small portion of the 163 million workers and 7 million employers in the U.S. Approximately 66,000 employers or less than 1 percent of all employers in the U.S. are enrolled to use E-Verify. And, registered users do not use it.

The focus of this hearing is the abuse and use of the E-Verify system on U.S. workers who have been erroneously denied work authorization because of E-Verify or EEVS—12.7 million errors were found in the records of U.S. Citizens. Moreover, there is evidence as cited in a recent GAO report that employers have abused or misused EEVS. Misuse has included failure to train staff on the use of the system, prescreening, reduction in work and pay for employees that received tentative nonconfirmations, failure to fire an employee that received a final nonconfirmation which resulted in discriminatory treatment, failure to explain the EEVS system to employees, reverification of existing employees, and failure to comply with paperwork requirements.

The problems with E-Verify is that anyone can sign up to use it. In addition, employers have failed to maintain employee confidences, and there's a threat of increased identity theft.

Today's hearing will discuss the use, misuse, and abuse of the E-Verify and EEVS systems. I welcome the witnesses' insightful testimony.

Thank you, I yield the balance of my time.

STATEMENT OF THE

HUMAN RESOURCE INITIATIVE FOR A LEGAL WORKFORCE

REPRESENTING:

- AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL
- COLLEGE AND UNIVERSITY PROFESSIONAL ASSOCIATION FOR HUMAN RESOURCES
- FOOD MARKETING INSTITUTE
- HR POLICY ASSOCIATION
- INTERNATIONAL PUBLIC MANAGEMENT ASSOCIATION FOR HUMAN RESOURCES
- NATIONAL ASSOCIATION OF MANUFACTURERS
- NATIONAL FRANCHISEE ASSOCIATION
- SOCIETY FOR HUMAN RESOURCE MANAGEMENT

SUBMITTED TO
COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES,
BORDER SECURITY AND INTERNATIONAL LAW

JUNE 10, 2008

The Human Resource Initiative for a Legal Workforce supports a mandatory federal electronic employment verification system. Our objective is to improve the current employment verification process by promoting a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment – and to that end, the members of the HR Initiative are enthusiastic supporters of H.R. 5515, the New Employment Verification Act.

The collective membership of the HR Initiative represents the front lines on employment verification, and as such are fully committed to the hiring of only work-authorized individuals through an effective, efficient electronic employment verification system. We believe effective employment verification is the lynchpin for true immigration reform. We also recognize that the current employment verification system is in need of real reform and is inadequate to meet current and future demands.

We urge Congress to carefully consider the effort underway to mandate employer use of E-Verify – in particular, the recent Executive Order from President Bush to mandate that all Federal contractors participate in the system. As a pilot program, E-Verify has been very worthwhile in highlighting the challenges to creating a one-size-fits-all system for the many hiring situations in the U.S. economy. It is time, however, to go beyond E-Verify and to provide employers the option of enrolling in a more secure system that better protects the rights of employers and workers. That is why we have endorsed the New Employee Verification Act (NEVA).

Today, under current federal law, employers are required to review any of 25 documents presented by an employee to demonstrate the employee's identity and authorization to work in the United States. Employers are then required to attest on Form I-9 that they have reviewed the documents and that they appear genuine and authentic.

Even under the best of circumstances, HR professionals encounter numerous challenges with these employment verification requirements, as there is ample evidence that the I-9 system is prone to fraud, forgeries and identity theft, making it difficult, if not impossible, for an employer to differentiate between the legal and illegal worker.

In an attempt to address the shortcomings of the paper-based system, Congress created the Basic Pilot program – now known as E-Verify – for employers to confirm an employee's eligibility to work using a voluntary electronic verification system. Under E-Verify, employers review an employee's identity and work authorization documents, including completing all Form I-9 paperwork prior to using E-verify. Employers then check each new employee's work eligibility using an electronic system that verifies that the presented name and Social Security number and or Department of Homeland Security (DHS) number, matches information in these databases.

Although E-Verify has been operational since 1997, and despite the best efforts of the men and women who administer this program in the United States Citizen Immigration Services (USCIS), we believe it is inadequate to meet the needs of mandated use by all U.S. employers and will not provide an effective system for preventing unauthorized employment without change. The HR Initiative therefore believes that mandated E-Verify is the wrong choice for the U.S. for the following reasons:

First, according to the DHS, only 69,000 employers are now using the E-Verify system, which represents only a tiny fraction of the over 6 million employers in the United States. In addition, as of January 1 of this year, Arizona mandated that all 140,000 employers in the state participate in the system, yet as of mid-May, less than 25,000 were actually enrolled. While no survey has been conducted to determine why the employer participation rate is so low, there have been numerous complaints from Arizona businesses and employer groups that the E-Verify enrollment process is cumbersome and difficult, and that support from USCIS for employers trying to enroll has been inconsistent and ineffective. Expanding this system to cover all employers – absent federal certification that the system is adequately staffed and prepared to handle the increased workload – will undoubtedly cause confusion, harm productivity, and deny eligible workers employment opportunities.

Second, E-Verify is not reliable as it depends principally on the Social Security Administration database. According to testimony before Congress, the Social Security Administration's own Office of the Inspector General in June of last year, there is a 4.1 percent error rate in the 145 million Social Security records. If all U.S. employers were to use the

system, millions of U.S. citizens and legal residents could potentially be denied employment due to bureaucratic errors. Moreover, the error rate for work authorized foreign nationals is estimated to be as high as 10 percent, thereby opening the door to increased discrimination based on national origin.

This error rate is unacceptable – especially when it will impact the ability of legal workers to obtain jobs. We should not place human resource professionals and their employers in the middle – subjecting them to stiff penalties if they mistakenly hire an unauthorized worker, while exposing them to potential lawsuits if they deny employment to a legal worker – all because of faulty government data and processes.

Third, E-Verify is a paper-based system and not the entirely electronic system portrayed by DHS and some Members of Congress. Employers are still required to complete the paper Form I-9 after analyzing one or more of 25 documents that an employee can use for identity and work authorization purposes. It is only after completing the Form I-9 that an employer enters data information into E-Verify.

Fourth, because E-Verify remains a paper-based system, it is unable to detect many forms of document fraud and identity theft. This leaves all employers vulnerable to sanctions through no fault of their own. This is because E-Verify does not verify the authenticity of the identity being presented for employment purposes, but rather only that the identity presented matches information in the Social Security and Department of Homeland Security databases.

Simply stated, unauthorized workers are using stolen Social Security numbers, fake certificates and fraudulently-obtained but "legitimate" photo IDs to bypass the system and gain employment. Even the E-Verify photo tool cannot detect whether the document actually relates to the person presenting it – as a fraudulent photo could already be in the system.

The proliferation of false or stolen documents can and does cause reputable employers to mistakenly hire individuals who are not eligible to work. At the same time, the lack of certainty and the threat of government-imposed penalties may lead some employers to delay or forego hiring legal workers who are eligible. In either case, the costs are high for both U.S. employers and legal workers.

Employers need the right tools to verify a legal workforce. We believe employers are entitled to a quick, unambiguous, and accurate answer from the government to the query whether an employee is authorized to accept an offer of employment. Unfortunately, mandating E-Verify without change will not meet this need, and may make the challenges more difficult for reputable employers and legal employees.

The HR Initiative has been critical of E-Verify's reliance on the Social Security database. However, we recognize that no federal employment verification program can be run effectively without reliance on this database. The reality is that Social Security has long-been responsible for accurate wage reporting, assigning Social Security numbers and determining benefit eligibility for both citizens and non-citizens, and ultimately must have a role in any effective employment verification system. As a result, the overriding issue the HR Initiative believes needs to be addressed is how we design an employment verification system that ensures Social Security can perform its role while still achieving its core responsibility of providing benefits. To achieve this goal, the HR Initiative believes Congress must enact a system that meets the following criteria:

First, whatever requirements are placed on the Social Security system must do no harm to tl system or affect its mission of providing benefits to retirees, those with disabilities, or survivors.

Second, the data errors in the Social Security Administration's database must be cleaned up Advance appropriated resources and staffing must be provided to Social Security to address this iss before any more requirements are placed on the agency.

Third, the Social Security Administration should control access to and the operation of the system, as the overwhelming number of people that are employed in this country are U.S. citizens with whom the Department of Homeland Security need have no other contact.

Fourth, to use enforcement resources wisely and to limit the impact on government databas only new hires should be checked for work authorization. As mentioned previously, there are 145 million individuals employed in the U.S. and due to job turnover, approximately 60 million new hi annually. On average, most individuals would be run through an employment verification system

within 3 to 4 years. It would be inefficient and costly to run all 145 million workers through a re-verification process at the outset.

Fifth and finally, resources and tools must be provided to U.S. citizens to allow individuals ensure that their Social Security data is accurate, and also allow them the opportunity to "lock" thei Social Security number – preventing it from being misused and verified through any employment verification system. This would help to clean-up the data error rate assist in combating the fraudule use of this information

These steps taken in their entirety would help to ensure that the impact on the Social Security Administration is manageable and effective. It is no coincidence that these criteria are all met in H.R. 5515, the New Employee Verification Act, which will transform the current paper-based verification process into a state-of-the-art electronic system that is accurate, reliable, cost-efficient, easy-to-use, and shares responsibility among government, employers and employees.

If NEVA were to become law, all U.S. employers would be required to participate in one of two electronic employment verification systems by enrolling through their State's existing "new hire" reporting program, originally designed to enhance child support enforcement under the Welfare to Work act of 1996. This electronic portal is already used by 90 percent of U.S. employers – a vast improvement over the 60,000 employers that currently use E-verify – which will allow resources to be focused on enforcement, not enrollment.

Under NEVA, all employers would be required to participate in a completely electronic employment verification system (EEVS) that improves upon E-Verify by replacing the paper-based, error-prone, I-9 work status verification process with a paperless system.

EEVS would require the Social Security Administration and the Department Homeland Security to certify the accuracy of the system in advance of full implementation, and annually thereafter – and it would also require the Government Accountability Office to evaluate the accuracy, efficiency and impact of the EEVS.

EEVS would provide for the verification of U.S. citizens only by the Social Security Administration – with only non-citizens checked and tracked by law enforcement authorities at DHS. We view this as a critical component of the proposed system, as no U.S. citizen will have to rely on a federal law enforcement authority to approve their work status. Importantly, all employers would be subject to stepped-up Federal enforcement efforts and penalties.

Employers would be provided with a second voluntary option for a more secure electronic employment verification system (SEEVS) to guard against identity theft. The proposed SEEVS system would verify employees' identity and work eligibility through both government and publicly available databases and "lock" that identity once verified through use of biometric technologies. To achieve this level of security, SEEVS would establish a network of private sector government-certified companies to authenticate new employees' identities utilizing existing background check and document screening tools. Each employee's identity would be safeguarded through the use of a biometric identifier (such as a thumbprint) and inter-dispersed databases that will keep the biometric and identity information separate. An employee would simply present his or her biometric to an employer to confirm identity and work authorization. The service would be paid for by employers.

Use of biometric identifiers are becoming widely accepted by Americans, as it increases an individual's ability to protect personal identification data, and prevent identity theft. Many employers – including certain high security industries, schools, hospitals and government entities, to name just a few – already use biometrics in the employment process. U.S. consumers are increasingly using them as well, as banks and other service providers and retail outlets incorporate the technology into everyday transactions. According to public opinion research conducted earlier this year by Greenberg, Quinlan, Rosner Research and Public Opinion Strategies, fully 79 percent of Americans support using biometrics in the employment verification process as described in NEVA. In addition, and contrary to expectation, biometric scanners are inexpensive and easy to use.

Importantly, SEEVS would preclude the creation of new government bureaucracies to administer the employment verification system and does not require any new national or state identification cards to facilitate the process, thus savings billions of dollars as well as preventing another opportunity for identity fraud.

Both EEVS and SEEVS would prevent wages earned through future unauthorized work from being used to determine Social Security benefits, and both systems would protect the Social Security Administration's primary mission and trust funds by authorizing employment verification only through advanced appropriated funds. Both systems would also provide employers a safe harbor through reliance on system information, along with a reasonable phased-in implementation schedule designed to achieve deterrence of illegal immigration and unauthorized employment, while providing employees needed protections against discrimination.

If adequately funded – as called for in H.R. 5515 – we believe this new system could eradicate virtually all unauthorized employment, thereby eliminating a huge incentive for illegal immigration. It will also eliminate employment discrimination by taking the subjectivity out of the verification process.

Finally, we strongly recommend that the federal government, specifically the Department of Homeland Security, take sole ownership of enforcing immigration laws at the worksite. Recently, partially due to an understandable frustration on the part of state and local governments over the lack of immigration control, many jurisdictions have enacted their own laws on employment eligibility verification. With all due respect to these states and municipalities, it is the U.S. Congress that has plenary authority, and the expertise, to deal with this issue. Moreover, it is becoming impossible for employers with presence in several states to keep in compliance with the various requirements. What is resulting from state action is a conflicting patchwork of rules and regulations that don't serve the interests of employers, employees or the nation.

True employment verification is the only way to ensure fair and equitable treatment for thos individuals who should have access to legitimate jobs. It is essential for a legal workforce and for America's national and economic security.

The members of the HR Initiative urge Members of this Subcommittee to support of the Ne Employee Verification Act, and reject any effort to mandate use of E-Verify.

United States Government Accountability Office

GAO

Statement for the Record

To the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, House of Representatives

For Release on Delivery
Expected at 9:00 a.m. EDT
Tuesday, June 10, 2008

EMPLOYMENT VERIFICATION

Challenges Exist in Implementing a Mandatory Electronic Employment Verification System

Statement for the Record by Richard M. Stana, Director
Homeland Security and Justice Issues

GAO-08-895T

June 10, 2008

GAO
Accountability • Integrity • Reliability

Highlights

Highlights of GAO-08-895T, a statement for the record to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, House of Representatives

EMPLOYMENT VERIFICATION

Challenges Exist in Implementing a Mandatory Electronic Employment Verification System

Why GAO Did This Study

In 1996, the former U.S. Immigration and Naturalization Service, now within the Department of Homeland Security (DHS), and the Social Security Administration (SSA) began operating a voluntary pilot program, recently named the E-Verify program, to provide participating employers with a means for electronically verifying employees' work eligibility. Legislation has been introduced in Congress to require all employers to electronically verify the work authorization status of their employees. In this statement GAO provides observations on the E-Verify system's capacity and costs, options for reducing delays and improving efficiency in the verification process, ability to detect fraudulent documents and identity theft, and vulnerability to employer fraud and misuse. This statement is based on GAO's products issued from August 2005 through June 2007 and updated information obtained from DHS and SSA in April 2008. We analyzed data on employer use, E-Verify guidance, and other reports on the employment verification process, as well as legislative proposals and regulations.

What GAO Recommends

In 2005, we recommended that DHS include an assessment of the feasibility and costs of addressing program weaknesses, such as inability to detect identity fraud, in a planned evaluation of the program. DHS implemented this recommendation. This statement contains no new recommendations.

To view the full product, including the scope and methodology, click on GAO-08-895T. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

What GAO Found

A mandatory E-Verify program would necessitate an increased capacity at both U.S. Citizenship and Immigration Services (USCIS) and SSA to accommodate the estimated 7.4 million employers in the United States. According to USCIS, as of April 2008, more than 61,000 employers have registered for E-Verify, and about half are active users. Although DHS has not prepared official cost figures, USCIS officials estimated that a mandatory E-Verify program could cost a total of about $765 million for fiscal years 2009 through 2012 if only newly hired employees are queried through the program and about $838 million over the same 4-year period if both newly hired and current employees are queried. USCIS has estimated that it would need additional staff for a mandatory E-Verify program, but was not yet able to provide estimates for its staffing needs. SSA has estimated that implementation of a mandatory E-Verify program would cost a total of about $281 million and require hiring 700 new employees for a total of 2,325 additional workyears for fiscal years 2009 through 2013.

USCIS and SSA are exploring options to reduce delays and improve efficiency in the E-Verify process. The majority of E-Verify queries entered by employers—about 92 percent—confirm within seconds that the employee is work-authorized. About 7 percent of the queries cannot be immediately confirmed as work authorized by SSA, and about 1 percent cannot be immediately confirmed as work authorized by USCIS because employees' information queried through the system does not match information in SSA or DHS databases. The majority of SSA erroneous tentative nonconfirmations occur because employees' citizenship or other information, such as name changes, is not up to date in the SSA database, generally because individuals do not request that SSA make these updates. USCIS and SSA are planning to implement initiatives to help address these weaknesses and reduce delays.

E-Verify may help employers detect fraudulent documents thereby reducing such fraud, but it cannot yet fully address identity fraud issues, for example when employees present genuine documents that may be stolen. USCIS has added a photograph screening tool to E-Verify through which an employer verifies the authenticity of certain documents, such as an employment authorization document, by matching the photograph on the document with the photograph in DHS databases. USCIS is exploring options to expand this tool to include other forms of documentation, such as passports, with databases that store photographic information, but these efforts are in the planning stages and require decisions about data sharing and privacy issues.

E-Verify is vulnerable to acts of employer fraud and misuse, such as employers limiting employees' pay during the E-Verify process. USCIS has established a branch to review employers' use of E-Verify. In addition, information suggesting employers' fraud or misuse can be useful to U.S. Immigration and Customs Enforcement (ICE) in targeting worksite enforcement resources. USCIS and ICE are negotiating a memorandum of understanding to define roles and responsibilities for sharing information.

Madam Chairwoman, Ranking Member King, and Members of the Subcommittee:

We appreciate the opportunity to comment on electronic employment verification issues. As we and others have reported in the past, the opportunity for employment is one of the most powerful magnets attracting unauthorized immigrants to the United States. To help address this issue, in 1986 Congress passed the Immigration Reform and Control Act (IRCA), which made it illegal for individuals and entities to knowingly hire, continue to employ, or recruit or refer for a fee unauthorized workers.[1] The act established a two-pronged approach for helping to limit the employment of unauthorized workers: (1) an employment verification process through which employers verify all newly hired employees' work eligibility and (2) a sanctions program for fining employers who do not comply with the act.[2]

Following the passage of IRCA, the U.S. Commission on Immigration Reform and various immigration experts indicated a number of problems with the implementation of immigration policies and concluded that deterring illegal immigration requires, among other things, strategies involving a more reliable employment eligibility verification process that focuses on disrupting the ability of unauthorized immigrants to gain employment. In particular, the commission report and other studies found that the single most important step that could be taken to reduce unlawful migration is the development of a more effective system for verifying work authorization. In the over 20 years since passage of IRCA, the employment eligibility verification process has remained largely unchanged. Legislation has been introduced in Congress to reform immigration laws and strengthen electronic employment verification. Some of this legislation includes proposals that would require employers to use a mandatory, functional electronic employment verification program for verifying the

[1] 8 U.S.C. §1324a(a).

[2] IRCA provided for sanctions against employers who do not follow the employment verification (Form I-9) process. Employers who fail to properly complete, retain, or present for inspection a Form I-9 may face civil or administrative fines ranging from $110 to $1,100 for each employee for whom the form was not properly completed, retained, or presented. Employers who knowingly hire or continue to employ unauthorized aliens may be fined from $275 to $11,000 for each employee, depending on whether the violation is a first or subsequent offense. Employers who engage in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens are subject to criminal penalties consisting of fines up to $3,000 per unauthorized employee and up to 6 months imprisonment for the entire pattern or practice.

work authorization of all newly hired employees. Some of these proposals would also require employers to use an electronic employment verification program to verify the work authorization status of existing employees. In addition, some proposals would provide sanctions for employers who do not use electronic verification to verify the work authorization status of employees equivalent to sanctions for employers who do not comply with the employment verification process established by IRCA.

Currently, U.S. Citizenship and Immigration Services (USCIS), a component within the Department of Homeland Security (DHS), in conjunction with the Social Security Administration (SSA), operates a voluntary electronic employment verification program, called E-Verify. While participation in this program remains voluntary, some states are moving to require all employers in the state to verify newly hired employees using E-Verify. For example, as of January 1, 2008, the "Legal Arizona Workers Act" requires all employers in Arizona to verify the employment eligibility of newly hired employees through the E-Verify program. This act also provides civil penalties, including the possible suspension or permanent revocation of all Arizona business licenses, for employers who are found to intentionally or knowingly employ an unauthorized alien. In 2008, Mississippi passed the "Mississippi Employment Protection Act," under which the state will phase in mandatory newly hired employee eligibility verification with E-Verify for all employers between July 1, 2008, and July 1, 2011. Other states, including Idaho, Minnesota, Rhode Island, and Oklahoma, require employers in certain sectors, such as government employers and contractors, to verify their employees' work authorization status.

This statement is an update of our prior work regarding employment verification and worksite enforcement. Specifically, this statement includes our observations on the E-Verify program's capacity and costs, options for reducing delays and improving efficiency in the verification process, ability to detect fraudulent documents and identity theft, and vulnerability to employer fraud and misuse.

In preparing this statement, we reviewed our past work on employment verification and worksite enforcement efforts.[3] In April 2008, we updated information from our past work. Specifically, we analyzed updated information provided by U.S. Immigration and Customs Enforcement (ICE), USCIS, and SSA officials on the E-Verify program and challenges their agencies may face if an electronic employment verification program were made mandatory. We examined legislative proposals, regulations, guidance, and other studies on the employment verification process. We also analyzed a report on the results of an independent evaluation of the E-Verify program, then known as the Basic Pilot program, issued by Westat Corporation, a contractor evaluating the program, in September 2007.[4] We reviewed the scope and methodology used by Westat in conducting the evaluation and, based on this review, found that the report findings were sufficiently reliable to provide a general indication of the types of ways in which employers have used the program. Furthermore, we received updated data on employer use of the current electronic employment eligibility verification system. We reviewed these data for accuracy and completeness and determined that these data were sufficiently reliable for the purposes of our review. We conducted these performance audits and our 2008 update in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

A mandatory E-Verify program would necessitate an increased capacity at both USCIS and SSA to accommodate the estimated 7.4 million employers in the United States.[5] As of April 2008, more than 61,000 employers have registered for E-Verify, about half of whom have been active users. Under a mandatory E-Verify program, USCIS has estimated that annual employer queries of newly hired employees would be an average of 63 million.

[3]GAO, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, GAO-05-813 (Washington, D.C.: Aug. 31, 2005) and GAO, *Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Verification System*, GAO-07-924T (Washington, D.C.: June 7, 2007).

[4]Westat, *Findings of the Web Basic Pilot Evaluation* (Washington, D.C.: September 2007).

[5]In 2005, the most recent year for which data are available, there were approximately 7.4 million employer establishments in the United States.

USCIS has tested the E-Verify computer system and found that the system could process up to 240 million queries per year with the purchase of five additional servers. A mandatory E-Verify program would require additional USCIS and SSA resources to operate the program, including conducting monitoring and compliance and status verification activities. Although DHS has not prepared official cost figures, USCIS officials estimated that a mandatory E-Verify program could cost a total of about $765 million for fiscal years 2009 through 2012 if only newly hired employees are queried through the program and about $838 million over the same 4-year period if both newly hired and current employees are queried. USCIS has estimated that it would need additional staff for a mandatory E-Verify program, but was not yet able to provide estimates for its staffing needs. USCIS has 121 E-Verify staff nationwide and, according to the agency, would increase its staffing level based on a formula that considers monitoring and compliance and status verification staffing needs as the number of employers using E-Verify increases. SSA has estimated that expansion of a mandatory E-Verify program would cost a total of about $281 million for fiscal years 2009 through 2013 and require hiring 700 new employees for a total of 2,325 additional workyears over the same 5-year period.

USCIS and SSA are exploring options to reduce delays and improve efficiency in the E-Verify process. According to USCIS, under the current voluntary program the majority of E-Verify queries entered by employers—about 92 percent—confirm within seconds that the employee is authorized to work. About 7 percent of the queries cannot be immediately confirmed as work authorized by SSA, and about 1 percent cannot be immediately confirmed as work authorized by USCIS because the employee information queried through the program does not match information in SSA or DHS databases.[6] With regard to SSA tentative nonconfirmations, USCIS and SSA officials told us that the majority of erroneous tentative nonconfirmations occur because employees' citizenship or other information, such as name changes, is not up to date in the SSA database, generally because individuals have not contacted SSA to update their information when changes occurred. USCIS and SSA are planning to implement various initiatives to help address these weaknesses and reduce delays in the verification process. For example, in

[6]In general, in cases when the E-Verify system cannot confirm an employee's work authorization status through the initial automatic check, the system issues the employer either an SSA or a DHS tentative nonconfirmation of the employee's work authorization status, which requires the employee to resolve any data inaccuracies if he or she is able or chooses to do so.

May 2008 USCIS implemented an initiative to modify the electronic verification process so that employees whose naturalized citizenship status cannot be confirmed by SSA will be also checked against DHS databases, helping to reduce the number of naturalized citizens who would need to visit an SSA office to resolve a tentative nonconfirmation and improving efficiency in the verification process.

E-Verify may help employers detect fraudulent documents, thereby reducing such fraud, but it cannot yet fully address identity fraud issues, for example, when employees present borrowed or stolen genuine documents. USCIS has taken steps to improve E-Verify's ability to help reduce fraud. For example, USCIS has added a photograph screening tool to E-Verify through which an employer verifies the authenticity of certain DHS-issued identity documents, such as an employment authorization document, by matching the photograph on the card or document with the photograph stored in DHS databases. USCIS is exploring options for expanding this tool to include other forms of documentation with related databases that store photographic information, such as passports issued by the Department of State and driver's licenses issued by states. These efforts are in the planning stages and require policy decisions regarding data-sharing processes and consideration of privacy issues.

E-Verify is also vulnerable to acts of employer fraud and misuse, such as employers limiting work assignments or pay while employees undergo the verification process, that can adversely affect employees queried through the E-Verify program. USCIS has taken actions to help address employer fraud and misuse by, for example, establishing a Monitoring and Compliance branch to review employers' use of the E-Verify program. USCIS is working to staff this office and implement monitoring and compliance activities. However, these implementation efforts are in the early stages, and it is too early to tell whether these efforts will fully ensure that all employers are properly using E-Verify and following requirements under a mandatory program. In addition, information suggesting employer fraud or misuse of the system could be useful to other DHS components in targeting worksite enforcement resources and promoting employer compliance with employment laws. Under the current voluntary program, case referrals and requests for information between ICE and USCIS have been infrequent and informal. ICE and USCIS are negotiating a memorandum of understanding (MOU) to define roles, responsibilities, and mechanisms for sharing E-Verify data, and USCIS is developing a system for tracking case referrals made to ICE.

Background

In 1986, IRCA established the employment verification process based on employers' review of documents presented by employees to prove identity and work eligibility. On the Form I-9, employees must attest that they are U.S. citizens, lawfully admitted permanent residents, or aliens authorized to work in the United States. Employers must then certify that they have reviewed the documents presented by their employees to establish identity and work eligibility and that the documents appear genuine and relate to the individual presenting them. In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent. Employers are required to retain the Form I-9 and provide it, upon request, to officers of the Departments of Homeland Security and Labor and the Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices for inspection.[7] Employers generally are deemed in compliance with IRCA if they have followed the Form I-9 process, including when an unauthorized alien presents fraudulent documents that appear genuine. Following the passage of IRCA in 1986, employees could present 29 different documents to establish their identity and/or work eligibility. In a 1997 interim rule, the former U.S. Immigration and Naturalization Service (INS) reduced the number of acceptable work eligibility documents from 29 to 27.[8]

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)[9] of 1996 required the former INS and SSA to operate three voluntary pilot programs to test electronic means for employers to verify an employee's eligibility to work, one of which was the Basic Pilot Program.[10] The Basic Pilot Program was designed to test whether pilot verification procedures could improve the existing employment

[7]Employers are required to retain the Form I-9 for 3 years after the date the person begins work or 1 year after the person's employment is terminated, whichever is later.

[8]Eight of these documents establish both identity and employment eligibility (e.g., U.S. passport or permanent resident card); 12 documents establish identity only (e.g., driver's license); and 7 documents establish employment eligibility only (e.g., Social Security card).

[9] Pub. L. No. 104-208, div. C, §§ 401-404, 110 Stat. 3009-546, 3009-655-65.

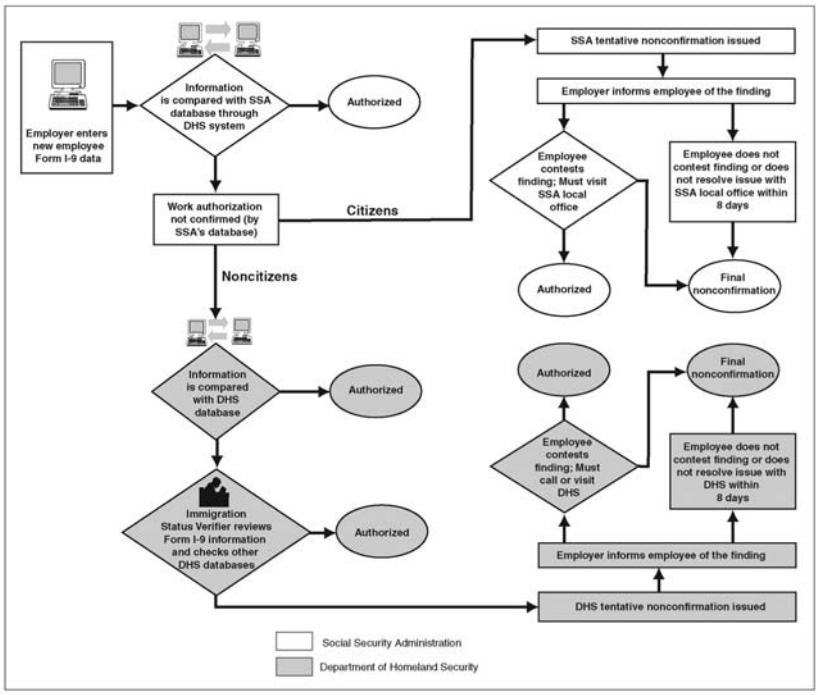
[10]The other two pilot programs mandated by IIRIRA—the Citizen Attestation Verification Pilot Program and the Machine-Readable Document Pilot Program—were discontinued in 2003 due to technical difficulties and unintended consequences identified in evaluations of the programs. See Institute for Survey Research and Westat, *Findings of the Citizen Attestation Verification Pilot Program Evaluation* (Washington, D.C.: April 2003) and Institute for Survey Research and Westat, *Findings of the Machine-Readable Document Pilot Program Evaluation* (Washington, D.C.: May 2003).

verification process by reducing (1) false claims of U.S. citizenship and document fraud, (2) discrimination against employees, (3) violations of civil liberties and privacy, and (4) the burden on employers to verify employees' work eligibility.

In 2007, USCIS renamed the Basic Pilot Program the Employment Eligibility Verification program and later in the year changed the name to E-Verify. E-Verify provides participating employers with an electronic method to verify their employees' work eligibility. Regardless of whether employers participate voluntarily in E-Verify, they are still required to complete Forms I-9 for all newly hired employees in accordance with IRCA. After completing the forms, those employers participating in the program query E-Verify's automated system by entering employee information provided on the forms, such as name and social security number, into the E-Verify Web site within 3 days of the employee's start date. The program then electronically matches that information against information in SSA's Numident database and, if necessary, DHS databases to determine whether the employee is eligible to work.[11] E-Verify electronically notifies employers whether their employees' work authorization was confirmed. Those queries that the DHS automated check cannot confirm are referred to USCIS staff, called immigration status verifiers, who check employee information against information in other DHS databases. The E-Verify program process is shown in figure 1.

[11] Through a process known as enumeration, SSA assigns a unique social security number to each individual who meets the requirements for one. Social security numbers are issued to most U.S. citizens at birth. They are also available to noncitizens lawfully admitted to the United States with permission to work. Numident contains demographic information on every social security number holder.

Figure 1: E-Verify Program Verification Process



Source: GAO analysis based on USCIS information.

In cases when E-Verify cannot confirm an employee's work authorization status either through the automatic check or the check by an immigration status verifier, the system issues the employer a tentative nonconfirmation

of the employee's work authorization status. In this case, the employers must notify the affected employees of the finding, and the employees have the right to contest their tentative nonconfirmations by contacting SSA or USCIS to resolve any inaccuracies in their records within 8 federal working days. During this time, employers may not take any adverse actions against those employees, such as limiting their work assignments or pay. After 8 days, employers are required to either immediately terminate the employment, or notify DHS of the continued employment, of workers who do not successfully contest the tentative nonconfirmation and those whom the program finds are not work-authorized.[12]

The E-Verify program uses the same system as USCIS's Systematic Alien Verification for Entitlements Program, which provides a variety of verification services for federal, state, and local government agencies. USCIS estimates that more than 150,000 federal, state, and local agency users verify immigration status through the Systematic Alien Verification for Entitlements Program. SSA also operates the Web-based Social Security Number Verification Service, which employers can use to assure that employees' names and social security numbers match SSA's records. This service, designed to ensure accurate employer wage reporting, is offered free of charge. Employer use is voluntary, and approximately 12,000 employers requested more than 25.7 million verifications in 2005, according to the SSA Office of the Inspector General.[13]

USCIS contracted for an independent evaluation of the E-Verify program. Westat, the organization that conducted the evaluation, issued a report on its evaluation findings in September 2007. According to this report, the Westat evaluation examined how well the federal government implemented modifications made to the original Basic Pilot Program and the extent to which the program met its goals to (1) reduce employment of unauthorized workers, (2) reduce discrimination, (3) protect employee civil liberties and privacy, and (4) prevent undue burden on employers. Based on its findings, Westat made recommendations to USCIS and SSA intended to help improve the program.

[12] According to the E-Verify User Manual, a participating employer can notify DHS that it is not terminating an employee whose employment was not authorized by E-Verify or who did not contest a tentative nonconfirmation.

[13] Social Security Administration Office of the Inspector General, *Monitoring the Use of Employee Verification Program*, A-03-06-36122 (Washington, D.C.: Sept. 26, 2006).

Mandatory E-Verify Will Require an Increase in Capacity at USCIS and SSA

Mandatory electronic employment verification would substantially increase the number of employers using the E-Verify program, which would place greater demands on USCIS and SSA resources. As of April 2008, more than 61,000 employers have registered to use the program, about 28,000 of whom were active users, according to USCIS.[14] USCIS has estimated that approximately 4,000 employers are registering per month. In fiscal year 2007, USCIS processed about 3.2 million employer queries and for the first 6 months of fiscal year 2008, processed about 2.6 million queries. If participation in the E-Verify program were made mandatory, the program would have to accommodate all of the estimated 7.4 million employers in the United States. USCIS has projected that employers would submit an average of 63 million queries on newly hired employees per year under a mandatory E-Verify program.[15] USCIS officials stated that they have tested the capacity of the E-Verify computer system to handle about four times the projected load of queries that would occur if E-Verify participation were made mandatory for all employers. These tests showed that the E-Verify system can process up to 240 million queries per year, with the purchase of 5 additional servers, exceeding USCIS's projection of an average of 63 million queries per year under a mandatory E-Verify program.[16]

USCIS has developed cost and staffing estimates for operating a mandatory E-Verify program. Although DHS has not prepared official cost figures, USCIS officials estimated that a mandatory E-Verify program could cost a total of about $765 million for fiscal years 2009 through 2012 if only newly hired employees are queried through the program and about $838 million over the same 4-year period if both newly hired and current

[14]Active users are those employers who have run at least one query in fiscal year 2008.

[15]USCIS used employment data from the Bureau of Labor Statistics to develop these query projections. According to these statistics, employers hire an average of 9 new employees per year. The total number of employers is 7.4 million, based on these statistics, which amounts to approximately 63 million employment verifications per year.

[16]USCIS officials told us that under the current voluntary E-Verify program, which uses one server, the program has been tested to handle about 40 million queries per year. In addition, under the current voluntary program, the program has been tested to handle about 45,000 employer registrations per day and, with two additional servers, could handle up to 145,000 employer registrations per day.

employees are queried.[17] Mandatory implementation of E-Verify would also require additional USCIS staff to administer the program, but USCIS was not yet able to provide estimates for its staffing needs. Under the voluntary program, USCIS operated E-Verify with 12 headquarters staff members in 2005, which has grown to about 121 full-time employees nationwide, with 21 staff members for monitoring and compliance and 11 for status verification operations. According to USCIS, the agency would increase its staffing level based on a formula that considers monitoring and compliance and status verification staffing needs as the number of employers using E-Verify increases.

A mandatory E-Verify program would also require an increase in SSA's resource and staffing requirements. SSA has estimated that implementation of a mandatory E-Verify program would cost a total of about $281 million for fiscal years 2009 through 2013 and require hiring 700 new employees for a total of 2,325 additional workyears over the same 5-year period.[18] According to SSA, these estimates represent costs if the current E-Verify system is expanded, and any changes to the current process could have significant additional costs to the agency. The estimates include costs for start-up, such as system upgrades, training for current SSA employees, and training, space, and workstations for new employees, and ongoing activities, such as field office visits and system maintenance. SSA's estimates assume that under a mandatory expansion of the current E-Verify program, for every 100 E-Verify queries, about 1.4

[17]The 4-year phased-in implementation proposal used by USCIS in making this estimate assumes that the federal employers with over 250 employees would be required to use E-Verify the first year. Mandatory use of E-Verify would be required for all employers with more than 100 employers in the second year, employers with more than 30 employees in the third year, and all remaining employers in the fourth year.

[18]In developing these estimates, SSA assumed that that the federal government, federal contractors, and employers with over 250 employees would be required to use E-Verify the first year. Mandatory use of E-Verify would be required for all employers with more than 100 employers in the second year, employers with more than 30 employees in the third year, and all remaining employers in the fourth year. SSA assumed that employers must ensure that their current employees have been verified through E-Verify within 4 years. SSA also assumed that the first group of employers will have to begin verifying newly hired employees by the end of fiscal year 2009. Moreover, in developing the estimate SSA assumed that there will be a gradual increase in verification requests from fiscal years 2009 through 2012, peaking at 110 million in fiscal year 2012, before settling off at a consistent volume of 60 million verification requests each year, with some employers participating voluntarily in E-Verify to verify new and current employees before they are required to do so.

individuals will contact SSA regarding a tentative nonconfirmation.[19] According to SSA officials, the cost of mandatory E-Verify would be driven by the increased workload of its field office staff due to resolving SSA tentative nonconfirmations, as well as some of the computer systems improvements and upgrades that SSA would need to implement to address the capacity of a federal mandatory program. Moreover, the final number of new full-time staff required would depend on both the legislative requirements for implementing mandatory E-Verify and the effectiveness of efforts USCIS has underway to decrease the need for individuals to visit SSA field offices. SSA officials told us that SSA would need time and a phased-in approach for implementation of a mandatory E-Verify program in order to handle the increased workload for SSA field offices.

USCIS and SSA Are Implementing Plans to Reduce Delays and Improve Efficiency in the E-Verify Process

In prior work, we reported that secondary verifications lengthen the time needed to complete the employment verification process. The majority of E-Verify queries entered by employers—about 92 percent—confirm the employee is authorized to work within seconds. About 7 percent of queries are not confirmed by the initial automated check and result in SSA tentative nonconfirmations, while about 1 percent result in DHS tentative nonconfirmations.[20] With regard to the SSA tentative nonconfirmations, USCIS officials told us that the majority of erroneous tentative nonconfirmations occur because employees' citizenship status or other information, such as name changes, is not up to date in the SSA database, generally because individuals have not notified SSA of information

[19]According to SSA, the vast majority of individuals visit an SSA field office, and a small percentage contact SSA's 1-800 number. SSA officials told us that in fiscal year 2007, for every 100 E-Verify queries, 1.7 individuals contacted SSA, on average, about 1.5 times, or a total a total of 2.6 contacts per 100 queries. Based on planned changes to the E-Verify process, SSA currently estimates that for every 100 queries submitted to E-Verify in fiscal year 2008, 1.4 individuals will contact SSA, on average about 1.5 times each, for a total of 2.1 contacts per 100 queries. This 1.4 estimate accounts for planned modifications to the E-Verify program through which (1) individuals whose naturalized citizenship status cannot be confirmed by SSA will also be queried against DHS's databases; and (2) individuals who receive a tentative nonconfirmation because their citizenship status does not match SSA's records can contact USCIS via a 1-800 number to resolve the tentative nonconfirmation rather than having to visit an SSA field office to do so.

[20]These data on the results of initial E-Verify queries may not serve as a basis for projecting the number of queries that will be automatically confirmed or receive a tentative nonconfirmation under a mandatory E-Verify program. According to USCIS, there are preliminary indications that because of system improvements, the percentage of initial queries that are automatically confirmed as work authorized is increasing, and the percentage of initial queries that result in tentative nonconfirmations is decreasing.

changes that occurred. SSA updates its records to reflect changes in individuals' information, such as citizenship status or name, when individuals request that SSA make such updates. USCIS officials stated that, for example, when aliens become naturalized citizens, their citizenship status, updated in DHS databases, is not automatically updated in the SSA database. When these individuals' information is queried through E-Verify, a tentative nonconfirmation would be issued because under the current E-Verify process, those queries would only check against SSA's database; they would not automatically check against DHS's databases. Therefore, these individuals would have to go to an SSA field office to correct their records in SSA's database.

USCIS and SSA are planning to implement initiatives to help address SSA tentative nonconfirmations, particularly those issued for naturalized citizens, with a goal of reducing the need for employees to visit SSA field offices. For example, in May 2008 USCIS launched an initiative to modify the electronic verification process so that employees whose naturalized citizenship status cannot be confirmed by SSA will also be checked against DHS's databases.[21] A query that could not be confirmed by SSA would be automatically checked against DHS's databases. If the employee's information matched information in DHS's databases and the databases showed that the person was a naturalized U.S. citizen, E-Verify would confirm the employee as work authorized. USCIS and SSA intend for this modification to enable USCIS to check naturalization status before an SSA tentative nonconfirmation is issued as a result of the naturalized citizen's information not matching citizenship information in SSA's database. According to USCIS, this should help eliminate the need for the employee who is a naturalized citizen to travel to an SSA field office before being confirmed as work authorized. USCIS has projected that as it implements this modification, the number of tentative nonconfirmations should also be reduced. It remains to be seen by how much the number of tentative nonconfirmations will be reduced as a result of this modification. Furthermore, in May 2008 USCIS modified the E-Verify process so that naturalized citizens who receive a citizenship-related mismatch can call DHS directly to resolve this mismatch rather than having to visit an SSA

[21]As of May 2008, USCIS will use the following databases to confirm employee work authorization: DHS Central Index System; Computer Linked Automated Information Management System 3; Interagency Border Inspection System I-94 data; Image Storage and Retrieval System; SSA Numerical Identification File; Interagency Border Inspection System Real Time Arrival; and the Computer Linked Automated Information Management System 4 and the Reengineered Naturalization Automated Casework System.

field office in-person to resolve the mismatch. In addition USCIS and SSA are exploring options for updating SSA records with naturalization information from DHS records. Although this could help to further reduce the number of SSA tentative nonconfirmations, USCIS and SSA are still in the planning stages, and implementation of this initiative may require significant policy and technical considerations, such as how to link records in SSA and DHS databases that are stored according to different identifiers.[22]

USCIS and SSA are also implementing additional options to reduce delays and improve the efficiency of the verification process. USCIS stated that it is adding databases to the E-Verify program, increasing the number of databases against which queries of employees' information are checked. For example, USCIS stated that it is incorporating real-time arrival data for noncitizens from the Inter-Agency Border Inspection System (IBIS) database, which tracks individuals, to help reduce the number of tentative nonconfirmations issued for newly arrived noncitizens queried through E-Verify.[23] SSA has also coordinated with USCIS to develop an automated notification capability, known as the Employment Verification SSA Tentative Nonconfirmation Automated Response (EV-STAR) system. This system, available in all SSA field offices, became operational in October 2007 and allows SSA field office staff to view the same information that is provided to employers through E-Verify. In addition, SSA field office staff can notify the employer of the status of and any actions taken on the employee's record to resolve the tentative nonconfirmation and, through EV-STAR, this information is directly updated in E-Verify.[24] USCIS and SSA officials stated that EV-STAR has helped to reduce the burden on SSA, employers, and employees in resolving SSA tentative nonconfirmations.

[22]In general, SSA records are stored according to social security numbers, while DHS records are stored according to alien numbers, known as A-numbers.

[23]E-Verify is using IBIS data to verify the work authorization of non-citizens whose data are not found in the DHS Central Index System. The Central Index System contains information on the status of applicants/petitioners seeking immigration benefits to include, among others, lawful permanent residents, naturalized citizens, U.S. border crossers, and aliens who illegally entered the United States.

[24]Prior to the establishment of EV-STAR, employers were not automatically notified through the E-Verify system after an SSA-issued tentative nonconfirmation was resolved. Rather, after resolving the tentative nonconfirmation, the employee had to present the tentative nonconfirmation notification, containing SSA's notice of resolution of the tentative nonconfirmation, to the employer and the employer then had to access E-Verify to resolve the tentative nonconfirmation in the system.

These efforts may help improve the efficiency of the verification process. However, they will not entirely eliminate the need for some individuals to visit SSA field offices to update their records, as USCIS and SSA efforts do not address all types of changes that may occur in individuals' information and result in the issuance of tentative nonconfirmations, such as individuals' name changes.

USCIS has Identified Areas where E-Verify is Vulnerable to Fraud, but Proposed Actions Do Not Address All Types of Fraud and Raise Privacy Concerns

In our prior work, we reported that E-Verify enhances the ability of participating employers to reliably verify their employees' work eligibility.[25] The program also assists participating employers with identification of false documents used to attempt to obtain employment. When newly hired employees present false information, E-Verify will not confirm the employees' work eligibility because their information, such as a false name or social security number, would not match SSA and DHS databases. However, the current E-Verify program cannot help employers detect forms of identity fraud, such as cases in which an individual presents genuine documents that are borrowed or stolen because the system will verify an employee when the information entered matches DHS and SSA records, even if the information belongs to another person.

USCIS has taken steps to reduce fraud associated with the use of genuine documents in which the original photograph is substituted for another. A photograph screening tool was incorporated into E-Verify in September 2007 and is accessible for most employers registered to use E-Verify.[26] According to USCIS officials, the photograph screening tool is intended to allow an employer to verify the authenticity of a lawful permanent resident card ("green card") or an employment authorization document, both of which contain photographs of the document holder. As a part of the E-Verify program, the photograph screening tool is used in cases when an employee presents a green card or employment authorization document to prove his or her work eligibility. The employer then inputs the card number into E-Verify, and the system then retrieves a copy of the employee's photograph that is stored in DHS databases through the photograph screening tool. The employer is then supposed to match the

[25]GAO-05-813.

[26]As of April 2008, E-Verify employers who use a designated agent (another company or individual who runs queries on behalf of the company) or Web services (an access method that allows employers to use their own software to access E-Verify) cannot access the Photo Screening Tool.

photograph shown on the computer screen with the photograph on the original or photocopy of the employee's lawful permanent resident card or employment authorization document and make a determination as to whether the photographs match.[27] In completing the Form I-9, the employer is required to review the documents presented by an employee to prove identity and work eligibility and to certify that the documents appear genuine and relate to the individual presenting them. According to USCIS, for about 5 percent of employee queries that are run through E-Verify, employees present a green card or employment authorization document as identification.[28]

The use of the photograph screening tool is currently limited because newly hired employees who are queried through the E-Verify system and present documentation other than green cards or employment authorization documents to verify work eligibility—about 95 percent of E-Verify queries—are not subject to the tool. Expansion of the photograph screening tool would require incorporating other forms of documentation with related databases that store photographic information, such as passports issued by the Department of State and driver's licenses issued by states. Efforts to expand the tool have been initiated, but are still in the early planning stages. For example, according to USCIS officials, USCIS and the Department of State have begun exploring ways to include visa and U.S. passport documents in the tool, but these agencies have not yet reached agreement regarding the use of these documents. The Department of State is working with DHS to determine the business processes and system requirements of linking passport and visa databases to E-Verify. Additionally, USCIS is negotiating with state motor vehicle associations to incorporate driver's license photographs into E-Verify, and is seeking state motor vehicle agencies that are willing to participate in an image-sharing pilot program. As of April 2008, no motor vehicle agencies have yet officially agreed to participate in the pilot program.

As USCIS works to address fraud through data sharing with other agencies, privacy issues—particularly in regards to sharing employee information with employers—may be a challenge. In its 2007 evaluation of

[27]Employers are supposed to notify USCIS of their determination of whether the photographs matched, or if they could not make a determination, through the E-Verify system. If an employer determines that the photographs do not match, a tentative nonconfirmation is issued.

[28]This number excludes queries submitted by a designated agent or through Web services.

E-Verify, Westat reported that some employers joining the Web Basic Pilot were not appropriately handling their employees' personal information. For example, some employers did not privately inform employees that queries of the employees' information through E-Verify resulted in tentative nonconfirmations. The report also pointed out that anyone wanting access to the system could pose as an employer and obtain access by signing a MOU with the E-Verify program. USCIS officials told us that taking actions to ensure that employers are legitimate when they register for E-Verify is a long term goal for the program. However, according to USCIS officials, implementing such controls to verify employer authenticity may require access to information from other agencies, such as Internal Revenue Service-issued employer identification numbers, to which USCIS currently does not have access. Additionally, some states and agencies have raised the issue of employee privacy. Representatives of motor vehicle agencies have expressed concerns in regards to the potential threats to customer privacy should their digital images be accessible to employers. USCIS is working to address these privacy concerns. However, it remains to be seen whether USCIS will be able to fully address all privacy concerns related to data and photograph sharing and use among agencies and employers.

While USCIS Created a Monitoring and Compliance Branch, Work Remains to Staff the Branch, Develop Tools, and Finalize Enforcement Protocols

E-Verify is vulnerable to acts of employer fraud, such as when the employer enters the same identity information to authorize multiple workers. Moreover, although Westat has found that most participating employers comply with E-Verify program procedures, some employers have not complied or have misused the program, which may adversely affect employees. The findings from the Westat report showed that while changes to the E-Verify program appear to have increased employer compliance with program procedures compared to the previous version of the program, employer noncompliance still occurred. For example, Westat reported that some employers used E-Verify to screen job applicants before they were hired, an activity that is prohibited under E-Verify procedures. Additionally, some employers took prohibited adverse actions against employees—such as restricting work assignments, reducing pay, or requiring employees to work longer hours or in poor conditions—while they were contesting tentative nonconfirmations. Finally, Westat found that some employers did not always promptly terminate employees after receiving confirmation that the employees were not authorized to work in the United States. USCIS reported that it is working to address these issues by, for example, conducting education and outreach activities about the E-Verify program.

In 2005, we reported that E-Verify provided a variety of reports that could help USCIS determine whether employers followed program requirements intended to safeguard employees—such as informing employees of tentative nonconfirmation results and referring employees contesting tentative nonconfirmations to SSA or DHS—but that USCIS lacked sufficient staff to review employers' use of the program. Since then, USCIS has added staff to its Verification Office, created a Monitoring and Compliance branch to review employers' use of the E-Verify system, and identified planned activities for the branch.[29] As of April 2008, the Monitoring and Compliance branch had 21 staff and planned to hire 32 additional staff in fiscal years 2008 and 2009. Additionally, by January 2009, USCIS plans to establish a regional verification office with 135 staff members to conduct status verification and monitoring and compliance activities.[30]

With regard to compliance and monitoring activities, USCIS has identified 53 employer and employee behaviors of noncompliance and monitors the program for some of these behaviors. These behaviors include, among others,

- the use of counterfeit documents or substituted identities;
- use of the E-Verify system that does not follow procedures identified in the MOU between employers and DHS, such as failures to complete training or perform verifications within specific time frames;
- misuse of E-Verify to discriminate and/or adversely affect employees such as verifying existing employees, prescreening, firing employees who received tentative nonconfirmations, or not firing unauthorized employees; and
- detecting instances where privacy information is compromised, such as by sharing of passwords or nonemployer access of the system.

[29]The mission of USCIS's Monitoring and Compliance branch is to: (1) prevent fraud, discrimination, or illegal use of E-Verify; (2) educate employers and provide assistance with compliance procedures; (3) follow up with employers on misuse of the system; and (4) monitor E-Verify system usage and refer identified instances of fraud, discrimination, or illegal use of the system to enforcement authorities such as ICE or the Department of Justice's Office of Special Counsel.

[30]According to USCIS officials, as participation in the E-Verify program grows, the agency will need 3 additional field monitoring officers and 25 additional field compliance officers for every 100,000 employers.

Using some of these behaviors, among other things, to monitor employers' use of E-Verify, USCIS plans to interact with employers who might not be complying with program procedures in four main ways: (1) sending letters or e-mails to advise employers of misuse of the system and to provide appropriate remedies, (2) follow-up phone calls when employers fail to respond to the initial letters or e-mails, (3) audits through which USCIS requests documents and information be sent to the agency from potentially noncompliant employers, and (4) site visits for in-person interviews and document inspection when desk audits reveal cause for further investigation. Under the current voluntary program, USCIS plans to contact about 6 percent of participating employers regarding employer noncompliance. USCIS estimates that under a mandatory E-Verify program, the percentage of employers the agency would contact regarding employer noncompliance would decrease to about 1 to 3 percent. If, as a result of its monitoring activities, USCIS found that it needed to contact more than 3 percent of employers, USCIS officials stated that the agency plans to modify its approach for addressing employers' noncompliance. As of April 2008, USCIS plans to allocate its monitoring and compliance efforts as follows: 45 percent of its activities would involve sending letters and e-mails to employers; 45 percent would involve follow-up phone calls; 9 percent would involve desk audits; and 1 percent would involve site visits. As part of a mandatory program, USCIS would modify this distribution of monitoring activities by, for example, using letters, e-mails, and phone calls for a larger percentage of interactions with employers. However, USCIS is still in the early stages of implementing its monitoring and compliance activities. Therefore, it is too early to tell whether these activities will ensure that all employers fully follow program requirements and properly use E-Verify under a mandatory program, especially since such controls cannot be expected to provide absolute assurance.

The Monitoring and Compliance branch could help ICE better target its worksite enforcement efforts by providing information that indicates cases of employers' egregious misuse of the system. Although ICE has no direct role in monitoring employer use of E-Verify and does not have access to program information that is maintained by USCIS unless it requests such information from USCIS, ICE officials told us that program data could indicate cases in which employers or employees may be fraudulently using the system and therefore should help the agency better target its worksite enforcement resources toward those employers. ICE officials noted that, in a few cases, they have requested and received E-Verify data from USCIS on specific employers who participate in the program and are under ICE investigation. For example, USCIS told us that by monitoring use of the E-Verify program to date, staff were able to identify instances of fraudulent

use of social security numbers and referred such egregious examples of fraud to ICE. However, USCIS and ICE officials told us that case referrals or requests for information between the two agencies have been infrequent, and information on the resolution of these referrals is not formally maintained by ICE. USCIS expects to complete and implement a compliance tracking system to track referrals to and responses to requests from ICE on compliance cases in fiscal year 2009. USCIS and ICE are also negotiating an MOU to define roles, responsibilities, and mechanisms for sharing and using E-Verify information. Outstanding issues that need to be resolved for the MOU include the type of information that USCIS will provide to ICE through the referral process and the purposes for which ICE will use this information. While the MOU between USCIS and ICE is incomplete, ICE officials anticipate that, if the E-Verify program is made mandatory, they would receive an increased number of referrals for investigation from USCIS. Therefore, ICE officials told us that they plan to require additional resources to follow-up on USCIS referrals. ICE also hopes to be able to use elements of the E-Verify program to detect and track large-scale instances of employer or employee fraud.

GAO Contact and Staff Acknowledgments

For further information about this testimony, please contact Richard Stana at 202-512-8777.

Other key contributors to this statement were Jonah Blumstein, Burns Chamberlain, Frances Cook, Josh A. Diosomito, Rebecca Gambler, Danielle Pakdaman, Evi Rezmovic, Julie E. Silvers, Rebekah Temple, and Adam Vogt.

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "E-mail Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are $2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, DC 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

PRINTED ON RECYCLED PAPER

Question#:	1
Topic:	safeguards
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Through E-Verify, an employer submits a query to check an employee's name, date of birth, social security number, and other information against SSA and DHS databases. This query is transmitted electronically over the Internet.

What safeguards have DHS and SSA put in place to ensure that employee information queried through the Internet is protected and secure?

Response: DHS and SSA have designed and implemented physical, technical and administrative controls to protect and secure information queried via the Internet throughout the transaction. Before employers may query DHS and SSA databases, they must sign a Memorandum of Understanding (MOU), which clearly states the specific purpose of the service as confirming employment eligibility, and memorializes an employer's agreement to safeguard the information it receives to ensure the privacy of the subject of the search. Once the employer enters the information, the information is transmitted via the Internet through an encrypted virtual private network (VPN) session to ensure that there is no unauthorized access, modification or disclosure of the information during transmission.

The underlying E-Verify software logic provides additional privacy controls by restricting access to information through the use of role-based permissions and Access Control Lists (ACLs). The E-Verify user community is broken down into several levels of security roles, restricting access to data based on a defined "need to know", i.e. data entered by one employer is not searchable or viewable by another employer. Each authorized user of the E-Verify system has a unique username and password. Passwords must be compliant with guidelines provided in DHS 4300A. The E-Verify system also creates detailed logs and audit trails of employment verification transactions for monitoring and compliance purposes.

The E-Verify system infrastructure employs multiple layers of security controls to defend against internal and external threats, as well as network intrusions. The Internet-based E-Verify Web interface utilizes 128-bit Secure Sockets Layer (SSL) encryption in the protection of data as it is sent to and from the E-Verify application. Additionally, the E-Verify data repositories are safeguarded by a tiered firewall architecture to mitigate external penetration of systems, or exposure of stored sensitive data.

Question#:	1
Topic:	safeguards
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: What types of security tests have DHS and SSA conducted on the E-Verify system?

Response: All aspects of security (e.g. personnel, physical, data communications and storage, authentication, access control, cryptography) have been and continue to be tested to ensure that E-Verify complies with the Privacy Act, the Federal Information Security Management Act (FISMA), National Institute for Standards and Technology (NIST) publications, DHS 4300A (IT Security Program Handbook for Sensitive Systems), and other privacy and security laws, regulations, and guidance.

The E-Verify system received its latest Authority to Operate (ATO) for production operations on May 5, 2008 based on a comprehensive System Test and Evaluation (ST&E) assessment. This accreditation was based on a detailed investigation of the security controls, system configurations, and security policy and procedures currently in place in the management of the E-Verify system. Independent analysts performed detailed system scans using standard DHS and USCIS tools to evaluate the hardening of the E-Verify security mechanisms and their configurations. Tools such as Nessus and App. Detective look for such findings as security holes, possible misconfigurations, security patch levels, and permission levels in assessing the compliance with the published NIST and DHS security guidelines. This ensured the appropriate level of management, operation and technical security controls are in place at each point in the E-Verify system.

Question#:	2
Topic:	misuse
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: The independent evaluation of E-Verify by Westat has found that some employers participating in E-Verify have not complied with its terms or have misused the program. GAO and Westat have reported that employers have misused the program by using E-Verify to screen job applicants *before* they were hired. Some employers also have restricted employees' work assignments and reduced pay while employers contested *tentative* nonconfirmations by E-Verify

What actions has DHS taken to address employer misuse of the E-Verify program?

Response: The E-Verify program has worked to address employer misuse of the program through a variety of methods, including targeted outreach designed to educate employers about the proper use of the program as well as increased monitoring and compliance of behaviors associated with employer misuse.

The E-Verify program conducted E-Verify Informational Seminars targeted towards employers and open to the public in Georgia and the metropolitan Washington, D.C. area. These seminars included presentations on programmatic monitoring and compliance as well as a presentation by DHS Office of Civil Rights and Civil Liberties regarding employee rights and employer responsibilities. During the seminars, clear examples of misuse and direct guidance to employers were provided.

The program has regular interactions with current and potential users through Webinars and customer support contact. With the feedback and information collected through these methods, the E-Verify program works to continuously improve our materials and call center scripts to further educate about correct system use.

DHS has produced informational materials intended to facilitate proper use of the program, discourage discriminatory use of the program by employers, and provide clarification on using the Employment Eligibility Verification Form I-9. DHS also has produced brochures on employer responsibilities and employee rights which are available to the public in both English and Spanish. The following additional materials referencing employer responsibilities and employee rights can be found on www.dhs.gov/E-Verify under the "For Employees" tab:

- "How Does E-Verify Affect me as an Employee"
- "Know Your Rights – Quick List"
- "Know Your Rights and Responsibilities under E-Verify" (available in 9 languages)

Question#:	2
Topic:	misuse
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

- "Know Your Rights" Poster by the Department of Justice, Civil Rights Division, Office of Special Counsel (OSC) for Immigration Related Unfair Employment Practices

In addition, the following materials will soon be made available on www.dhs.gov/E-Verify:

- Office of Special Counsel E-Verify Do's and Don'ts by Department of Justice, Civil Rights Division, Office of Special Counsel (OSC) for Immigration Related Unfair Employment Practices (will be available in 9 languages)

The E-Verify Monitoring and Compliance (M&C) program has developed a process for detecting and addressing non-compliant user behaviors. Over the past year M&C has identified several behaviors that require monitoring and will provide assistance with compliance if needed. All standard operating procedures are being developed in compliance with the Privacy Act. Cases of suspected misuse will be referred to either Immigration and Customs Enforcement (ICE) or OSC when M&C assesses that a referral to an enforcement agency is required. Also, see information stated below.

Question: What penalties has DHS used, or does it plan to use, to sanction employers who misuse the E-Verify program?

Response: USCIS reserves the right to terminate the account of an employer or user in the appropriate circumstances and has exercised this option in the past. In addition, employers have been referred to the Department of Justice's Office of Special Counsel and DHS' Immigration and Customs Enforcement as appropriate for enforcement action.

Question#:	3
Topic:	access
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Westat reported that anyone wanting to access the E-Verify system could pose as an employer and obtain access by simply signing a memorandum of understanding. According to GAO, USCIS has reported that taking actions to ensure that entities that are signing up to use E-Verify are legitimate is a long-term goal, but implementing such controls to verify employer authenticity may require access to other information that USCIS currently does not have.

What actions is DHS taking to verify the authenticity of employers registering for E-Verify?

Response: USCIS is currently undertaking a robust reengineering of the entire employer registration process, including exploring ways of verifying the authenticity of employers registering for E-Verify. Several initiatives fall under this project. First, the usability of the registration process for the customer will be enhanced by streamlining navigation and ensuring that plain language is used throughout the process. Second, improvements in the MOU process will be implemented with the institution of electronic signatures as well as improvements in the MOU management process. Third, stronger identity management and identity authentication processes are being developed, which will help ensure that people and companies using the system are who they say they are. Finally, the underlying technology will be revamped to include role-based access to provide a greater level of security and privacy protection. For instance, four main roles have been identified within the context of E-Verify registration, (Registrant, MOU Signatory, Program Administrator, and E-Verify User), and an individual may play one or more of these roles. However, since each role has different responsibilities and differing levels of authority within the context of E-Verify, the access rights and the level of rigor around the identity authentication of each role will differ accordingly, and the new registration process will both support and enforce these roles. USCIS plans to begin implementing this improved employer registration process during fiscal year 2009.

Question: What data or tools does DHS need to more fully verify employer authenticity?

Response: It would be helpful to have statutory authority to verify Employer Identification Numbers (EINs) directly with the Internal Revenue Service. In the absence

Question#:	3
Topic:	access
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

of such authority, the program is also exploring EIN verification options from commercial sources.

Question#:	4
Topic:	databases
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: In August 2007, the Administration announced that it intended to link E-Verify to the State Department's U.S. passport database and to state Department of Motor Vehicles (DMV) databases.

What is DHS's schedule for expanding E-Verify to include passports and driver's licenses?

Response: DHS's goal is to verify with issuing agencies documents (including passports and driver's licenses) that are presented to employers as evidence of work authorization. DHS is currently working with the Department of State to finalize a Memorandum of Agreement (MOA) to enable this capability for passports. Negotiations with the Department of State are in process, and the timeline for implementation is dependent on the timing of the MOA and availability of data. E-Verify has developed and prepared its system to immediately enable data checks against U.S. passport information once the MOA between the Departments is complete and data is made available to E-Verify. DHS has engaged several states in discussions about making DMV data available so that driver's licenses can be electronically verified by employers as well. To date, no state has formally agreed to share DMV data with the Verification Division but negotiations with several states are ongoing.

Question: What actions is DHS taking to protect the sensitive data of millions of U.S. citizens in the U.S. passport and DMV databases as they become linked to E-Verify?

Response: U.S. passport and DMV data will be protected by rigorous security protections and safeguards already in place as part of the E-Verify system. The E-Verify program continually tests and analyzes all aspects of security (e.g. personnel, physical, data communications and storage, authentication, access control, cryptography). The E-Verify program's privacy office works extensively with the DHS Chief Privacy Officer to ensure the program complies with the Privacy Act, the Federal Information Security Management Act (FISMA), National Institute for Standards and Technology (NIST) publications, DHS 4300A (IT Security Program Handbook for Sensitive Systems), and other privacy and security laws, regulations, and guidance.

Question#:	4
Topic:	databases
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

It is important to note though that E-Verify will not be copying or storing the data from passport and DMV databases. Instead, we envision that these databases will be essentially additional datasets against which and E-Verify query may run. Safeguards pertaining to access controls and security infrastructure are discussed in response to question 1. The integration mechanism to provide DMV and passport information to VIS is the USCIS Enterprise Service Bus (ESB). All traffic transmitted between E-Verify system and ESB is encapsulated in an SSL session. The SSL session properties are defined the DHS issued certificates we have received. All service invocations made by E-Verify require the authentication and authorization of the VIS system on the ESB to gain permission to invoke the service. The E-Verify system is precluded to invoke only those services on the ESB that it is authorized to invoke through role-based security.

Question#:	5
Topic:	mou
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: According to the GAO, USCIS and ICE are in the process of negotiating a memorandum of understanding (MOU) regarding the sharing and use of E-Verify information.

When do USCIS and ICE expect to finalize the MOU?

Response: USCIS leadership and ICE leadership are currently in the final stages of reviewing the final draft MOU and it is anticipated that the agreement will be signed in the very near future.

Question: For what purposes would ICE use E-Verify data?

Response: The USCIS Verification Division will refer suspected employer and employee misuse, abuse, and fraudulent use of the E-Verify System to ICE for investigative consideration concerning matters within ICE's jurisdiction. An MOU regarding the transmission of information from USCIS to ICE for law enforcement purposes is currently being developed. It is contemplated that ICE would use E-Verify information for investigating civil and criminal violations, including, but not limited to instances of identity theft or fraud.

Question: Will the MOU address any privacy issues that might be raised by the sharing of E-Verify data between USCIS and ICE?

Response: The MOU between the two components will memorialize these conditions and require that each component maintain appropriate levels of privacy and security of the information by implementing controls identified in DHS Sensitive System Handbook (SSH) 4300A, The Federal Information Processing Standard (FIPS) 200, "Minimum Security Requirements for Federal Information and Information Systems" (which is derived from The Federal Information Security Act (FISMA) of 2002), and National Institute of Information Standards and Technology (NIST) Special Publication (SP) 800-53, "Recommended Security Controls for Federal Information Systems" (mandated by FIPS 200).

Question#:	6
Topic:	compliance
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: You stated in your written testimony that "[o]ver 66,000 employers, representing close to 259,000 worksites, currently are signed up to use the E-Verify program, and the number of registered employers is growing by over 1,000 per week." According to the statement submitted by the Government Accountability Office (GAO) for this hearing, as of April 2008, USCIS had approximately 21 staff to conduct monitoring and compliance activities and planned to hire 32 additional staff in fiscal years 2008 and 2009.

How many staff now work in the monitoring and compliance unit? Please describe how this unit is organized and the duties of the staff by category.

How many of staff in the monitoring and compliance branch works on protecting U.S. workers against employer abuse or misuse of E-Verify? Is this their primary duty, or do they perform other duties in addition to employer compliance?

Response: There are 21 federal employees and one contractor on-board in the M&C Unit in Washington, D.C. In the Verification Operations Center, located in Buffalo, NY, there are two federal employees on-board in M&C, and an additional 30 are expected to join throughout Fiscal Year 2009. M&C is divided into E-Verify Monitoring, E-Verify Compliance, and E-Verify referrals. The Buffalo regional office has six people in queue to enter on duty in M&C within the next three months. E-Verify Monitoring evaluates E-Verify transactional data to identify anomalies in system use. E-Verify Compliance staff evaluates the identified anomalies to find out what misuses exist and helps employers properly use the system through compliance assistance efforts with employers. The E-Verify referrals staff evaluate the appropriateness of a referral to an enforcement agency and prepare the case package for the referral.

Question#:	7
Topic:	refer
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: You stated in your written testimony that USCIS will "refer cases of fraud, discrimination, and illegal use to the Department of Justice Office of Special Counsel (OSC) or U.S. Immigration and Customs Enforcement (ICE)."

How many cases of employer discrimination and misuse has the E-Verify Monitoring and Compliance unit found?

Response: Since FY08, the inception of the Monitoring and Compliance branch, one case of employer discrimination in use of the program has been referred to OSC, and OSC has requested information on two additional cases brought to their attention through their employee hotline, which is published on all E-Verify materials. OSC and the E-Verify program have been coordinating on investigations for discrimination since the Basic Pilot was created in 1997. No cases have been referred to ICE. However, information has been provided to ICE on several cases at ICE's request.

Question: How many has been sent to the OSC?

Response: At present, one case has been referred to OSC.

Question: Does OSC have any jurisdiction over employer misuse of E-Verify when the misuse is not related to discrimination, even if workers were harmed?

Response: We would refer you to DOJ OSC to respond to questions regarding their jurisdiction. E-Verify refers cases to OSC that appear to involve the possibility of discriminatory conduct, and OSC brings to our attention from time to time questions or concerns about E-Verify misuse that do not appear to involve discrimination that have arisen in their interactions with the public

Question: If the unit has not found any such cases to date, do you believe that's because such cases of employer discrimination and misuse do not exist?

Response: The recent independent evaluation of the program has identified instances of employer discrimination and misuse and the E-Verify program is continuing to address them through the development of M&C processes, employer and employee education, and coordination with OSC.

Question#:	8
Topic:	media ads
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: DHS appears to be running media ads on E-Verify.

What is the budget for the E-Verify ads? How much money has been spent thus far? Please provide a detailed breakdown of how the money has been spent on the ads.

Response: The FY07-08 marketing budget was $2.2 million, as part of a contract awarded in July 2007 to Maya Consulting. The marketing strategy included a mix of advertising, informational seminars, and the design and layout of creative materials (brochures, flyers, displays) to enhance education and recognition of E-Verify. The majority of the funds were used to place print, radio, billboard, and internet advertising. Media outlets used during the campaign have included The Atlanta Journal, Atlanta Business Chronicle, CNN, Univision, Government Executive Magazine, and the Washington Post Express. Local radio stations, internet and direct mail advertising were also used in each of the areas (markets) identified below. Of the $2.2 million budgeted, over $1.96 million has been spent.

FY08 funds spent on marketing initiatives within targeted geographical areas include:

DC Metro Area	$397,959
MS	$166,928
AZ	$662,044
RI	$79,943
SC	$107,962
GA	$134,483
DC Online Campaign	$197,251
National Print Advertising	$72,471
National Online Advertising	$149,719
Totals	$1,968,760

Question: What is the purpose of the E-Verify ads? Who is the target audience?

Response: The purpose of the E-Verify marketing campaign is to increase awareness about the program and educate employers and the general public about E-Verify

Question#:	8
Topic:	media ads
Hearing:	Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

employer responsibilities and employee rights under the program. The employee rights marketing efforts are also bilingual. The target audience of the campaign is employers that are current and potential users of E-Verify and all employees in the U.S. E-Verify ads provide important contact information, as well as pointing the public to the www.dhs.gov/E-Verify page where they can find additional information about the program.

Question: Are the E-Verify ads being run nationwide? If not, where are the ads being run? Which cities and/or media markets? In what languages?

Response: The advertising strategy to date has sought to meet awareness and educational needs for employers and employees in states that currently have laws requiring electronic employment verification by public and/or private employers. Depending on the market, a mix of print, online, radio, and billboard ads have been placed in Arizona, Georgia, the Washington, D.C. metropolitan area, South Carolina, Mississippi, and Rhode Island. In addition, advertisements for seminars scheduled in Georgia, Washington, D.C., Maryland and Virginia were placed to provide dates, times and location of the seminars. Strategically placed advertising is scheduled to continue through the remainder of FY08 and in FY09. Both radio and print ads are in English and Spanish and the online employee resources are available in Spanish, French, Korean, Russian, Tagalog, Vietnamese, Chinese, and Creole.

Question: How long will the E-Verify ads run?

Response: The duration of advertising varies and is based on availability of resources, educational needs and program priorities. For most markets, media buys are planned in increments of six weeks.

Question: How will DHS judge the effectiveness of the E-Verify ads?

Response: The effectiveness of the advertising is gauged from a collective appraisal of the circulation estimates from media buys, public feedback, increased requests for outreach events, increased requests for telephone assistance, and tracking of hits to the E-Verify webpage. Increases in E-Verify enrollments in the period following each phase in the campaign are also measured.

○