AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

E-VERIFY: CHALLENGES AND OPPORTUNITIES

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JULY 23, 2009

Serial No. 111–59

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

57–384 PDF WASHINGTON : 2010

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 OVERSIGHT AND GOVERNMENT REFORM

EDOLPHUS TOWNS, New York, *Chairman*

PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
JIM COOPER, Tennessee
GERALD E. CONNOLLY, Virginia
MIKE QUIGLEY, Illinois
MARCY KAPTUR, Ohio
ELEANOR HOLMES NORTON, District of Columbia
PATRICK J. KENNEDY, Rhode Island
DANNY K. DAVIS, Illinois
CHRIS VAN HOLLEN, Maryland
HENRY CUELLAR, Texas
PAUL W. HODES, New Hampshire
CHRISTOPHER S. MURPHY, Connecticut
PETER WELCH, Vermont
BILL FOSTER, Illinois
JACKIE SPEIER, California
STEVE DRIEHAUS, Ohio

DARRELL E. ISSA, California
DAN BURTON, Indiana
JOHN M. MCHUGH, New York
JOHN L. MICA, Florida
MARK E. SOUDER, Indiana
JOHN J. DUNCAN, JR., Tennessee
MICHAEL R. TURNER, Ohio
LYNN A. WESTMORELAND, Georgia
PATRICK T. MCHENRY, North Carolina
BRIAN P. BILBRAY, California
JIM JORDAN, Ohio
JEFF FLAKE, Arizona
JEFF FORTENBERRY, Nebraska
JASON CHAFFETZ, Utah
AARON SCHOCK, Illinois

RON STROMAN, *Staff Director*
MICHAEL MCCARTHY, *Deputy Staff Director*
CARLA HULTBERG, *Chief Clerk*
LARRY BRADY, *Minority Staff Director*

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

DIANE E. WATSON, California, *Chairman*

PAUL E. KANJORSKI, Pennsylvania
JIM COOPER, Tennessee
GERALD E. CONNOLLY, Virginia
HENRY CUELLAR, Texas
JACKIE SPEIER, California
PAUL W. HODES, New Hampshire
CHRISTOPHER S. MURPHY, Connecticut
MIKE QUIGLEY, Illinois

BRIAN P. BILBRAY, California
AARON SCHOCK, Illinois
JOHN J. DUNCAN, JR., Tennessee
JEFF FLAKE, Arizona

CONTENTS

	Page
Hearing held on July 23, 2009	1
Statement of:	
McNeill, Jena Baker, policy analyst for homeland security, the Heritage Foundation; and Angelo Amador, Executive Director for Immigration Policy, U.S. Chamber of Commerce	44
Amador, Angelo	58
McNeill, Jena Baker	44
Ratliff, Gerri, Deputy Associate Director of the National Security and Records Verification Directorate, U.S. Citizenship and Immigration Services, Department of Human Security; and David Rust, Deputy Commissioner for Retirement and Disability Policy, Social Security Administration	4
Ratliff, Gerri	4
Rust, David	15
Letters, statements, etc., submitted for the record by:	
Amador, Angelo, Executive Director for Immigration Policy, U.S. Chamber of Commerce, prepared statement of	60
McNeill, Jena Baker, policy analyst for homeland security, the Heritage Foundation, prepared statement of	46
Ratliff, Gerri, Deputy Associate Director of the National Security and Records Verification Directorate, U.S. Citizenship and Immigration Services, Department of Human Security, prepared statement of	7
Rust, David, Deputy Commissioner for Retirement and Disability Policy, Social Security Administration, prepared statement of	17

E-VERIFY: CHALLENGES AND OPPORTUNITIES

THURSDAY, JULY 23, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION, AND PROCUREMENT,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Diane E. Watson (chairwoman of the subcommittee) presiding.

Present: Representatives Watson, Bilbray, Connolly, Cuellar, Speier, and Duncan.

Staff present: Bert Hammond, staff director; Adam Bordes and Deborah Mack, professional staff; Dan Blankenburg, minority director of outreach and senior advisor; Adam Fromm, minority chief clerk and Member liaison; Marvin Kaplan and Mitchell Kominsky, minority counsels.

Ms. WATSON. The Subcommittee on Government Management, Organization, and Procurement of the Committee on Oversight and Government Reform will now come to order.

Today's hearing will provide an overview of E-Verify and examine how current challenges are affecting its implementation and potential for future expansion. The subcommittee is particularly interested in hearing how the September 2009 deadline for Federal contractors to comply with E-Verify is impacting their ability to serve our agencies and programs.

In addition, the subcommittee will be examining the overall efficacy and efficiency to the E-Verify program, including issues associated with system accuracy, capacity, and usability by those in the employer community.

Without objection, the Chair and the ranking minority member will have 5 minutes to make opening statements, followed by opening statements not to exceed 3 minutes by any other Member who seeks recognition.

Without objection, Members and witnesses may have 5 legislative days to submit a written statement or extraneous materials for the record.

I want to first thank all the witnesses for appearing here today to discuss recent developments in the administration's E-Verify program.

E-Verify is designed to electronically verify information contained in the Employment Eligibility Verification Form known as I–9, which all newly hired employees are required by law to submit to their employer in a free Web-based program operated by the De-

partment of Homeland Security's U.S. Citizens and Immigration Services [USCIS], in partnership with the Social Security Administration. The program is designed to strengthen the employment verification process and protect against the use of fraudulent documents on the part of new hires.

According to most recent figures at the subcommittee's disposal, as of January 2009, a little over 103,000 employers had registered with E-Verify. In fiscal year 2008, USCIS reported that E-Verify handled about 7 million requests. Authorization and funding for E-Verify has been extended by Congress a number of times, most recently through September 30, 2009.

On July 8, 2009, Department of Homeland Security's Janet Napolitano announced the administration's support for a regulation that will award Federal contracts only to employers who use E-Verify to check employee work authorization. It is my understanding that the administration has mandated that the new regulations will go into effect by September 8th while DHS continues to work on strengthening E-Verify in order to guard against errors, enforce compliance, promote proper usage, and enhance security.

Critics of E-Verify claim that the system suffers from a number of major, perhaps irreconcilable, weaknesses. Among the weaknesses often cited by critics of E-Verify are: one, E-Verify's limited capability to detect certain types of identify fraud; No. 2, system inefficacies and inaccuracies; third, the lack of sufficient system capacity; and fourth, privacy concerns and employer non-compliance that results in misuse of E-Verify to the detriment of both current employees and new hires.

I would be most interested in hearing what the administration is doing on an ongoing, forward basis to address these concerns and, moreover, what its current thinking is on extending E-Verify beyond the September 30th expiration date. Specifically, the Senate-passed versions of the fiscal year 2010 Homeland Security appropriations bill, H.R. 2892, would make E-Verify permanent. Does the administration support this provision?

I also am interested in learning what plans the administration is putting in place to implement Secretary Napolitano's July 8th announcement that all Federal contractors will be required to use E-Verify. For example, how many new queries does USCIS anticipate E-Verify will need to handle when the Federal contractor rule is implemented? Does E-Verify have sufficient capacity to deal with the increased workload of electronically verifying employment status of Federal contractors?

And how does USCIS intend to deal with the almost certain increased number of non-final, non-confirmations that cannot be appealed and the fact that legal aliens and naturalized U.S. citizens are more likely to receive erroneous, tentative, non-confirmations? And what regulations will DHS propose to guide employers in dealing with employees who are not authorized to work? And, finally, will DHS propose regulations to protect workers as they are seeking to overturn tentative non-confirmations?

I hope today's hearing will shed some light on a number of outstanding issues surrounding the implementation and use of E-Verify on a going forward basis.

Once again, I thank all of today's witnesses for appearing and I look forward to an informative exchange.

Now I would like to yield time to our most distinguished minority leader. I don't like to call you that; you are more than that. Mr. Bilbray.

Mr. BILBRAY. Thank you very much, Madam Chair. Madam Chair, I thank you for this hearing. First of all, Madam Chair, I would ask for unanimous consent that three statements from the construction industry, from the Human Resource Initiative for Legal Workforce, and for the Center of Immigration Studies be entered into the hearing record.

Ms. WATSON. Without objection.

Mr. BILBRAY. Thank you, Madam Chair.

Madam Chair, let me, first of all, say there are so many times, in oversight, we get testimony about how the system doesn't work and the breakdown of the system or the abuses of the system. E-Verify, I think, is going to go down in history as one of those examples—a small example, but a very clear example—of when the system works properly.

Back in the early 1990's, a lowly Federal bureaucrat approached a Member of Congress with an idea and asked the Congressman to look into this. That Congressman was Ken Calvert, somebody that nobody would even know about because I don't think he was on committees of jurisdiction or whatever. But the idea that was given to this Congressman because of our ability for people in the front line to talk to policymakers, and for that policymaker then to take it up to the appropriate committee and work it through has really shown in this issue.

He implemented, back in the mid-1990's, the pilot program where five States introduced this idea, basically helped to evolve it from a telephone to a computer system. That program in those five States had a level of success to the point to where Congress overwhelmingly agreed to make it a national model under the volunteer aspect, and that allowed it to grow and be improved and to be fine-tuned as the process goes down.

Now we are seeing the next step taken in this evolution of a small little mustard seed that was planted by a Federal bureaucrat, the little guy at the bottom, watching it grow into quite a program that I think that any one of us, if we tried to design it from Harvard, Yale, or from Capitol Hill, never would have come to this conclusion.

So I just want to say, as we get into this hearing, the source of this program I think is one of the inspirations of showing that sometimes the system does work and really is an incentive for all of us as policymakers to remember to listen to the little guy who doesn't seem to have a lot of power and influence, but he does have a lot to say and a lot of good to give into the system if we will just listen.

With that, Madam Chair, I will yield back my time.

Ms. WATSON. Thank you.

Mr. Cuellar.

Mr. CUELLAR. Thank you, Madam Chair. I appreciate your having this particular meeting.

I know that in my other committee, in Homeland, we have covered this issue, but there are a lot of issues that I think this committee will cover. I guess one of the issues that I am looking at is, like any other program that you have, what sort of input are we getting from the private sector, and that part I hope the witnesses can talk about that.

I know the U.S. Chamber and other folks have shown concern. I know in the past, when I have talked to some of the Federal folks, they have said we have taken input, but I would hopefully like to have some discussion as to exactly what they have done, how broad of a diverse have they brought in, the folks, the private sector, because we want to make sure we do this right.

So, Madam Chair, I appreciate your having this meeting. It is a good meeting. I look forward to the witnesses.

Ms. WATSON. Thank you.

It is the committee policy that all witnesses are sworn in, and I would like the witnesses to now stand as I administer the oath of office. The first panel, please, just the first panel. Would you raise your right hands, please?

[Witnesses sworn.]

Ms. WATSON. Thank you. Let the record show that the witnesses have answered in the affirmative and you are now seated.

If there are no additional opening statements—I don't see any others—we will now turn to our first panel. I ask that each of the witnesses give a brief summary of your testimony and, if you can, please keep this within 5 minutes in duration. Your complete written statement will be included in the hearing record.

I would first like to introduce Ms. Gerri Ratliff, who currently serves as Deputy Associate Director of the National Security and Records Verification Directorate for the U.S. Citizenship and Immigration Services [USCIS]. Ms. Ratliff's prior assignment included working as the First Chief of the Verification Division of USCIS and serving as Acting Director of the INS Office, Congressional Relations. Before joining USCIS, Ms. Ratliff was the counsel to the Deputy Attorney General and Special Counsel in the Department of Justice's Office of Legislative Affairs.

Ms. Ratliff, would you now please proceed?

STATEMENTS OF GERRI RATLIFF, DEPUTY ASSOCIATE DIRECTOR OF THE NATIONAL SECURITY AND RECORDS VERIFICATION DIRECTORATE, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HUMAN SECURITY; AND DAVID RUST, DEPUTY COMMISSIONER FOR RETIREMENT AND DISABILITY POLICY, SOCIAL SECURITY ADMINISTRATION

STATEMENT OF GERRI RATLIFF

Ms. RATLIFF. Chairwoman Watson, Ranking Member Bilbray, members of the subcommittee, I am Gerri Ratliff, Deputy Associate Director of the National Security and Records Verification Directorate of USCIS. This is the directorate that oversees the E-Verify program as well as the Fraud Detection and National Security Division, the Records Division, and the National Records Center. I am very grateful for the opportunity to be here today to discuss our shared goal of effective employment eligibility verification.

First, let me express our appreciation for the House's vigorous support for the President's budget request to extend and continue funding E-Verify.

E-Verify has grown exponentially over the past several years. Over 137,000 employers are now enrolled and the statistic I find most significant is that number translates into over half a million work sites today. In addition, over 14 percent of all non-agricultural new hires in the United States are run through E-Verify currently. We really are beginning to show up on the map. We are growing at the rate of 1,000 employers a week and already have over 2,000 employers signed up as Federal contractors.

We believe E-Verify is the best available tool for employers committed to maintaining a legal work force, but we also are working hard to effectively serve workers by giving accurate and quick verification of their employment authorization. Our goals are to improve E-Verify's ability to instantly verify new hires, to strengthen employer training, and our monitoring and compliance functions, and to protect employees' rights.

Complaints about E-Verify fall largely into three categories: one, the system is inaccurate; two, E-Verify doesn't combat identity theft; three, the system can result in discrimination. I would like to briefly discuss each in turn.

First, accuracy. Well, today, 96.9 percent of queries result in an automatic confirmation that the worker is employment authorized. Of the remaining 3.1 percent of queries, only 1 in 10 is ultimately found to be work authorized. Those are statistics we are very, very proud of. We have worked hard to reduce the initial mismatch rate for authorized workers.

We have made changes to reduce typographical errors made by employers that had resulted in mismatches. We have added data bases to our automated checks that have enabled us to verify authorized workers more quickly. We have made system changes and entered into a partnership with the Department of State to share passport data that has enabled us to more quickly verify naturalized and derivative citizens.

Even though we have had success in this area, we will continue to work harder to do even better.

Not every mismatch can be prevented simply by adding data or system changes, however. For example, if someone changes their name through marriage or divorce, but doesn't then update their Social Security records, it can result in a mismatch. That, in fact, right now is the largest category of successfully contested mismatches.

Second, identity fraud. E-Verify was not initially designed to combat identity theft or to do identity authentication, but identity theft and document fraud are growing issues that we have to grapple with, so we are trying to respond. We are giving E-Verify tools to begin to detect document fraud. Last year, we added a photo screening tool that has DHS photos in it for green cards and employment authorization documents, and can be used for the Form I–9 purposes. This tool has already detected hundreds of fraudulent green cards and employment authorization documents.

In fiscal year 2010, we plan to add U.S. passport photos to the photo tool and we would like to add driver's license information

and photos, because driver's licenses are the most commonly used document for the Form I–9. We need the States' help to do that.

We are also in the final stages of developing an initiative to let identity theft victims lock and unlock their own Social Security numbers in E-Verify to prevent their number being used without their knowledge.

Finally, E-Verify must protect the rights of workers. We have expanded our information from workers, even working with the Department of Homeland Security's Civil Rights and Civil Liberties Division to create videos aimed at employee rights, as well as employer rights; and we are growing our Monitoring and Compliance Branch that is very focused on system misuse that is evidence of discrimination. In fact, this week we put our first compliance letters in the mail to employers who may not be using E-Verify correctly.

We are beginning to use a system that was just deployed at the end of June that will enable us to do more and more compliance work. We are also working to refer instances of fraud, discrimination, and system misuse to the appropriate enforcement authorities. And we work very closely with the Justice Department's Office of Special Counsel for unfair immigration-related employment practices on charges of E-Verify-related discrimination.

In summary, E-Verify has made great strides, we believe, in becoming a fast, easy-to-use, and more accurate tool, and we are dedicated to improving the program even more.

Thank you for the opportunity to testify before the subcommittee and, again, we appreciate your continued support of our program.

[The prepared statement of Ms. Ratliff follows:]

U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

OF

GERRI RATLIFF
DEPUTY ASSOCIATE DIRECTOR
OF THE
NATIONAL SECURITY AND RECORDS VERIFICATION DIRECTORATE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

"E-VERIFY: CHALLENGES AND OPPORTUNITIES"

BEFORE
THE HOUSE COMMITTEE ON
OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON MANAGEMENT, ORGANIZATION
AND PROCUREMENT

July 23, 2009
10:00 AM
2154 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

Introduction

Chairwoman Watson, Ranking Member Bilbray, and Members of the Subcommittee, I am Gerri Ratliff, Deputy Associate Director of the National Security and Records Verification of U.S. Citizenship and Immigration Services (USCIS). I am grateful for the opportunity to appear before you to discuss our shared goal of effective employment eligibility verification.

The Department of Homeland Security (DHS) believes E-Verify is an essential and valuable tool for employers who are committed to maintaining a legal workforce. E-Verify works by addressing illegal immigration from the demand side. Any participating company in the United States can access E-Verify through a user-friendly government website that compares employee information taken from the Employment Eligibility Verification Form (Form I-9) with more than 455 million records in the Social Security Administration's (SSA) database, our partner in the program, and more than 80 million records in DHS immigration databases.

The E-Verify Program has grown exponentially in the past several years. Some of this increase is due to a growing number of States that have enacted laws requiring all or some of the employers in their State to use E-Verify. In addition, more employers are recognizing the value of this straightforward process by which they can assure their compliance with the law. As of July 18, over 137,000 employers are enrolled, representing over 517,000 locations. An average of 1,000 employers enroll each week and participation has more than doubled each fiscal year since 2007. Employers have run over 6.4 million queries thus far in FY 2009. The volume of queries doubled from FY 2007 to FY 2008 from 3.27 million to 6.6 million, and in the first quarter of this fiscal year, based on an analysis of Bureau of Labor Statistics data, up to 14 percent of all nonagricultural new hires in the U.S were run though E-Verify.

Not only does the E-Verify Program continue to grow, but it also continues to improve. The most recent analysis of E-Verify by Westat, our independent evaluator, found that approximately 96.9 percent of all cases queried through E-Verify were automatically verified as work authorized. The 96.9 percent figure is based on statistics from October through December 2008 and represents a significant improvement over earlier evaluations. In addition, in a recent American Customer Satisfaction Index Survey, the E-Verify Program scored 83 out of a possible 100 on the Customer Satisfaction Index--well above the latest Federal Government satisfaction index of 69 percent. More than half (51 percent) of the respondents self-identified themselves as small business owners or employers.

Of all the cases verified through E-Verify, 3.1 percent of queries resulted in a mismatch, or a Tentative Nonconfirmation (TNC). A TNC is issued when the information queried through E-Verify does not match the information in SSA or DHS databases and requires further action by employers and then by employees to resolve their cases with SSA or DHS, which is a process that we—in partnership with SSA—continually strive to improve.

Of all queries being run, 0.3 percent are related to new hires who were issued a TNC and successfully contested the case. The remaining 2.8 percent of queries were found not work-authorized either because the employee was in fact not work-authorized, chose not to contest, did not follow the necessary procedures to successfully contest, or was unaware of the TNC or the opportunity to contest because the employer did not follow proper procedures.

The Current E-Verify System: Past Program Enhancements

Under USCIS management and in cooperation with SSA, the E-Verify Program continues to increase accuracy rates, ensure that E-Verify is fast, easy to use correctly, and protect employees' rights. Recent improvements to the E-Verify Program included instituting a system change to reduce typographical errors, incorporating a photo screening tool for certain DHS documents to combat certain instances of document fraud, establishing a Monitoring and Compliance Branch to help ensure that employers are using E-Verify correctly, and adding new databases that are automatically checked by the system to further reduce initial mismatches. In addition, the E-Verify Program established a new process for naturalized U.S. citizens to call a USCIS toll-free number to address citizenship status mismatches as an alternative to visiting SSA. All these efforts were targeted to establish efficient and effective verification.

E-Verify is an increasingly accurate and efficient procedure to verify employment authorization.

In September 2007, the E-Verify Program instituted an additional automatic flag notice that allows employers to double-check the data they entered into the system for those queries that are about to result in a mismatch. This has reduced data entry errors and thus initial mismatches by approximately 30 percent.

The 2007 Westat independent evaluation found that many of the employees who are found to be work authorized after they contest the TNC were recently naturalized citizens. In May 2008, USCIS added an automatic check with USCIS naturalization data to E-Verify before issuing a citizenship-related mismatch, which reduced the number of these mismatches by nearly 40 percent. In addition, employees who receive a mismatch with SSA related to their citizenship status are now able to contact USCIS via a toll-free number to contest the finding, address the discrepancy, and verify their work authorization. Over 50 percent of employees who received a TNC for a citizenship mismatch since May 2008 have chosen to call USCIS. This process change has helped to reduce walk-ins to SSA field offices for E-Verify citizenship mismatches. Of those individuals who call USCIS to address a mismatch based on citizenship status, over 90 percent are successfully resolved by USCIS as work authorized. USCIS and SSA are also discussing further enhancements, including a direct data share initiative that would update SSA's database with naturalized citizen information. In addition, USICS has invested in a dedicated pipeline from E-Verify to SSA to handle increased growth in query volume. The development for this pipeline is ongoing and is expected to be completed in early FY10.

The E-Verify Program also added the Integrated Border Inspection System (IBIS) that provides real time arrival and departure information for non-citizens to its databases as of May 2008, which is preventing E-Verify mismatches that previously resulted from delays

in data entry for persons entering the country through ports-of-entry. The addition of this information into the E-Verify system is reducing hundreds of mismatches that occur for newly arriving workers who enter the country legally and start working immediately.

In December 2008, DHS signed a Memorandum of Agreement with the Department of State (DOS) to share passport data from the DOS's records. In February 2009, USCIS began incorporating passport data into E-Verify to help verify citizenship status information in the event of a mismatch with SSA for citizens who present a U.S. passport during the Form I-9 process. To date, over 5,200 queries that would have received TNCs under the previous procedures have been automatically verified as employment authorized as a result of this enhancement.

We continue to work to improve the system with the goal of being able to automatically verify every work-authorized person accurately and expeditiously, with a minimal number of false nonconfirmations. While there is still work to do to achieve this goal, we continue to make improvements and are committed to further investments to increase further the system's accuracy rate. Of course, non work-authorized persons will continue to receive non-confirmations, which demonstrates that the system is working as intended.

We believe E-Verify continues to grow in efficiency and ease of use for employers, and we continually strive to understand the needs of our stakeholders.
The E-Verify program is routinely reviewed by an independent evaluator in an effort to better respond to the needs of stakeholders and ensure ongoing improvement. We anticipate that the next independent evaluation will be submitted to USCIS by the end of this calendar year. According to the 2007 independent Westat evaluation of E-Verify, "[m]ost employers found the Web Basic Pilot (E-Verify) to be an effective and reliable tool for employment verification" and 96 percent strongly disagreed that E-Verify was a burden.

Ultimately, E-Verify's continuing success relies not only on increasing its automatic verification rate, but also on increased awareness and public use of the program as well as more education of U.S. citizens and work-authorized immigrants about their rights when using the system. In an effort to better understand the needs of those employers using the program, USCIS substantially increased customer service and outreach staff over the past two years to ensure that questions and issues are addressed quickly and professionally.

In FY 2008, we launched an outreach campaign aimed at educating employers about their responsibilities in using E-Verify. In addition to conducting hundreds of presentations, demonstrations, and webinars, we also held informational seminars for the public in Arizona, Georgia, Mississippi, and the metropolitan D.C. area, and conducted 239 outreach events in 24 states. E-Verify also has a toll-free informational call center that handles approximately 2,000 calls per week.

The program launched radio, print, billboard, and internet advertisements aimed at increasing awareness about E-Verify. In addition, USCIS is collaborating with the Small Business Administration (SBA) to include E-Verify information on SBA's website and to identify additional ways E-Verify information can be incorporated into SBA program activities. USCIS has also collaborated with the Office of Special Counsel for

Immigration-Related Unfair Employment Practices in the Civil Rights Division of the Department of Justice to develop guidance for employers about how to avoid discrimination when using E-Verify. This guidance is available on the website of the Office of Special Counsel and, with USCIS' assistance, has been translated into nine foreign languages (Chinese, Haitian Creole, French, Japanese, Korean, Tagalog, Vietnamese, Russian, and Spanish).

Employees are also key stakeholders of E-Verify. USCIS has bilingual English and Spanish advertising and has online materials in eight foreign languages (Chinese, Haitian Creole, French, Korean, Tagalog, Vietnamese, Russian, and Spanish) to inform employees of their rights. The E-Verify Program has collaborated with the DHS Office for Civil Rights and Civil Liberties to prepare bilingual English and Spanish videos for employers and employees to teach them about E-Verify and their rights, roles, and responsibilities.

Through monitoring and compliance, the E-Verify Program is committed to maintaining the integrity of the authorization system and effectively detecting and preventing discrimination and misuse.

A successful and effective electronic employment authorization verification program is critical to ensuring that employers have the necessary tools to ensure their work force is authorized to work in the United States. However, to be effective, the program must also include robust tools to detect and deter employer and employee fraud and misuse. USCIS first contracted for an independent review of E-Verify in June 1998 with the initial evaluation of the program published on January 29, 2002 by Temple University and Westat. USCIS has continued this process to ensure third-party review of ongoing operations as well as evaluation of new capabilities and improvements.

The 2007 independent Westat evaluation found "substantial" employer non-compliance with program rules. While the evaluation found that employer compliance with program procedures is improving, it also identified methods by which some E-Verify employers may be using the program incorrectly. Failure to follow E-Verify procedures can potentially result in discrimination and can lead to job loss for U.S. citizens and work authorized immigrants and could ultimately reduce the effectiveness of the program. USCIS is dedicated to reducing E-Verify misuse through employer training, educational outreach, print and electronic resources, and our monitoring and compliance program. Indeed, we believe that a strong monitoring and compliance program is essential to the success and acceptance of the system.

USCIS established a Monitoring and Compliance Branch dedicated to monitoring E-Verify use and providing compliance assistance. The Monitoring and Compliance Branch aims to detect and deter system misuse; prevent the fraudulent use of counterfeit documents; safeguard personally identifiable information; and refer instances of fraud, discrimination, misuse and illegal or unauthorized use of the system to enforcement authorities. The Branch has begun systematically reviewing E-Verify transaction data to detect and deter employer misuse, fraud and discriminatory practices, and offers compliance assistance to help employers use the system correctly. This approach is supported by the Case Tracking and Management System (CTMS), which was launched on June 22, 2009. The E-Verify Program has instituted procedures to refer cases of non-

compliance to Immigration and Customs Enforcement (ICE) and instances of potential discrimination under the anti-discrimination provision of the Immigration and Nationality Act to the Office of Special Counsel for Immigration-Related Unfair Employment Practices. In December 2008, USCIS signed a Memorandum of Agreement with ICE establishing guidelines for referrals and sharing of information. USCIS and the Office of Special Counsel have established mechanisms for the cross-referral of matters and the sharing of E-Verify information, and they are working to memorialize these procedures in an agreement.

To safeguard employee privacy, the E-Verify Program has established an internal Privacy Branch to ensure that program policies, practices, and procedures comply with the Privacy Act; promote transparency within the program; and to conduct Privacy Threshold Analyses (PTAs), Privacy Impact Assessments (PIAs), and develop System of Records Notices (SORNs) for system and programmatic enhancements. The Privacy Branch's mission is to protect employees' civil rights and personal information.

In addition to detecting fraud that occurs when workers provide counterfeit documents containing information about nonexistent persons, E-Verify prevents certain types of identity fraud from passing successfully through E-Verify.
Some noncitizens without work authorization use stolen identities to obtain employment. To help address this problem, the E-Verify Program introduced a photograph screening capability into the verification process in September 2007. The tool allows a participating employer to check the photos on Employment Authorization Documents (EAD) or Permanent Resident Cards (green cards) against images stored in USCIS databases, thus allowing employers to determine if the document presented by the employee as a DHS document is a complete fabrication or has been subject to photo-substitution. Through use of the photo tool, hundreds of cases of document and identity fraud have been identified, and unauthorized workers have been prevented from illegally obtaining employment.

Upcoming Enhancements to E-Verify: Fiscal Year 2010
USCIS continues to improve the system's automatic confirmation rate by incorporating additional data sources into E-Verify. Other key efforts include assisting employers in using the program correctly, continuing to conduct outreach focusing on employee as well as employer stakeholder groups, and expanding relationships with all stakeholders in an effort to further improve the program.

The E-Verify Program will continue to add new data sources to the automated initial check to reduce the number of mismatches issued by the system.
In fiscal year 2010, USCIS plans to improve the system's ability to automatically verify international students and exchange visitors through the incorporation of ICE's Student and Exchange Visitors Information System (SEVIS) data. By incorporating SEVIS nonimmigrant student visa data into the automatic initial E-Verify check, the number of students and exchange visitors who receive initial mismatches and then have to contest the initial result should be reduced. In FY2010, ICE will be launching a new version of SEVIS – SEVIS II – which will include employment eligibility information that E-Verify will be able to access electronically. Currently, the SEVIS database is checked manually by immigration status verifiers after an initial mismatch is issued.

The E-Verify Program also plans to provide automated system updates for any new hire with Temporary Protected Status (TPS) who has an expired EAD but who is within an auto-extension time period. This system enhancement will decrease the number of TPS recipients who receive an initial mismatch or TNC.

Additionally, E-Verify continues to develop other ways to reduce the number of initial mismatches and improve system performance by analyzing system data. One such effort will improve the date of birth entry field to avoid data entry errors such as reversing the day and month as is the practice in many countries outside of the United States. This mismatch reduction initiative includes improving the data-matching algorithm and improving usability to reduce data entry errors.

The E-Verify Program will continue to combat identity fraud and expand the photo screening tool.

USCIS is working to expand the types of documents available to the E-Verify system to provide photo confirmation. Currently, only DHS-issued identity documents are displayed in the photo tool, but the E-Verify Program is actively seeking to expand the types of photos available in this functionality. This would prevent one possible avenue of identity theft currently used to "game" the system. This effort will be combined with a reduction in the number of documents acceptable for Form I-9 purposes, such as those listed in the Interim Final Rule, which became effective on April 3, 2009.

USCIS is also assessing the feasibility of a state-based department of motor vehicles (DMV) data exchange that would incorporate driver's license photos into the photo tool. This would represent a significant enhancement to the system, since new hires most often present a driver's license for Form I-9 purposes. To date, no state has yet agreed to add its driver's license data to the photo tool. If launched, this functionality would be available to any state that chooses to participate.

USCIS is aware that identity fraud is a serious concern in the U.S. and is especially concerned with how this practice affects E-Verify. While USCIS cannot detect all forms of identity fraud used by an employee who is run through E-Verify, we are working to find ways to detect and deter fraud to the extent possible. Incorporating driver's license information and photos would strongly support this effort. Further, USCIS is in the final stages of developing an initiative that would enable individuals who are victims of identity theft and who have filed both a police report and a report with the Federal Trade Commission (FTC) to choose to "lock" and "unlock" their records in E-Verify.

The E-Verify Program will continue to implement enhancements to improve usability and program efficiency.

USCIS is evaluating the E-Verify registration process and is currently examining the best ways to validate the legitimacy of employers using the system, the individual registrants signing up to use the system, and those using the system after the enrollment phase. Improving the registration portion of the E-Verify Program will help ensure that E-Verify has accurate and complete information on those employers using the program.

The E-Verify Program is also working to provide an electronic Form I-9. The first phase of this enhancement includes developing a stand-alone Form I-9 in portable format that will allow employers to electronically create, sign, and store the completed forms. In a future enhancement, the electronic Form I-9 will pre-fill the fields in E-Verify, eliminating the need for employers to input the data into the system after it was already recorded on the Form I-9. Once available, this function will decrease workload on employers and should help reduce employer input errors.

Conclusion

The E-Verify Program has made great strides in becoming a fast, easy, and more accurate tool to help employers maintain a legal workforce and comply with immigration law. The Administration is dedicated to continuing to make improvements to address issues such as usability, fraud, discrimination, and to further improve the system's automatic verification rate. On balance, E-Verify will continue to be a key element of our Nation's ability to safeguard U.S. jobs for citizens and authorized workers by combating illegal immigration.

Thank you for the opportunity to testify before the Subcommittee and we appreciate your continued support of the E-Verify Program.

- USCIS -

Ms. WATSON. Thank you.

I would like to announce the arrival of Congresswoman Jackie Speier. Welcome.

Mr. David Rust is the Social Security Administration's Deputy Commissioner for Retirement and Disability Policy. In this role, Mr. Rust directs and manages the planning, development, and issuance of operational policy and instructions. Mr. Rust previously served as Executive Secretary for the agency and he also held high ranking positions with the Department of Health and Human Services, the Department of Agricultural, and as a professional staff member for the Congress.

Mr. Rust, please proceed.

STATEMENT OF DAVID RUST

Mr. RUST. Madam Chairwoman, Ranking Member Bilbray, members of the subcommittee, thank you for this opportunity to discuss the Social Security Administration's supporting role in E-Verify, the DHS-administered electronic employment eligibility system. I am David Rust, the Deputy Commissioner for Retirement and Disability Policy. My responsibilities include development and coordination of policy in the oversight of related issues to E-Verify and to our core workloads, which are the Old-Age, Survivors and Disability Insurance program and the supplemental security income program.

Before I discuss our supporting role with E-Verify, I would like to briefly mention some of the key purposes we have developed over the years for the use of the Social Security number.

Assigning SSNs and issuing SSN cards is one of our core workloads and a key to administering our program. We developed the SSN as a way for employers to accurately report an employee's earnings. We use the SSN to credit wages to the permanent earnings record that we maintain for each worker, which is the basis of their Social Security coverage and benefits. We have great confidence in the integrity of our workers, and for our program purposes the SSN serves us very well.

Let me now turn to our role in the E-Verify program.

An employer submits information on a new hire to DHS. DHS then sends this information to us electronically to verify the SSN, the name, and the date of birth in our records. For new hires alleging U.S. citizenship, we confirm citizenship status based on information in our records. For any naturalized citizen whose U.S. citizenship we cannot confirm, DHS verifies the naturalization status and, thus, authorization for work.

For all non-citizens, if there is a match with our records, DHS then determines current work authorization status. DHS notifies the employer of the result of the verification. E-Verify automatically confirms, as Ms. Ratliff said, work authorization in 96.9 percent of all queries.

Next month we will complete a much anticipated improvement in our computer systems that serve E-Verify. Currently, we use the same system developed in the late 1990's, when E-Verify was a small pilot program in just five States. Our improved system, known as the Isolated Environment, will ensure that there is no in-

terference between our own mission critical workloads and DHS's E-Verify program.

At the request of DHS, we designed the system to handle up to 60 million queries a year, but we can increase that capacity with additional hardware and funding if the need arises. The new system also includes redundancy measures that ensure that E-Verify does not experience unnecessary outages.

We worked closely with DHS over the last few years to improve the E-Verify program. These changes have increased the efficiency and effectiveness of the system and have helped to control the workload effects on our field offices. In the last 2 years, these changes reduced by about half the number of workers who need to visit our offices to resolve tentative non-confirmations.

In fiscal year 2009, we will handle about 75 contacts for every 10,000 queries run through the E-Verify system. Despite these improvements, we remain focused on further reducing the need for workers to visit our field offices to resolve tentative non-confirmations.

Madam Chairwoman, our own mission critical workloads are increasing at an alarming rate. Based on the newest economic assumptions and actuarial projections, we now estimate nearly 250,000 more retirement claims will be filed and 350,000 more disability claims will be filed in fiscal year 2010 than we projected in the President's fiscal year 2010 budget, which was delivered to Congress in May. Our field offices are under great strain to keep pace with these growing workloads. Any additional field office visits related to E-Verify will only add more challenges to our efforts to deliver the level of service the public expect and deserves.

I must also mention that under the Social Security Act we cannot use Trust Fund dollars to finance the work we do for E-Verify or any other work that does not fall within our core mission as specified in the Social Security Act. Since E-Verify began, Congress has appropriated funds to DHS to administer the program, and each year DHS has provided funds to us to cover our E-Verify related costs. These include our systems costs and the cost of assisting new hires in resolving tentative non-confirmations. Receiving timely and adequate reimbursement from DHS for our E-Verify work is thus critical to us.

In conclusion, I want to thank you for giving me an opportunity to discuss our role in assisting DHS in administering the E-Verify system. We look forward to your continued support for our critical programs. I would be glad to answer any questions you may have.

[The prepared statement of Mr. Rust follows:]

Statement of
David A. Rust
Deputy Commissioner for Retirement and Disability Policy
House Oversight and Government Reform,
Subcommittee on Government Management, Organization and Procurement
Hearing on E-Verify

Madam Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to discuss the Social Security Administration's (SSA) role in helping the Department of Homeland Security (DHS) administers the E-Verify system. This system allows employers to verify the employment eligibility of newly-hired employees.

We are pleased you are holding this hearing today to discuss the history of the system, the activities we conduct in helping DHS administer it, and the system's ability to grow to serve the increasing number of employers registering to use it.

Before I discuss our supporting role in the E-Verify system, I would like to take a moment to explain our mission and how our records have developed over the years.

OUR MISSION & OUR RECORDS

We administer the Nation's social insurance programs and the Supplemental Security Income (SSI) program—one of the Nation's largest means-tested income maintenance programs. Social Security and SSI benefits play a significant role in the economic security of all Americans. Each year, we send benefits totaling about $700 billion to approximately 60 million beneficiaries.

The Old-Age, Survivors, and Disability Insurance programs benefit workers, their dependents, and survivors at critical junctures in their lives: when they retire, when they become disabled, and when a

family's wage-earner dies. Through the SSI program, we assist some of the most vulnerable members of our society.

To effectively administer our programs, we created the Social Security number (SSN). Assigning SSNs and issuing SSN cards remains one of our core workloads. Since the inception of the program we have assigned over 455 million SSNs.

The SSN functions as a record-keeping mechanism that allows employers to uniquely identify and accurately report a worker's earnings. Names alone cannot assure accurate reporting, but the combination of a name and an SSN provides a system for accurately reporting and recording wage information.

Each year, employers file a Form W-2, *Wage and Tax Statement*, for each of their employees. These W-2s include the employees' names and SSNs. We process the W-2s, crediting the wage amounts to the permanent earnings record that we maintain for each worker. We also send the information to the Internal Revenue Service since that agency needs the information for tax purposes. Each year, we process approximately 245 million W-2s from employers, covering approximately 154 million workers.

Properly crediting earnings to the correct SSN ensures that we can determine eligibility for retirement, survivors, and disability benefits and that we pay the proper benefit amount. If a worker's earnings are not properly recorded, he or she may not qualify for Social Security benefits or the benefit amount may be wrong.

While the SSN has a very limited purpose, the role of the SSN card is even narrower. It is simply a record of the number assigned to the worker so that he or she can provide the correct number to the employer. The SSN card was never intended, and does not serve, as a personal identification document. Although we have made many changes over the years to make the card counterfeit-resistant and continue to work to strengthen its security, the card does not contain information that would allow it to be used as proof of identity. The card does not establish that the person presenting it is actually the person whose name and SSN appear on the card.

Originally, all SSNs were assigned, and cards were issued, based solely on applicants' allegations of name, date of birth, etc. No evidence was required. Today, applicants for an SSN and SSN card must submit evidence of age, identity, and U.S. citizenship or current immigration status. Applicants for replacement cards must submit evidence of identity and, if a non-citizen, of current immigration status. We verify the birth records for U.S. citizens requesting an original card and the immigration documents presented by non-citizens requesting original or replacement cards.

We have great confidence in the integrity of our SSN records. For our program purposes, the SSN serves us well. In fact, in a December 2006 report presented to Congress, SSA's Office of Inspector General (OIG) commended the accuracy of the information in our Numident, which is our electronic master file of all SSNs.

The personally identifiable information associated with an SSN in our electronic database reflects the information provided on the application for an SSN. The SSN record acts as a snapshot in time. We update or correct our records whenever a person applies for a replacement card, applies for benefits, or requests a change to the record, such as a name change.

Although a person is not required to notify us of changes in his or her information, we encourage doing so. The instructions attached to each Social Security card state that the person should contact us if his or her name, citizenship, or status as an alien changes because these changes may affect current or future Social Security benefits.

A person has a number of opportunities to verify his or her name and SSN on our records and to inform us of any updates or errors. For example, since 1990 we have issued annual *Social Security Statements* to workers age 25 and older. The *Statement* is a concise, easy-to-read personal record of the earnings on which the worker has paid Federal Insurance Contributions Act tax. We encourage workers to review the earnings and name on their *Statement* and to contact us if any of the information is inaccurate or out-of-date.

Since the early 1980s we have offered employers a free SSN verification service. Today, we have a number of free verification

services and a variety of access methods, including telephone and internet access. Through these services, we verify whether a worker's name and SSN match our records. We encourage employers to use any of these services to improve the accuracy of their wage reports so that we can properly credit employees' earnings.

With this brief background on our programs and the records we maintain to assist us in administering these programs, let me describe our role in supporting the Department of Homeland Security's E-Verify program. It important to note that the E-Verify program is not one of our core workloads, and as I describe later, Social Security Trust Funds may not be used to finance the E-Verify program.

THE HISTORY OF THE CURRENT EMPLOYMENT VERIFICATION SYSTEM

The Immigration Reform and Control Act (IRCA) of 1986 required employers for the first time to examine workers' documents to verify the employment eligibility of newly hired employees. Ten years later, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which required testing three alternative methods of providing an effective, nondiscriminatory employment eligibility confirmation process; E-Verify was one of the three methods. The law required that the voluntary E-Verify pilot be implemented in at least five of the seven States with the highest estimated population of non-citizens who were not lawfully present in the United States. The five states selected were California, Florida, Illinois, New York, and Texas.

In March 1999, Nebraska was added to assist employers in the meat packing industry. Employers in these six states were also allowed to use the system to verify the employment eligibility of new hires at their work sites located in other states. In 2002, Congress extended authorization for the system for an additional two years. In 2003, Congress again extended E-Verify through 2008 and expanded the voluntary program to include employers in all 50 States. In the past year, Congress again extended the program, and it is currently set to expire at the end of September 2009.

Employer use of E-Verify has grown significantly over the last five years. Before the nationwide expansion, less than 3,000 employers participated. As of July 11, more than 137,000 employers participate at more than 517,000 sites, and participation is growing by an average of 1,000 employers each week. As the number of participating employers has grown, so has the number of queries we handle. In fiscal year (FY) 2006, we handled about 1.7 million queries; in FY 2007, we handled about 3.3 million, and that number doubled to about 6.6 million in FY 2008. So far this fiscal year, we have already handled over 6.3 million queries.

THE E-VERIFY PROCESS

Employers participate voluntarily and register with DHS to use the automated, web-based system to verify a newly-hired employee's SSN and work authorization status. The employer inputs information from the new hire's Form I-9, the Employment Eligibility Verification Form, into the web-based system. DHS then sends this information to us electronically to verify that the newly-hired employee's SSN, name, and date of birth match the information in our records. For employees alleging United States citizenship, we also confirm citizenship status for DHS, thereby allowing DHS to confirm work authorization. For any naturalized citizen whose U.S. citizenship we cannot confirm, DHS will verify naturalization status and, thus, authorization to work. For all non-citizens, if there is a match with our records, DHS then determines the current work authorization status.

Within three to five seconds, the E-Verify system notifies the employer of the verification result. The DHS notification informs employers whether the new hire is authorized to work. If the new hire's information could not be confirmed, the DHS notification explains that the new hire has been tentatively non-confirmed—that is, that the new hire must take additional steps to be verified to work under the system.

E-Verify automatically confirm the work-authorization of 96.9 percent of queries. If E-Verify cannot confirm that the information matches our records or cannot confirm United States citizenship, DHS notifies the employer of the tentative non-confirmation. The employer, in turn, must notify the new hire of the tentative non-confirmation and give the new hire the opportunity to contest the finding. If the new hire contests

the tentative non-confirmation, he or she has eight days to contact one of our field offices or in some situations a DHS office, with the required documents to correct the record. Once the record has been corrected, the employer must check the E-Verify system to determine whether the tentative non-confirmation has been resolved.

E-VERIFY ENHANCEMENTS

Since the inception of E-Verify, we have worked collaboratively with DHS to improve the operation of the system—to make it work more efficiently and more smoothly for employers and their new hires. I would like to highlight a few of the more significant improvements.

In 2007, we worked with DHS to implement the E-Verify SSA Tentative Non-confirmation Automated Response system (EV-STAR). Through EV-STAR, our field office representatives input directly to E-Verify all actions taken to resolve a tentative non-confirmation. As a result, employers can now determine the status of pending cases by querying E-Verify. Previously, the new hire had to carry paperwork from our agency back to the employer in order to resolve a tentative non-confirmation.

In 2007 and 2008, we worked with DHS to make several significant changes that reduced the number of new hires receiving a tentative non-confirmation. In September 2007, DHS modified the front-end of the E-Verify system to do a "pre-tentative non-confirmation check." This pre-check verifies the data entered into the system, and if any information does not match, asks employers to double check the data. In this way, the pre-check acts as a fail-safe against employers' mistakes, keying errors, and misread information on the Form I-9.

In May 2008, DHS updated the E-Verify system to include naturalization data, a project known as "Natz Phase I." Years of experience with E-Verify had shown that naturalized citizens who had not yet reported their citizenship changes to Social Security constituted not only a primary source of error in the Numident, but also one of the largest categories of work-authorized new hires who initially receive a tentative non-confirmation. By including DHS naturalization data in the initial electronic verification process, naturalized citizens are more likely to be automatically confirmed through E-Verify.

At the same time, DHS also changed the process for contesting tentative non-confirmations based on citizenship mismatches. Under the new process, known as "Natz Phase II," naturalized citizens who receive a tentative non-confirmation can call DHS directly to resolve the issue. New hires still have the option of resolving the mismatch in person at one of our field offices. This new process provides better, more convenient service to the public and helps reduce the number of visitors coming to our field offices to change their records.

These enhancements have increased the automation of the E-Verify system and have helped ensure that employers can promptly and accurately confirm the work authorization status of new hires. We are committed to working with DHS to make E-Verify an even better tool for employers and to ensure that the system protects the jobs of all work-authorized employees.

Isolated Environment

Next month, we will complete a much-anticipated improvement to our systems that support E-Verify. We currently use the same system developed in the 1990s to support what was then a small pilot program operating in just five States. The new system is the result of months of collaboration with DHS to determine how best to meet both of our agencies' requirements.

We refer to the upgrade as the "Isolated Environment," since it will isolate our E-Verify workloads from our mission critical workloads. Under the current system, the processing of our core workloads takes precedence over E-Verify. The new system, however, will ensure that there is no interference between our own mission critical workloads and E-Verify workloads. No other workloads will run in the new isolated E-Verify environment, thus insulating E-Verify against the effects of unrelated workloads and system outages and our own workloads against E-Verify issues or spikes in the volume of E-Verify queries. Additionally, we designed the system to include redundancy measures to ensure that E-Verify does not experience outages.

The more robust design of the new system increases our capacity for E-Verify queries. With the new system, we can handle substantially

heavier volumes of verifications. In coordination with DHS, we designed the system to accommodate 60 million queries a year because United States' employers hire about 60 million workers each year. In time, we may need to add additional capacity, but we expect our systems to be able to handle potential expansions of E-Verify. The new isolated environment will provide the most stable environment possible to the employer and employee communities and will help us provide prompt, efficient, and accurate service to those seeking employment as well as to the millions of Americans who depend on our programs.

We continue to look for ways to reduce the number of tentative non-confirmations and the resulting burden on our field offices. Although we are in the initial stages of discussions with DHS, we may add more checks to the system that, based on feedback from employers, will address some common obstacles to the employment eligibility verification process.

E-VERIFY WORKLOADS

Over the last 10 years, as E-Verify evolved from a small pilot program to a service used by over one hundred thousand employers nationwide, we have overcome a number of challenges and have worked with DHS to improve the efficiency and effectiveness of the program. Our primary focus with respect to the program continues to be reducing the need for workers to visit field offices to resolve non-confirmations.

Workload

We respond to every query run through the system, and we are the primary point of contact for new hires contesting a tentative non-confirmation. E-Verify is a vital tool designed to prevent unauthorized non-citizens from obtaining employment. However, any action we take to assist a new hire in resolving a tentative non-confirmation is time our employees cannot use to assist applicants for a Social Security benefit. E-Verify tentative non-confirmations create an additional workload for our already strained local offices.

We must verify that new hires contesting tentative non-confirmations are who they say they are. In almost every situation, we must conduct a face-to-face interview, during which the new hire presents documentation to support his or her request for an update or correction to the Numident. We estimate that it takes about 20 minutes to complete just one face-to-face interview and update the EV-STAR system and the Numident when a person requests a change to his or her record.

Sometimes the new hire may not have the documentation required to support a change in our records, and he or she must request the document from the custodian of record or issuing agency. These record requests can add weeks to the process. For example, a new hire may not have the original or a certified copy of his or her marriage certificate and may need to request the original from the State. In other cases, the new hire has the document, but we must verify it with the custodian of the record, another step that can add additional time to the process. Thus, changing a Numident record may, in the most complex cases, require multiple visits to one of our field offices. These steps are critical to the integrity of our records and of the E-Verify system, but can be inconvenient for new hires who are trying to change their records. It also creates a workload burden for our field offices.

The changes our agencies have made to the E-Verify system have helped us control the workload effects on our offices and have increased the efficiency and effectiveness of E-Verify. In FY 2007, for every 100 E-Verify queries, we handled about 2.6 contacts. In FY 2008, we reduced that to about 1.5 contacts per 100 queries. For FY 2009, we estimate that we will handle about 0.75 contacts for every 100 queries.

As noted earlier, one of the primary reasons for an SSA tentative non-confirmation had been a non-citizen's failure to notify us of a change in his or her citizenship status. According to a recent DHS report, as result of Natz Phase I, over the last 14 months E-Verify found more than 58,000 new hires to be employment-authorized. This change saved these workers from having to visit our offices to resolve the tentative non-confirmation. This improvement has greatly reduced the E-Verify-related work in our field offices. Under Natz Phase II, over

3,000 new hires received the revised tentative non-confirmation notice that provides new hires the option to call DHS to resolve the citizenship discrepancy. Over 91 percent of these citizens were able to resolve the discrepancy by phone with DHS and become employment authorized under E-Verify. Only 259 new hires came to SSA for resolution of this type of issue.

In total, since May 2008, Natz Phases I and II have resolved more than 61,000 citizenship mismatches. We will continue to work with DHS and to assess our policies and procedures looking for ways to better serve the public and reduce the number of new hires who visit our field offices to resolve tentative non-confirmations produced by the E-Verify process.

Funding

Since E-Verify began, Congress has appropriated funds to DHS to administer the program. Each year, we negotiate and sign agreements with DHS to cover our costs in supporting E-Verify. These costs include our operational costs—which are systems costs to respond to E-Verify queries and the costs of assisting new hires who visit our field offices to contest a tentative non-confirmation. This fiscal year, our reimbursable agreement included more than $21 million, about $4 million for the operational and on-going systems costs, and about $17.8 million for the isolated environment discussed earlier. We are happy to report that we will implement this new system next month—on schedule and within budget.

SSA cannot use Trust Fund dollars to finance this employment eligibility verification program. DHS ensures timely and adequate reimbursement for our E-Verify work. Our own mission critical workloads are increasing at an alarming rate. We will receive and process more claims this year than in any prior year. Due to the aging of the baby boomers and the current economic downturn, we expect to process over 300,000 more retirement claims, 30,000 more disability claims, and nearly 75,000 more hearing requests this fiscal year compared to FY 2008. Based on the newest economic assumptions and actuarial projections we received just a few days ago, we now estimate nearly 250,000 more retirement claims and 350,000 more disability claims in FY 2010 than we projected in the President's FY

2010 Budget delivered to Congress in May 2009. Our field offices are under strain to keep pace with the growing workloads, and any additional field office visitors related to E-Verify will only add additional challenges in delivering the level of service the public expects and deserves.

We are grateful for the funding the Congress provided to us in the *American Recovery and Reinvestment Act of 2009* and in our FY 2009 appropriation. Our ability to deliver service to the American public depends upon sustained, timely, and adequate funding. We look forward to your continued support so that we may continue to fulfill our core mission and also support DHS' E-Verify program.

I want to thank the Chairwoman and members of the Subcommittee for inviting me here today. On behalf of SSA, we look forward to your continued support for the Agency and for our mission.

I will be happy to answer any questions you may have.

SOCIAL SECURITY
Office of Retirement and Disability Policy

The Honorable Diane E. Watson
Chairwoman, Subcommittee on Government Management,
Organization, and Procurement
Committee on Oversight and Government Reform
House of Representatives
Washington, D.C. 20515

Dear Chairwoman Watson:

Thank you for your letter of August 3, 2009, requesting additional information in order to complete the record for the hearing on "E-Verify: Challenges and Opportunities," held on July 23, 2009. Enclosed you will find the answers to your questions.

I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact Angela Arnett, our Acting Deputy Commissioner for Legislative and Regulatory Affairs, at (202) 358-6030.

Sincerely,

David A. Rust

Enclosure

Enclosure – Page 1 – The Honorable Diane E. Watson

Questions for the Record Subsequent to the July 23, 2009, Hearing Before the House Committee on Oversight and Government Reform, Subcommittee on Government Management, Organization, and Procurement

1. **What is the number of citizens who need to update their record of name changes with the agency each year but fail to do so?**

   We do not know how many people change their names each year but fail to notify us of the change. We update or correct our records whenever a person applies for a replacement card, applies for benefits, or requests a change to the record. Even though we cannot require people to notify us of changes in their information, we encourage them to do it. The instructions attached to each Social Security card state that the card holder should contact us if his or her name, citizenship, or alien status changes because these changes may affect current or future Social Security benefits.

2. **What would be the actual costs incurred by employers to participate in E-Verify if the program were to operate on a user-fee basis?**

   The Department of Homeland Security (DHS) is responsible for administering the E-Verify program, so we defer to DHS regarding its total cost to run the program and how those costs would translate to employer costs should Congress require DHS to charge a fee to use the program.

3. **If participation in E-Verify becomes mandatory for employers, how would SSA's field offices be impacted in terms of additional costs and the need for more personnel?**

   We are preparing a preliminary estimate on the effects of a mandatory E-Verify program on our agency. Once we finalize our estimate, we will immediately provide the information to you. The preliminary estimate will represent the costs if the current E-Verify system is expanded. Any changes to the current process could have significant additional costs to the agency.

   In addition to direct costs, there are indirect costs associated with a mandatory program. Any action we take in resolving a tentative non-confirmation is time our employees cannot use to assist applicants for a Social Security benefit. Due to the aging of the baby boomers and the current economic downturn, our offices are already straining to keep pace with increasing numbers of Social Security claims. Any significant increase in visitors to our field offices related to E-Verify could lead to longer waiting times for applicants for Social Security benefits.

   The field office workload related to tentative non-confirmations of the E-Verify system falls disproportionately on certain States. Last year, our California, Arizona, and Texas field offices handled more than 40 percent of this E-Verify workload.

It is vitally important that, should Congress make the program mandatory, we have adequate funding and lead-time to increase our field office capacity. At the end of this month, we will implement a much-anticipated systems upgrade to more efficiently process the expected increase in E-Verify queries should the program be mandated for all new hires. However, to ensure that we effectively support the E-Verify program without compromising our ability to handle our mission critical workloads, a mandatory program should be phased-in over a multi-year period.

4. **Is the federal government prepared to begin checking the identity and/or work eligibility of all federal workers?**

   We defer to DHS regarding the capability to expand the E-Verify program to all Federal workers.

5. **With the implementation of the September 8, 2009 deadline for registering federal contract workers, will contractors who work at the state and local government levels also have to begin registering in order to work on federally-funded contracts (i.e., stimulus-funded transportation projects)?**

   We defer to DHS regarding the requirements for contractors to verify work eligibility.

Ms. WATSON. Thank you so much, and I will begin by asking the first few questions.

First to Ms. Ratliff. Secretary Napolitano recently announced that, starting on September 8, 2009, the administration would implement a regulation requiring that Federal contractors use E-Verify according to the USCIS statistics, and E-Verify has handled more than 6 million queries thus far this fiscal year. How many queries do you anticipate E-Verify will need to handle next year if the Federal contractor rule is implemented?

Ms. RATLIFF. Madam Chairwoman, we estimate that in the first year about 3.8 million queries would be run pursuant to that regulation. There is a little under 170,000 Federal contractors in our analysis and, given our current system capacity of over 60 million queries annually, we are well poised to meet that challenge.

Ms. WATSON. OK. Do you see any problems in the system? These are staggering numbers.

Ms. RATLIFF. We are always analyzing to see what could be tweaked and fixed and made better. We feel that we do have a program that is ready to handle the challenges of the Federal contractor role and other growth. We have a team of system engineers, program experts who are always looking to see what could be improved; could your educational materials be more extensive. We have added languages to our materials.

To implement the Federal contractor rule, we are planning now a second wave of outreach to Federal contractors through Webinars and other events to make sure they have the information they need to successfully enroll and use E-Verify. We have, in the registration process, a tailored approach for contractors and a tailored tutorial. We are always open to ideas for additional improvements in other materials, but we do feel that we are ready.

Ms. WATSON. All right. Do you support giving E-Verify participants the option of verifying current employees and could E-Verify handle the potential increase? I think you have probably already answered that.

Ms. RATLIFF. Well, our 3.8 million query estimate under the Federal contractor rule for the first year does include an estimate for a certain number of contractors choosing to run their entire existing work force, which would be an option under that regulation. We also are constantly doing forecasting and building costing models for other larger scenarios so that we would be ready for whatever Congress sees fit to send our way.

Ms. WATSON. And how effective is E-Verify in authenticating employees' identities, as well as authorizing their right to work?

Ms. RATLIFF. Identity fraud is something that we are spending a lot of time thinking about and developing the tools that are possible for us to put in our tool kit. We cannot today catch every form of identity fraud. We have the photo tool that we are using to the fullest ability that we can use it, by putting Department of Homeland Security identity document photos in it for the new hires who show a green card or an employment authorization document for the Form I–9.

We are planning, next year, to put in the photo tool the U.S. passport citizen photos, but the biggest document used for the Form I–9 is the driver's license, and we, on our end, have done out-

reach to States to see if there is a willing partner who would work with us to add their driver's license photos to the photo tool. That is the step that would take us the farthest down the path of detecting identity fraud in terms of the photo tool.

We are also monitoring for duplicate uses of Social Security numbers and will be referring to ICE, our sister enforcement agency, identity fraud patterns that we see under that initiative. We are exploring in-house possible biometric- and biographic-based identity authentication options. I know that is a topic of great interest and we are already looking to see and working with stakeholders, including in the business community all stakeholders who are interested in working with us to put good ideas together and see what would be worth testing out and learning from.

Ms. WATSON. Let me just refer to ICE and the raids that were held in 2007 on the Swift Meat Packing Co. I understand it netted about 1,200 workers and reportedly contributed to $30 million in losses to the company. It is my understanding that Swift participated, and still participates, in E-Verify pilot programs who were found and they were not verified. So can you explain what the breakdown in the system was at that time, what the weaknesses were and how you plan to overcome those?

Ms. RATLIFF. Yes, Madam Chair. The photo tool that we have added to the system was added after the Swift incident.

Ms. WATSON. The photo tool, faces?

Ms. RATLIFF. Yes, ma'am. It is the green card and employment authorization document photos. So when a new hire shows one of those documents to the employer for the Form I–9 process, we are now able to pull up in the system the photo that should be on that card, the photo that we put on the card.

So if the new hire is using a completely fraudulent green card or employment authorization document, or has taken a real card and photo-substituted their picture, the photo tool will detect that by showing the photo that should be on the card. So it is a very easy match. It is not a matter of saying, well, you got a haircut and your shirt is different; it should be exactly, 100 percent, the same photo that we put on the card. And as we are working to expand the photo tool, that will expand our ability to help employers detect identity fraud.

And I do want to note that Swift, you are absolutely right, it underscores why we are moving to add tools to E-Verify to allow employers to detect identity fraud and why we need to do more.

Ms. WATSON. My time has expired, so I am going to yield to our ranking member, Mr. Bilbray.

Mr. BILBRAY. Thank you. I guess the point here, we had a hearing not too long ago, Madam Chair, about the improvement of the Federal identification systems and the new technologies we are using there.

So, Ms. Ratliff, as the States and the Federal Government improve our documentation ourselves, our IDs itself, that will strengthen the E-Verify because that is a basis for a lot of this information gathering, isn't it?

Ms. RATLIFF. Yes, sir. To the extent that E-Verify is able to have access to those photos on those identity documents, yes.

Mr. BILBRAY. OK. So you can't operate in isolation. As other improvements are made, as the States improve their programs, as the Feds improve theirs, your efficiency will be improved proportionally down the line.

Ms. RATLIFF. Absolutely.

Mr. BILBRAY. Mr. Rust, you have been resting for too long, I am going to have to get to you. Westat commissioned a study that came out and said that there was 99.6 confirmation of U.S. citizens to the program for native born, or 99.9. That was pretty substantial. And that the 97 are for foreign born nationals. The question is I guess that also reflects the fact that is where the most fraud is, is in foreign born. Is that safe to assume that?

Mr. RUST. I think intuitively you could assume that, but this is one of the things we are looking at all the time. We are looking at ways to make the information in the Numident more accurate, have a more substantial basis for it. We have increased the evidentiary requirements for the information in the Numident, so we are also, just as DHS is doing, we are continually improving the quality of the data in the system to reduce that number.

Mr. BILBRAY. Ms. Ratliff was bringing up this issue of women forgetting to notify Social Security when they get married, change their names. I don't know why ladies do that, but it happens to be some kind of conspiracy out here to confuse the system. But, at the same time, we have the same problem, coming from local government, with IDs in State government trying to get the names changed. It is always a big deal about notifying people go to your DMV, look at your registration and a lot of other stuff.

My question is with the accuracy level that we have with E-Verify, the Social Security Administration provides Social Security payments for individuals. I am looking at a comparison to this level of efficiency. What is the percentage of payments that are sent out to the wrong person or not sent out at all? What is the efficiency of the Social Security payments to retired individuals?

Mr. RUST. Mr. Bilbray, I may have to provide that for the record, if you don't mind.

Mr. BILBRAY. I would appreciate that. Let me just say this. I think those of us that have worked in local government look at this percentage, 99.6. When you get up in the high 90's, you really are at a level the government very seldom ventures into. So I was very interested in that aspect of it.

Mr. RUST. But remember, for the people who are beneficiaries, they have a vested interest in letting us know changes of address, changes of name, and things of that nature. We are sending them a benefit every month. So they are very good about coming into us and correcting the record.

Where the bigger gap for us is, many of us got our Social Security card when we were 16; now many are enumerated at birth. But then you may go decades without having any interaction with the Social Security Administration. It is during that period of time when we probably have the greatest discrepancies in the data. When a person gets ready to draw benefits, they are in to see us and to correct those situations.

Mr. BILBRAY. Right.

Mr. RUST. Another thing we do is we send a statement out every year, the Social Security Statement, to everybody above age 25, and it has information in there on earnings and other information; and we ask people if there is anything wrong with the data we are presenting to you in this Social Security Statement, would you come and notify us so we can correct it. So we are trying on a regular basis to get those things cleaned up.

Mr. BILBRAY. I would also be interested in the people that get checks after their loved ones have passed away and forget to notify you. I think those are one of those things.

Mr. Rust, the phase 2 has been pretty successful, but what is the average waiting time to resolve a mismatch over the phone? What type of issues can be resolved over the phone?

Mr. RUST. From our point of view,—I believe you have a telephone response system, correct? Maybe you might want to respond and then I will respond.

Ms. RATLIFF. If I might answer. The Social Security Administration mismatches are typically resolved by an in-person visit. It is the DHS mismatches that we have a process where you can call us. We have a 1–800 number. We typically are able to resolve over 90 percent of those calls within 2 days.

In addition, we most recently added another option for citizens to call DHS, instead of doing into SSA, where they had a naturalization-related mismatch, and we are able to check our naturalization records, and 90 percent of the time we are able, over the phone, to confirm their citizenship. And this could be a case where the naturalized and haven't yet gone to SSA to update their citizenship status. But we know they are naturalized, we naturalized them, so with just a phone call we are able to verify that they are in fact work authorized.

Mr. RUST. For the ones that come to us, it is almost all walk-in; there is very little that can be resolved by the phone. And I think they have 7 or 8 days to contact us, and then we resolve it as quickly as we can. It depends, in many cases, on how quickly they give us the documentation.

Mr. BILBRAY. Bring in a marriage certificate?

Mr. RUST. Marriage certificate. If they don't have a birth certificate, they may have to go to the vital records in their home State or something of that nature. They have to get some sort of documentation to resolve the issue for us.

Mr. BILBRAY. And all of this will be streamlined as the States go into basically electronic data files on birth certificates and all that other stuff, which is a different piece of legislation.

Mr. RUST. And death records and things of that nature. All those electronic systems help us keep our data base up to date.

Mr. BILBRAY. Thank you.

Ms. WATSON. I will now yield to Congresswoman Speier.

Ms. SPEIER. Thank you, Madam Chair.

Ms. Ratliff, 103,000 employers, approximately, participate voluntarily in E-Verify, according to our briefing paper. So what percentage of the employers in this country are actually participating in E-Verify, then?

Ms. RATLIFF. Well, there are two statistics we use to answer that question. The statistics on the number of employers is always hard

to keep accurate because it changes every day, with about 1,000 more adding each week. The current number is 137,000. That represents over half a million work sites, because one employer——

Ms. SPEIER. No, I understand that. I just want to know how many employers you have as a percentage. Do you have that figure?

Ms. RATLIFF. Yes, ma'am. It is a half a million divided into about 7.2 million employers nationwide, so it is about one-fourteenth of the U.S. employer work force.

Ms. SPEIER. So a very small percentage of the employers.

Ms. RATLIFF. It is small, yes, ma'am.

Ms. SPEIER. Why is it we haven't made it mandatory?

Ms. RATLIFF. Well, Congress authorized it as a pilot to make sure that it was working appropriately and was scalable for 7 million employers, and I think that, as a matter of the program perspective, not as a matter of the policy perspective, we are building a program that could be made mandatory so that when the time is right, we can be successful.

Ms. SPEIER. So how much longer do you think you need to be able to absorb 13th, 14ths more of a work force?

Ms. RATLIFF. As a matter of the IT infrastructure, we are ready today. We have a system capability of 65 million queries today, and, on average, there are about 60 to 65 million new hires a year. As a matter of the staff to do monitoring and compliance, we don't want to hire staff earlier and incur costs for salaries, etc., earlier than the ratio would support, but we have training modules——

Ms. SPEIER. Can you give me just an estimate? I mean, is it 2 years away, is it 3 years away? You are saying the IT is up and running.

Ms. RATLIFF. Yes, ma'am.

Ms. SPEIER. So you don't have the work force to accommodate the kinds of inquiries. Is that basically what is missing, then?

Ms. RATLIFF. We could, within several years, hire staff to support monitoring and compliance if Congress saw fit to fund it at that level, and we could, today, support the mismatch resolution process.

Ms. SPEIER. And do these employers who are voluntarily participating in the program right now, do they pay a fee for doing so?

Ms. RATLIFF. E-Verify is free.

Ms. SPEIER. It is free?

Ms. RATLIFF. Yes, ma'am.

Ms. SPEIER. So if we were to charge for it, what would we charge for it?

Ms. RATLIFF. Well, we would have to look at how Congress chose to phase in E-Verify. The costs would do down per query as more employers were enrolled. Past forms of legislation over the last few years have had varying phase-in years, so that would be a big factor. Also, if Congress chose to add a specific form of biometric, that would influence the cost. Right now, the authorizing statute doesn't speak to identity authentication.

Ms. SPEIER. All right, what I would like for you to do, Ms. Ratliff, if you would, is just provide to the committee what the actual cost would be per employer if it was going to operate on a user fee basis.

Ms. RATLIFF. Yes, ma'am.

Ms. SPEIER. I can't imagine that employers wouldn't embrace something like E-Verify, because what they are required to do now is very time-consuming and it is a huge cost to business. So if there was a simple IT solution, I think that they would embrace it. I am just kind of surprised that more employers haven't taken advantage of it.

Mr. BILBRAY. Would the gentlelady yield just for a second?

Ms. SPEIER. I certainly will.

Mr. BILBRAY. Especially if we went to a universal application, because then you would divide the total cost among the entire universe, rather than just those who were volunteering.

Ms. WATSON. As I understand, Ms. Speier, it is optional, so maybe we can do this, make it permanent, and then once we get that information, out spread across the universe, I think the fee would be minimal. But we need that information.

Ms. RATLIFF. Yes, ma'am.

Mr. RUST. Could I add?

Ms. SPEIER. Mr. Rust, I have a question for you. Did you want to respond to that?

Mr. RUST. If I could. From our point of view, we would be glad to work with DHS on bringing about mandatory coverage, but we would ask—funding would be an issue, adequate funding for it would be an issue because it would take us from something like 50,000 people walking into our offices to probably 450,000 or thereabouts if we went up to the level of 60 million a year being run through. So it would be a substantial workload increase on the Social Security field offices.

The systems aspect of it would not be very costly for us because we have modernized that and I think it can handle those number of inquiries. But there would certainly be a fallout in our field offices and it would be substantial.

Ms. SPEIER. Well, the answer may be in trying to do sectors of employers over a period of time and bring them onboard over a number of years, as opposed to just turning a switch and having the program operate.

I have one question for you, Mr. Rust. In California, we have taken action to prevent the use of Social Security numbers as a health insurance identifier. Is that also the law on a Federal level?

Mr. RUST. Our position has been, since the agency was created in the mid-1930's, that the Social Security number is not a national ID number, that it was created specifically for the use in maintaining records on people's employment and earnings to determine their benefits. We actively discourage the private use of the numbers, but it is widely used.

Ms. SPEIER. OK, so the answer to my question is no, there is no Federal law that prevents health insurers from using Social Security numbers as an identifier.

Mr. RUST. Not that I am aware of.

Ms. SPEIER. All right. Thank you.

I yield back.

Ms. WATSON. Thank you.

Now we will call on Mr. Connolly.

Mr. CONNOLLY. Thank you, Madam Chairwoman. Thank you for holding this hearing. I would ask, without objection, that my opening statement be entered into the record at this point.

Ms. WATSON. Without objection.

Mr. CONNOLLY. I thank the Chair.

Let me walk through this just a little bit to make sure I understand where we are in E-Verify. The Bush administration started this program, with congressional support, on an optional and voluntary basis, is that correct?

Mr. BILBRAY. No.

Ms. RATLIFF. The program has actually been authorized for about 10 years, so it has spanned several administrations.

Mr. BILBRAY. Would the gentleman yield?

Mr. CONNOLLY. Yes.

Mr. BILBRAY. The program actually was implemented under the Clinton administration under the five-member pilot program.

Mr. CONNOLLY. But remaining an optional voluntary program, correct?

Ms. RATLIFF. Yes, sir.

Mr. CONNOLLY. Now, you have had a number, for example, of Federal contractors who have participated in the program on a voluntary basis as part of the pilot, is that correct?

Ms. RATLIFF. That is correct, sir.

Mr. CONNOLLY. And has that worked successfully?

Ms. RATLIFF. It has. We have had about 2,000 employers, as they have registered, self-select as Federal contractors. In anticipation of the Federal contractor rule becoming effective, we built a registration module where a business could self-identify as a Federal contractor, and about 2,000 have, so far, taken advantage of that.

Mr. CONNOLLY. I talked with some Federal contractors last week who participated in the pilot program at the behest of the Federal Government. You are familiar with some of those candidates?

Ms. RATLIFF. With some of the 2,000 who are participating in E-Verify?

Mr. CONNOLLY. Yes.

Ms. RATLIFF. I know a few of them, yes, sir.

Mr. CONNOLLY. Right. One of the concerns they had was that when you move to the new stage in this program in September, that all of the hard work they have done in E-Verifying their employees, they are not going to get credit for it; they have to start all over again as if they were like anybody else who didn't participate in the pilot or voluntary program. Is that correct?

Ms. RATLIFF. That is partially correct, sir. If I may explain. The new hires who they have already run through E-Verify they will not need to run again. Beginning September 8th, under the Federal contractor regulation, they will have to run an additional portion of their current work force through E-Verify, and those are the people who they are going to put on the Federal contract. So that between their new hires and the work force working on the Federal contract that were already in place, they can have staffing to the Federal project that has been 100 percent run through E-Verify. So there will be a piece that they have to do that is additional.

They also will have the option to query E-Verify for their entire current work force, whether or not those employees are working on a Federal contract.

Mr. CONNOLLY. Well, I am not sure I understood your answer. If I am a Federal contractor who volunteered and participated in the pilot program for E-Verify, it was only for new hires.

Ms. RATLIFF. Currently, yes, sir.

Mr. CONNOLLY. Those new hires, if they are still on my payroll, I won't have to go back and duplicate the E-Verification of those?

Ms. RATLIFF. That is correct, you will not have to.

Mr. CONNOLLY. All right. Because I think there was some confusion about that in terms of what the requirement is going to be.

Were there some Federal contractors who went beyond new hires and, in fact, used E-Verify for their current work force?

Ms. RATLIFF. If any employer has done that, it would be a misuse of E-Verify.

Mr. CONNOLLY. They were not allowed to do that?

Ms. RATLIFF. It would not be proper.

Mr. CONNOLLY. But it will be proper come September.

Ms. RATLIFF. Yes. As of September 8th, if they run current workers who are assigned to a Federal contract, that will be a part of their requirement. Then they also could choose to run their entire current work force. Large companies, they may have employees who are on Federal contracts; they may have a whole group of other employees who work on private sector projects.

Mr. CONNOLLY. Why would it have been a misuse, why in fact would it be a misuse of E-Verify today for me to do that, but it will be an option available to me in 2 months?

Ms. RATLIFF. Because the way our statute is written, it is just for new hires, it is not for current work force. President Bush signed an Executive order that is the underpinning of the Federal contractor regulation that said in order to ensure a stable and work-authorized Federal work force—because we already are running Federal Government new hires through E-Verify—the administration wanted to ensure that the Federal contractors who are also working on Federal Government projects had also been run through E-Verify. And the Executive order found that for the interest of a secure, stable, Federal work force, contractors who were moving to a Federal contract should also be queried and verified through E-Verify.

Mr. CONNOLLY. What about the potential misuse of this data base? We have had hearings in this committee about the issue of cybersecurity. We have had testimony that the incidents of hacking and attempted hacking into Federal data bases have skyrocketed. And with the best of intentions with E-Verify, are we putting Federal contractors at risk of similar hacking incidents? What kind of security provisions are we undertaking to ensure that those data bases are secure and people's privacy isn't unwittingly invaded?

Ms. RATLIFF. Sir, E-Verify, as a matter of the IT infrastructure, meets the very stringent Department of Homeland Security IT security standards. We also meet all Privacy Act standards. Our privacy impact assessment and system of records notices are both up to date with how we use our information, and we will continue to

meet those stringent standards with an eye toward the importance of the very issues you are mentioning.

Mr. CONNOLLY. Madam Chairwoman, my time is up, but I would just say to you, Ms. Ratliff, that is a bureaucratic answer. My question was what measures are you taking. Meeting standards, lots of Federal agencies are meeting standards, and the hacking incidents are growing and becoming more successful. My question to you was what are we doing with this new program, creating this new data base for Federal contractors, to ensure their security. Meeting standards is not a satisfactory answer for this Member of Congress.

Ms. RATLIFF. I know we are out of time, but I would commit to submitting information, meeting with your staff to discuss this in detail.

Mr. CONNOLLY. OK. My time is up.

Ms. WATSON. Yes.

Mr. Bilbray.

Mr. BILBRAY. Madam Chair, I would just like to point out, because I think it is quite appropriate, as we develop these systems, that we armor them and protect them, and that is a universal application. The gentleman from Fairfax County can be reminded, too, that one of the greatest identity thefts in the United States—and I think Mr. Rust will reinforce this—is the hijacking of people's Social Security numbers. And this helps to armor that to some degree.

So as we look at the hi-tech threat of going to the electronic system, we also need to recognize that it is the low-tech where the greatest abuse of Social Security identity theft is, and that is of people getting a number and being able to use it because we don't have a check system. The old I–9 documentation system has been a farce; we have all known it. So as we move forward, I think the gentleman from Fairfax has pointed out that as we move away from an old system that was very vulnerable, let's try to armor the new system and protect it. That is an issue that we have been talking about with E-Verify and all our electronic data stuff.

I yield back, Madam Chair.

Ms. WATSON. And I just have a few more questions to ask Mr. Rust, and then we are going to move on to the second panel.

The House passed the version of the fiscal year 2010 Homeland Security appropriations bill, it was H.R. 2092, and it includes a provision to require that both the Social Security Administration and the Department of Homeland Security enter into an agreement each fiscal year to provide funding to the Social Security Administration to cover the full cost of the agency's E-Verify-related responsibilities. What do you think about this provision? Did you know about it?

Mr. RUST. We have had a very good working relationship with DHS and we have been able to work this out year after year to get the adequate funding that we need to do most especially the fallout that occurs in our field. We always appreciate when Congress helps us to make certain that we get that level of funding, but our relationship with DHS has been very collegial and this has worked very well.

Ms. WATSON. OK. And do you believe that the Social Security Administration can, with this provision, receive the kind of funding

for E-Verify in the absence of such a statutory requirement? And given our crisis at the time, how do you think this is going to really facilitate what you do?

Mr. RUST. I think it will simply reinforce the relationship we have had, the excellent working relationship we have had, so I think it will be helpful in that sense. One of the things I would stress, why we stress the importance of this, I mentioned the growth in our workloads in terms of 250,000. This is more retirees than we expected. 350,000 more disability claims. We budgeted for 2.5 million. This is 350,000 on top of that. So we are an agency under stress in that sense, so any assistance we get from DHS to help handle that workload is very much appreciated and very critical to us.

Ms. WATSON. A 2006 report by the Social Security Administration Inspector General on the accuracy of the Numident data base, that was relied on by E-Verify, found that there were discrepancies in approximately 17.8 million of the 435 million Numident records could result in an incorrect feedback. The report noted particular concern about the extent of incorrect citizenship information.

What has been done to improve the accuracy of Numident and have any more recent studies been conducted on this particular issue? And how do you expect the Social Security Administration and its field offices to be impacted by the new Federal contractor rule?

Mr. RUST. To answer your second question first, we have gotten it to the point now where about 0.75 percent, or about 75 out of every 10,000 queries that go through E-Verify end up in someone walking into our offices to resolve a non-confirmation. So if we are able to maintain that and we worked very closely with our colleagues to reduce that workload, but as the number of verifications go through E-Verify, if that ratio holds, we will see more and more people coming into our offices.

So, again, like I say, just 2 years ago it was 3 percent; now it is down to 0.75. So working with DHS we have substantially reduced that, but it is still a fairly sizable workload. So, like I say, this year it is over 50,000 visits to our office related to E-Verify non-confirmations.

Going back to your first question, the 17 million is 4.1 percent of the entries. The Inspector General looked not at those cases, for instance, if you had ones that were no match in the E-Verify system; this was just an overall look at the Numident. We have now about 455 million entries in there. Everybody who has had a Social Security number since 1936 has an entry in there.

As I mentioned, I think, to Mr. Bilbray a little while ago, most of the information we get comes from individuals telling us stuff, so if you went and got your Social Security card at 16, and then you don't come to us again for many years, that is when the marriage could happen, a name change could happen, a divorce could happen, other things like that can happen that would then cause a discrepancy in the number. So we have mechanisms for clearing it up and for strengthening it.

You asked what we have done to strengthen the Numident. One I mentioned is the Social Security Statement which goes out every year, presents the information to people and asks them, if there are

any discrepancies, to contact us to clean it up. Second, we use enhanced evidentiary requirements now. We have birth certificates, we see marriage licenses and marriage certificates; we see naturalization papers. We ask for documentation now when people come in to make these corrections. So we think the Numident is steadily becoming more accurate.

We now enumerate most children born in the United States at birth, so that is going to give us the hospitals handling it at the State, statistics units will be handling it, so we will be getting data electronically, we will be getting it cleaner, we will be getting it quicker; and then we will know citizenship, because they were born in this country. So things of that nature, these electronic mechanisms we are doing to make the data more accurate and more up to date.

Ms. WATSON. I am going to yield now to Mr. Bilbray.

Mr. BILBRAY. Yes. The gentleman from the great Commonwealth of Virginia brought up a very interesting issue, and this is about the fact that we created barriers in the past from having employers use E-Verify on existing employees, and I think, to clarify, there were concerns about who would pick and choose which employees, and we created that barrier for a good reason for that time.

But he did bring up this item that I have to say shows why these hearings are great. Is there a reason why or is there a great barrier for the Federal Government to lead through example and start a process of phasing in checking all our existing employees, as pointed out by the gentleman from Fairfax County? Do we have the capability to lead through example and start having our own internal operation now, start checking up with these?

Ms. RATLIFF. That wasn't an issue that we actually looked at quite deeply last year. The leading by example was a theme of great interest to the last administration, as well as now, and we did spend time looking at what are the current processes that the current workers have already been run through to verify their work authorization status, and given that was found that they are already quite vigorous. So at that time, it didn't seem an appropriate use of resources to basically duplicate what had already been done in other steps through——

Mr. BILBRAY. Security checks and——

Ms. RATLIFF [continuing]. OPM checks, and also the Government's preparation for the SHPD–12 process of producing even more secure identity documents for us as employees. But that was something that was looked at very deeply.

Mr. BILBRAY. OK, and I would like to see that, because I think that we need to revisit it and make sure that just because the majority of the time we have already covered it because of other security checks and stuff doesn't mean there isn't enough that we need to look into.

And while we are on the subject, seeing that you have two former county chairmen here, when we do this contract requirement, does that apply to our local governments when we start giving them grants? And are we going to now start requiring government that gets our money to start responding in the same manner that we are requiring the private sector to respond?

Ms. RATLIFF. The answer to your question is no. The FAR regulation does have some discreet exemptions. Subcontractors for contract values of less than $3,000 are exempted. COTS, the commercial office-the-shelf products, those contracts are exempted as well.

Mr. BILBRAY. OK. Now, you said that for the private sector. How about the public sector? Is there any requirement that local governments, when they start getting grants, that we start phasing this? I am wondering about this issue because when we start giving transportation funds, the American people are starting to say we want to make sure that Federal funds aren't going into fraud.

Are we requiring that at all of our States and our counties and our cities as they get Federal funds? Has this become a tradition or have we just basically been blind-sided on that and we are just working on the private sector right now?

Ms. RATLIFF. The grants are excluded from the FAR regulation.

Mr. BILBRAY. OK.

Thank you very much, Madam Chair. I have a feeling that we need to revisit this whole thing again, leading through example, and that means the Federal Government and the local government and the States need to lead through example. I yield back.

Ms. WATSON. Mr. Connolly of Virginia.

Mr. CONNOLLY. I have no further questions of this panel, Madam Chair.

Ms. WATSON. All right.

Mr. Duncan of California.

Mr. DUNCAN. Tennessee.

Ms. WATSON. Tennessee. Excuse me. Come on to California.

Mr. DUNCAN. You are from California. [Laughter.]

Well, I am sorry that I wasn't able to get here before now, but let me just ask a couple quick questions.

How much does the Federal Government spend on this program at this time?

Ms. RATLIFF. Sir, the E-Verify budget for this year is comprised of about $100 million in appropriations that was given for fiscal year 2009, and we also had $20 or $30 million from fiscal year 2008 appropriations that we wisely and efficiently did not spend, and it rolled over. So, this year we will be spending close to the $120, $130 million budget. Some of those are one-time costs for system improvements that will not need to be put into our baseline program funding.

Mr. DUNCAN. And is my information accurate that there is now 134,000 employers or companies that have used this system?

Ms. RATLIFF. Well, that was 3 weeks ago. It is growing by 1,000 a week, so now we are up to about 137,000.

Mr. DUNCAN. That was going to be my next question, how fast it was growing. It is growing at about 1,000 more employers per week?

Ms. RATLIFF. Yes, sir.

Mr. DUNCAN. And I am also told that right now there is 1 employee for each 1,250 employers, roughly. And it is a voluntary program right now, so do you think the DHS is equipped to make this program mandatory?

Ms. RATLIFF. Sir, in terms of our staffing, there is a certain baseline staffing you need whether E-Verify has 1,000 employers in it

or 7 million. For example, it takes a certain number of staff to write a regulation no matter how many employers it is going to affect, so our staffing number, we have about 200 employees right now working on E-Verify, roughly. That will not grow in huge numbers as the program grows; a lot of that is a baseline program staffing.

The pieces that grow, the biggest piece will be outreach, so we are appropriately helping employers who are signing up know how to use the system; and monitoring and compliance so we are able to make sure those employers are using the system properly and reaching out to them if they are not.

So we have been basically building a program that would be ready if Congress chooses to make it mandatory, and I think that we are very far down the road in terms of being ready should Congress authorize such a change to the program.

Mr. DUNCAN. And the 7 million figure that you mentioned just a few moments ago, is that the number of employers that your Department estimates are in this country today?

Ms. RATLIFF. Yes, sir. We use the statistic of about 7.2 million employers.

Mr. DUNCAN. So even that high figure of 137,000 employers using this system now is just a tiny percentage, then, of the total number of employers in the country.

Ms. RATLIFF. It is. The 137,000 represents about a half a million work sites, and that is the more apples-to-apples comparison to the 7.2 million. But, yes, we look forward to a lot more growth in E-Verify as more employers join.

Mr. DUNCAN. All right, thank you very much.

Ms. WATSON. Thank you, Ms. Ratliff, Mr. Rust, for your witnessing. We appreciate it and you may now leave the table.

I would like to invite our second panel of witnesses to come forth. And remain standing, please.

It is the committee's policy that all witnesses are sworn in. I would like you to raise your right hands as I administer the oath.

[Witnesses sworn.]

Ms. WATSON. Thank you. Let the record show that the witnesses have answered in the affirmative.

You may now be seated.

I ask that each one of you now give a brief summary of your testimony and to keep your testimony within 5 minutes if you can, because your complete written statement will be included in the hearing record. Thank you.

I first would like to introduce Ms. Jena Baker McNeill, who is the Heritage Foundation's homeland security policy analyst, where she focuses on broader security, immigration technology, and other issues. She previously worked for the Hutchinson Group LLC as a research assistant and as an environmental management consultant for Booz Allen Hamilton, and for former Maryland Governor Robert Ehrlich.

Ms. McNeill, would you please proceed now? Thank you.

STATEMENTS OF JENA BAKER MCNEILL, POLICY ANALYST FOR HOMELAND SECURITY, THE HERITAGE FOUNDATION; AND ANGELO AMADOR, EXECUTIVE DIRECTOR FOR IMMIGRATION POLICY, U.S. CHAMBER OF COMMERCE

STATEMENT OF JENA BAKER MCNEILL

Ms. MCNEILL. Thank you, Madam Chairwoman. Madam Chairwoman, Ranking Member Bilbray, and the members of the subcommittee, thank you for the opportunity to testify today on the topic of E-Verify. I should state beforehand that the views expressed in this testimony are my own and should not be construed as representative of an official position of the Heritage Foundation.

Workplace immigration enforcement is vital to breaking the cycle of dependency on illegal labor. These policies, however, should center on three goals: first, keeping America free; second, keeping America safe; and, third, keeping it prosperous. We should not compromise one of these goals to gain another, and all three can and should be met with respect to America's immigration policy.

E-Verify is a tool that meets these requirements. But I want to emphasize up front that E-Verify remains only one piece of the immigration puzzle. The right approach to solving the immigration dilemma will include the following aspects: first, enforcement of immigration laws in the workplace; second, a safeguarding of the southern border; third, promotion of economic development in Latin America to provide illegal immigrants economic opportunities at home; fourth, enhancement of legal worker programs here in the United States to meet the needs of employers and immigrants; fifth, reforms of citizenship at immigration services to handle legal immigration in a better way; and, finally, strengthening of citizenship requirements and programs to foster assimilation.

Effective enforcement doesn't require a costly amnesty that would erode rule of law and be patently unfair to legal immigrants. E-Verify tackles the immigration problem by going to the heart of what draws illegal immigrants to the United States, finding employment. At present, more than 137,000 employers participate in E-Verify voluntarily. And E-Verify is being used to determine work authorization for one in four new hires nationwide.

Contributing to this success is that E-Verify helps employers enforce immigration laws in a way that is humane and fair, cost-effective for business, and maintains privacy. E-Verify can determine quickly and accurately the authenticity of the personal information and credentials offered by new hires.

Of course, E-Verify isn't without its challenges. It has low error rates, but more can be done to drive down the rate of error. While the software is free, there is a cost to doing business with E-Verify. But this cost is negated by driving down other costs, such as the cost of having to find a new employee later if an employee tends out to be illegal, or the stiff penalties if discovered.

Finally, the only personal information entered into E-Verify is the employee's name, date of birth, Social Security number, and citizenship status. This is information already on the I–9, and neither the E-Verify employees nor the employer can access any more information, maintaining privacy.

The administration's recent announcement to abandon Social Security no-match, however, is a step backward in terms of workplace enforcement. This action sends the message that DHS will not enforce the law against employing illegal workers. Furthermore, DHS has yet to implement the Federal contractor's provision, signed by President Bush in 2008, which requires all Federal contractors to use E-Verify. The administration has announced plans to comply, and this is a step in the right direction.

Going forward, Congress should permanently authorize E-Verify and provide adequate funding for its implementation. DHS should craft E-Verify rules to apply to all workers under Federal Government contracts; otherwise, the result will be less workplace enforcement, not more. DHS and Congress should work together to drive down the already low error rates. And, finally, DHS should not abandon no-match, but should, instead, move forward with it. At the same time, Congress should grant the Social Security Administration the ability to share data directly with DHS, allowing DHS to target large-scale employers of illegal workers.

A truly smart and tough enforcement policy will be one that creates disincentives to unlawful immigration, is cost-effective, protects individual data and privacy, and minimizes the burdens on employers while addressing concerns over safety and security. E-Verify does this, meeting those ultimate goals of keeping America free, keeping it safe, and keeping it prosperous.

Thank you, and I would be happy to answer your questions.

[The prepared statement of Ms. McNeill follows:]

The Heritage Foundation
LEADERSHIP FOR AMERICA

214 Massachusetts Avenue, NE • Washington DC 20002 • (202) 546-4400 • heritage.org

CONGRESSIONAL TESTIMONY

E-Verify: Challenges & Opportunities

Testimony before
Committee on Oversight & Government Reform
Subcommittee on Government Management, Organization, and Procurement
United States House of Representatives

July 23, 2009

Jena Baker McNeill, J.D.
Policy Analyst for Homeland Security in the Kathryn and Shelby Cullom Davis Institute for International Studies and the Douglas and Sarah Allison Center for Foreign Policy Studies
The Heritage Foundation

Madame Chairwoman, Ranking Member Bilbray, and members of the subcommittee, thank you for this opportunity to testify before you today on the topic of E-Verify. My name is Jena Baker McNeill and I am the Policy Analyst for Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

By way of background, The Heritage Foundation has long been engaged on the topic of E-Verify. Heritage experts such as Attorney General Ed Meese, Dr. James Carafano, Dr. Matthew Spalding, Mr. Cully Stimson, Mr. Robert Rector, Mr. Matt Mayer, and I have held working groups and events, and have written and researched extensively on the topic of E-Verify and related matters dealing with the topics of citizenship and assimilation, border security, and enforcement. Previously, I worked as a Research Assistant at Hutchinson Group, LLC, the homeland security consulting firm of Asa Hutchinson, former Undersecretary for Border and Transportation Security at the Department of Homeland Security, and as a consultant for Booz Allen Hamilton. What I would like to do with my testimony today is the following:

- Characterize the role for E-Verify in the broader immigration enforcement strategy.
- Discuss how E-Verify has become a highly effective tool in the enforcement of the nation's immigration laws.
- Suggest ways in which to make E-Verify stronger and better able to serve both the legitimate needs of business, American citizens and lawful immigrant workers.

An effective immigration policy will be one that has the effect of reducing illegal immigration in the United States. At the same time, policies must center on three goals (1) keeping America free, (2) keeping it safe, and (3) keeping it prosperous. We should not compromise one to gain another; all three can and should be met with respect to America's immigration policies.

E-Verify is a tool that meets these requirements. It tackles the immigration problem by going to the heart of what draws illegal immigrants into the U.S.—finding employment. Illegal immigrants come to America more often than not to find jobs. Proof of this can be seen in the decreased numbers of illegal workers in the United States since the economic downturn. The numbers of individuals crossing the border illegally has dropped significantly since jobs have become scarcer and the recession has deepened.[1] It then follows that if access to employment were curtailed in accordance with the law, many of the current illegal immigrants would leave the country voluntarily and the number of future illegal entrants would be greatly reduced.[2] E-Verify helps to do this in a way that is humane and fair, cost-effective for businesses and the American taxpayer, and maintains privacy.

---

[1] The Associated Press, "Illegal Immigration Declines as Economy Falters," *Tuscon Citizen*, October 2, 2008, at http://www.tucsoncitizen.com/daily/local/98429.php. The article cites a report of the Pew Hispanic Center that estimates a 500,000 person decline in one year of illegal immigrants inside the United States. While the report does not identify a reason for the downturn, it highlights independent researchers that suggest both economics and increased enforcement as contributing factors. *Ibid.*

[2] Robert Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection," Heritage Foundation *Backgrounder* No. 2192, October 7, 2008, at http://www.heritage.org/Research/Immigration/bg2192.cfm.

It is important to emphasize, however, that E-Verify is only one piece of immigration enforcement. Establishing a robust and responsible immigration system and repairing America's broken borders will require serious efforts across the entire immigration and border security system. But effective enforcement will not require Congress to pass a massive comprehensive bill nor will it require a costly amnesty that would erode the rule of law and be patently unfair to legal immigrants. Reform needs to be incremental and designed to lessen the incentive for illegal immigration, while strengthening the capacity of employers to hire the employees they need to help the economy grow and prosper without jeopardizing the nation's security, sovereignty, and social fabric.[3] The right approach includes the following:

- *Enforcement of immigration and workplace laws* to reduce the economic incentives for illegal immigration. The executive branch is responsible for implementing laws passed by Congress, but immigration reform is only possible if the government defends its laws.

- *Safeguarding the southern border* to make illegal entry into the United States less attractive than legal avenues. The porous southern border makes illegal entry into the United States an easier and more attractive option than the legal avenues. Conscious efforts should be made to give the U.S. government greater awareness along the border. The physical and technological fence is only part of the solution. More border agents are needed, more technology needs to be deployed, and federal authorities need to cooperate and collaborate more with state and local law enforcement.[4]

- *Promotion of economic development and good governance in Latin America* to provide potential illegal immigrants with economic opportunities at home. The lack of job opportunities in Latin America encourages those desperate for work to enter the U.S. illegally. Meanwhile, employers readily offer work to those who are here illegally. This "push-pull" effect can only be addressed by engaging both sides. Aiding Latin American countries in their efforts for economic development will greatly reduce the pressure for their citizens to come to the United States illegally. In Mexico, it is vital that the U.S. help the Mexican government combat the drug cartels that are trying to destabilize it.[5]

- *Enhancing the legal worker programs to provide legal avenues* of immigration that meet the needs of employers and immigrants and are a better option than illegal immigration. For instance, America needs a market-based temporary worker program that allows for a reliable source of labor provided by a dynamic and rotating temporary workforce. Such a program would serve to diminish the demand for illegal immigrants by allowing those who would normally enter the country illegally to come here legally, make money, and then return home. And it would serve the needs of the American economy.

- *Reforms at U.S. Citizenship and Immigration Services (USCIS)* to handle legal immigration better. USCIS needs to be a more efficient and effective partner in providing

[3] Diem Nguyen, Matt A. Mayer, and James Jay Carafano, Ph.D., "Next Steps for Immigration Reform and Workplace Enforcement," Heritage Foundation *Backgrounder* No. 2241, February 13, 2009, at http://www.heritage.org/Research/Immigration/bg2241.cfm.
[4] *Ibid.*
[5] *Ibid.*

the immigration services and enforcement that the nation needs. These reforms should include an entirely new funding model, a comprehensive overhaul of the agency's service support enterprise, and better integration of USCIS programs with immigration enforcement and border control efforts. USCIS also needs to streamline the visa programs already in place (such as those aimed at temporary or seasonal agricultural workers).

- *Strengthen citizenship.* Each nation has the responsibility--and obligation--to determine what legal requirements will be established for immigration, naturalization, and citizenship. Since the United States Constitution and laws passed by Congress have already established these requirements, there should be support to programs that promote civics and history education among immigrants and encourage English language proficiency in order to foster political integration and strengthen commitment to our common principles.

Immigration's Enforcement History

In 1986, President Ronald Reagan signed the Immigration Reform and Control Act.[6] In exchange for an amnesty of the approximately 3 million illegal workers living in the U.S., Congress promised voters that the government would take effective measures to eliminate future illegal immigration. A major element of this promised policy was increased employment security: measures designed to prevent or reduce significantly the future hiring of illegal immigrants within the U.S.

Until four years ago, however, it was an open secret that once inside the United States; illegal immigrants could live their lives with little fear of arrest or deportation.[7] Essentially, the promise of real enforcement was never fulfilled because illegal workers were able to obtain forged documents purporting to show that they were either lawful immigrants or U.S. citizens. Furthermore, employers were unwilling or unable to verify the authenticity of these documents, making the federal probation on the hiring of illegal workers nearly meaningless.[8]

Using E-Verify

In 2007, the Bush Administration launched an effort to enhance internal enforcement of immigration laws. This effort led to a decline in the number of illegal immigrants inside of the United States.[9] One major component of this strategy was the use of E-Verify (formerly the Basic Pilot/Employment Eligibility Verification Program).

E-Verify is a system that helps employers to confirm that their newly hired employees are eligible to work in the United States by verifying their information on a Web-based system run

---

[6] Public Law 99-603.
[7] Diem Nguyen, Matt A. Mayer, and James Jay Carafano, Ph.D., "Next Steps for Immigration Reform and Workplace Enforcement."
[8] Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement and Protection."
[9] The Associated Press, "Illegal Immigration Declines as Economy Falters."

by the Department of Homeland Security (DHS) and the Social Security Administration (SSA). The following basic steps occur:[10]

1. An employer enters the employee's information into an online portal; such as the employee's name, date of birth, and Social Security number.
2. The information is securely transmitted to DHS and SSA. DHS checks the information against both DHS and SSA databases to determine whether it corresponds to a U.S. citizen or work-eligible immigrant. In most cases, DHS can do this and transmit a definitive reply to the employer within seconds.
3. If the information cannot be corroborated by the USCIS automated check, the case is referred to a USCIS immigration status verifier, who checks the employee's information against other DHS databases.
4. If the employee information is corroborated by the SSA database, the USCIS automated database, or by the immigration status verifier's review, DHS sends the employer an electronic positive confirmation notice certifying that the employee is an eligible worker. Ninety-four percent of E-Verify submissions receive initial positive confirmations, most within three to five seconds.[11]
5. If the information submitted by the employee does not match any information in the SSA and USCIS records, E-Verify automatically gives the employer the opportunity to double check the submitted information for clerical errors. If clerical errors are found, the employee's data can be resubmitted immediately, and a positive confirmation can be received from DHS within seconds. If no clerical errors are found, or if the information still does not match any information in SSA or USCIS records, then E-Verify issues a *tentative non-confirmation* to the employee.
6. In the case of a *tentative non-confirmation*, the employee has eight federal working days to correct the non-confirmation at a local SSA office (if he/she is a citizen) or a USCIS office (if he/she is a lawful immigrant). These errors can be resolved quite simply by a toll-free phone call. Ninety-five percent of contested non-confirmations are resolved with a single phone call or appointment.[12]
7. If the employee chooses not to contest the tentative non-confirmation or has not provided information to alter the non-confirmation within eight working days, DHS sends a *final non-confirmation* to the employer electronically.
8. After receipt of a *final non-confirmation*, the employer must either (a) discharge the employee or (b) notify DHS that it plans to continue employment. This allows employers to continue employment in situations where they are certain the non-confirmation is incorrect and will be rectified at some point.

E-Verify: An Effective Tool for Effective Enforcement

At present, more than 87,000 employers participate in E-Verify voluntarily. Contributing to this success is that E-Verify helps employers enforce immigration laws in a cheap and user-friendly fashion. For example, the software is free and requires very basic information—information already found on the I-9. Specifically, the program has the following benefits:

---

[10] Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement and Protection."
[11] *Ibid.*
[12] *Ibid.*

- **Accuracy and Speed**. E-Verify can determine quickly and accurately the authenticity of the personal information and credentials offered by new hires. The accuracy of E-Verify was confirmed in 2007 by a formal evaluation of E-Verify/Basic Pilot for DHS by Westat, an influential private research firm.[13] From October 2005-March 2007, Westat found:
    - More than 90 percent of submissions received an initial positive confirmation; around 1 percent of submissions received an initial tentative non-confirmation that was contested and converted into a final positive confirmation once information discrepancies were corrected; and around 7 percent of submissions resulted in final non-confirmations, nearly all resulting from initial tentative non-confirmations that were never contested.
    - Among all employees who were eventually found to be work-authorized, 99.4 percent received an initial positive confirmation, and 0.6 percent received an initial tentative non-confirmation that was corrected by a brief visit to an SSA or USCIS office.
    - The evaluation found around 5 percent of final non-confirmations under the system may have been authorized workers. However, there were no reported instances in which authorized workers who received a tentative non-confirmation were unable to contest the ruling successfully and establish proper work authorization.

  Overall, the evaluation showed that E-Verify was very successful in distinguishing between authorized and unauthorized workers. It also provides a process for correcting erroneous initial findings. Despite years of use and screenings of millions of employees, there has never been a single instance in which a lawful worker lost permanent employment as a result of erroneous information provided by the E-Verify system.[14]

  This accuracy also exists in the SSA Database used in E-Verify. When SSA assigns a Social Security number, it creates a Numident file, or master record, of the number and the individual to whom it is assigned. When a newly hired employee is checked through E-Verify, the information provided by the employee is checked against these files. This means that the accuracy of E-Verify is contingent on the accuracy of the Numident files. In 2004-2005, the Office of the Inspector General of SSA conducted an audit of these files to assess their accuracy with respect to E-Verify.[15] Although 4.1 percent of the files were found to contain a data discrepancy, those discrepancies would rarely inconvenience lawful citizens and residents, nor would the errors impede significantly the ability of E-Verify to identify illegal immigrants seeking employment. Roughly two-thirds (1.6 percent) of the discrepancies were of the sort that might result in a "false positive" (where an unauthorized individual receives an erroneous "positive" confirmation), while only one-third were the sort

---

[13] Westat reviewed all 2.7 million employee submissions to Basic Pilot/E-Verify between October 2005 and March 2007. *Ibid.* See also Westat, *Findings of the Web Basic Pilot Evaluation*, September 2007.

[14] Robert Rector, "Senate Stimulus Bill Would Provide 300,000 Jobs for Illegal Immigrants," Heritage Foundation *WebMemo* No. 2268, February 4, 2009, at http://www.heritage.org/Research/economy/wm2268.cfm.

[15] Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement and Protection." See also, Social Security Administration, Office of the Inspector General, "Accuracy of the Social Security Administration's Numident File," *Congressional Response Report* No. A-08-06-26100, December 2006.

that would result in a "false negative" non-confirmation. Moreover, the "false negative" discrepancies were clerical matters that could be corrected with little inconvenience.[16]

- **Low Cost to Business.** E-Verify can be done in a cost-effective manner, so that businesses regardless of size can check the legal status of their employees without breaking the bank. Of course, even though the software is free, there is some cost to business from using E-Verify. But the Westat evaluation found low employer costs to set up the system and operate it over a year. For instance, the evaluation found that:

    - Firms with between 100 and 250 employees reported average setup costs and annual operating expenses of $646, or around $4.00 per standing employee;
    - Firms with 251 to 500 employees reported average costs of $746, or around $2.00 per employee; and
    - Firms with between 501 and 1,000 employees reported average setup and annual operating costs of $473, or less than $1.00 per employee.[17]

  Furthermore, knowing beforehand that an employee can legally work will minimize the cost of having to hire new employees later.

  The Office of Management and Budget (OMB) examined the costs of requiring federal contractors to use E-Verify for their employees.[18] OMB estimated that firms would incur start-up and administrative costs of around $15 per vetted employee, primarily for the initial and recurring costs of training personnel to use the system, and that the operational cost of actually processing individuals (including the costs of dealing with temporary and final non-confirmations) would be around $6.70 per processed employee. Thus, the overall costs to business to administer and operate E-Verify would total about $22 for each employee checked. OMB did not consider whether costs could be cut by contracting out with designated agents or other personnel service companies. DHS does have "designated agents" who process E-Verify queries for other U.S. businesses on a fee-for-service basis. These firms, on average, charge between $2 and $15 per employee submission and give a means for small businesses to contract out the process for additional cost savings.[19]

- **Maintains Privacy.**[20] The only personal information entered into E-Verify is the employee's name, date of birth, Social Security number, and citizenship status. This information is already included in the official I-9 forms that the employer completes for each employee. E-Verify does not allow employers to examine information from the Social Security Administration or other government agencies. Furthermore, the government already has this information in its records and routinely collects similar information as part of the new-hire process and for purposes of collecting income and FICA taxes. The DHS employees who operate the E-Verify system only have access to the information submitted through E-Verify

---

[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.* See also *Office of Management and Budget, Regulatory Impact Analysis, Employment Eligibility Verification Federal Acquisition Regulation; FAR Case 2007-013, Notice of Proposed Rule Making*, May 29, 2008.
[19] *Ibid.*
[20] *Ibid.*

and the SSA confirmation or non-confirmation of that information. They do not have access to the larger SSA employment history and earnings files for individuals nor can DHS employees view or examine SSA records; they can merely corroborate that the limited identity data submitted for an individual through E-Verify matches information in the SSA files.[21]

E-Verify: Opportunities Going Forward

Perhaps the biggest challenge facing E-Verify at this time is the future viability of the program. If Congress does not reauthorize E-Verify by September 30, 2009 it will expire. Furthermore, DHS has yet to implement the federal contractors provision signed by President Bush in June of 2008. This executive order directs all federal departments and agencies to require contractors (as a condition for obtaining future federal contracts) to agree to use E-Verify. This is a needed provision given the recent stimulus, where hundreds of thousands of new construction jobs are coming available—and should go to those lawfully able to work in the U.S., giving the near record high unemployment. At present, all federal employees are checked by the E-Verify system, but outside contractors receiving federal funds are not required to use the system.

E-Verify is not without its challenges, however, and it should be the burden of DHS and Congress to work together to continually drive down its already low error rates and find ways to enforce the law in areas E-Verify is not effective. For example, E-Verify cannot catch either identity fraud or "off the books" employment.[22] In an identity fraud situation, the illegal employee presents identity documents to the employer showing that he is either a U.S. citizen or lawful immigrant entitled to work. However, in this case, the name, date of birth, Social Security number and (in some cases) the green card number on the documents corresponds to the identity of a real U.S. citizen or lawful immigrant. E-Verify can catch, and is very effective at discovering illegal immigrants working under a fictitious Social Security number, green card number, name, and/or date of birth—significantly reducing the opportunity to work illegally.

In order to use E-Verify to administer smart and tough enforcement of America's immigration laws, Congress and DHS should work together to take the following steps:

- **Permanently reauthorize E-Verify and provide adequate funding for implementation.** Unless Congress steps in, the law authorizing E-Verify is set to expire. Congress should extend E-Verify as a voluntary program and provide the funding needed for its continued and aggressive expansion and improvement.[23]

- **Implement the E-Verify Contractors Provision.** While there was a recent announcement that the Administration planned to abide by the provision that would require federal contractors to comply with E-Verify, it is not clear whether the Administration will fully comply with the intent of the previous Administration to apply E-Verify to *all* federal

[21] *Ibid.*
[22] *Ibid.*
[23] Jena Baker McNeill and Matt A. Mayer, "Don't Let E-Verify Perish in the Next Congress," Heritage Foundation *WebMemo* No. 2097, October 8, 2008, at http://www.heritage.org/Research/HomelandSecurity/wm2097.cfm.

contract employees. The intent of the new Administration is suspect given the newly floated interpretation of the federal contractors provision. It looks as though E-Verify will only be applied only to new employees hired specifically for the contract work. This means that if a construction firm hires an unlawfully present individual and then one week later assigns him to work on a federal contract project, this unlawful individual would be considered an "existing employee" not subject to E-Verify.[24] This Administration must craft the E-Verify rules to apply to all existing employees working for the federal government *and* under federal government contracts; otherwise the result would be less workplace enforcement, not more.

- **Reducing Erroneous Non-Confirmations in E-Verify.** While E-Verify is effective in identifying a high level of potential unlawful employment, the Westat analysis estimated that around 5 percent of E-Verify's final non-confirmations were erroneous (meaning that these individuals were actually legal workers).[25] It is vital that DHS and Congress work together to drive down error rates in order to make the process as effective as possible—getting employees confirmed so that they can get to work and business can thrive. A few small changes could help to make this possible:

    - *Work to reduce simple errors.*[26] Nearly all erroneous tentative non-confirmations stemming from E-Verify are the result of simple errors in the databases (such as misspelled names, maiden names, clerical errors in date of birth, or missing date of birth, and most commonly missing naturalization data). DHS has taken steps to reduce error based on missing naturalization data significantly by checking both SSA and USCIS files before issuing a tentative non-confirmation. However, USCIS does not have data on naturalizations that occurred before 1995 in electronic format. Converting these earlier naturalization data into an electronic form would further reduce this source of error. Also, encouraging women to enter both maiden and married names as part of their E-Verify input would be beneficial.

    - *Give individuals the opportunity to determine the accuracy of SSA data.*[27] Individuals should be able to confirm the accuracy of their personal SSA/USCIS files independently of the job application process, helping to eliminate the infrequent but real prospect of being turned down for a job opening because of an erroneous tentative non-confirmation stemming from a clerical error. Under present conditions, an individual may not become aware of problems in his/her SSA file until applying for retirement benefits. But it is better to correct faulty SSA data sooner than later because individuals who are employed with faulty or SSA identity records may not get full credit for their employment for purposes of calculating future benefits. It is in the best interest of the individual, DHS, and SSA to correct problems as soon as possible.

---

[24] James Jay Carafano, Ph.D., "Homeland Security Department Guts Workplace Enforcement."
[25] Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement and Protection."
[26] *Ibid.*
[27] *Ibid.*

- **Encourage state and local initiatives.** Several states, such as Arizona, have made the use of E-Verify mandatory, which courts have found permissible.[28] Furthermore, 287(g) programs have made a difference in controlling illegal immigration by allowing state and local law enforcement to act in the stead of ICE agents. Efforts like these should be supported because they act as force multipliers in the nation's immigration enforcement effort.

Enforcement without No-Match: Less Enforcement

The Secretary of Homeland Security recently announced plans to rescind the 2007 Social Security No-Match Rule. This is a significant impediment to overall immigration enforcement and the success of E-Verify. Beginning in 1994, SSA started sending no-match letters to employers who submitted 10 or more W-2 forms that could not be matched to SSA records or who have no-matches for more than one-half of 1 percent of their workforces.[29] These letters inform employers of the no-matches and explain common reasons for them, such as typographical errors, name changes, and incomplete W-2 forms.

In 2007, DHS launched an effort to persuade more employers to use no-match letters to determine whether their employees are authorized to work in the United States and to terminate those who are not. It issued a new rule clarifying that receipt of a no-match letter "may," constitute constructive knowledge that a worker is unauthorized—which could subject an employer to penalty for not following the law. It also granted employers a safe harbor from immigration enforcement actions if they took certain actions, such as double-checking their records.[30] DHS also drafted an insert, to accompany no-match letters, explaining how to take advantage of the safe harbor.

In 2007, however, a federal court issued a preliminary injunction against enforcement of the new rule and mailing of the inserts on the grounds that DHS did not sufficiently justify its change in policy, may not have the statutory authority to promise an additional safe harbor from anti-discrimination lawsuits on the basis of actions taken in response to the receipt of no-match letters, and did not conduct a required "regulatory flexibility analysis."[31] In response, DHS proposed a supplemental rule, effectively resolving the court's three concerns. The recent DHS press release, however, stated that the department was abandoning "no-match" because of this legal challenge. There is every reason to believe that the judge would be forced to lift the stay if this Administration pushed the issue in court. Indeed, any efforts at real workplace enforcement are likely to be challenged in the courts. Offering court challenges as an excuse to make bad public policy is unacceptable.

---

[28] Diem Nguyen, Matt A. Mayer, and James Jay Carafano, Ph.D., "Next Steps for Immigration Reform and Workplace Enforcement."

[29] James Jay Carafano, Ph.D., "Homeland Security Department Guts Workplace Enforcement," Heritage Foundation *WebMemo* No. 2535, July 10, 2009, at http://www.heritage.org/Research/HomelandSecurity/wm2535.cfm.

[30] "An employer will not be considered to have constructive knowledge…if the employer (1) checks its records to ensure that it did not make a clerical error; (2) asks the employee mentioned in the letter to confirm the accuracy of his or her information; (3) if necessary, asks the employee to resolve the issue with SSA within 90 days of receipt of the letter; and (4) if the issue was not resolved, attempts to re-verify the employee's employment eligibility without using any documents containing a disputed Social Security number." Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection."

[31] *Ibid.*

The Secretary's decision means that the Department will perform less-not more—workplace checks. Enforcing workplace laws is a vital component to create disincentives to unlawful immigration. Congress should not authorize or fund efforts to scale back workplace enforcement and should work to facilitate this type of information sharing. This can happen through the following steps:

- **Reject DHS Plans to Abandon Amended No-Match Rule.** Congress should reject the plan announced by DHS to abandon the 2007 amended "no-match" letter rule. It is the responsibility of Homeland Security to enforce the law in a manner that is both reasonable and effective. Congress should not let it stand.[32]

- **Facilitate information sharing between DHS and SSA.** DHS needs to be able to target employers that willfully hire unlawfully present labor. A far better policy than simple no-match letters would be for the SSA to routinely share no-match data directly with DHS. Congress should craft legislation that specifically authorizes SSA to routinely this data directly with DHS. Allowing this sharing and giving DHS the resources and authority to target large-scale employers in the sectors of the economy where undocumented workers are most present (e.g., agriculture, services industries, and construction) would provide incentives and enforcement measures to wean employers from the shadow workforce.[33]

Conclusion

Government policy should be based on the principles of *empowerment*, *deterrence*, and *information*. It should empower honest employers by giving them the tools to determine quickly and accurately whether a new hire is an authorized worker. It should hold employers free from penalty if they inadvertently hire an illegal worker after following the prescribed procedures.[34]

E-Verify is the most promising employment verification system in existence in the United States, and it should be continued. But the future of E-Verify is in the hands of Congress. It should be permanently reauthorized and fully funded in order to expand and be used effectively. Until E-Verify is more broadly adopted throughout the U.S. workforce, E-Verify must be complemented by a robust Social Security no-match process that assists employers by specifically spelling out their obligations. By rescinding the 2007 no-match letter amended rule, the Administration is effectively saying that it will not enforce the law against employing illegal immigrants or the overwhelming bulk of U.S. employers.[35] It is giving employers of unauthorized aliens legal cover and an excuse not to follow the law.

DHS will never be able to arrest and identify every illegal immigrant in our country. However, the choice between mass roundups and amnesty is a false dichotomy. A third alternative exists: By seriously enforcing the laws against illegal immigration in the U.S., the government can remove the incentives for illegal immigrants to enter and remain in this country, thereby causing the bulk of them to return home and sharply reducing future inflows. Hiding

---

[32] James Jay Carafano, Ph.D., "Homeland Security Department Guts Workplace Enforcement."
[33] *Ibid.*
[34] *Ibid.*
[35] *Ibid.*

behind the mantra that E-Verify isn't perfect or needs further improvement is the functional equivalent of not enforcing immigration laws.[36]

In closing, as part of a broader immigration plan, employment verification should be done in the most effective manner possible, one that is cost-friendly; protects individual data and privacy; minimizes the burden on employers; and addresses concerns over security and public safety. Nothing less is acceptable. And nothing less will keep America free, safe, and prosperous. Thank you.

[36] Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection."

Ms. WATSON. All right.

We will proceed now to Mr. Angelo Amador. He serves as the U.S. Chamber of Commerce's Executive Director of Immigration Policy, where he works with business leaders to shape the Chamber's position on immigration reform, legalization, border security, visa processing, and guest worker programs. Mr. Amador also represents the Chamber before the Congress and Federal agencies.

Mr. Amador, please proceed.

STATEMENT OF ANGELO AMADOR

Mr. AMADOR. Thank you very much.

I had prepared an oral statement, but after listening to the questions, I would rather use the 6-minutes or the 5-minutes that I have to give some concrete examples of what you have been talking about.

A lot has been said about what DHS should mandate or not mandate. I will point out again that the underlying law says the Secretary of Homeland Security may not require any person or other entity to participate in the E-Verify program. They call it a pilot program, but it is the underlying law that gave to the creation of E-Verify. We do believe that Congress has that authority to mandate it; that is why we continue to come to Congress and that is why we are here today.

Now, I also want to point out that it has been said let's put a fee because this program is free and the word free is used quite a lot. Actually, using E-Verify doesn't do away with any of the other requirements, you still need to do the I–9, you still need to do the other processing that you need to do when you hire a new worker.

It is estimated that already employers spend between 10 to 12 million hours in the hiring and processing of about, as you heard, 50 to 60 million workers. A study in 2005 said that the estimated total compliance costs of workplace regulations is about $91 billion. Five years later, when they did a followup study using 2004 dollars, the cost was already at $106 billion.

When you make these requirements, we had a witness come that owned about seven Burger King franchises, he testified as to the cost of training, the cost of following up with tentative no-confirmations, attorneys and all these things. So when you think about a fee, I just want to point out this is not free. The employers are willing to help the Government with the mandated program. We are willing to support and we have supported mandated programs in the past. We could support a Federal contractor's mandate, but only if you have certain requirements.

One of the numbers that was used in the prior panel was one-fourteenth of all employers use this. This is less than 1 percent. Now, when we look at—actually, sorry, this is 7 percent. When we look at this body of employers is very small. Most of the comments I get from people complaining about the program and complaining about what is about to be required are people using the program. They sign an MOU, which is a contract. They agree with the Government to do certain things.

What Congress is saying and what the administration is saying is to change that contract. They agreed to verify new hires. We hear that the program can handle 60 million queries. That is about

how many new hires you have every year. That doesn't count re-verification.

It is interesting that every time the Government has looked at running their own program, which has been an idea, and is an idea that is being pushed by AFL–CIO and might be one of the only things we agree with them on in this Congress, the Government looks at it and they always say, well, let's only do new hires. But if we are going to implement it on employers, do everybody.

I was just talking to UPS 2 days ago, and they were telling me that they have 250,000 employees in the United States. They cannot verify which one is going to touch a package that goes under a Federal contract, so they would have to re-verify every single individual. They have been using E-Verify since 2007.

So it adds an additional hurdle if they have to figure out, first, who was hired after 2007. They will have to them recreate an I–9 application, an I–9 process, because the current E-Verify requires that you use current documents. And they tell me that is going to cause thousands of manpower hours just to bring everybody back in for 250,000.

There are ways of doing this. Senator Obama had an amendment, when he was a Member of the Senate in 2007, that said, let's share the information with the Social Security Administration getting no-match, let DHS send a letter to the employer saying re-verify these workers, but don't re-verify your entire work force. If it is a small employer, we do not oppose the language that makes re-verification voluntary, because if you have three employees, you and two others, and you want to verify them, that is fine. But all the large employers, and all of them, again, are the ones that sign on these contract that use E-Verify have told me that this is not the way to go.

Finally, on the subcontractor liability, there was an amendment that was presented in 2005. Chairwoman, you voted against it, but we would hope to have your support next time. But Congressman Duncan, Congressman Cuellar, in 2005, voted to keep liability for contractors only if they knew the subcontractor was violating the law, because there are a lot of things on the MOU and the contractor cannot be held responsible for everything, because that is why you go with a subcontractor, so you don't have to run the work force.

Finally, in my last 10 seconds, I will just point out that we need to create one law. We need to strengthen the preemption language that we have because employers should be able to comply with immigration law by complying with Federal law.

Thank you very much.

[The prepared statement of Mr. Amador follows:]

Statement of the U.S. Chamber of Commerce

ON: **"E-VERIFY: CHALLENGES AND OPPORTUNITIES"**

TO: **THE HOUSE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT OF THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

BY: **ANGELO I. AMADOR**

DATE: **JULY 23, 2009**

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance – is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 105 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Statement on
"E-Verify: Challenges and Opportunities"
Before
The House Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight and Government Reform

Angelo I. Amador
Executive Director of Immigration Policy
U.S. Chamber of Commerce
July 23, 2009

Good Morning Chairwoman Watson, Ranking Member Bilbray, and distinguished members of the Subcommittee. Thank you for inviting me to testify on the subject of E-Verify.[1] My name is Angelo Amador and I am executive director of immigration policy for the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

In April of this year, the Chamber released a study prepared by its Labor, Immigration, and Employee Benefits Division, with cooperation from Dr. Peter A. Creticos, President/Executive Director of the Institute for Work and the Economy. The purpose of the report was to collect and disseminate objective data on the impact on businesses of E-Verify and other proposed electronic employment verification systems (EEVS), while providing ideas on the efficient implementation of such new mandates. By reference herein, I would like to make it part of my testimony in its entirety.

In today's hearing, I will address two main points. First, I will outline the business community's historic support for fair, efficient and workable mandatory employment verification systems that work for businesses both large and small, under real life conditions. Second, I will describe what an E-Verify legislative mandate must have to gain the support of the Chamber and many others in the business community.

The Chamber is encouraged that the Subcommittee is examining the current challenges to the implementation and expansion of the E-Verify program. Particularly, the Chamber supports the Subcommittee's emphasis in researching and addressing the issues related to system usability and the burdens imposed on employers.

The Chamber has taken a leading role in representing businesses that want to work with Congress in drafting a reasonable and workable EEVS, particularly if it will be mandated on all employers. The Chamber is not alone; companies themselves and other

[1] There is no reference in U.S. law to an "E-Verify" program. However, it is accepted that the creation of the program commonly known as "E-Verify" was authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, div. C, tit. IV, subtit. A, 110 Stat. 3009-546, 3009-655 (codified as amended at 8 U.S.C. § 1324a note). As amended, the IIRIRA instructs the Secretary of Homeland Security that she is to conduct various "pilot programs of employment eligibility confirmation." IIRIRA § 401(a). E-Verify is one such "pilot program," also known as the "Basic Pilot."

trade associations from across the industry spectrum have been extremely engaged in the subject. The reason is simple; in the U.S. there are close to eight million establishments, employing about 120 million people, and these new requirements will affect all of them, whether or not they hire immigrants.[2]

The stakes are extremely high, and the concerns of the business community of how a new mandate will be constructed cannot be overstated. While much of the debate has concentrated on the issue of undocumented workers, employers view E-Verify and other EEVS proposals much more broadly. After all, E-Verify has an impact in the day-to-day activities, obligations, responsibilities, and exposure to liability of the employer, regardless of whether it even hires immigrants.

Finally, the invitation asking me to come testify states that the Subcommittee is interested in learning more about Secretary Napolitano's July 8 decision to implement regulations mandating the use of a modified version of the E-Verify program on most federal contractors and subcontractors. I can only imagine that a question in the minds of the members of this Subcommittee is how the Secretary can mandate this program on any employer when the law clearly states that "the Secretary of Homeland Security may not require any person or other entity to participate in [the E-Verify] program."[3]

However, as you may know, the Chamber, together with the Associated Builders and Contractors, the Society for Human Resource Management, the American Council on International Personnel, and the HR Policy Association, filed a lawsuit challenging the legality of the regulation in question. This litigation is pending with a hearing scheduled for August 21, 2009, in the US District Court for the District of Maryland, Southern Division. Thus, I am not at liberty to discuss our position in this pending litigation and will allow instead the Plaintiffs' official filings to speak for themselves. As to the Administration's position, its response to our Motion for Summary Judgment is due next week and we will then all be able to read its arguments on the legality of the proposed mandate.

BUSINESS SUPPORT FOR MANDATORY EMPLOYMENT VERIFICATION SYSTEMS

Support for the initial mandate in 1986.

Some have argued that the current "I-9" mandatory employment verification program was supported by business back in 1986 because employers wanted to have a tool to find out who was an unauthorized worker and use that information to force those workers to work longer hours and in poorer conditions. This reason is unlikely given that most undocumented workers were legalized in the same legislation that created the

---

[2] For the latest statistics on U.S. Businesses, including number of firms, number of establishments, employment, and annual payroll, please go to the U.S. Census Bureau webpage www.census.gov/econ/susb/. Also, the Bureau of Labor Statistics (BLS) reports the level of employment in the civilian labor sector for June 2009 at 140 million. (See http://www.bls.gov/news.release/empsit.nr0.htm.) I use the latest Census data, instead of BLS, because it better divides the data by the number of employees for both establishments and firms.

[3] IIRIRA § 402(a).

current mandatory employment verification system. Still, even now, some are arguing against a new mandatory employer-based program under similar grounds. The truth is that employers are willing to do their part to address this controversial issue as long as the system is fair and workable.

Support for government-based verification.

Nevertheless, if the federal government wishes to take over the duty of verifying employment authorization, employers would probably welcome the idea, as long as no new fees or taxes accompany such an effort. It has been noted that between 1979 and 1981 Labor Department experts designed a work authorization verification system for new hires for the Select Commission on Immigration and Refugee Policies (SCIRP).[4] That proposal made a federal agency responsible for verifying the worker's employment authorization status.[5] Under that plan, employers would only have to verify the identification number the worker received from the federal agency doing the verification.[6]

A similar idea is being proposed now by the AFL-CIO and Change to Win with an added secured identification card with biometrics issued by a federal agency and a distinctive work authorization number issued to the worker for each new job.[7] Once again, employers would only be in charge of verifying the number with the federal agency.[8] Again, the Chamber has never opposed a government-based verification proposal, and has yet to see one introduced as legislation. Instead, the Chamber and other business groups have endorsed various employer-based proposals because they seem to be the ones that gain traction, as the numerous hearings on E-Verify, including this one, attest.

Deciding which E-Verify or similar program to support.

The Chamber and other business groups have supported a new mandated EEVS, under certain circumstances, since at least 2005, because employers do want the tools to ensure that their workforce is in fact authorized to work. However, employers only support approaches that are comprehensive in nature and take into account the divergence in types of establishments and firms in the United States.

An establishment, defined as "a single physical location where business is conducted or where services or industrial operations are performed," include factories, mills, stores,

---

[4] Marshall, Ray, Economic Policy Institute Briefing Paper #186: "Getting Immigration Reform Right," Match15, 2007, pp. 2-3.

[5] *Id.*

[6] *Id.*

[7] Parks, James, "Here's How to Fix Nation's Broken Immigration System," (*sic*) April 16, 2009, found at http://blog.aflcio.org/2009/04/16/heres-how-to-fix-nations-broken-immigration-system/, asserting that this approach has been adopted by both the AFL-CIO and Change to Win as their proposal for an EEVS. The complete proposal is found in "Immigration for Shared Prosperity: A Framework for Comprehensive Reform" by Ray Marshall, Economic Policy Institute, April 16, 2009.

[8] Marshall, Ray, Economic Policy Institute, "Immigration for Shared Prosperity: A Framework for Comprehensive Reform," April 16, 2009.

hotels, movie theaters, mines, farms, airline terminals, sales offices, warehouses, and central administrative offices.[9] One cannot expect that the less than 20,000 firms with more than 500 employees, which hire over 50% of all workers in the U.S., will have the same resources and concerns as the four million firms with less than four employees.[10]

Thus, while most trade associations support a mandatory EEVS, each group tends to support the program that more closely reflects the resources and concerns of their constituency. Almost by definition, the core membership of the Society for Human Resource Management, the HR Policy Association, and the National Association of Manufacturers, tends to be firms with a well equipped and trained Human Resources division. These trade associations have formed a coalition, The HR Initiative for a Legal Workforce, that seems to have a preference for a new program that would rely on new technology as well as biometrics.[11]

On the other hand, the core membership of the National Association of Home Builders (NAHB) tends to be firms with a small staff and heavily dependent on the contractor/subcontractor relationship. Thus, it tends to support proposals that safeguard the independence and vitality of that relationship.

While for a home builder with twenty employees reverification of its workforce may not be a big concern, it is a colossal concern for a manufacturer with establishments in all fifty states and over 100,000 employees. In this regard, the Chamber is in the unenviable position of finding a program to support that inevitably will—and has—angered certain sectors of its membership. Currently, 96% of the Chamber's member companies have fewer than 100 employees, 70% of which have 10 or fewer employees, and, thus, small business concerns are clearly a top priority for the Chamber. At the same time, large corporations also play an integral role in the Chamber's policy making process. Thus, the Chamber can only support an E-verify mandate that addresses the concerns of both large and small employers.

Mandatory EEVS proposals supported in the 109th Congress.

During the 109th Congress, there were two competing proposals, one passed by the House and the other passed by the Senate. The House EEVS proposal found in the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) contained some of the key provisions employers support, including safeguards for contractors if the subcontractor hired undocumented aliens without the contractor's knowledge, exemption from civil penalties for an initial good faith violation, and mitigation of civil money penalties for smaller employers.

---

[9] Definition found in the U.S. Census Bureau webpage at http://www.census.gov/eos/www/naics/faqs/faqs.html#q2.

[10] Data found in U.S. Census Bureau webpage www.census.gov/econ/susb/.

[11] For more information on The HR Initiative for a Legal Workforce, go to www.legal-workforce.org.

However, the Chamber and other business groups supported the Senate version, which was the product of a bipartisan amendment by then Senator Barack Obama and Senators Chuck Grassley and Max Baucus to the Comprehensive Immigration Reform Act of 2006 (S. 2611). Unlike the House version, the Senate proposal did not have a broad reverification requirement, and it had better due process with attorneys fees for employers who substantially prevailed on the merits in an appeal of an agency action. Both chambers failed to go to conference and the proposals expired with the closing of the 109th Congress.

Mandatory EEVS proposals supported in the 110th Congress.

During the 110th Congress, there were two competing proposals; both came to the floor of the Senate. One proposal was being championed by Senator Jon Kyl, with the support of then Department of Homeland Security (DHS) Secretary Michael Chertoff, in a bill to provide for comprehensive immigration reform (S. 1639). Once again, then Senator Obama and Senators Grassley and Baucus introduced a comprehensive amendment in the form of a substitute to the EEVS title found in S. 1639. Some employer concerns were addressed in both versions, but employers split in their support.

Most notably, the NAHB supported Senator Obama's version, understandably because of its stronger safe harbor from vicarious liability for contractors. The Chamber supported Senator Kyl's version in part for procedural reasons to prevent the issue from dying in the Senate through endless debate. In the end, the procedural hurdles could not be overcome and there was never a floor vote on either the version found in the underlying bill or Senator Obama's substitute amendment.

Mandatory EEVS proposals supported in the 111th Congress.

There is not a comprehensive immigration reform package moving in either chamber at this point. However, the business community continues to support expansion of E-Verify and other EEVS alternatives outside comprehensive immigration reform. The Chamber continues to support the reauthorization of E-Verify for longer periods than Congress has been willing to do.

The Chamber has also called for more money to be allocated to address the error rates and deficiencies found in E-Verify. Finally, the Chamber continues to ask for more independent research to look at ways to improve E-Verify as well as the financial impact of the program on small businesses.[12] The HR Initiative for a Legal Workforce supports H.R. 2028, the New Employee Verification Act (NEVA), as a better alternative to E-Verify. The Chamber does not have a preference for E-Verify, NEVA, or a new government-based program, as long as the serious and real concerns of the business community as a whole are addressed.

Because this hearing is about E-Verify, I will concentrate my remaining remarks in outlining the things the Chamber is looking for in a mandatory E-Verify proposal that we

[12] Several letters have been sent to Congress on this issue, copies of which are available upon request.

could support. As a final point, I want to remind you that E-Verify is anything but free. The Chamber testified last year through a current member and user of E-Verify, who explained at length the costs associated with E-Verify.[13]

NEEDS OF EMPLOYERS IN A MANDATORY E-VERIFY

Fair and reasonable roll out of E-Verify.

The Chamber has been calling for a tiered approach to rolling out E-Verify or any new EEVS. Starting out with large federal contractors may not be a bad idea, given that a number of these federal contractors represent part of the less than 20,000 firms who employ over 50% of U.S. workers.

However, the amendment added by the Senate to the DHS FY 2010 Appropriations bill mandating E-Verify on federal contractors takes the wrong approach. The amendment had a blanket mandate on all federal contractors without exception and included a provision mandating employers to reverify the work authorization of current employees.

The Chamber cannot support a mandatory reverification provision in E-Verify, as was included in the Senate version of DHS FY 2010 Appropriations bill. The Chamber urges you to assist in either dropping this provision from the final DHS FY 2010 Appropriations bill or amending it to address the real concerns of the business community. If you are inclined to assist in amending it, instead of deleting it, we urge you to work on eliminating the reverification provision, creating a reasonable applicability threshold standard, clarifying that there should be no subcontractor flowdown, and creating a commercial item exemption. The reasons for some of these requests are explained in more detail below.

Regardless, the best approach for a broad E-Verify mandate would be to move from one phase to the next as the system is being improved to take care of inaccuracies and other inefficiencies ascertained through the earlier phase. This would also allow DHS to properly prepare for the new influx of participants. In addition, the needs of the different types of firms and establishments need to be considered during the roll out. Many legislative proposals have failed to include even a study on a telephonic option for small businesses.

The Chamber urges that in any mandated roll out of E-Verify, businesses with less than fifty employees be exempted, as Congress studies the impact of such a mandate on small businesses and potential alternatives for compliance, such as a telephonic option. While these smaller businesses do not employ the majority of workers in the U.S., they still create millions of jobs in the U.S. economy. The burdens placed upon these entrepreneurs must be considered. Furthermore, if allowed to grow and prosper without being swamped

[13] Laird, Mitchell, "Employment Eligibility Verification Systems (EEVS) and the Potential Impacts on the Social Security Administration's (SSA'S) Ability to Serve Retirees, People with Disabilities, and Workers," House Subcommittee on Social Security of the Committee on Ways and Means, May 6, 2008.

in government bureaucracy, they may become the next global leaders. Let's remember that Apple, along with many other (now large) businesses, began in someone's garage.

The contractor-subcontractor relationship should be preserved.

It is critical to the employer community that contractors do not bear vicarious liability for subcontractor actions unless the contractor knew of the actions of the subcontractor. In other words, without evidence of direct knowledge by the general contractor, it should not be held liable for undocumented workers hired by a subcontractor, particularly when both would be required to independently verify the work authorization of their own employees. Without such protection, an employer could be open to liability even for the violations of its peripheral contractors—e.g., a water delivery company or landscaping contractor.

The House voted overwhelmingly for an amendment to H.R. 4437 in 2005 to ensure that general contractors would not be held liable for the actions of a subcontractor, when the contractor is not aware that the subcontractor was hiring undocumented workers. I found that at least four current members of this Subcommittee voted for this language in 2005.[14] Other members voting in favor of this safe harbor for contractors included Representatives Lamar Smith, James Sensenbrenner, and Pete King, three of the main proponents of H.R. 4437.

To employers, it is also unclear how enforcement would flow down or up from contractors to subcontractors and vice-versa. Would a contractor be liable for a subcontractor's negligence in utilizing E-Verify, e.g., preverifying applicants? Or, is the contractor liable only if the subcontractor is not using E-Verify, after being required to do so? What actions must the contractor have to take to make sure that the subcontractor is complying with an E-Verify mandate without opening itself to liability under other labor laws? Thus, the Chamber urges you to make sure there is a safe harbor for contractors operating in good faith, while a subcontractor is unbeknown to him or her to be abusing the E-Verify, or another EEVS.

Verification should apply to new hires only.

The Chamber does not oppose the strictly voluntary reverification provision added by the Senate to the DHS Appropriations bill. The Chamber objects only to mandatory reverification provisions. While some small size employers would not mind reverifying their workforce, all employers that have contacted the Chamber with a significant number of employees list this item as their number one concern. It is not surprising that when the government has considered a program in which it is in charge of verifying work authorization, it limits the system burdens to only new hires.

---

[14] Roll Call Vote 657, Representative Westmoreland of Georgia, Amendment to H.R. 4437, Recorded Vote of December 16, 2005, 9:38pm.

Businesses already spend approximately 12 million hours each year documenting the legal status of the nation's 50 to 60 million new hires. As then Senator Obama, together with Senators Grassley and Baucus, explained in a letter to former DHS Secretary Chertoff, requiring current workers to go through E-Verify is duplicative of current procedures and redundant given the large number of employees starting or changing jobs every year.

One of the Chamber's foremost concerns is to ensure that any new E-Verify mandate does not become too costly or burdensome for employers. Existing employees have already been verified under the applicable legal procedures in place when they were hired. Reverifying an entire workforce is an unduly burdensome, costly proposition, and unnecessary given how often workers change jobs in the United States.

Under a mandated E-Verify, employers would already need to train employees to comply with the new requirements and devote a great deal of human resources staff time to verifying work eligibility, resolving data errors, and dealing with wrongful denials of eligibility. The rate of an initial response being something other than "employment authorized" reported by Chamber members large and small according to their own data is closer to 15%. Employers would be more amenable to allow DHS to obtain data from the W-2 process and ask employers to reverify workers flagged by this procedure, as Senator Obama's amendment to S. 1639 in 2007 envisioned.

There should only be one E-Verify law.

The current federal employment verification system is clearly in need of an overhaul. States and localities have responded to the lack of action at the federal level with a patchwork of employment verification laws. This new patchwork of immigration enforcement laws expose employers, who must deal with a broken legal structure, to unfair liability and the burden of numerous state and local laws. These attempts are undermining the ability of the federal government to oversee and enforce our national immigration laws and put an undue burden on businesses attempting to deal with a new patchwork of different state and local laws.

A new E-Verify mandate needs to address specifically these attempts by states and localities to interfere with federal immigration law. Specifically, it should amend the preemption provision that already is contained in federal law, but that states and localities—aided by certain courts—have sought to circumvent.

Employers must know what their responsibilities are under immigration law, and having one federal law will help alleviate any confusion about employers' role under the law.

Enforcement provisions must be fair.

Full and fair enforcement of an E-Verify mandate should take into account transition times for the new system to be fully in place and protect employers acting in good faith. Businesses are overregulated and piling on fines and other penalties for even small

paperwork violations is not the answer. A new broad E-Verify mandate should include language similar to the one found in the House EEVS version of 2005 providing relief from civil penalties for a first time offense, if the employer acted in good faith.

Employers should also be given some time to rectify paperwork violations/errors made in good faith. For example, just last week, I was informed about an employer being fined because some of its I-9 forms did not contain the employer's own address. An opportunity to rectify minor paperwork violations will protect employers that are doing their very best in good faith to comply with the myriad of complicated federal regulations.

DHS, not trial attorneys, should be in charge of enforcing E-Verify provisions.

The Chamber believes that a new E-Verify mandate should not be used to open the door to a barrage of new causes of action unrelated to the hiring or firing of employees based on their work authorization status. DHS should have primary authority over the enforcement provisions of any E-Verify mandate.

Enforcement of employment verification laws resides properly with the federal government. Accordingly, the Chamber maintains that DHS, as the federal agency tasked with responsibility for immigration enforcement, should have sole enforcement authority over prosecutions for violations of section 274A of the immigration code. A broad E-Verify mandate provides the perfect opportunity to clarify that only DHS has enforcement jurisdiction over these issues.

You may be aware that the federal RICO statute has recently been used by private attorneys seeking to enforce immigration law. Not only does this invade the province of the federal government as sole enforcer of federal immigration policy, it also perverts the federal RICO statute into a use that is contrary to the intent of the statute.

Thus, there should be language prohibiting private rights of action against employers for matters that should be enforced by DHS. Furthermore, the power to investigate any labor or employment violations should be kept out of a system created exclusively for the purpose of verifying employment eligibility. The Chamber continues to call for a simple and reliable system, which includes reasonable penalties for bad actor violators.

Liability standards and penalties should be proportionate.

The Chamber agrees that employers who knowingly employ work unauthorized aliens ought to be prosecuted under the law. This current "knowing" legal standard for liability is fair and objective and gives employers some degree of certainty regarding their responsibilities under the law and should, therefore, be maintained. Lowering this test to a subjective standard would open the process to different judicial interpretations as to what an employer is expected to do. Presumptions of guilt without proof of intent are unwarranted.

The Chamber does not oppose efforts to increase penalties. However, the penalties need to be proportionate to the offense and comparable to other penalties in existence in the employment law arena. If penalties are too high, and too unyielding, employers who are assessed a penalty, but believe that they did not violate the law, will be forced into an unnecessary settlement because they cannot afford to pay both the legal fees necessary to fight the citation, and gamble that they might end up with a penalty that is so high that it devastates their businesses.

Penalties should not be inflexible, and I would urge you to incorporate statutory language that allows enforcement agencies to mitigate penalties, rather than tying them to a specific, non-negotiable, dollar amount. A number of additional penalties and causes of action have been suggested as proper penalties in a broadly mandated E-Verify. These range from debarring employers from federal government contracts to expansion of the current antidiscrimination protections.

Penalties must be tailored to the offense and the system must be fair. Automatic debarment from federal contracts is not an authority that should be given to DHS. Indeed a working process already exists in current law under the Federal Acquisition Regulations (FAR). Finally, the Chamber objects to expansion of antidiscrimination provisions found in current law. Employers should not be put in a "catch-22" position in which attempting to abide by one law would lead to liability under another one.

Role of biometric documents in E-Verify.

One of the main flaws of E-Verify is the uncomplicated manner through which an undocumented alien can fool the system through the use of someone else's documents. The issues of document fraud and identity theft are exacerbated because of the lack of reliable and secure documents acceptable under E-Verify.

Documents should be re-tooled and limited so as to provide employers with a clear and functional way to verify that they are accurate and relate to the prospective employee. There are two ways by which this can be done, either by issuing a new tamper and counterfeit resistant work authorization card or by limiting the number of acceptable work authorization documents to, for example, social security cards, driver's licenses, passports, and alien registration cards (green cards).

All of these documents could be made more tamper and counterfeit resistant. In fact, in 1998, the federal government began issuing green cards with a hologram, a digital photograph and fingerprint images and by next year all green cards currently in existence should have these features. With fewer acceptable work authorization documents, the issue of identity theft can more readily be addressed.

The new verification process will need to require a certain degree of inter-agency information sharing. When an employer sends a telephonic or internet based inquiry, the government must not only be able to respond as to whether an employee's name and social

security number matches, but also whether they are being used in multiple places of employment by persons who may have assumed the identity of other legitimate workers.

As the verification system is developed and perfected, it should continue to move closer towards the use of biometric technology that can detect whether the person presenting the document relates to the actual person to whom the card relates. Obviously, as biometric technology is rolled out, it is important to address who would actually pay for the readers and the implementation of the technology. Further, there will be legitimate issues of practicality in implementing biometrics in many workplaces.

An E-Verify check needs to be allowed to start earlier and be finalized sooner.

The employer needs to be able to affirmatively rely on the responses to inquiries into E-Verify. Either a response informs the employer that the employee is authorized and can be retained, or that the employee is not and must be discharged. Employers would like to have the tools to determine in real time, or near real time, the legal status of a prospective employee or applicant to work.

DHS and the Social Security Administration must be given the resources to ensure that work authorization status changes are current. This will help avoid the costs and disruption that stems from employers having to employ, train, and pay an applicant prior to receiving final confirmation regarding the applicant's legal status.

The Chamber understands that due process concerns must allow the employee to know of an inquiry and to then have the ability to challenge a government determination. Thus, at the very least, employers should be able to submit an initial inquiry into the system after an offer of employment has been made and accepted. Presumably this could be done two weeks before the first day of employment so the clock starts running earlier. The start date should not be affected by an initial tentative nonconfirmation.

Of course, for employers that need someone immediately, the option of submitting the initial inquiry shortly after the new employee shows up for his or her first day at work should continue to be available. In the case of staffing agencies, current law allowing for submission of the inquiry when the original contract with the agency is signed should be kept in future laws.

A maximum of 30 days, regardless of when or how the inquiry is made, and taking into consideration time to submit additional information and manual review, should be the outer limit that the system should take from the date of initial inquiry until a final determination is issued by the government.

The government should also be held accountable for E-Verify.

The government must also be held accountable for the proper administration of E-Verify. There must be an administrative and judicial review process that would allow

employers and workers to contest findings. Through the review process, workers could seek compensation for lost wages due to a DHS agency error.

Meanwhile, if an employer is fined by the government due to unfounded allegations, the employer should be able to recover some attorneys' fees and costs—capped at perhaps $50,000—if they substantially prevail in an appeal of the determination. Again, a reasonable appeals process with attorneys' fees for employers, if they prevail on the merits, is not a new idea. It was part of Senator Obama's amendment to S. 2611 in 2006 that passed the Senate with overwhelming support in a vote of 59 to 39.

E-Verify should have limited bureaucracy or additional costs.

DHS will need adequate funding to maintain and implement an expansion of E-Verify. The cost should not be passed on to the employer with fees for inquiries or through other mechanisms. Additionally, there should not be overly burdensome document retention requirements. The more copies of official documents are kept in someone's desk drawer, the increased likelihood of identity theft. Under current law, an employer does not need to keep copies of driver licenses, social security cards, birth certificates, or any other document shown to prove work authorization.

The employer must certify under penalty of perjury that those documents were presented. The requirement to copy and store copies of this sensitive documentation in any future E-Verify mandate should be carefully analyzed not only from the cost perspective to employers, but also from the privacy perspective of workers. At the same time, workers should have access to review and request changes to their own records to resolve issues, prior to approaching the employer.

An expansion of E-Verify should not serve as a back door to expand employment laws.

The new system needs to be implemented with full acknowledgment that employers already have to comply with a variety of employment laws. Thus, verifying employment authorization, not expansion of employment protections, should be the sole emphasis of an E-Verify mandate. In this regard, it should be emphasized that there are already existing laws that govern wage requirements, pensions, health benefits, the interactions between employers and unions, safety and health requirements, hiring and firing practices, and discrimination statutes.

The Code of Federal Regulations relating to employment laws alone covers over 5,000 pages of fine print. And of course, formal regulations, often unintelligible to the small business employer, are just the tip of the iceberg. Thousands of court cases provide an interpretive overlay to the statutory and regulatory law, and complex treatises provide their own nuances.[15] A GAO report titled "Workplace Regulations: Information on Selected

[15] For example, one treatise on employment discrimination law alone stretches over 2,000 pages. Barbara

Employer and Union Experiences" identified concerns regarding workplace regulations that employers continue to have to this very day.[16] The report noted that enforcement of such regulations is inconsistent, and that paperwork requirements could be quite onerous.

Most importantly, the report concluded that employers are overburdened by regulatory requirements imposed upon their businesses and many are fearful of being sued for inadequate compliance. The cost of compliance continues to grow at an alarming pace. A 2005 study by Joseph Johnson of the Mercatus Center[17] estimated the total compliance cost of workplace regulations at $91 billion (in 2000 dollars) and a follow up study by W. Mark Crain for The Office of Advocacy, U.S. Small Business Administration,[18] estimated the total compliance cost of workplace regulations at $106 billion (in 2004 dollars). Within a four year span, the cost grew at a rate of $15 billion, or $3.75 billion per year.

CONCLUSION

After several years of debate, the issues and solutions outlined here are not new. The Chamber urges you to continue to engage the business community to create a workable E-Verify, or another EEVS, mandate.

It is easy to ignore the drawbacks of E-Verify and simply pass a law mandating it. It is harder to pass a responsible E-Verify mandate that accommodates the different needs of the close to eight million establishments in the U.S., which are extremely different in both size and levels of sophistication. A broad E-Verify mandate should be fast, accurate and reliable under practical real world working conditions, and include:

- A fair and reasonable roll out of a broad mandate;
- No expansion of liability beyond the knowing standard for contractor/subcontractor relationships;
- E-Verify should only apply to new hires;
- Clarification that federal jurisdiction preempts state and local laws;
- An investigative and enforcement system that is fair;
- Provisions to protect first-time good faith "offenders" caught in the web of ever-changing federal regulations;
- DHS, not trial attorneys, should have enforcement authority of E-Verify;
- Penalties should be commensurate to the offense;
- No expansion of antidiscrimination laws or debarment outside the FAR system;

Lindemann and Paul Grossman, "Employment Discrimination Law," ABA Section of Labor and Employment Law, 3rd Edition, 1996.

[16] U.S. Government Accountability Office Report, "Workplace Regulation: Information on Selected Employer and Union Experiences," GAO-HEHS-94-138, Washington DC, pages, June 30, 1994, pages 25-53.

[17] Johnson, Joseph. "The Cost of Workplace Regulations", Mercatus Center, George Mason University, Arlington, Virginia, August 2001.

[18] Crain, Mark W. "The Impact of Regulatory Costs on Small Firms," Report RFP No. SBHQ-03-M-0522, Lafayette College, for the Office of Advocacy, U.S. Small Business Administration, September 2005.

- A reasonable number of reliable documents with biometric identifiers, when possible, to reduce fraud;
- Verification to begin when a firm offer of employment is made and accepted, followed by reasonable system response times—at the most 30 days;
- Accountability structures for all involved—including our government;
- Limited bureaucracy and sensible document retention requirements; and,
- No expansion of labor laws within the E-Verify framework.

Under a broad E-Verify mandate, employers will be required to utilize and comply with all its provisions and, therefore, the Chamber should continue to be consulted in shaping the system. Meanwhile, the Chamber stands ready to continue assisting in this process.

Thank you again for this opportunity to share the views of the Chamber, and I look forward to your questions.



Statement of the
Human Resource Initiative for a Legal Workforce

Submitted to
Committee on Oversight and Government Reform
of the
United States House of Representatives
Subcommittee on Government Management,
Organization and Procurement

July 23, 2009

The Human Resource Initiative for a Legal Workforce (H.R. Initiative) is a coalition of human resource organizations and employer groups, representing thousands of small and large U.S. employers from a broad range of sectors. The following statement is submitted by the HR Initiative on behalf of the Society for Human Resource Management, the American Council on International Personnel, the Food Marketing Institute, the HR Policy Association, the International Public Management Association for Human Resources, and the National Association of Manufacturers.

The HR Initiative supports a federal electronic employment verification system to improve on and replace the existing E-Verify system. We share with Members of this Committee a belief that 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.

Our objective is to promote a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment – and to that end, we have been enthusiastic supporters of H.R. 2028, the New Employment Verification Act (NEVA). Introduced by Representatives Gabrielle Giffords (D-AZ) and Sam Johnson

(R-TX), NEVA offers a solution. The bill would create an entirely electronic process to prevent identity theft and ensure a fair, efficient and secure verification process and could eliminate virtually all unauthorized employment – thereby taking away a huge incentive for illegal immigration.

For far too long, U.S. employers have been saddled with insufficient and ineffective employment verification tools. Because of inherent limitations with E-Verify technology, systemic problems with the accuracy of E-Verify result in employers having no assurance that hires are legal because of both "false positives" (illegal workers approved who should not be) and "false negatives" (legal workers rejected who should not be).

Although E-Verify has been operational – as a voluntary program – since 1997, it has proven ineffectual in preventing unauthorized employment. Despite the best efforts of the men and women who administer this program in the United States Citizen Immigration Services (USCIS), E-Verify's continued reliance on outdated technology and error-prone databases, render it inadequate to meet the needs of mandated use. In fact, we believe mandating its use would divert attention from the development of a state-of-the-art employment verification system, as embodied in NEVA.

E-Verify has served a valuable purpose, and voluntary participation in the program may be the best option available today. However, it is now time for the United States to move to the next generation of employment verification. The HR Initiative believes that mandating participation in E-Verify, instead of focusing on new technology, is the wrong choice for the following reasons:

First, E-Verify is a paper-based system, and not the entirely electronic system portrayed by Department of Homeland Security (DHS) and some Members of Congress. This is because 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 is permitted to enter data information into E-Verify.

Second, because E-Verify remains a paper-based system, it is unable to detect many forms of document fraud and identity theft. This is because E-Verify does not verify the authenticity of the identity being presented for employment purposes, but rather only that the identity number (Social Security and or Work Authorization) presented matches information in the Social Security and DHS 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 can only detect fake documents where a photo has been substituted. It cannot detect whether the document actually relates to the person presenting it.

Third, this 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 far too high for both U.S. employers and legal workers. These deficiencies, in combination with the inadequacies of E-Verify, leave employers vulnerable to sanctions from the government through no fault of their own.

The highly publicized 2006 raids at several Swift & Co. meatpacking plants are a prime example of the shortcomings of E-Verify and its complete inability to detect document fraud and identity theft. Literally hundreds of unauthorized workers were arrested at Swift. While all were using false identities or forged paperwork, all were also approved by E-Verify. Putting aside whether persons in the company may have been complicit in the subterfuge, the obvious conclusion is that the system was – and still is – easily manipulated. Because E-Verify is so inadequate in this regard, it actually encourages identity theft.

Recently, the federal government has proposed requiring all federal contractors to use the E-Verify program for all of its newly hired employees, as well as to re-verify employment eligibility of any other existing employee supporting a federal contract. This latter requirement, which has never been permitted under existing law, will place a huge administrative burden on federal contractors that must apply re-verification to their workforce.

Additionally, because of the database errors in the systems accessed by E-Verify (estimated as high as four percent), re-verification will undoubtedly cause the dismissal of thousands of current employees – many of whom are legal workers whose documents or DHS or Social Security records have errors. Also, because E-Verify lacks a structured system to redress errors, legal workers who are fired may be denied unemployment compensation and other social benefits.

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.

Rather than relying on E-Verify, we believe Congress should be working to create a uniform federal employment verification process that is secure, efficient and easy to administer. Inviting all employers to seek false security in broader re-verification would just make the problem worse.

NEVA meets this standard by building upon the lessons learned from E-Verify – but changes some fundamental aspects to ensure that any mandatory system meets the needs of the government, employers and employees. For example, NEVA requires mandatory verification of all newly hired employees and mandates the use of fewer, more secure identity documents (driver's license with picture, U.S. passport, approved work authorization document), and allows individuals to update their Social Security records as well as block the use of the Social Security number within the verification system. As an

added level of security, NEVA also includes an optional system for employers to authenticate and safeguard the identity of their employees through a "biometric" characteristic – such as a thumbprint – to secure an employee's identity and prevent future fraudulent use of a Social Security number for the purposes of illegal employment.

Accurate employment verification is the only way to ensure fair and equitable treatment for those individuals who should have access to legitimate jobs. The next generation of employment verification is essential for a legal workforce – and for America's national and economic security.

The HR Initiative looks forward to working with Congress to craft an effective employment verification system.

Construction Industry Joint Statement for the Record

U.S. House of Representatives

Subcommittee on Government Management, Organization and Procurement

"E-Verify: Challenges and Opportunities"

July 23, 2009

Submitted on behalf of:

American Subcontractors Association
Associated Builders and Contractors
Associated General Contractors
Independent Electrical Contractors
Mason Contractors Association of America
National Association of Home Builders
National Roofing Contractors Association
Plumbing-Heating-Cooling Contractors of America

On behalf of the aforementioned associations, we appreciate the opportunity to submit the following statement for the official record. We would like to thank Chairwoman Watson, Ranking Member Bilbray and members of the House Subcommittee on Government Management, Organization and Procurement for holding today's hearing on "E-Verify: Challenges and Opportunities."

For almost a decade, comprehensive reform of U.S. immigration laws has been a top priority for the construction industry. As Congress has struggled with the proper way to move forward on this very controversial issue, construction employers have been at the forefront calling for reforms to not only the employer verification and enforcement system, but also border security measures, interior enforcement, a future flow immigrant system, and addressing the issue of how to appropriately respond to the undocumented immigrants who are currently in the United States. While we are firmly committed to a fully comprehensive approach to immigration reform, we fundamentally understand that getting the employer verification and enforcement system right is a primary component of successful reform, because it will impact every U.S. employer, not just those who use immigrant labor. We are strongly encouraged by the committee's dedication to looking into this issue as a part of the larger debate on comprehensive immigration reform, and we appreciate this opportunity to have input.

The impact and contributions of the immigrant workforce is nothing new to the construction industry. Throughout the history of the United States, new immigrants have always found our industry to be a welcoming place for them to build good careers and gain a foothold in American society. From the Irish, to the Italian, German, Chinese, and now, Hispanic, immigrant populations, the construction industry has been a place where new immigrants to our shores could begin on the road to the American dream. In fact, careers in the construction industry have traditionally been one of the quickest paths to entrepreneurship. As such, our industry has been a magnet for those immigrants willing to work hard and pursue the American Dream of owning one's own business.

Inasmuch as the presence of immigrant workers is not a new phenomenon for our industry, it is also not a dwindling one. As the native U.S. population continues to move away from jobs involving manual labor, to more service-oriented jobs, and as our U.S. population continues to age and move out of the workforce, we have found it increasingly difficult to find the workers we need to continue meeting the construction demands of our growing U.S. economy. For this reason, we continue to see the percentages of immigrant workers in our industry increase, and our organizations continue to appreciate and welcome the contributions of immigrant workers. It should also be noted that the average hourly earnings in construction is over $20.00.

Undertaking a massive reform of U.S. immigration law is not an easy task, and perhaps one of the most daunting components of it is the creation of a new employer verification and enforcement system. A new system will impact every employer and every worker in the United States. Getting the system right—creating a workable, fair and efficient process—is a complicated task, fraught with the potential for confusing regulations, bloated and languishing bureaucracies, and aggressive, devastating enforcements against employers who are legitimately trying to do the right thing. Through our comments here, we hope to share with the Subcommittee some of the most pressing concerns we have about the creation of a new system.

Keeping Perspective: Large vs. Small Employers and Key Issues of Concern

Important in any review of employer verification system proposals is the question of large versus small employers. As representatives of an industry that is predominantly comprised of small employers, we are acutely concerned with whether a new verification system will be workable for a small business, and whether the enforcement of the new system will be fair to them. Small employers, especially in our industry, typically do not have human resources (HR) departments, and they do not have HR staff. Often in our industry, companies do not have dedicated offices; instead, they do their books at their kitchen tables, and they operate their day-today business over a cell phone, and out of their pickup truck or van. We often find that our smaller members do not have frequent or common access to a computer—nevermind high speed internet access—and frankly, in many instances we still have problems contacting some of our members through the use of fax machines. A new employer verification system must be workable not only for the fortune 100 companies in the U.S., but also the small employer who has three employees, and who thinks they might have an email address but couldn't tell you what it is, because they've never tried to use it.

Common conversations surrounding the creation of a new verification system often involve the debate over the creation of tamper-proof identification and work authorization cards, and internet-only based access to the system. These conversations are concerning to small employers in our industry, not because we don't support the creation of tamper-proof identification or internet based systems, but because the creation of these things necessarily brings with it problems when trying to address the reality that every U.S. employer will need to be in compliance.

Creating tamper-proof identification is one issue, but the problem of how employers are required to use those IDs is another. Many small employers would be unable to afford the cost of expensive card readers, software and high speed internet access. And additionally, in our industry, the ability of employers to actively use these readers is hindered by the fact that, again, many of our employers are not operating on a day-to-day basis at a desk, behind a computer, in a dedicated office. A new verification system needs to address these types of issues by ensuring, if nothing else, that a new burdensome, unfunded mandate is not levied on employers requiring them to buy a lot of expensive equipment, and that any new verification system is both internet and phone-based.

Knowing Standard

Our organizations strongly believe that any verification system put in place as part of comprehensive immigration reform must maintain the current knowing standard. In order for employers to fully comply with a new system, they must be able to easily and clearly understand their role and obligations. The knowing standard, put simply, provides clarity for employers: "knowing" that someone is illegal, or that the employee of one of your subcontractors is illegal, and choosing to do nothing about it, is a violation. Our industries oppose watering down the knowing standard to a more subjective standard, such as "reckless disregard," or "reason to know." These concepts are far too broad, far too open to interpretation, and lack clear definition for employers. It is unfair to saddle employers with broadly defined standards that make it

impossible for them to know whether they are fully in compliance or will still carry liability—because the determination of their compliance will be made by someone else's definition or interpretation of the situation, rather than a clear rule.

Contractor-Subcontractor Relationships

Our associations strongly oppose creating a pattern of cross liability that would make general contractors responsible for the legal status of their subcontractors' employees. The construction industry has a unique perspective on the issue of contractor-subcontractor relationships because almost all business activity is traditionally conducted through contract. However, the issue of contractor and subcontractor liability in the verification system is broad-based, and impacts far more industries than just construction. Any business or industry that contracts with others for services—from cleaning crews, to landscapers, to caterers and equipment maintenance—is impacted by the way in which Congress treats the contractor-subcontractor relationship.

While all of our groups agree that general contractors who knowingly use subcontracting relationships and subcontract labor to violate immigration law should be punished and brought to account for their actions, we also strongly believe that it is fundamentally unfair to create a blanket, direct chain of liability for all contract-subcontract relationships. Put simply, it is outrageous and unfair for the federal government to mandate that employer "A" should be held accountable for the behaviors and practices of employer "B"—especially concerning employees that employer "A" does not have the power to hire or fire. A mandate from Congress that employers could all be held responsible for the behaviors of other employers could essentially cripple the construction industry, as companies big and small struggle with how to assume massive levels of liability, while still having no power to mitigate that liability. Our associations firmly believe that, if eventually, all U.S. employers must be required to participate in a new verification system, that all employers must be held directly accountable for the legal status of their own, direct employees. A system which keeps all employers liable for their own actions and behaviors is not only fair, but will create far less confusion and problems for all employers who are trying to navigate and comply with a new verification system.

Liability for Failures of the System

Our associations fully support the inclusion of safe harbor language for employers who rely on information provided to them by the verification system. Under no circumstances should an employer who in good faith correctly complied with the new verification system, and was provided incorrect information by the system when determining final action on an employee's status, be sued by the former employee, or involved in an enforcement action by the federal government, for relying on that information.

Debarment Provisions

A major concern for our associations is language that seeks to completely change the way the procurement process is administered. There currently exists a well-tested and thorough system in place to handle alleged violations of federal law, including immigration worksite violations. The existing federal debarment process protects the government's proprietary interests; it is not

used to punish first time offenders with what is comparable to a corporate death sentence. What is often forgotten is that current Federal Acquisition Regulations (FAR) already grant the government the authority to debar businesses for a wide range of improper conduct, including commissions of a criminal offense, fraud, and immigration violations. Because of the severity of the punishment, the current debarment process includes a ten part test that differentiates habitual bad actors from those who have made a simple mistake.

Both the House and the Senate have made efforts to debar federal contractors and those seeking to become federal contractors for even simple violations of immigration law. These efforts would bypass the structure set up in the current system and totally ignore the current process as well as the ten part test. Should efforts to move forward with this idea, it will have ramifications well beyond immigration law, and would open the floodgates to using the procurement system as an enforcement mechanism for even first time paperwork violations of any federal law. Attempts to bypass the FAR process confuses the purposes of the federal procurement system and distort its mission, which federal procurement officers have long and correctly understood to be limited to protecting the government's proprietary interests.

Eligible Documents and Document Retention

Under the current I-9 system, employers are required to accept up to 27 different forms of identification as proof of identification and work eligibility in the U.S. Technically, an employer who requests documents from an applicant would have to accept a college ID and a social security card as proof of identity and work authorization—even though both documents are easily forged.

One of the main issues faced by employers today is that the rampant counterfeiting of documents puts employers at a disadvantage for being able to ensure that job applicants are truly work authorized. An employer who wonders whether the documents they have been presented are legal is still precluded from asking for more documentation for fear of discrimination lawsuits. As a result of all of the uncertainty, and rampant counterfeiting of identity documents—as well as increasing instances of pure identity theft—the construction industry supports limiting the number of eligible documents for proof of work authorization, and the creation of tamper-resistant documents that will give employers the confidence of knowing that their job applicant is eligible to work in the United States.

Additionally, our industries support the retention of the current "may" requirement in regard to the photocopying and retention of identity documents presented as part of the verification process. Under current law, U.S. employers may choose to retain copies of identity documents for their files, but they are not required to do so. We believe that while it is important to allow employers who choose to copy documents the right to do so, it is overly burdensome to require all employers to copy identity documents. For reasons previously explained, large employers have a greater ability and opportunity to copy, retain, and protect copies of identity documents than small employers. Many small employers do not have human resources departments, photocopiers or permanently secure locations to keep these photocopies. We fully support retaining "may," or providing small employers with an exemption from the requirement to photocopy all identity documents.

Verification System Implementation and Timelines

The construction industry believes that any new mandatory employer verification system needs to be phased in over a period of several years, based on size of employer. Clearly, larger employers will have more resources and time to devote to understanding how to navigate a new system, while smaller employers will need time to be trained and to understand this new regulatory requirement. Given that there are over 8 million employers currently in the United States, rapidly pushing all employers into the new system is certain to lead to problems and delays. Our associations believe that phasing in the new system provides benefits that are two-fold: giving smaller employers time to understand their obligations, while also giving the government time to adjust to the influx of employers into the system. Many in Congress as well as around the country want to see critical infrastructure use this system quickly. Our associations support this as well, as long as there as "critical infrastructure" is clearly defined. We urge lawmakers to support a gradual multi-year phase in based on size of employer, with larger employers enrolling in the system first, and smaller employers joining in last, once the system has proven that it can work efficiently.

Additionally, employers participating in a new verification system should be able to begin the verification process as soon as possible. Because of the complexity and time delay associated with getting final confirmations or nonconfirmations, employers should be able to begin the verification process once an applicant has officially accepted an offer of employment, and a start date has been established. In the first few weeks of employment, employers—especially in the construction industry—expend a lot of up front costs in job and safety training. An employer who begins the verification process at the date of acceptance of the job offer can better manage their training resources, and will know whether they need to hold off on expending those limited resources until a final confirmation comes through.

Additionally, the overall scope of the verification system, and the timeline between initiating a verification and receiving a final answer is of great concern to our industries. While we applaud proposals that require the Department of Homeland Security to respond back to an employer within 24 hours on the first confirmation/non-confirmation, we are concerned with any proposal that seeks to drag out the review process for tentative nonconfirmations over the span of several weeks. Employers need to know as quickly and efficiently as possible whether or not their new employees are work authorized and—unless employers are able to pre-verify job applicants prior to offering them the position—a system which requires employers to keep someone on the payroll for months before finding out that the person was not work authorized is simply over burdensome and a waste of the employer's limited resources. The timeline for the review of tentative nonconfirmations must provide for a rapid turnaround so that employers can be confident that their employees are legally allowed to work.

Preemption

Of great concern to our industry, and to all industries, is the proliferation of a patchwork quilt of state and local immigration laws. We strongly believe that any comprehensive immigration reform legislation passed by Congress must clearly and decisively pre-empt all state and local

immigration laws, so that employers who operate across state or local jurisdictions be it in construction or any other industry, can clearly know what their roles and responsibilities are under the law. We support the federal government's authority to enforce federal immigration law and the requirements that flow from that law, and we urge lawmakers to support strong and comprehensive preemption language.

Enforcement

Our associations strongly believe that the enforcement of immigration law should remain under the authority of the Department of Homeland Security, and that the power to investigate labor and employment violations should be kept to areas outside of the employer verification system. The system is being created to establish an efficient and workable method for determining the work authorization of U.S. workers, and its function should be strictly to accomplish that goal. Under current law, employers already have to comply with scores of requirements regarding wages, pensions, health benefits, safety and health requirements, hiring and firing practices and discrimination statutes. The costs and resources involved in complying with all of the current federal laws and regulations are significant enough without adding an additional layer on top of a new verification system that is supposed to serve a basic, functional purpose. We oppose using the verification system to broaden and expand employment protections which are already covered under existing law.

In conclusion, our associations continue to support a fair, efficient and workable employer verification system that holds every U.S. employer accountable for all of their direct employees, and that vigorously punishes willful and egregious violators of the system. The employer verification and enforcement portion of any comprehensive immigration reform bill is vitally important due to the scope of its impact on all U.S. employers and every U.S. worker, and we are eager to work with Congress as it crafts a meaningful and permanent solution to the immigration concerns that impact our country today.

Ms. WATSON. I want to thank you both.

We are now going to move to the question period and we will proceed under our 5 minute rule.

Let me ask Ms. McNeill, first, are adequate steps being taken by the Social Security Administration and the USCIS to balance the requirements of E-Verify with ongoing agency demands and are the additional agency staff members being hired to deal with an influx of queries related to E-Verify or are existing staff members being reassigned?

Ms. MCNEILL. Madam Chairwoman, I can answer your question as far as I think that right now the Social Security Administration and the Department of Homeland Security are well equipped to handle what we have now and well equipped to handle the number of workers that could happen if we had a universal system.

But I want to emphasize that a universal system might not be the silver bullet approach right now. I think they are well equipped at the moment, they have the right kind of staff in place, but a universal system, they may not have the staff in place for that now, and I think that it shows that not only would a mandatory system right now not be the best approach for all industries.

Obviously, we want to move toward a system where everyone would use the system, use E-Verify, but I think that using it in a mandatory fashion right now would not be the best approach either from the Government's side or from the business side, because we don't have the right things in place to ensure that all employers and the Government are doing things in an accurate, cost-effective manner.

Ms. WATSON. OK. With fewer than 2 percent of all employers enrolled in E-Verify, how can we possibly gauge whether the current system will be able to handle a rising number of queries on an annual basis?

Ms. MCNEILL. Well, Madam Chairwoman, I think the biggest thing that shows how good the system is right now is that 96.9 percent of the people who are put into E-Verify right now are getting a confirmation that says you are great, go and work; and only 2.8 percent are getting a final non-confirmation. That shows how accurate the system is. It is really hard to find that level of accuracy in other data bases and other parts of Government, and this is the right kind of efficiencies that we need to have in the Federal Government. So I think that just the success of E-Verify on a small level shows the ability of DHS and the Social Security Administration to take this to a much larger scale.

Ms. WATSON. Mr. Amador.

Mr. AMADOR. Yes. I would point out the numbers and how you deal with accuracy differ, and I want to point out that Intel Corp. did its own study as to the accuracy or how often did they get a tentative non-confirmation, something other than confirmed, for their employees.

I want to compare it with the individual that testified that uses E-Verify for seven Burger King franchises in Arizona. They both came back with about 15 percent of the time they got an answer other than tentative non-confirmation, and every time that happens—because, again, we are not just talking about swipe a card,

green, red light, you get in or you get out; this is an employee you have.

You have a number of other requirements; you need to be very careful that you do not change training, you do not change work hours, you do not change any of these things. So liability opens up and there are other burdens. And, for them, the number they are looking at is 15 percent, it is not whether, 3 months down the road, you finally fix the problem with the Social Security number. They are looking at today I ran you through the system, it came as a TNC, what do I do now; and there is a process for that.

So the 2 percent, 1 percent, or whatever number, it is up to Congress to decide what error rate they want to live with; it is not up for businesses. But since no program is going to be 100 percent accurate, you then need to look at the safeguards, because employers and employees are going to have to live with this. There was a provision, again, in the Senate that passed that provided lost wages for employees that, at the end of the day, got fired and it ended up being an error of the system.

And even though Chertoff, at the time, was saying that this was a wonderful, almost perfect program, they opposed that amendment based on the lost wages and based on the fees that employers would get if it was an error of the system.

We are all for a mandated program, but we have to do it right because there will be errors and somebody is going to pay the consequences.

Ms. WATSON. Still a work in progress.

In what ways have some of the recent enhancements to E-Verify, including the use of the photo tool, helped to improve the system for businesses?

Mr. AMADOR. Well, it is an improvement in the system. Now, it also opens up the employer to more liability. When we had our witness testify, he said, well, I have a central location where we do the I–9s and we put it in the system, so they were faxing the copy of the person's ID to compare with the computer. The guy in the field would copy the license, fax it to the guy in the central office doing the E-Verify on the computer, and now he is looking at a copy and he has to make a determination. And he said, you know, we found more often than now how accurate is my comparison and what happens in an audit.

When they go and do audits, we have an audit right now on 652 employers. I got a call from somebody who said that he was getting 47 citations out of the 59 I–9s he had on record because he failed to write the address of the employer. The employer's I–9s are being kept by his side, he has his name, and he said, well, I will write them right now. We were just being quick, we were hiring a lot of people. He said, no, that is 47 citations.

We need to make sure—and they look at E-Verify. Yet, another potential for liability when they do audits on paperwork and other misuses other than not running somebody through the system. So those are the safeguards we are looking for.

Ms. WATSON. Well, with the concept of this is a work in progress, we would like to hear from you as to how you think we can perfect the system.

Mr. AMADOR. Well, one of the things we continue to say is——

Ms. WATSON. And, as I said, you don't have to give us all your ideas now.

Mr. AMADOR. No, I understand. But one of the things that should be instrumental is to start implementing a tier process; and it cannot be done by DHS, it has to be done by Congress. Starting doing it in a tier process. Eighteen thousand firms basically hire 50 percent of all Americans, so it might make sense to go with bigger employers first, but you need to also put those safeguards. And then as this comes up and you realize the problems that they have, then keep on going. But employers are different. You cannot expect the 4 million that 0 to 4 employees, to have the same capacity as the 18,000.

Ms. WATSON. Yes. And we are going to depend on you letting us know what you think we need to do to correct the system. We are going to hold another hearing down the line, too, on E-Verify, just to see what we need to do in terms of policy.

Now I would like to call on Congressman Duncan of Tennessee.

Mr. DUNCAN. Thank you very much, Madam Chairwoman.

Mr. Amador, you make a point that this system, while it is usually referred to as being a free system, it is not really free to businesses. Could you elaborate on that a little bit and how much it might cost? I assume it varies from employer to employer.

For instance, I have noticed over the years that a company like UPS, when I go visit UPS facilities, I will find people that have worked there, commonly, 20 or 25 years. Yet, fast food places, they have, some of them, 300 percent, 400 percent a year turnover, so people work an average of 3, 4, or 6 months there. How does that factor in?

Mr. AMADOR. Yes. I guess our view is that there is no such thing as a free lunch and there is no such thing as a free mandate, and this is a perfect example. You need to spend time. One of the biggest expenses, according to this gentleman, Mitchell Laird, from Arizona, who owns seven Burger King franchises, that they have a high turnover rate.

So you need to take people out of the work, the system managers that are doing the hiring, to train them, and the training alone—and you basically get hit twice; you have the person in training and you don't have them at the work site. The fact that you have all these new employees you need to continuously be running these individuals.

Then you have large companies who have other concerns. When you talk about the large Federal contractor, they say, well, we really don't have a big problem using E-Verify now for new hires, but we would have a big problem if we need to go out. Ingersoll Rand, which is our immigration subcommittee chair, has 45,000 employees and they are all over the United States. They don't have a centralized system.

They said we are going to have to start paying for auditors to go over there. We need to bring everybody in and give them training so everybody does it the same way, because the moment one place starts doing it different, then you have to, well, wait a second, what are you trying to do? You are trying to discriminate against people in Texas versus people in Washington. So those are all costs; the

training and the facilities and the manpower and the hours is a big concern for them.

Mr. DUNCAN. Do you think that because this is such a big and overwhelming problem, that it is just going to be impossible to do something about? Do you feel like we are tilting at windmills here or beating our heads against concrete walls? Do you think we should just have open borders and not do anything about illegal immigration?

Mr. AMADOR. No, not at all. And I think we can even mandate an employment verification program, but what we have continued to say is we want to make sure—and even outside of comprehensive reform, what my members are telling me, we just need to make sure that it is the right program and it has the right safeguards. It is for Congress to decide what error level they can live with.

If you want to mandate it on Federal contractors, then we want to sit down with you and tell you, well, this is what the Federal contractors, particularly the ones that are using it right now, are telling me they could live with and ways of addressing the issues. For example, if what you want to do is figure out whether the name, which is what E-Verify does, the name and Social Security number of those currently working match, there is a process for that.

Now, the numbers go to the Social Security Administration and there was an amendment that put the burden on DHS to send a letter to the employer saying verify these individuals, and the employers are willing to do that. So that is a way of doing that. Reverification, as Grassley, Baucus, and Obama said in the letter to Chertoff, shouldn't be a requirement.

Subcontractor/contractor liability, the amendment from Congressman Westmoreland that, you know, I thank you for your vote in favor of it, stated as long as the contractor didn't know what the subcontractor was doing in his internal operations of the system, he should not be held liable. That is current law. If the contractor is trying to hire a subcontractor to get around immigration law, yes, hold him liable, but not create vicarious liability for a contractor to be held liable. These are the kinds of things that, if you put them in a mandatory employment verification system, employers will be able to get behind it.

Now, a blanket language like the one that is coming from the Senate on the Department of Homeland Security appropriations we oppose because it doesn't create exemptions like even the ones in the regulation for commercial over-the-shelf items or small employers, and it has a broad mandate for re-verification. We have always opposed that; we opposed it in 2005 and we still oppose it today.

Mr. DUNCAN. Let me say, before my time runs out, first of all, I think that your suggestion about going to the biggest employers first is just common sense. Second, almost all Federal contracts are so ridiculously lucrative it seems to me that we should require, first, compliance by Federal contractors.

But let me ask Ms. McNeill, maybe this testimony has already been given when I wasn't here, maybe I missed it, but of the 6 million inquiries, how many are found to be illegal out of that 6 million? Do you have those figures?

Ms. MCNEILL. I don't have those figures on hand. I would be happy to see if I could find them and provide them for you for the record. However, I will say that 2.8 percent of the people are found to be final non-confirmations, and both Pugh Hispanic Center and the Center for Immigration Studies estimated that the amount of unauthorized workers in the work force was about 4 to 5 percent. So it is about, on average——

Mr. DUNCAN. OK. Well, that is good enough. Have there been any examples of any legal worker who has lost his or her job due to incorrect information under this system?

Ms. MCNEILL. Well, there are going to be people who were denied positions because they were final non-confirmations, but that doesn't mean that they were necessarily denied incorrectly for the position.

But I will also say, Congressman, that if there is a situation where it becomes a discriminatory situation, where it is a prescreening thing that is against E-Verify, there are penalties in place for that, and I think that we need to educate employers better on figuring out how to use E-Verify in an effective way, because a lot of employers are confused on subjects such as how to use E-Verify in the way that actually meets the law. So I think that is also an important, that education angle as well.

Mr. DUNCAN. All right. Thank you very much.

Ms. WATSON. Mr. Connolly.

Mr. CONNOLLY. Thank you, Madam Chairwoman.

If I can pick up on my friend from Tennessee's questioning, isn't it true that 2.8 percent you are referring to, they may be denied employment because they are found to be non-compliant, is that not correct?

Ms. MCNEILL. That is absolutely true, Congressman.

Mr. CONNOLLY. But the system doesn't tell you whether the non-compliance is as to their immigration status or just the failure to provide proper documentation.

Ms. MCNEILL. Congressman, that is absolutely correct.

Mr. CONNOLLY. So there is no way you are ever going to get back to Mr. Duncan giving him numbers about here is the estimated number of illegals the system has caught. For example, I only have 8 days in which to provide a birth certificate, for example, or a marriage certificate, and if I am in California applying as a new hire for a job and those documents are back home in Virginia, it is conceivable, bureaucracies being bureaucracies, that documentation just is not forthcoming within the requisite time period. Is that not correct?

Ms. MCNEILL. That is absolutely correct, and I think we need to work on the accuracy, absolutely.

Mr. CONNOLLY. And I would be found to be non-compliant in failing to provide that document and, thus, not to be hired, is that correct?

Ms. MCNEILL. It is very possible that could happen, Congressman.

Mr. CONNOLLY. And I would just say, if I were a major employer, even if I were a small business employer, that would concern me, because, as an individual, I am not in control of how quickly such

documentation may be made available to me, and not everyone can fly back to the State capital and get that birth certificate.

Ms. MCNEILL. And I think, Congressman, that makes the point for why we need to work on the accuracy of E-Verify, for those exact situations that are very few and far between. But I don't think it is a reason to derail E-Verify as a useful tool in enforcement.

Mr. CONNOLLY. No, but I am just pointing out a potential flaw in the system that doesn't really capture whether someone is here illegally or not; it may just capture the failure, for whatever reason, to provide the necessary documentation.

Ms. MCNEILL. And, Congressman, I think we absolutely want any American worker or legal immigrant that is here to work, we want to get them into those positions. So I think working to remedy errors and accuracy and making it so that people can fix stuff easily is vital to the process.

Mr. CONNOLLY. And, Mr. Amador, I want to give you an opportunity to comment on this as well, because I see this as a potential inefficiency we are adding, with the best of intentions, that we have to address. But let me just say you were way too modest just a little bit earlier in your testimony, referring to the fact that maybe there was only one area you were, the Chamber, and AFL were in agreement on.

I want to remind you that, of course, I was only too happy to support the Chamber's position on the Economic Recovery and Reinvestment Act, which you supported, as did the AFL–CIO. And I also would note that you have come out, the Chamber has come out in support of the reauthorization of the surface transportation act, known as SAFETEA-LU, also supported by AFL–CIO, and also certainly supported by me.

Mr. AMADOR. Yes, we have.

Mr. CONNOLLY. So you were way too modest in talking about common ground just a little bit earlier.

Mr. AMADOR. No, I would say that on immigration and employer issues we do meet more often and reach agreement more often than the lawsuits. I haven't seen any lawsuit except dealing with immigration issues, where the first words is AFL and U.S. Chamber, as opposed to AFL versus U.S. Chamber or vice versa.

I would point out that few and far between is fine, as long as you are not the one that lost the job. What we are saying is for these individuals, whether it is 1 person or whether it is 10—and, again, that is an argument made stronger by the civil rights groups—we didn't support or oppose the lost wages provision. Our concern was let's make sure they don't come after the employer, because we are just doing the Government's job.

And I always found interesting that was the one reason why DHS, at the time, came after the amendment. They said, wait a second, we cannot be paying back lost wages. I said, well, if it is an error in the system, if the person were willing to put protections that said the person must follow all these steps, they must do everything, but if, at the end of the day, you didn't get your papers on time and you were fired because we were asked to fire you, then you should have some recourse. And these are the kinds of things that need to be addressed.

We are not saying do not move forward with E-Verify. But as you make an E-Verify mandate stronger and you hold employers accountable for the results of E-Verify, you need to also provide the protections for both employers and their employees. And that is why I said E-Verify is good, but just saying few and far between and ignoring it is not the right way to go. Let's make sure we do it right. Again, we are all going to have to live with it.

And on the requirements, whether we use it right or wrong, you pointed out something to the prior panel that is very important here. These rules keep on changing. Employers would like to start verifying individuals before they even start to work, because they would like to know if there is going to be any problem. That is illegal today. We have been asking for it.

Employers do not want to re-verify. That is illegal. One of the things UPS pointed out is since it was illegal, it is on their labor contracts—and most of the drivers are members of unions—that they cannot re-verify this work force, and they are trying to figure out if we have to go back, how do we renegotiate that with the unions, because now we are going to be in breach of a contract and negotiating with unions is not always, from our perspective, one of the easiest things to do.

Mr. CONNOLLY. And, Mr. Amador, did you cite the statistic—I thought I heard you say a little bit earlier—that when you look at the number of new hires every year in the United States, it is approaching 60 million?

Mr. AMADOR. Correct.

Mr. CONNOLLY. So if we had a 2.8 percent non-compliance rate, for whatever reason, that is a lot of people. That is almost 1.8 million people, is that not correct?

Mr. AMADOR. That is correct.

Mr. CONNOLLY. So it sounds like it is an acceptable statistical margin of error, but it is actually a lot of people denied employment, and when you start with Federal contractors—and I will end on this note, Madam chairman—the problem is it is not just, gee, I could get fined if I get you wrong, so let's put you over there and hopefully you will get your documentation and then we can consider your employment. There may be hundreds of millions of dollars of Federal contracts at stake. You are collateral damage. I haven't got time to wait for verification or the documents to arrive in time.

So I am a little bit worried about that because, with the best of intention moving forward, there are a lot of people who could fall through the cracks purely innocently because of the mail system or the lack of responsiveness by some other bureaucracy somewhere else providing a document, and I hope we are going to monitor that very carefully.

Mr. AMADOR. And the 15 percent that came tentative non-confirmed at Intel, they were all confirmed at the end of the day. But that takes a long time and it takes help from the employer as well.

Mr. CONNOLLY. I thank you.

My time is up, Madam chairman.

Ms. WATSON. Thank you.

Are there other questions?

Mr. BILBRAY. Yes.

Mr. Amador, the percentage that you were talking about, the 4 percent we are playing around with, would you agree that the overwhelming majority of that percentage either do not contest the ruling or are found to be not qualified?

Mr. AMADOR. Most of them do not contest the ruling.

Mr. BILBRAY. Right. Why would they not contest it?

Mr. AMADOR. Well, according to the Government study, they said because they go to another job, it takes too long, and they do something else.

Mr. BILBRAY. In other words, you don't think the majority of noncontestants are people who aren't qualified?

Mr. AMADOR. I am not an expert in that field. That is what the Government is saying, and I will go with what the independent study says.

Mr. BILBRAY. OK, the fact is that we have 1,000 new employees voluntarily going onto a system right now. I don't know, we are sitting at 94 percent efficiency. Can you show a Federal program that you know of that is at that level of efficiency today?

Mr. AMADOR. I am not an expert in other programs.

Mr. BILBRAY. OK.

Ms. MCNEILL. I don't have actual data for a specific data base, but I would say that is a high level of efficiency and accuracy for a Federal Government data base.

Mr. BILBRAY. And let me just say this. We forget about what the old system is. My family has been in the tax business since the year I was born. I guess my mother took one look at me and decided to get in another business than having children, but that is a separate issue.

Look, have you ever experienced a situation where somebody gets your Social Security number and uses it to file, or do you know of anybody that has ever run into the old system where the fraud of illegal use of a Social Security number and the problems that are related to that?

Mr. AMADOR. Excuse me? Sorry, I didn't understand the question.

Mr. BILBRAY. Are you aware of the problems with the old system with the fraud occurring from somebody using someone else's Social Security number and the complications that caused for the innocent bystander whose number has been picked up and used for illegal employment or to avoid detection?

Mr. AMADOR. I am aware that other studies, including the Government's, state that E-Verify is going to make that problem worse because people are going to be looking for real Social Security numbers and names, which is what it does, it matches the number to the name.

Mr. BILBRAY. Let me say the E-Verify, the way we are busting that now is through electronic filing, sir, so it is just the opposite. The trouble is when you get notified that your tax return can't be filed. You are saying that you think E-Verify will cause more fraud in the system than the paper system that we have had for the last 20 years?

Mr. AMADOR. What I am saying is that the Government study that looked at it, and GAO as well, stated that E-Verify promotes more identity fraud because now, instead of just making a Social

Security number on paper and having IDs that look real, you need somebody's actual name and Social Security number; and they are saying that E-Verify is promoting that. Again, Swift, that was raided and they found all these undocumented, they had all been through E-Verify and they all had real names and real Social Security numbers.

Mr. BILBRAY. Do you have a comment to that?

Ms. MCNEILL. Congressman, I think the point to be made is that Mr. Amador is correct that there are problems with identity theft and with off-the-books employment that E-Verify, right now, they are working toward it, but they can't catch that right now.

But that is why I would emphasize that E-Verify is a great tool for document fraud. We should implement it and then we should also followup with things like Social Security no match, enforcement, investigations, and other things that help us squeeze out the process. You know, you stop people first from document fraud, then—eventually, we are going to get to a work force that is——

Mr. BILBRAY. But as the previous witnesses pointed out, this is not in isolation. We have now, online, the real ID bill, so that the base documents will have the electronic capability where an employer now will have more reliable tools to draw on for identification. And won't you agree that——

Mr. AMADOR. We supported——

Mr. BILBRAY [continuing]. A State-issued identification, when it is upgraded to the real ID standard, will help substantially in addressing this issue from an employee's point of view?

Mr. AMADOR. Well, we haven't taken a position on the real ID, so I don't know about the real ID standard.

Mr. BILBRAY. I am not talking about the law itself; I am talking about the application of biometric fraud-resistant documentation to be able to be presented to the employer.

Mr. AMADOR. We have always asked for—first we asked for the list of identification that was accepted on the I–9 to be narrow, because we think it is too broad. We have asked for at least a study on making the Social Security card, which is one of the IDs that are allowed under the current system, to be at least made plastic.

Mr. BILBRAY. Is there a reason, in your opinion, that we, as the Federal Government, have not upgraded the Social Security card since 1937, when it was introduced? And why is the Federal Government Federal identification document for employment a piece of paper with a name and a number, when no other government agency that I know of is using that technology today?

Mr. AMADOR. I guess the view is that it is expensive. That is not our view; we are in favor of updating the Social Security. We would love for the Social Security card to be updated because that is a prime form of identification. I think, from what I have read, the main reason is the cost.

Mr. BILBRAY. I yield back, Madam Chair. Thank you.

Ms. WATSON. If there are no other questions?

Mr. CONNOLLY. Madam chairman.

Ms. WATSON. Yes.

Mr. CONNOLLY. If I might just say to my good friend from California, I do not disagree with him about the benefits of the E-Verify program potentially and really. My concern is that we, as quickly

as we can, identify what could go wrong, though, in anticipation of that so we can manage it and we can address those issues, rather than having a program get very far down the road and very large, only to discover we have all kinds of problems. And I know, like my friend from California, I am always skeptical of anything that has a whiff of being an unfunded mandate, because, having been in local governments, we know the burden that can put on——

Mr. BILBRAY. And I appreciate that, and my biggest concern is the fact that, as somebody who comes from local government, like you, is utilizing those resources in the most cost-effective way and that, rather than having—that is why real ID is so essential; it eliminates the need for citizens to have a Federal ID. If States are upgraded to a minimum Federal standard, you avoid the Federal ID issue.

But the Feds do have an obligation here, as the representative of the Chamber pointed out, that, while everyone else is improving and has evolved, it appears to the public that the Federal Government has a constant strategy of saying we won't upgrade, and the cost issue just evaporates when you look at I don't see that as being the argument used by local governments across this country for upgrading driver's licenses over the years, but the political aspect of it.

And I will just point out that one of the greatest breakthroughs for the consumer in privacy and in efficiency that the IRS has implemented is the E-Filing. It has been such a great breakthrough and it has been one of the greatest helps at early detection of fraud, because, before, somebody could steal your Social Security number, file under your number, and you would never know about it until years later, until you are audited for income that you didn't declare, that you didn't even know, but it got filed.

Today, you are notified within a short period of time. In fact, you can't file your tax return if somebody has filed your number ahead of time; it notifies you, so you get that warning. E-Filing has been a great breakthrough.

I think that this technology is one of those things we need to embrace, we need to improve. We shouldn't accept it as a god, but we darn well want to see it as a great tool that we need and the private sector has gone to. And I will just say this about E-Verify. Visa, since 1970, has handled trillions of transactions, and it is the standard for every citizen that I know of in cash exchanges and everything else. If they have been able to do it since 1970, the Federal Government should be able to transfer numbers and information at least half as efficiency. So I think there is the big challenge we have here.

Thank you very much, and I yield back.

Ms. WATSON. Yes. I would want to thank the panel for your testimony and for the information of our Members. We will have a followup hearing and I would like to invite our witnesses and those in the audience that are vested in E-Verify contact us with ideas of how we can improve. We do have to commit the dollars if we broaden the system and correct any weaknesses in it. That would be a consideration. There was a suggestion at the committee today by Ms. Speier that we find out some way to maybe charge for this service.

Mr. AMADOR. And we oppose that.

Ms. WATSON. You oppose it. The Chamber of Commerce speaking.

And that is not anything that we would say would be factual, but it did come up in the testimony.

So, if there are no further questions, I thank you and you may be excused. We appreciate your testimony and this particular meeting is adjourned.

[Whereupon, at 12 p.m., the subcommittee was adjourned.]

○