

LEGAL WORKFORCE ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

ON

H.R. 1772

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LEGAL WORKFORCE ACT

THURSDAY, MAY 16, 2013

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 10:16 a.m., in room 2141, Rayburn House Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Poe, Smith, King, Jordan, Amodei, Holding, Goodlatte, Lofgren, Jackson Lee, Gutierrez and Garcia.

Staff Present: (Majority) Andrea Loving, Counsel; Graham Owens, Clerk; and (Minority) Tom Jawetz, Counsel.

Mr. GOWDY. We will now move to our legislative hearing on H.R. 1772, the “Legal Workforce Act.”

The Subcommittee on Immigration and Border Security will come to order. Without objection, the Chair is still authorized to declare recesses of the Committee at any time.

We welcome all of our witnesses. I will introduce our witnesses properly here in just a moment, but for now I will recognize myself for a brief opening statement.

Today this Subcommittee holds legislative hearings on bills that can, if implemented, substantially affect U.S. Immigration policy in a positive way. The first hearing is on H.R. 1772, the “Legal Workforce Act,” which requires all U.S. employers to use E-Verify to verify the work eligibility of their employees.

Because the desire for employment is one of the—if not the—largest incentives for illegal immigration to the United States, we must help ensure employers have appropriate and workable tools to verify a legal workforce.

I know Chairman Goodlatte and past-Chairman Smith and others have worked tirelessly on this issue, and I am pleased to yield the remainder of my time to the gentleman from Texas, the past Chairman, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. And I very much appreciate your yielding me your time.

The Legal Workforce Act is bipartisan legislation that shuts off the jobs magnet attracting illegal immigrants to the United States. The bill expands the E-Verify system and makes it mandatory for all U.S. employers. Twenty-three million Americans are unemployed or underemployed. Meanwhile 7 million people are working

in the United States illegally. These jobs should go to American citizens and legal workers.

H.R. 1772 could open up millions of jobs for unemployed Americans by requiring all employers to use E-Verify. The E-Verify system is quick and effective, confirming 99.7 percent of work-eligible employees. Recent data shows that approximately 451,000 American employers voluntarily use E-Verify, and an average of 1,600 new businesses sign up each week. The program is free, quick and easy to use. In fact, this Subcommittee heard testimony in February from the Department of Homeland Security that E-Verify can now be used by smartphones.

You have to show your Social Security number to visit the doctor, go to the bank or buy a home. It makes sense that businesses would use the same identification to ensure they have a legal workforce by checking the legal status of their employees.

The Legal Workforce Act requires that all U.S. employers use E-Verify to check the work eligibility of new hires in the U.S. The verification is phased in depending on the size of the employer's business; up to 2 years, for example, to provide additional time for smaller businesses and agriculture.

H.R. 1772 balances immigration enforcement priorities and legitimate employer concerns. It gives employers a workable system under which they cannot be held liable if they use the system in good faith. The bill prevents the patchwork of State E-Verify laws, but retains the ability of States and localities to condition business licenses on the use of E-Verify. In addition, H.R. 1772 allows States to enforce the Federal E-Verify requirement if the Federal Government fails to do so.

The Legal Workforce Act increases penalties on employers who knowingly violate the requirements of E-Verify, and imposes criminal penalties on employers and employees who engage in or facilitate identity theft.

The bill creates a fully electronic employment eligibility verification system, and it allows employers to voluntarily check their current workforce if done in a nondiscriminatory manner.

Furthermore, the Legal Workforce Act gives USCIS additional tools to help prevent identity theft. For example the bill allows individuals to lock their own Social Security number so that it cannot be used by imposters to verify work eligibility. The legislation also allows parents to lock the Social Security number of their minor child to prevent identity theft, and if a Social Security number shows unusual multiple uses, the Social Security Administration locks the number for employment verification purposes and notifies the owner that their personal information may be compromised.

Studies by Westat on error rates in the cost of E-Verify have been mentioned at prior hearings. That study utilized old data and failed to address the provisions aimed at preventing identity theft that I mentioned above and which are in the bill today.

In regard to cost this Subcommittee heard testimony earlier this year that discredited the study because it amplifies higher numbers by 25 percent by counting internal promotions and transfers. Many of these critics fail to point out that other studies reveal that three-quarters of employers stated that the cost of using E-Verify is zero.

Equally important, the American people support E-Verify. A 2011 Rasmussen poll found that 82 percent of likely voters “think businesses should be required to use the Federal Government’s E-Verify system to determine if a potential employee is in the country legally.”

Unfortunately many States do not enforce their own E-Verify laws, and others only apply E-Verify in a very limited way. The Legal Workforce Act will help ensure that employers from every State are on an equal footing when it comes to hiring employees. This bill is a commonsense approach to deterring illegal workers that could open up millions of jobs for unemployed and underemployed Americans.

Thank you, Mr. Chairman. I yield back.

Mr. GOWDY. I thank the gentlemen from Texas.

The Chair would now recognize the gentlelady from California, the Ranking Member of the Subcommittee, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Few issues have received as much attention before this Subcommittee in recent years as E-Verify. In the last Congress we held three hearings on the electronic employment eligibility verification system, and the Committee marked up the Legal Workforce Act. In this Congress we have already held one hearing on E-Verify and will today examine Congressman Smith’s new version of the Legal Workforce Act.

At the outset let me note that the new version of the bill we are considering today contains several improvements over the version offered in the last Congress, and I want to recognize the bill’s sponsor for responding to some of the concerns raised at that time. For instance, when we marked up the Legal Workforce Act in the 112th Congress, the bill exempted returning seasonal farm workers from having to be verified upon hire. This gigantic loophole came under attack from all sides. From the right it was attacked as amnesty; from the left it was attacked as an admission that E-Verify alone would destroy our agricultural industry and the millions of jobs held by U.S. workers that are supported by that industry. The Committee struck this provision from the bill during markup, and I am glad to see it is omitted from this version.

The bill in the last Congress also created new criminal penalties for unlawful conduct that were excessive and wasteful. In addition to imposing multiple mandatory minimum prison terms, the bill made it a felony punishable by up to 15 years in prison for a person to use a Social Security number that did not belong to him or her during the employment verification process. Although this version of the bill still creates one mandatory minimum prison term, it contains a number of improvements in the criminal provisions pertaining to fraud and misuse of documents.

And finally this version contains some changes designed to make E-Verify a little less unworkable for the Social Security Administration, which obviously serves a number of other critically important functions.

Having said that, today’s bill still contains several of the greatest flaws of the bill we considered in the last Congress. It continues to provide no meaningful due process protections for authorized

workers, including U.S. citizens, who may lose their jobs because of erroneous final nonconfirmations.

The idea that Americans and authorized immigrants will lose their jobs as a result of this bill is not simply theoretical. Although we know that the government continues to work hard to reduce error rates in E-Verify, errors absolutely still exist. Under this bill people would lose their jobs and become effectively unemployable for an indeterminate length of time because of such government errors, and they would have no meaningful recourse.

The bill also provides no penalties at all for employers who violate the requirement that they inform an employee about a tentative nonconfirmation and give that employee an opportunity to contest the ETNC. The absence of any consequence renders the notice requirement completely toothless.

But let me take a step back, because although I welcome the opportunity to discuss how to design an effective and fair E-Verify system, I believe it is clear that we can only do that together with other necessary forums to our broken immigration system.

We could design the best E-Verify system imaginable, a system that is easy to use, 100 percent accurate, and available at virtually no cost to big and small businesses alike. But if we impose that system nationwide and did nothing to fix our immigration system, the consequences would be disastrous.

I won't belabor the point because the issues are so familiar to Members of this Subcommittee, and we have witnesses who are prepared to testify. I will simply say that without top-to-bottom reform of our immigration laws, expanding E-Verify would devastate the agricultural economy, resulting in closed farms, a less secure America, and the mass offshoring of millions of U.S. jobs, including the upstream and downstream jobs that are created and supported by our agricultural industry.

Expanding E-Verify without more would also cost the government significant tax revenues. In 2008, the Congressional Budget Office and the Joint Committee on Taxation concluded that mandatory E-Verify in Representative Health Shuler's SAVE Act would decrease Federal revenues by \$17.3 billion over a 10-year period. Those offices determined that expanding E-Verify in an economy with this significant undocumented workforce and no way to provide for a legal workforce would drive employers and workers off the books and into the underground economy. The end result would be lost tax revenues and depressed wages and working conditions for all workers, including U.S. workers.

I believe firmly that E-Verify must play an important role in helping to fix our immigration system, so I appreciate the proposal by Representative Smith. I thank Chairman Goodlatte and Chairman Gowdy for the opportunity to discuss this today. I think we have further work to do, but I look forward to the testimony of the witnesses, and I yield back.

Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentlelady from California.

The Chair would now recognize the gentlemen from Michigan, the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

This is an important hearing, and we know that everybody's currently focused on the Senate Judiciary's markup of S. 744, and that is why we are encouraged by the ongoing efforts by Members on both sides of the aisle to forge an agreement on an immigration reform bill in the House. That is why the U.S. Chamber of Commerce and AFL-CIO were able to come together to forge an historic agreement regarding a future temporary guestworker proposal. It is why all of the major agricultural producers amazingly, including the American Farm Bureau and United Farm Workers, joined together to back changes to our agricultural guestworker program.

So I agree that we must talk about E-Verify because it will be an important component of comprehensive immigration reform, but when we do so, we need to recognize the dangers that American workers would face if we were to make E-Verify mandatory for all employers without fixing our immigration system. I think it is important whenever we talk about E-Verify to talk about the real-world actualities.

Sometimes we hear people say that E-Verify will help American workers because every time an undocumented immigrant is denied a job, an unemployed American will get hired. That is a simple, an appealing proposition, but is probably not correct. Immigrants often fill critical gaps in our own workforce. Even in this difficult economy, there are entire industries that rely upon undocumented immigrants because there just aren't enough Americans around willing to do the work.

Just look at how mandatory E-Verify would affect agriculture. Fifty to seventy-five percent of farm workers are undocumented. Losing these workers would obviously be devastating. Fruits and vegetables would rot in fields, and American farms would go under, and we would see a mass offshoring of jobs, including millions of upstream and downstream American jobs supported by agriculture.

An earlier witness at a hearing testified that some farms could survive by shifting to different crops. Now, that is really one for the books, crops that are not labor intensive. The majority of all lettuce in this country apparently comes from one county in California. Lettuce farmers may well be able to find a different crop to grow, but let us be clear about what it means. Virtually all our lettuce from now will be imported from another country. The same is true for tomatoes, flowers, strawberries. The list goes on and on.

I look forward to hearing from our distinguished witnesses, and I hope they will comment on some of my observations. We need to understand the strengths and weaknesses of the Smith legislative proposal, and in doing so I hope that they each take some time to talk about whether they think it would be a good or bad thing for America and our workers if Congress made E-Verify mandatory nationwide without simultaneously fixing our broken immigration system.

So we talk about, I conclude, comprehensive reform: One, 11 million people on the path to an earned legal status; two, and most importantly, modernizing the flow of future immigrants so it works for both businesses and families; and three, improved enforcement, including E-Verify, but not on its own.

Thank you, Mr. Chairman for allowing my statement.

Mr. GOWDY. I thank the gentleman from Michigan.

Without objection, all the Members' opening statements will be made part of the record.

[The prepared statement of Mr. Smith follows:]

Prepared Statement of the Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Member, Subcommittee on Immigration and Border Security

The *Legal Workforce Act* is bipartisan legislation that shuts off the jobs magnet attracting illegal immigrants to the United States. The bill expands the E-Verify system and makes it mandatory for all U.S. employers.

Twenty-three million Americans are unemployed or under employed. Meanwhile, seven million people are working in the United States illegally. These jobs should go to American citizens and legal workers.

H.R. 1772 could open up millions of jobs for unemployed Americans by requiring all employers to use E-Verify. The E-Verify system is quick and effective, confirming 99.7% of work-eligible employees. Recent data shows that approximately 451,000 American employers voluntarily use E-Verify and an average of 1,600 new businesses sign up each week.

The program is free, quick and easy to use. In fact, this subcommittee heard testimony in February from the Department of Homeland Security that E-Verify can now be used via smart phones.

You have to show your Social Security Number to visit the doctor, go to the bank, or buy a home. It makes sense that businesses would use the same identification to ensure they have a legal workforce by checking the legal status of their employees.

The *Legal Workforce Act* requires that all U.S. employers use E-Verify to check the work eligibility of new hires in the U.S. The verification is phased-in depending on the size of the employer's business—up to two years to provide additional time for smaller businesses and agriculture.

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Equally important, the American people support E-Verify. A 2011 Rasmussen poll found that 82% of likely voters "think businesses should be required to use the fed-

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This bill is a common sense approach to deterring illegal workers that could open up millions of jobs for unemployed Americans.

[The prepared statement of Ms. Lofgren follows]:

Prepared Statement of the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security

Few issues have received as much attention before this Subcommittee in recent years as E-Verify. Last Congress we held three hearings on the electronic employment eligibility verification system and the Committee marked up the Legal Workforce Act. In this Congress we have already held one hearing on E-Verify and will today examine Rep. Smith’s new version of the Legal Workforce Act.

At the outset, let me note that the version of the bill we are considering today contains several improvements over the version offered in the last Congress and I want to recognize the bill’s sponsor for responding to some of the concerns raised at that time.

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is easy to use, 100% accurate, and available at virtually no cost to big and small businesses alike. But if we imposed that system nationwide and did nothing to fix our broken immigration system the consequences would be disastrous.

I will not belabor the point, because the issues are already so familiar to Members of this Subcommittee and we have witnesses who are prepared to testify. I will say simply that without top-to-bottom reform of our immigration laws, expanding E-Verify would devastate the agricultural economy, resulting in closed farms, a less-secure America, and the mass off-shoring of millions and millions of U.S. jobs, including all of the upstream and downstream jobs that are created and supported by our agriculture industry.

Expanding E-Verify without more would also cost the government significant tax revenues. In 2008, the Congressional Budget Office and the Joint Committee on Taxation concluded that mandatory E-Verify in Rep. Heath Shuler's SAVE Act would decrease federal revenues by \$17.3 billion over a 10-year period. Those offices determined that expanding E-Verify to an economy with a significant undocumented workforce would drive employers and workers off-the-books and into the underground economy.

The end result would be lost tax revenues and depressed wages and working conditions for all workers, including U.S. workers.

I believe firmly that E-Verify must play an important role in helping to fix our immigration system, so I appreciate the proposal by Rep. Smith and I thank Chairman Goodlatte and Chairman Gowdy for the opportunity to discuss this today.

I look forward to the testimony of the witnesses.

[The prepared statement of Mr. Conyers follows:]

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary

At the Judiciary Committee's first hearing in this Congress, we discussed opportunities for legal immigration as well as enforcement of the law against undocumented immigrants. It became clear early on that pretty much everyone on the Committee agreed that our immigration system is broken.

So what can we do to fix it? For years, some people have argued that we only need to enforce the laws that are on the books. Last Congress, we spent more time talking only about expanding E-Verify—three hearings and a Committee markup—than we spent on any other topic. Already in this Congress we have held one hearing on E-Verify, so today's hearing makes it two.

Based on everything I have heard, I am hopeful that we have begun to turn the corner. I believe there is genuine interest in Congress from Members on both sides of the aisle to help us achieve a real solution to our broken immigration system and I look forward to working with Chairman Goodlatte and Chairman Gowdy to get the job done.

So what does a real solution look like? For starters, it means we cannot return to proposals that rely **solely** upon enforcement of our broken system. Let me be clear. No one argues that we should stop enforcing our immigration laws. But enforcement without reform will promote a race to the bottom that only hurts the American worker. If we fix our broken immigration system, however, we can help American workers and grow our economy.

That is why everyone right now is focused on the Senate Judiciary Committee's markup of S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act." And that is why everyone is encouraged by the ongoing efforts by Members on both sides of the aisle to forge an agreement on an immigration reform bill in the House.

That is why the U.S. Chamber of Commerce and the AFL-CIO were able to come together to forge an historic agreement regarding a future temporary guestworker proposal.

That is why all of the major agricultural producers—including the American Farm Bureau—and the United Farmworkers joined together to back changes to our agricultural guestworker programs.

So I agree that we must talk about E-Verify, because it will be an important component of Comprehensive Immigration Reform. But when we do so we need to recognize the dangers that American workers would face if we were to make E-Verify mandatory for all employers without also fixing our immigration system.

I think it is important whenever we talk about E-Verify to talk about the real world. Sometimes we hear people say that E-Verify will help American workers because every time an undocumented immigrant is denied a job, an unemployed American can get hired. That is a pretty simple proposition and I see how appealing it is.

The problem, of course, is that it is completely false. Immigrants often fill critical gaps in our own workforce. Even in this difficult economy, there are entire industries that rely upon undocumented immigrants because there just are not enough Americans willing to do the work.

Just look at how mandatory E-Verify would affect agriculture. 50 to 75% of farm workers are undocumented. Losing those workers would be devastating. Fruits and vegetables would rot in the fields and American farms would go under. And we would see a mass off-shoring of jobs, including the millions of upstream and downstream American jobs supported by agriculture.

One witness testified at a hearing earlier this year that some farms could survive by shifting to different crops. Crops that are not as labor-intensive. But my friend Mr. Darryl Issa explained the problems with that answer.

The majority of all lettuce in this country apparently comes from one county in California. Lettuce farmers may well be able to find a different crop to grow, but let's be clear about what that means. Virtually all of our lettuce from now will be imported from another country. The same is true for tomatoes, flowers, strawberries. The list goes on and on.

I look forward to hearing from our witnesses, because we need to understand the strengths and weaknesses of Rep. Smith's legislative proposal. But in doing so, I hope they each take some time to talk about whether they think it would be a good or a bad thing for America and American workers if Congress made E-Verify mandatory nationwide without simultaneously fixing our broken immigration system.

Mr. GOWDY. We have a distinguished panel of witnesses for which we are all grateful. I will begin by swearing you in, and then I will introduce you en bloc, and then we will recognize each of you for your 5-minute opening statement.

If you would please stand.

[Witnesses sworn.]

Mr. GOWDY. Let the record reflect all witnesses answered in the affirmative. You may be seated.

It is my pleasure to begin by introducing Mr. Angelo Amador. Mr. Amador is vice president of labor and workforce policy with the National Restaurant Association. He advocates on behalf of the National Restaurant Association and its members before the U.S. Congress and the executive branch. Prior to joining the NRA, Mr. Amador served as the executive director in labor, immigration, employment benefits division of U.S. Chamber of Commerce, and was an adjunct professor of law at George Mason University School of Law. He is a graduate Robert H. Smith School of Business at the University of Maryland and obtained a master of arts in international transactions from George Mason University. He earned his J.D. From George Mason University School of Law, graduating cum laude.

Welcome, Mr. Amador.

Ms. Jill Blitstein is testifying today on behalf of the College and University Professional Association for Human Resources. She is currently the international employment manager at North Carolina State University. Her current position involves assisting departments, faculty, and staff with immigration and visa issues, and overseeing the employment eligibility verification process and compliance procedures at NC State University.

Prior to joining NC State, she was a senior associate at the Chicago office of Fragomen, Del Rey, Bernsen & Loewy—and I apologize to your former partners if I messed that up, I am sure I did—from 1997 to 2007. Ms. Blitstein received her law degree from DePaul University College of Law in 1995. I would also like to note that she is a constituent of one of our Subcommittee's Members, the former distinguished U.S. attorney from whichever district that is in North Carolina, Mr. George Holding. Welcome, Ms. Blitstein.

Julie Myers Wood is president of compliance, Federal practice and software solutions at Guidepost Solutions, LLC, an immigration investigation and compliance firm. She served as the Assistant Secretary of DHS Immigration and Customs Enforcement for nearly 3 years. Under her leadership the agency set new enforcement records with respect to immigration enforcement, export enforcement, and intellectual property rights. She earned a bachelor's degree and, along with Brittney Griner, is probably the most famous graduate of Baylor University that I can think of; and earned a J.D. Cum laude from Cornell Law School. Welcome, Ms. Wood.

Mr. Dominick Mondì is executive director of the New Jersey Nursery and Landscaping Association, a trade group representing horticulture industry in the State. Prior to joining the staff, he served on the board of directors of the organization, first of all working for a landscape design/build contractor, Doerler Landscapes, and later while running his own landscape design firm, Mondì Designs. Mr. Mondì serves on the advisory council for landscape industry program at Rutgers University, where he also graduated with a degree in landscape architecture.

I will, now that I have hopefully sufficiently introduced all of you, ask you to indulge me while I recognize our Chairman for his opening statement, and then I promise we will go to you for your opening statement.

The gentleman from Virginia, the Chairman of the Judiciary Committee, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I apologize for being late, and I do have a great interest in this issue and the hearing and our witnesses, so I apologize to them, but I did want to give my opening statement.

I want to thank you and Congressman Smith for your hard work on this legislation.

The future of immigration reform hinges on assuring the American people that our immigration laws will be enforced. In the past Americans were promised tougher enforcement in exchange for the legalization of those unlawfully in the U.S. Succeeding Administrations never kept these promises, and today we are left with a broken immigration system.

One way to make sure we discourage illegal immigration in the future is to prevent unlawful immigrants from getting jobs in the U.S. Requiring the use of E-Verify by all employers across the country will help do just that. The Web-based program is a reliable and fast way for employers to electronically check the work eligibility of newly hired employees. H.R. 1772, the "Legal Workforce Act," builds on E-verify's success and helps ensure the strong enforcement that was promised to the American people many years ago.

The Legal Workforce Act doesn't simply leave enforcement up to the Federal Government; in fact, it actually empowers States to help enforce the law, ensuring that we don't continue the enforcement mistakes of the past where a President can turn off Federal enforcement efforts unilaterally.

Over 450,000 employers are currently signed up to use E-Verify. It is easy for employers to use and is effective. In fact, as USCIS testified in front of this Committee this past February, E-Verify's accuracy rate for confirmation of work eligibility is 99.7 percent.

But the system is not perfect. For instance, in cases of identity theft, when an individual submits stolen identity documents and information, E-Verify may confirm the work eligibility of that individual. This happens because E-Verify uses a Social Security number or alien identification number and certain other corresponding identifying information, such as the name and date of birth of an individual, to determine if the Social Security number or alien identification number associated with that corresponding information is work eligible. Thus, if an individual uses a stolen Social Security number, and the real name corresponding with that Social Security number, a false positive could occur.

The Legal Workforce Act addresses identity theft in several ways. First, it requires notification to employees who submit for E-Verify a Social Security number that shows a pattern of unusual multiple use so the rightful owner of the Social Security number will know that their Social Security number may have been compromised, and once they confirm this, the Department of Homeland Security and the Social Security Administration must lock that Social Security number so no one else can use it for employment-eligibility purposes.

The bill also creates a program through which parents or legal guardians can lock the Social Security numbers of their minor children for work-eligibility purposes. This is to combat the rise in the number of thefts of children's identities.

But there are other changes that should also be made. For instance, in order to help prevent identity theft, the USCIS created and utilizes the photo match tool in which photos from green cards, work authorization documents and passports can be seen during the use of E-Verify in order to help ensure that the person submitting the identity document is, in fact, the person who owns that document. But I recently learned that USCIS materials regarding the use of E-Verify specifically state that a photo displayed in E-Verify should be compared with the photo in the document that the employee has presented and not with the face of the employee. What good is the photo match tool to prevent identity theft if the employer is prohibited from matching the photos to the person sub-

mitting the identity document? This policy is ludicrous, and we will look to address it as this legislation moves forward.

The bill also phases in E-Verify use in 6-month increments beginning with the largest U.S. businesses, raises penalties for employers who don't use E-Verify according to the requirements, allows employers to use E-Verify prior to the date they hired an employee, and provides meaningful safe harbors for employers who use the system in good faith.

H.R. 1772 balances the needs of the American people regarding immigration enforcement with the needs of the business community regarding a fair and workable electronic employment verification system.

I want to continue to work with the business community and other stakeholders to address any additional concerns with the bill. And I am pleased to be an original cosponsor and look forward to the testimony of the witnesses today.

Again, thank you, Mr. Chairman, thank you former Chairman Smith and all who have worked on this legislation, and I yield back the balance of my time.

Mr. GOWDY. I thank the gentlemen from Virginia.

Each of our witnesses' written statements will be entered into the record in its entirety, so I would therefore ask that you summarize your statement within 5 minutes so we can have the benefit of the answers to your questions as well in a timely fashion. To help you stay within that 5-minute time parameter, there is a lighting system in front of you, and the lights mean what they traditionally mean in life: Green is go, yellow means you have a minute left, and red means if you could conclude your thought with all deliberate speed, that would be wonderful.

So with that we would welcome all of you again, and, Mr. Amador, we will start with you for your opening statement.

**TESTIMONY OF ANGELO I. AMADOR, SR., VICE PRESIDENT,
LABOR AND WORKFORCE POLICY, NATIONAL RESTAURANT
ASSOCIATION**

Mr. AMADOR. Thank you. My opening statement, I have prepared oral remarks, but after listening to all of you, I am going to try to take less than my 5 minutes and just address a couple of things.

For over a decade, you know, I have been working with your staff, and with then-Chairman Jackson Lee, and Chairman Smith, Chairman Sensenbrenner, Nolan Rappaport, who was the staffer. George Fishman would remember all these people. A lot of staffers have changed. But we have all worked on an unemployment verification title. So the question, there is really only one issue.

I also want to, before I begin, say that I am honored to be here before Mr. Pierluisi, who may not remember me, but I started my career in D.C. working indirectly under him in his days as attorney general, so it is an honor to be here.

I will use my time instead to say that the only question that seems to be before the Committee and before Congress is whether we should consider an employment verification system being made mandatory by itself, or should it be considered as part of a comprehensive immigration reform package?

When I look at it, you know, and we support pieces of immigration because what we want is our immigration system to be fixed. So just like we supported DACA, which is the Deferred Action for Childhood Arrivals, we support the Legal Workforce Act. And the reason is that in the over decade that I have been working on programs and unemployment verification, with staffers on both sides and with chairmanships from both parties, this is by far the best employment verification mandate that I have seen from the days of the Daschle-Hagel bill in the Senate to the Gang of 8 now.

So what I would say to the Committee, and that is if you don't take anything from the my written testimony and by the testimony of others, is that it is upon you to look at employment verification title and see if you can improve it. And I think that by viewing it by itself, we have had the benefit to be able to negotiate and to look at different pieces without the disruption of talking about a guestworker program, which is also very complicated legalization and all the pieces. But it is imperative that we look at the employment verification title by itself.

And again, the only point I want to make is that from all the bills that I have been able to submit comments and analyze, the Legal Workforce Act is not perfect, but I have not seen any perfect law yet, but is by far the best employment verification mandate. It is simple; it makes accommodations for small businesses, which is something that we have been asking for for years; and it creates one set of rules that would be across the Nation for all employers.

And even though, you know, we talk about 11 million on legalization as one important piece, I would say that this is just as important. This would affect 6 million employers, and this would affect how 160 million people get verified to get work authorizations. So it is very, very important that these pieces get right, and, in our opinion, this is the best starting point moving forward.

Thank you very much.

Mr. GOWDY. Thank you, Mr. Amador.

[The prepared statement of Mr. Amador follows:]



Statement
On behalf of the
National Restaurant Association

ON: H.R. 1772, THE LEGAL WORKFORCE ACT

TO: U.S. HOUSE OF REPRESENTATIVES, JUDICIARY SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

BY: ANGELO I. AMADOR, ESQ.
VICE PRESIDENT, LABOR & WORKFORCE POLICY

DATE: MAY 16, 2013

Statement on: “H.R. 1772, The Legal Workforce Act”
By: Angelo I. Amador
On Behalf of the National Restaurant Association
House Judiciary Subcommittee on Immigration and Border Security
2141 Rayburn House Office Building
May 16, 2013

Good Morning Chairman Gowdy, Ranking Member Lofgren, and distinguished members of the Subcommittee. My name is Angelo Amador and I am the Vice President for Labor and Workforce Policy at the National Restaurant Association.

Thank you for allowing me the opportunity to testify today on behalf of the National Restaurant Association on the Legal Workforce Act, which would create a national E-Verify mandate.

Our Association is the leading business representative for the restaurant and food service industry. The industry is comprised of 998,000 restaurant and foodservice outlets employing 13.1 million people—about ten percent of the U.S. workforce. Restaurants are job creators and the nation’s second-largest private-sector employer. Despite its size, small businesses dominate the industry; even larger chains are often collections of smaller franchised businesses.

For years, the National Restaurant Association has provided input on the best ways to improve the E-Verify program. After reviewing H.R. 1772, the “Legal Workforce Act,” we were pleased to see that our concerns are being taken seriously, while so many other attempts to move forward without careful consideration of the impact of such a mandate on employers could have devastating effects.

As you may know, many of our members and their suppliers have been early adopters of the voluntary E-Verify program—some owners have been requiring the use of E-Verify by their operations as early as 2006. The National Restaurant Association is also a user of E-Verify. Our members that use the program, and the head of Human Resources at the National Restaurant Association, have found E-Verify to be both cost effective and fast in helping guarantee a legally authorized workforce.

For businesses across the country, particularly small businesses, it is imperative that any mandated E-Verify program be successful, efficient, and cost-effective within their own administrative structure. A federal E-Verify mandate would have an impact on the day-to-day activities, obligations, responsibilities, and exposure to liability of all restaurants, regardless of size.

To be clear, the Association believes that designing an employment authorization verification system is indeed, unequivocally, a federal role. Actions by 50 different states and numerous local governments in passing employment verification laws create an untenable system for employers and their prospective employees.

I would like to outline some improvements that the federal E-Verify program should have to gain broad support within our industry and compare those potential improvements to the version of the Legal Workforce Act we were able to review. Before addressing the specifics, I would like to highlight a recently released National Restaurant Association/ImmigrationWorks USA survey on E-Verify with first-hand accounts on why employers use or do not use the program. Respondents included restaurant owners and operators, non-restaurant foodservice operators and supply chain professionals.

E-VERIFY SURVEY RESULTS

The survey yielded over 789 responses from a wide range of members in our industry. It is attached to my testimony, so it can become part of the record. Among all restaurant owners and operators, 23 percent told surveyors they currently use E-Verify to check the immigration status of new hires. Among corporate-owned restaurants, a full 49 percent are enrolled in the system.

Of those using the program, it is significant that eighty percent of restaurant operators who use E-Verify would recommend it to a colleague. Two-thirds of the responding restaurant operators who use E-Verify enrolled voluntarily. Twenty-seven percent enrolled because it is mandated in states where they do business and 2 percent use E-Verify because they do business with the federal government.

Of those not using the program, sixty-two percent of the restaurant operators who are not using E-Verify said they did not enroll because they are small companies with no Human Resources professionals. This is why we are calling on changes as part of a broad national mandate that simplifies the current two-step E-Verify process and the need for internet access and a computer.

Finally, the vast majority of restaurant operators that use E-Verify said the system is accurate. Seventy-nine percent of restaurant operators said the E-Verify system has been 100 percent accurate, as far as they know. Across each of the demographic categories, a solid majority of restaurant operators said the E-Verify system has been 100 percent accurate, to the best of their knowledge, but we understand there will be errors and we need ways to deal with them.

A WORD OF CAUTION

Back in 1986, businesses supported the first employer-run employment authorization verification system, which is what we have now. Some argue that the current "I-9" mandatory employment verification program was supported by business 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 is nonsensical given that most undocumented workers were legalized in the same legislation that created the current mandatory employment verification system.

I have seen similar arguments raised against our continued support for an improved federally-mandated E-Verify system. 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.

THERE SHOULD BE ONE LAW OF THE LAND

The current federal employment verification system is clearly in need of an overhaul. Out of frustration, 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. A new federal E-Verify mandate must address this issue specifically, so employers will know with certainty what their responsibilities are under employment verification laws regardless of where they are located.

Under the Legal Workforce Act, as we understand it, states and localities are preempted from legislating different requirements or imposing additional penalties, but they may enforce the federal law and revoke a business license for failure to participate in the program, as required under federal law. While we might prefer blanket preemption, we understand the need to reach a balance.

SPECIAL CONSIDERATIONS FOR SMALL BUSINESSES MUST BE MADE

Smaller employers do not have universal access to high speed internet connections, are less likely to have Human Resources or Legal staff, and, in our industry, management does not work at a desk or behind a computer all day. In fact, even some well-known restaurant brands are composed of a collection of small franchisees that may or may not even have a copier at the restaurant location.

Thus, we are glad to see that the Legal Workforce Act calls for the creation of a toll-free telephonic option for doing E-Verify inquiries and allows, but does not mandate, the copying of additional documents. Unlike the current E-Verify, the mandate found in the Legal Workforce Act would permit a small restaurant to start using the program without the need to buy any new equipment or signing up for high-speed internet access.

ENFORCEMENT PROVISIONS MUST BE FAIR

Full and fair enforcement of an improved E-Verify system should protect employers acting in good faith. Businesses are overregulated and piling on fines and other penalties for even small paperwork errors is not the answer. The Legal Workforce Act states that an employer cannot be held liable for good-faith reliance on information provided through the E-Verify system.

Under the Legal Workforce Act, as we understand it, employers would also be given at least 30 days to rectify errors. While the language in the legislation in this area may need

some further clarification, it is certainly a step in the right direction. Any opportunity to rectify errors would protect employers that are doing their very best to comply in good faith with the myriad of federal regulations from unnecessary litigation.

NO EXEMPTIONS, BUT A REASONABLE ROLL-OUT OF E-VERIFY IS ENCOURAGED

To maintain an equal playing field, the Association believes an E-Verify mandate should be applicable to all employers in our industry. However, we understand that small businesses may need more time to adapt. Thus, we are encouraged by the Legal Workforce Act tiered approach for rolling out E-Verify, starting with employers having more than 10,000 employees.

We continue to welcome the provision that allows the Secretary of Homeland Security the ability to extend each deadline by six months. However, even more important, the program needs adequate resources, both with regard to funding and staffing, if it is to increase from less than 300,000 enrolled employers to over six million in two years. The Association's current users have integrated E-Verify into their hiring practices and disruption because the system is overwhelmed would interrupt their operations in a critical manner.

VERIFICATION OF POTENTIAL HIRES

There is a good tool that employers should be allowed to use that is unavailable under the current E-Verify framework. Currently, employers are not allowed to pre-verify, prior to hire. In other words, while an employer can check references, conduct drug tests, and background checks, before an individual is officially hired, the work authorization does not take place until the employee is officially on the books.

Employers should be given authority to check work authorization status as early as possible and allow the employee to start working with the government to fix any discrepancies before they show up for their first day of work. Thus, we support the provision that allows verification when an offer of employment is extended and making that offer conditioned on final verification of the identity and employment eligibility of the employee.

A few years ago, a restaurant owner from Arizona testified that in over fourteen percent (14%) of their queries, the initial response was something other than "employment authorized." When the initial response from E-Verify is something other than "employment authorized," and the employee has already been hired as mandated in current law, there are additional costs to the employer. Federal law requires that the employer continue to treat the employee as fully authorized to work during the time that the tentative nonconfirmation is being contested.

This means the employer cannot suspend the employee or even limit the hours or the training for the employee. Someone must monitor any unresolved E-Verify queries on a daily basis to make sure that employee responses are being made in a timely manner.

Under current regulations, if an employee contests the tentative nonconfirmation, but does not return with a referral letter, the employer must re-check that employee's work authorization after the tenth federal work day from the date that the referral letter was issued.

Some restaurants are fortunate to have the staff to deal with these issues and allow for redundancy and backup. For smaller operations that do not have that luxury, the burdens are greater.

VOLUNTARY REVERIFICATION SHOULD BE ALLOWED

The Association supports the inclusion of a strictly voluntary reverification provision, but objects to mandatory reverification provisions of the entire workforce. While some small size restaurants may not mind reverifying their workforce, all large-size operations—even those currently using E-Verify—that have contacted the Association list a mandatory reverification requirement as their number one concern.

For the industry's workforce, a restaurant is an employer of choice because they can take advantage of the flexible scheduling we offer, work only during school breaks or move between employers often. The nature of the restaurant business is such that it produces a great amount of movement of the workforce below management level, meaning that a mandatory requirement, in addition to being expensive, would also be redundant.

One of the Association's foremost concerns is to ensure that any new E-Verify mandate does not become too costly or burdensome for our members. Existing employees have already been verified under the applicable legal procedures in place when they were hired.

For those same reasons, the Association continues to oppose not allowing verification of only some workers for good cause. Triggering a reverification requirement for the entire workforce because one employee is reverified, as it currently appears in H.R. 1772, would discourage any reverification because of the cost and time required to conduct such an undertaking. Furthermore, it creates potential liability for a well-meaning employer trying to make sure that his workforce is legally authorized to work, if he reverifies workers with good reason, but still fails to reverify "all individuals so employed."

ROLE OF BIOMETRIC DOCUMENTS IN E-VERIFY

One of the main flaws in the current E-Verify system 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 the current E-Verify system.

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).

H.R. 1772 follows the latter approach with a voluntary biometric program available to employers. Also, with fewer acceptable work authorization documents, as is the case with H.R. 1772, the issue of identity theft is also readily addressed.

AN E-VERIFY CHECK NEEDS TO HAVE AN END DATE

The employer needs to be able to affirmatively rely on the responses to inquiries into the E-Verify system. Either a response informs the employer that the employee is authorized and can be hired or retained, or that the employee cannot be hired or 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.

The Association appreciates that, as we understand it, ten days, or twenty under special circumstances, after the initial inquiry there will be a final response for those that do not come back as work authorized during the initial inquiry. 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. Employers cannot wait months for a final determination of whether they need to terminate an employee.

LIABILITY STANDARDS AND PENALTIES SHOULD BE PROPORTIONATE

The Association agrees that employers who knowingly employ unauthorized aliens ought to be prosecuted under the law. The current "knowing" legal standard, also found in the Legal Workforce Act, 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.

Penalties should not be inflexible, and we would urge you to incorporate statutory language that allows enforcement agencies to mitigate penalties based on size of employer and good faith efforts to comply, rather than tying them to a specific, non-negotiable, dollar amount.

THE GOVERNMENT SHOULD ALSO BE HELD ACCOUNTABLE FOR E-VERIFY

The Association objects to the expansion of antidiscrimination provisions beyond what is 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. However, we understand that those wrongfully harmed by the system should have some mechanism to seek relief.

Thus, we support the Legal Workforce Act provision to allow those wrongfully harmed to seek relief under the Federal Torts Claims Act (FTCA). The government must be held accountable for the proper administration of E-Verify. FTCA provides a fair judicial review process that would allow workers to seek relief.

AN E-VERIFY MANDATE SHOULD NOT MEAN ADDITIONAL COSTS FOR EMPLOYERS

The federal government 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 a mandatory document retention requirement, other than the form where employers record the authorization code for the employees they hire. Keeping copies of official documents in someone’s desk drawer increases the likelihood of identity theft.

The Association supports the Legal Workforce Act provision that keeps the requirements as in current law, where 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 fact that the information in these documents will now be run through the E-Verify program makes the need for making copies of these documents unnecessary.

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.

The Association is encouraged by the Legal Workforce Act's emphasis on keeping it simple—a workable, national E-Verify system, nothing more, nothing less.

PARTICIPATION LOOPHOLES IN THE SYSTEM SHOULD BE CLOSED

Part of a government effort to roll out E-Verify to all employers should be closing loopholes for unauthorized workers to get into the employment system. The Association is glad that the Legal Workforce Act, as we understand it, requires state workforce agencies and labor union hiring halls to clear through E-Verify all workers whom they refer to employers.

For employers who receive workers through any of these venues, finding out that the worker is unauthorized after they are on the jobsite creates additional problems in addition to having to go find another worker. For example, with regard to hiring halls, it may also create problems with the labor union, depending on contract requirements. If any of these venues are going to refer workers to employers, they should ensure that those workers are work authorized before they do so.

LEGALIZATION AND LEGAL IMMIGRATION WILL STILL BE NEEDED

Finally, while this hearing is on employment verification, we must not forget that other pieces of our immigration system are also broken. We are committed to working with you on the difficult task of fixing our nation's broken immigration laws over the long haul, which needs to include legalization of a significant portion of the undocumented workforce.

We must also not forget that foreign born workers are an essential part of the restaurant industry's strength—complementing, not substituting, our American workforce. In general, historical immigration policies have brought vigor to the U.S. economy, as immigration creates growth and prosperity for the country as a whole.

Historically, teenagers and young adults made up the bulk of the restaurant industry workforce, as nearly half of all restaurant industry employees were under the age of 25. Over the last several decades, this key labor pool steadily declined as a proportion of the total labor force. According to data from the Bureau of Labor Statistics, the 16- to 24-year-old age group represented 24 percent of the total U.S. labor force in 1978, its highest level on record. However, by 2008, 16-to-24-year-olds represented only 14 percent of the labor force, and is projected to shrink to only 13 percent by 2018.

The predictions in demographic shifts tell us that we will also need to create a legal channel for employers in the service sectors, such as restaurants, to bring other than seasonal workers in a legal and orderly fashion. History tells us that when our economy picks up again, we will need those workers.

IN SUMMARY, THE LEGAL WORKFORCE ACT SHOWS THAT THERE IS LEADERSHIP IN WASHINGTON

It would have been easy to ignore the real concerns of the business community with a national E-Verify mandate and simply pass a law requiring its use. It is harder to pass a responsible E-Verify mandate that accommodates the different needs of the close to eight million employers in the U.S., which are extremely different in both size and levels of sophistication.

In the National Restaurant Association's opinion, notwithstanding the few changes and clarifications needed, the Legal Workforce Act reaches the right balance—a broad federal E-Verify mandate that is both fast and workable for businesses of every size under practical real world working conditions. Without the assurances and improvements to the E-Verify system found in the Legal Workforce Act, it should not be imposed on businesses.

I want to thank you for seeking our input and urge you to continue to engage the business community to create a workable E-Verify program for all employers, regardless of location, that accommodates their different needs. The National Restaurant Association stands ready to continue assisting in the process of tweaking and, then, moving the Legal Workforce Act forward.

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



2012 E-Verify Survey
Summary of Results

April 2013



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Executive Summary

In October 2012, the National Restaurant Association and ImmigrationWorks USA conducted a survey on E-Verify. Respondents included restaurant owners and operators, non-restaurant foodservice operators and supply chain professionals. The online survey fielded 789 responses.

Here are some key findings.

- **E-Verify usage.** Among all restaurant owners and operators, 23 percent told surveyors they currently use E-Verify to check the immigration status of new hires. Among corporate-owned restaurants, a full 49 percent are enrolled in the system.
- **Most would recommend it.** Eighty percent of restaurant operators who use E-Verify would recommend it to a colleague.
- **Reasons for enrolling.** Two-thirds of the responding restaurant operators who use E-Verify enrolled voluntarily. Twenty-seven percent enrolled because it is mandated in states where they do business. And 2 percent use E-Verify because they do business with the federal government.
- **Reasons for not enrolling.** Sixty-two percent of the restaurant operators who are not using E-Verify said they didn't enroll because they are small companies with no HR professionals.
- **Accuracy.** Seventy-nine percent of restaurant operators said the E-Verify system had been 100 percent accurate.
- **Changes to hiring procedures.** Most of the restaurant operators who use E-Verify said the program didn't cause major changes to their hiring or other procedures. Seventy-three percent said they made only minor changes to their hiring procedures.
- **Pool of applicants.** Fifty-five percent of the restaurant operators who use E-Verify said the pool of applicants seeking employment in their businesses hasn't changed since they started using the system. Thirty-four percent said the pool of applicants has changed somewhat. And 11 percent said it has changed significantly.

Introduction

This report presents the findings of the E-Verify Survey, which was fielded in October 2012 among restaurant owners and operators, non-restaurant foodservice operators, and supply chain professionals. The survey was fielded online, and a total of 789 responses were received.

E-Verify Usage

- Overall, 23 percent of responding restaurant operators said they currently use E-Verify to check the immigration status of their new hires. Sixty-one percent said they don't use E-Verify.
- Forty-nine percent of corporate-owned chain respondents said they currently use E-Verify, well above the usage among their franchisee (24%) and independent (20%) counterparts.
- Respondents with large staffs are much more likely to use E-Verify. Fifty-three percent of respondents with 1,000 or more employees said they use E-Verify, compared with just 15 percent of respondents with fewer than 50 employees.
- Respondents from businesses with higher annual sales volume were also much more likely than lower volume businesses to say they use E-Verify.
- Operators of non-restaurant foodservice operations (18%) and individuals from supply chain companies (9%) are less likely than restaurant operators to say they use E-Verify.

Do you currently use E-Verify to check the immigration status of your new hires?

	Yes	No	Don't Know
All Restaurants	23%	61%	16%
Industry Segment			
Fullservice	32%	63%	15%
Quickservice	25%	57%	17%
Ownership Category			
Independent	20%	66%	14%
Franchisee	24%	61%	15%
Corporate-Owned Chain	49%	22%	29%
Number of Employees			
fewer than 50	15%	72%	13%
50 to 99	28%	64%	9%
100 to 499	28%	46%	26%
500 to 999	35%	48%	17%
1,000 or more	53%	24%	24%
Annual Sales Volume			
Less than \$1 million	10%	80%	10%
\$1 million to \$4.9 million	22%	64%	15%
\$5 million to \$9.9 million	25%	53%	22%
\$10 million to \$19.9 million	41%	38%	22%
\$20 million or more	45%	31%	24%
Non-Restaurant Foodservice Operations	18%	49%	33%
Supply Chain Companies	9%	35%	56%

Number of Years Using E-Verify

- Of the responding restaurant operators who said they currently use E-Verify, they have used it for a median of 2 years
- For each demographic category of restaurants listed in the chart below, respondents have used E-Verify for a median of 2 or 3 years
- Operators of non-restaurant foodservice operations have used E-Verify for a median of 3 years while supply chain companies that use E-Verify have used it for a median of 2 years.

How many years have you been using the E-Verify program?

	Median Number of Years
All Restaurants	2
Industry Segment	
Fullservice	3
Quickservice	2
Ownership Category	
Independent	2
Franchisee	2
Corporate-Owned Chain	2
Number of Employees	
Fewer than 50	2
50 to 99	3
100 to 499	2
500 to 999	3
1,000 or more	3
Annual Sales Volume	
Less than \$1 million	2
\$1 million to \$4.9 million	2
\$5 million to \$9.9 million	2
\$10 million to \$19.9 million	3
\$20 million or more	2
Non-Restaurant Foodservice Operations*	3
Supply Chain Companies*	2

*Based on small sample size

Reasons for Enrolling in E-Verify

- Of the responding restaurant operators who said they currently use E-Verify, 66 percent said they enrolled voluntarily. Twenty-seven percent said they enrolled because it is mandated in states where they do business, while 2 percent enrolled because they do business with the federal government.
- Fullservice operators (72%) were more likely than quickservice operators (58%) to say they enrolled in E-Verify voluntarily. Quickservice operators (35%) were more likely than fullservice operators (21%) to say it is mandated in the states where they have operations.
- Franchisees (41%) were much more likely than independent operators (27%) and corporate-owned chain operators (8%) to say they enrolled in E-Verify because it is mandated in states where they do business. Eighty-three percent of chain operators said they enrolled voluntarily.

Why did you enroll in the E-Verify program?

	Voluntary Enrollment	Mandated in States of Operation	Company Does Business With Federal Government
All Restaurants	66%	27%	2%
Industry Segment			
Fullservice	72%	21%	3%
Quickservice	58%	35%	0%
Ownership Category			
Independent	65%	27%	3%
Franchisee	56%	41%	0%
Corporate-Owned Chain	83%	8%	0%
Number of Employees			
Fewer than 50	58%	33%	0%
50 to 99	64%	27%	9%
100 to 499	83%	17%	0%
500 to 999	75%	25%	0%
1,000 or more	65%	26%	0%
Annual Sales Volume			
Less than \$1 million	60%	27%	0%
\$1 million to \$4.9 million	61%	30%	4%
\$5 million to \$9.9 million	77%	23%	0%
\$10 million to \$19.9 million	92%	8%	0%
\$20 million or more	67%	28%	0%
Non-Restaurant Foodservice Operations*	29%	7%	50%
Supply Chain Companies*	50%	0%	50%

*Based on small sample size

Changes to Hiring Procedures

- In general, most restaurant operators that use E-Verify said it didn't cause major changes to their hiring or other procedures when they first started using the program. Seventy-three percent said they only made minor changes to their hiring procedures, and that it was not a major problem.
- In contrast, only 9 percent of operators said it was more disruptive than they anticipated, and that they had to make extensive changes to their procedures. Seventeen percent said they made significant changes to their hiring or procedures, but that was to be expected.
- Across each of the demographic categories, a majority of restaurant operators that use E-Verify said they only made minor changes to their hiring procedures when they first started using the program.

To what extent did you make changes in hiring or other procedures when you first started using the E-Verify program?

	Extensive changes: More disruptive than anticipated	Significant changes: That is to be expected	Only minor changes: Was not a major problem
All Restaurants	9%	17%	73%
Industry Segment			
Fullservice	9%	15%	76%
Quickservice	9%	21%	70%
Ownership Category			
Independent	9%	19%	72%
Franchisee	15%	9%	76%
Corporate-Owned Chain	0%	25%	75%
Number of Employees			
Fewer than 50	13%	11%	77%
50 to 99	5%	14%	82%
100 to 499	8%	21%	71%
500 to 999	14%	14%	71%
1,000 or more	6%	29%	65%
Annual Sales Volume			
Less than \$1 million	7%	13%	80%
\$1 million to \$4.9 million	13%	11%	75%
\$5 million to \$9.9 million	0%	38%	62%
\$10 million to \$19.9 million	8%	23%	69%
\$20 million or more	6%	20%	71%
Non-Restaurant Foodservice Operations*	0%	29%	71%
Supply Chain Companies*	0%	25%	75%

*Based on small sample size

Changes to Hiring Procedures (cont.)

Survey respondents were given the opportunity to include additional comments on changes to hiring procedures when they first started using the E-Verify program. Verbatim responses are below.

Extensive changes. It was more disruptive than anticipated.

- Frustration at the time it took to verify new staff
- Started using human resources software.

Significant changes. But that is to be expected.

- Went to electronic I-9.
- It was more difficult to hire kitchen help.

Only minor changes. It was not a major problem.

- We grandfathered the existing staff, chose a date, and implemented E-Verify for all new hires going forward.
- Had to develop and utilize a system for faster notification of new hires.
- Not a big deal.
- We have an HR department who streamlined the process.
- Simply added a few extra steps in the hiring process.

Accuracy of E-Verify System

- The vast majority of restaurant operators that use E-Verify said the system is accurate. Seventy-nine percent of restaurant operators said the E-Verify system has been 100 percent accurate, as far as they know.
- Seventeen percent of restaurant operators said there have been some errors in the E-Verify system, while 4 percent said it has been frequently inaccurate.
- Across each of the demographic categories, a solid majority of restaurant operators said the E-Verify system has been 100 percent accurate, to the best of their knowledge.

Do you find the E-Verify system is generally accurate?

	As far as I know, it has been 100 percent	There have been some errors	It has been frequently inaccurate
All Restaurants	79%	17%	4%
Industry Segment			
Fullservice	77%	16%	7%
Quickservice	81%	19%	0%
Ownership Category			
Independent	80%	14%	5%
Franchisee	78%	22%	0%
Corporate-Owned Chain	75%	21%	4%
Number of Employees			
Fewer than 50	79%	13%	6%
50 to 99	90%	5%	5%
100 to 499	71%	20%	0%
500 to 999	88%	13%	0%
1,000 or more	74%	23%	3%
Annual Sales Volume			
Less than \$1 million	73%	20%	7%
\$1 million to \$4.9 million	83%	12%	6%
\$5 million to \$9.9 million	69%	31%	0%
\$10 million to \$19.9 million	77%	23%	0%
\$20 million or more	78%	19%	3%
Non-Restaurant Foodservice Operations*	86%	7%	7%
Supply Chain Companies*	25%	75%	0%

*Based on small sample size

Changes in Pool of Applicants

- Fifty-five percent of restaurant operators that use E-Verify said the pool of applicants seeking employment in their business hasn't changed at all since they started using the system. Thirty-four percent said the pool of applicants has changed somewhat, while 11 percent said it has changed significantly.
- Restaurant operators with larger staffs were much more likely to say their pool of applicants has changed since they started using E-Verify. Roughly 1 out of 4 operators with 500 or more employees said their applicant pool has changed significantly, compared with about 1 out of 20 operators with fewer than 100 employees.
- Operators of larger restaurant businesses were much more likely than smaller operators to say their labor pool has changed as a result of using E-Verify. Twenty-two percent of operators with sales of \$20 million or more said their applicant pool has changed significantly, while no operators with sales under \$1 million reported similarly.

Has the pool of applicants seeking employment in your business changed since you started using the E-Verify system?

	Pool of applicants has changed significantly	Pool of applicants has changed somewhat	Pool of applicants hasn't changed at all
All Restaurants	11%	34%	55%
Industry Segment			
Fullservice	8%	35%	57%
Quickservice	16%	33%	52%
Ownership Category			
Independent	8%	32%	61%
Franchisee	18%	27%	55%
Corporate-Owned Chain	13%	50%	38%
Number of Employees			
Fewer than 50	4%	23%	72%
50 to 99	5%	41%	55%
100 to 499	13%	33%	54%
500 to 999	25%	50%	25%
1,000 or more	23%	42%	35%
Annual Sales Volume			
Less than \$1 million	0%	27%	73%
\$1 million to \$4.9 million	8%	25%	68%
\$5 million to \$9.9 million	8%	62%	31%
\$10 million to \$19.9 million	15%	31%	54%
\$20 million or more	22%	42%	36%
Non-Restaurant Foodservice Operations*	14%	36%	50%
Supply Chain Companies*	0%	50%	50%

*Based on small sample size

Changes in Pool of Applicants (cont.)

Survey respondents were given the opportunity to include additional comments on the changes to their pool of applicants. Verbatim responses are below.

Pool of applicants has changed significantly.

- Fewer applicants.

Pool of applicants has changed somewhat.

- Smaller pool of candidates.
- Fewer minority applicants.
- We tell applicants that numbers will be checked.
- Less kitchen help.

Difficult Features or Burdensome Requirements of E-Verify

Survey respondents were asked if there some features of the E-Verify program that they find particularly difficult to use, or if there are some requirements that they find particularly burdensome. Verbatim responses are below.

- Requirement is done in three days. Can be difficult with central office and weekends and seasonal hiring.
- If an applicant comes up non-qualified for work, you must continue to employ them for several weeks to give them time to clear up the problem. That's a burdensome cost of training for which there is no return.
- You cannot E-Verify current employees (hired prior to instituting use of the program).
- I don't like to have to retrain periodically and reset my password every three months.
- We use a third party vendor rather than directly using the government's E-Verify program. It is much more user friendly and this way our I-9 forms are entered electronically so we don't have to worry about errors.
- None whatsoever. It's reliable and no one who is rejected ever claims it to be a mistake.
- Sometimes the system is down and you do not get an immediate response.
- Public response is more challenging than expected.
- Getting set up takes time - if person does not fully read documents and instructions - will not be approved to use.
- It can be a challenge with international student staff but not insurmountable.

Would you recommend E-Verify to a colleague?

- Eighty percent of restaurant operators that currently use E-Verify said they would recommend it to a colleague.
- A solid majority of restaurant operators across each of the demographic categories said they would recommend E-Verify to a colleague.

Would you recommend E-Verify to a colleague?

	Yes	No
All Restaurants	80%	20%
Industry Segment		
Fullservice	78%	22%
Quickservice	83%	17%
Ownership Category		
Independent	82%	18%
Franchisee	74%	26%
Corporate-Owned Chain	83%	17%
Number of Employees		
Fewer than 50	80%	20%
50 to 99	90%	10%
100 to 499	78%	22%
500 to 999	71%	29%
1,000 or more	77%	23%
Annual Sales Volume		
Less than \$1 million	79%	21%
\$1 million to \$4.9 million	82%	18%
\$5 million to \$9.9 million	77%	23%
\$10 million to \$19.9 million	92%	8%
\$20 million or more	74%	26%
Non-Restaurant Foodservice Operations*	100%	0%
Supply Chain Companies*	100%	0%

**Based on small sample size*

Would you recommend E-Verify to a colleague? (cont.)

Survey respondents were given the opportunity to include additional comments on whether or not they would recommend E-Verify to a colleague. Verbatim responses are below.

Yes, would recommend E-Verify to a colleague.

- Easy, and eliminates guessing.
- As long as they used the vendor we partnered with.
- Ok to use.
- No other choice; it's a necessity.
- I like the system with a few exceptions as it gives me piece of mind, especially here in Arizona where we have an Employer Sanction Law.
- It's the right thing to do because identity theft is a problem and we should take a stand against it.
- I believe it should be mandatory in all 50 states.
- Protects us in following the law.
- Will be an industry-wide requirement soon.
- Safety.
- The system will eliminate liability of the business in regards to undocumented workers.
- It's a must to move toward fixing immigration issues.

No, would not recommend E-Verify to a colleague.

- Hassel factor.
- If you don't have to add to admin work, then don't. Wouldn't give government any more reasons to audit your biz.

Reasons for Not Enrolling in E-Verify

- Of the restaurant operators who are not currently using E-Verify, 62 percent said they choose not to enroll because they are a small company with no HR professional. Fifty percent of operators said they see no need to enroll in E-Verify.
- Restaurant operators from larger businesses were more likely to say they are concerned about a disruptive transition. Fifty percent of operators with 1,000 or more employees and 38 percent of operators with annual sales of \$20 million or more said they are hesitate to enroll because they are concerned about a disruptive transition.

If you are not using E-Verify, why do you hesitate to enroll? (check all that apply)

	I see no need to enroll	I am a small company with no HR professional	I am concerned about a disruptive transition	I am concerned about likely changes in the applicant pool
All Restaurants	50%	62%	9%	9%
Industry Segment				
Fullservice	51%	61%	9%	11%
Quickservice	49%	64%	10%	7%
Ownership Category				
Independent	52%	62%	8%	8%
Franchisee	45%	66%	11%	15%
Corporate-Owned Chain	44%	22%	53%	0%
Number of Employees				
Fewer than 50	49%	68%	4%	6%
50 to 99	48%	63%	15%	15%
100 to 499	62%	47%	15%	18%
500 to 999	56%	33%	11%	11%
1,000 or more	43%	21%	50%	14%
Annual Sales Volume				
Less than \$1 million	51%	60%	4%	5%
\$1 million to \$4.9 million	48%	65%	7%	10%
\$5 million to \$9.9 million	50%	54%	21%	15%
\$10 million to \$19.9 million	64%	45%	0%	27%
\$20 million or more	52%	19%	38%	14%
Non-Restaurant Foodservice Operations*	53%	50%	0%	6%
Supply Chain Companies*	43%	50%	0%	7%

*Based on small sample size.

Reasons for Not Enrolling in E-Verify (cont.)

Survey respondents were given the opportunity to include additional comments on why they are hesitant to enroll in E-Verify. Verbatim responses are below.

I see no need.

- I have a payroll company who does our new hire checks.
- We feel we meet government requirements by making copies of valid driver's licenses and social security cards that become part of each new employee's personnel file.
- We collect proper identification required by the I-9 form upon hire.
- Not mandatory. Paper seems to do fine. Do not want to spend all time in front of a computer.

I am a small company with no HR professional.

- Family run restaurant.
- We have just begun to look into this and will likely begin using it soon.
- We are a very small restaurant and are able to handle the number of employees by using their driver's license and SS card.
- Very slow turnover. Therefore not much hiring.
- Very small family business, very few employees.
- The site disclaimer basically states that I cannot deny a person employment if the E-Verify comes back questioning the information and I cannot dismiss an employee either, so what is the advantage in duplicating the verification? I-9 and/or E-Verify. I feel I should have to do one, but not both.
- Owners are doing all they can just to keep the business open, no extra time for government paperwork.

I am concerned about a disruptive transition.

- There are enormous requirements for employment already. Our orientations take over two hours now.

I am concerned about likely changes in the applicant pool.

- I see it as a deterrent to employment.
- E-Verify rules are onerous.
- Small business should not be doing more of the government work. We already are responsible for too many things and with Obama Care on the way our ever shrinking margins will be under tremendous pressure.

Mr. GOWDY. Ms. Blitstein.

TESTIMONY OF JILL G. BLITSTEIN, INTERNATIONAL EMPLOYMENT MANAGER, HUMAN RESOURCES, NORTH CAROLINA STATE UNIVERSITY

Ms. BLITSTEIN. Chairman Gowdy, Ranking Member Lofgren, and honorable Members of the Subcommittee, thank you for this oppor-

tunity to appear before you today to express support for the Legal Workforce Act. I am the international employment manager at North Carolina State University. NC State is an active member of the College and University Professional Association for Human Resources. CUPA-HR represents more than 1,900 institutions of higher education, 44 percent of which are public. I am speaking today on behalf of CUPA-HR.

My institution has been using E-Verify since January 1 of 2007, when it was mandated by the State of North Carolina for all public employers and the university system. I have responsibility for the institution's I-9 and E-Verify process.

With more than 8,000 regular employees and almost 8,000 more student workers and temporary employees during the academic year, including many foreign nationals, NC State's use of the E-Verify process is substantial. I speak to you today as someone who has experienced the positive effects of this program and found most aspects of it to be administratively manageable, as well as someone who might offer some informed suggestions as to its implementation by other employers.

CUPA-HR supports the majority of provisions within the act as being positive for both employers and employees. For example, we support the reduction in the number of documents acceptable to prove identity and work authorization, we support recognition of good-faith compliance, and we especially support the act's clear preemption of any State or local law on employment verification.

NC State has not experienced the worst-case E-Verify scenarios that were circulating several years ago, and in the 6 years that we have been managing this process, we experienced only a handful of cases in which a new hire could not present valid documentation or be cleared through the E-Verify process. So we believe that process works as intended.

That said, based on our direct experience, we do have some concerns about the proposed time frames for compliance. The act would require that within 6 months, all Federal, State and local government employers must reverify the employment eligibility of all current employees not already in the E-Verify system. Having verified the entire workforce at NC State University, I can tell you with confidence that this is an unrealistic time frame to achieve full compliance for large public employers.

Executive Order 12989, as amended in 2008, required Federal contractors with contracts containing Federal acquisition regulation, or FAR, language to use E-Verify to confirm the eligibility of employees working under that contract. NC State is a Federal contractor, and we received our first of many of FAR contracts in September of 2009. We quickly realized that verifying individuals coming and going on FAR contracts could be impractical, so we selected the only other alternative, to verify our entire workforce, for us meaning every active employee hired before January 1st of 2007.

We had a 6-month time frame to enter 12,000 I-9s into E-Verify. It actually took us 7 months to fully accomplish this goal even after hiring temporary staff. The time and effort by my office, my boss and others was significant to achieve compliance for 12,000 employees. It was an incredibly intense effort, and we have now invested in an electronic system to help us manage that process.

CUPA-HR would strongly encourage a longer phased roll-out compliance timeline, particularly for large public employers, of 24 months. Additionally, CUPA-HR suggests a longer reverification period for employees with limited work authorization. The act would require reverification of such employees, including many foreign nationals, during 3 business days preceding the expiration of their current work authorization. As an employer with over 3,000 foreign nationals a year on payroll, it is not practical for us to reverify all of them within the 3 business days before their authorization expires. CUPA-HR supports a reverification time frame of 30 days.

Our spring semester just ended at NC State, and the number of foreign nationals with May expiration dates is in the hundreds. A 3-business-day reverification period not practical for employers like us with large numbers of individuals whose expiration dates may converge around the same time.

In closing, I would say that the Legal Workforce Act is a balanced approach to creating a more secure and flexible employment-eligibility verification system. We respectfully encourage the Subcommittee to consider the suggestions we have offered today, and I personally thank the Members of the Subcommittee for the opportunity to testify.

Mr. GOWDY. Thank you, Ms. Blitstein.

[The prepared statement of Ms. Blitstein follows:]

TESTIMONY
OF
JILL G. BLITSTEIN
ON BEHALF OF
THE COLLEGE AND UNIVERSITY PROFESSIONAL
ASSOCIATION FOR HUMAN RESOURCES
MAY 16, 2013
ON
THE LEGAL WORKFORCE ACT
BEFORE
THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY
OF
THE COMMITTEE ON THE JUDICIARY

Chairman Gowdy, Ranking Member Lofgren and Honorable Members of the Subcommittee, thank you for the opportunity to appear before you today to express support for H.R. 1772, the "Legal Workforce Act." I am the International Employment Manager within Human Resources at North Carolina State University. NC State is an active member of the College and University Professional Association for Human Resources, known as CUPA-HR. I am speaking today on behalf of CUPA-HR.

CUPA-HR serves as the voice of human resources in higher education, representing more than 16,000 human resources professionals at over 1,900 colleges and universities across the country, including 92 percent of all United States doctoral institutions, 77 percent of all master's institutions, 57 percent of all bachelor's institutions, and nearly 600 two-year and specialized institutions. Forty four percent of CUPA-HR's member institutions are public employers, the remaining private. Higher education employs over 3.7 million workers nationwide, with colleges and universities in all 50 States.

By way of context, my institution has been using E-Verify since January 1, 2007, when it was mandated by the State of North Carolina for all public agencies and the University system. As the International Employment Manager at NC State, I have responsibility for the daily oversight of the institution's I-9 and E-Verify processes. With more than 8,000 regular employees, and almost 8,000 more student workers and temporary employees each academic year, including many foreign nationals, our use of the E-Verify process is substantive.

So I will speak to you today as someone who has experienced the positive effects of this program and who has found most aspects of the program to be administratively manageable, as well as someone who might be in a position to offer some informed suggestions as to its implementation by other employers.

CUPA-HR supports the majority of provisions within the Act as being positive for both employers and employees. For example, we support the reduction in the number of documents acceptable to prove identity and employment authorization; we support the recognition of good faith compliance; and we especially support the Act's clear preemption of any state or local law, ordinance or policy on employment verification. By example, as a research-extensive university, NC State has employees in more than 40 states. The current patchwork of policies and laws around the country make it incredibly difficult for employers with worksites in multiple locations to know each jurisdiction's rules regarding employment eligibility verification, much less to interpret and comply.

As NC State wrote in an article for CUPA-HR in 2008 to help allay concerns of other universities around the country about E-Verify, we did not experience the worst-case scenarios that were circulating at the time. We have never, for example, experienced 35% non-confirmation rates. We have found the confirmation turnaround times for the majority of inquiries to be virtually instantaneous. We have developed a successful process for handling foreign national scholars and graduate students who are coming to the U.S. for the first time and who do not yet have a Social Security number. In the six years we've been managing this process, we have experienced only a handful of cases in which a new hire could not present valid documentation or be cleared through the E-Verify process. So we believe the process works as intended.

That said, based on our direct experience, we do have concerns regarding the phased roll-out effective dates for compliance as currently written. In Section 2, the Act would require that within six months after enactment, all federal, state and local government employers re-verify

employment eligibility of any employees that had not previously been run through the E-Verify system. Having verified the entire workforce at NC State under the current E-Verify system, I can tell you with confidence that this is an unrealistic timeframe to achieve full compliance for large employers.

Executive Order 12989, as amended by President George W. Bush in 2008, required all federal contractors with a contract containing the federal acquisition regulation (or FAR) language to use E-Verify to verify the employment eligibility of employees performing work under that contract. NC State is a federal contractor, and we received our first FAR contract in September 2009. We quickly realized that tracking and verifying individual university employees working on FAR contracts would be impractical, since such contracts are constantly starting and ending, and workers on such contracts, especially graduate student workers, would be quite a changeable workforce. So we selected the only other available alternative, to verify our entire workforce, which meant that every active employee would have to be verified if hired before January 1, 2007 -- when we had started E-Verifying all new hires.

We were required to verify all of our pre-existing employees within six months in the E-Verify system. We had to enter data from approximately 12,000 I-9 forms into E-Verify to achieve full compliance, and it took us approximately seven months to fully accomplish the goal, even after hiring full-time temp staff to do nothing but non-stop data entry into the E-Verify system. The time and concentrated effort by me and my staff, my boss, and volunteers from other areas of HR, easily cost NC State more than \$250,000 to achieve compliance for 12,000 employees. I will say that it was an incredibly intense and exhausting effort -- and my institution may be fortunate to have more dedicated HR resources in this arena than most. To ease the burden going forward, we have now implemented an electronic system to manage I-9 and E-Verify data, which has an annual cost of more than \$20,000.

I can only imagine the costs, time, and technical resources that would be needed by employers with 50,000 or 100,000 existing employees -- or, for my colleagues in other resource-strapped colleges and universities -- the burden of trying to accomplish this within such a timeframe. CUPA-HR would strongly encourage a longer phased roll-out compliance timeline, particularly for the largest employers, of 24 months. Not only can these employers then spread the costs across a longer timeframe, they might also be able to avoid some the extra costs altogether such as hiring temporary staff or re-allocating current staff. In the end, it is more important to have done this process well than to have done it fast.

Additionally, CUPA-HR would suggest allowing a longer re-verification period for those employees with limited work authorization. In Section 2, the Act would require re-verification of such employees (including many foreign nationals) during the three business days preceding the expiration of their current work authorization, after a phased-in implementation period. As an employer with over 3,000 foreign nationals on our payroll during the academic year, it will be challenging at best and impossible at worst for us to re-verify all of these individuals within the three business days before their current work authorization expires. Three business days is not practicable in many situations, including during final exam periods, or in situations of absences due to illness or work-related travel, for example. We support a re-verification timeframe of 30 days. This would give employers a more realistic one-month period to achieve the required re-verification. Our spring semester just ended on Saturday at NC State, and the number of foreign national student employment expiration dates that have popped up in our electronic I-9 and E-Verify system for the end of May is in the hundreds, which is true at the end of every academic year. A three-business day re-verification will be impractical for us and I believe for many institutions, especially those of us with hundreds or thousands of foreign national students or

exchange visitors whose expiration dates tend to converge around the end of the fall or spring semester.

Related to this issue, we would recommend that the Act clearly allow employers to notify employees with limited work authorization up to 60 or 90 days in advance that their employment authorization will need to be re-verified in order for the employment to continue after that expiration date arrives. The new system should also have a mechanism to note when a timely filed extension of status and work authorization has been filed but is still pending with United States Citizenship and Immigration Services (USCIS). If the employer could enter the USCIS receipt number into the new system, it could comply with the Act requirements even while not yet having the new employment expiration dates due processing times out of its control. Likewise, with the "receipt rule" for I-9 completion, if there is a way for employers to enter some proof that a required document was timely applied for by the new employee, it could meet the Act requirements with alternative, valid documentation.

In closing, I would like to express my gratitude to the members of the Subcommittee for your time and attention today. The Legal Workforce Act is a balanced approach to creating a more secure and flexible employment eligibility verification system that will benefit and protect both employers and employees alike. We respectfully encourage the Subcommittee to consider some of the suggestions we have offered today, and I personally thank you for this opportunity to testify.

Mr. GOWDY. Ms. Wood.

TESTIMONY OF JULIE MYERS WOOD, PRESIDENT, COMPLIANCE, FEDERAL PRACTICE AND SOFTWARE SOLUTIONS, GUIDEPOST SOLUTIONS LLC

Ms. WOOD. Thank you, Subcommittee Chairman Gowdy, Ranking Member Lofgren, Members of the Subcommittee. It is great to be before you again, and I appreciate the opportunity to testify about H.R. 1772, the “Legal Workforce Act.”

As all of you have already stated, these challenges are not new. The government has not succeeded in effectively reducing the magnet of unlawful employment. Whether we are working to do this through civil audits or criminal investigations, the government has not found the right mechanisms to compel widespread compliance with immigration laws.

In my view, in attempting to effectively address the magnet of unauthorized employment, employers have been unfairly saddled with the significant burden related to interior enforcement of our immigration laws. I think that the Legal Workforce Act takes some very positive steps to equitably address these burdens and provide additional tools to employers, while ensuring that we will make some progress in reducing this magnet.

I want to highlight just a couple areas where I think the bill does an excellent job, and those where—areas where this bill may differ a little bit from the bill pending now in the Senate.

First, the bill levels the playing field by requiring mandatory employment verification, and does so smartly by building on the existing E-Verify framework. It is not requiring the creation of a new framework; it is building on and using an existing tool. Although a sizable number of industry leaders are on E-Verify, and more joining every day, in many industries E-Verify participation is still the exception rather than the rule. What I often hear from employers, particularly in high-risk industries, is that they go on E-Verify, but their competitors do not, and that their competitors continue to engage in high-risk hiring practices, undermining the market. This must change.

Second, and I think a very critical point, is this bill reduces the burden on employers by combining the duplicative form I-9 and E-Verify process into one single process. For employers this current duplication is particularly problematic because they can be fined based on errors in their I-9s even though their employees were found to be employment authorized through the E-Verify system. An example of such error includes a failure of an employee to check a box indicating the employee’s status even when the employer recorded the appropriate documents and the employee went through the E-Verify system successfully. And even when employers are allowed to correct these paperwork errors, they are still spending a lot of time and often money to make a piece of paper neat and technically accurate for the regulators. Such a focus on the technical side of the I-9 really defeats the purpose, and the purpose is to ensure that employees are authorized to work.

Finally, one of the biggest challenges that employers face is that the E-Verify system does not have a fool-proof way to address identity theft. The system’s Achilles’ heel remains its reliance on and

limitations on the information that is input into the system. If an employer is unable to confirm that the identity documents presented actually belong to the individual who presented them, then what value is there to the employment-authorized determination? It is merely confirming the authorization of the data entered.

Even though USCIS has made considerable progress, and despite their efforts in this area, absent a stronger identity tool tied to E-Verify, employers have been left to serve as document detectives. The good news, and I think the good news that this bill recognizes, is that there are ways to improve the current system, and there are many models for the pilot proposed by section 12.

One system that I think really addresses this is the software system I actually helped develop called SecureID. This system leverages public-sector data and other information to provide real-time algorithms and consistent screening for our employees in conjunction with the I-9 and E-Verify. It also has a lot of protections or exception processes to make sure that we represent adequately and take care of the rights of asylees and new immigrants.

The SecureID system avoids the problem of making rank-and-file HR managers be identity investigators, who, in their well-intentioned efforts to promote a legal workforce, only ask certain new hires lots of questions because their English isn't great, or they are presenting certain documents. That is simply unacceptable. Tools like the SecureID system have proven to be extremely effective for employees who have faced significant identity-fraud problems, and something like this could be used in a pilot as proposed in section 12.

One of the ways that our tool is being used right now, for example, is for managers who are trying to figure out how do they address employees who come in through the DACA process. These are people who have now changed their name, and they said they have adjusted under DACA. The employees' employers are trying to decide how do we do that in a fair and consistent way, because last time we were fooled, right? Last time we thought they were authorized, but they weren't. And so by using a tool like this, using knowledge-based authentications, you can really do this in an effective way.

Employers have also used a system like this to address third-party notification, such as when an insurance company calls you up and says, hey, this person you think is John Doe is actually not John Doe. Employers are facing how do we do this and how do we address this in an appropriate and nondiscriminatory manner. There are many tools like this in the private sector, and I encourage and applaud the work done in the Legal Workforce Act to look and see how can we push E-Verify further and really address the problems of identity theft.

Effective employment verification is critical to reducing the magnet of unlawful employment and restoring integrity to our immigration laws. I think the Legal Workforce Act takes some positive steps, and I agree with my counterparts that it is the best bill we have seen on this to address this continuing problem.

I appreciate the opportunity to testify before you and would be glad to answer any questions you may have. Thank you.

Mr. GOWDY. Thank you, Ms. Wood.

[The prepared statement of Ms. Wood follows:]

Hearing on “H.R. 1772, the ‘Legal Workforce Act,’”

Statement of Julie Myers Wood

Former Assistant Secretary, Immigration and Customs Enforcement (ICE)

Before the House Judiciary Committee,

Subcommittee on Borders and Immigration

May 16, 2013

Subcommittee Chairman Gowdy, Ranking Member Lofgren, Members of the Subcommittee, I appreciate the opportunity to testify before you about H.R. 1772, the “Legal Workforce Act.”

My name is Julie Myers Wood, and I am President of Guidepost Solutions, an investigative and compliance firm. In that position, I work with companies on their internal compliance programs, create web-based solutions to assist businesses with export and immigration compliance challenges, and consult with companies that work with the government. I also serve as an Advisory Committee member of the American Bar Association’s Commission on Immigration and as a Member of the Constitution Project’s Committee on Immigration. I am testifying today solely in my personal capacity and not as a representative of any group or organization.

Before joining the private sector, I most recently served as the Assistant Secretary of Immigration and Customs Enforcement (ICE) for nearly three years. I also served in a variety of government positions, including Assistant Secretary for Export Enforcement at the Department of Commerce, Chief of Staff for the Criminal Division at the Department

of Justice and Deputy Assistant Secretary (Enforcement – Money Laundering and Financial Crimes) at the Department of Treasury.

I. H.R. 1772 Must Be Considered In Context of Challenges to Stopping Illegal Employment.

When considering H.R. 1772, it is important to remember the significant challenges we have in stopping unlawful employment. The government has not succeeded in effectively reducing the magnet. When I started at ICE in 2006, there was virtually no workplace enforcement. Although it was common knowledge that jobs drove individuals to enter the United States illegally, the agency had not focused on how to prevent this behavior. Fines, if any, were assessed under an outdated structure, were subject to substantial legal wrangling and ended up being nothing more than a slap on the wrist to companies that considered them the cost of doing business. The focus of the old INS was simply not on criminal violations. For example, in 2002, the INS's last full year of existence, it brought only 25 criminal cases in worksite investigations and only collected \$484,585 through the administrative fine process.

At that time, few employers were on the Basic Pilot (BP) (predecessor to the E-Verify program). For employers who were on the program, document fraud remained rampant, and limited BP reporting procedures caused some inefficiencies in compliance efforts.

In an attempt to focus anew on stopping illegal employment, in 2006, ICE developed a focus on egregious employers. The agency focused on criminal investigations, revising the civil fine structure, and also requesting funding for auditors to

begin civil Form I-9 audits. For several years, we conducted criminal investigations where we obtained civil forfeitures in excess of \$30 million each year and prison terms for some egregious employers. While these investigations were complex and time intensive, this approach resulted in renewed awareness and cooperation from some high-risk industries. We recognized this approach was also considered controversial by some as it included large-scale apprehensions and removals of the unauthorized workers, who in many cases were using the names and social security numbers of authorized workers and U.S. citizens. The arrest and deportation of unauthorized workers consumed considerable ICE resources in worksite enforcement cases. Despite this ramped up enforcement, many companies in lower-risk industries did not think it necessary to focus on I-9 and immigration compliance with this targeted approach.

During this period, United States Citizenship and Immigration (USCIS) took many steps to improve the E-Verify process, including requiring participation for federal contractors, and introducing photo match tools for a growing number of Department of Homeland Security and U.S. government issued documents. Those improvements encouraged significant numbers of employers to join the program.

The current Administration has focused primarily on civil immigration audits, adopting an IRS-type approach. Under this approach, more companies have been subject to desktop audits, and the general awareness of immigration compliance has increased significantly. This approach is also imperfect, however. In most cases, ICE HSI agents are not involved in a review of compliance and there is no on-site review. Often tell-tale signs of abuse are overlooked as they could not possibly be evident in a paperwork-only review.

Furthermore, less than .01% of employers have been subject to fines in any given year. The average cost of the penalty was still miniscule - under \$25,000 per company in fiscal year 2012. Total civil fines for last fiscal year were only \$12 million. Employers are well aware of the statistics.

On occasion, the focus on civil audits have even resulted in perverse consequences – some employers with legal, fully authorized workers, were fined, while others that had a high percentage of unauthorized workers didn't receive a monetary fine, let alone a warning notice. The government essentially ignored the unauthorized workers, allowing them to stay and work in the United States. In the context of these Form I-9 civil audits, ICE issues a Notice of Suspect documents notifying the employer of a worker without appropriate paperwork. The employee is terminated and then simply walks down the street to a new unsuspecting employer. Generally speaking, no action is taken where the I-9 Forms are technically complete, even where it is clear that the employer knew or should have known of the employees lack of status in the United States. For this reason, deterrent effects of the civil audits, if any, seem to be wearing off. While some employers take the civil fine system seriously, others have begun to write the cost of immigration compliance off as another rounding error.

I have seen the effects of the civil fine model first-hand since leaving ICE and consulting with a variety of large and small companies in many industries. Many of these companies have struggled with employment verification. And, although these companies want to do the right thing, sometimes they find the current processes are often counter-intuitive and overwhelming.

On the positive side, more and more employers are participating in E-Verify, and the Administration continues to encourage participation as part of a compliance program. Employers that participate in E-Verify often find that it is a helpful addition to their overall process, especially the photo tool, but they are still frustrated by ever-increasing requirements and focus on “technical” aspects of the I-9. In testimony today, I will bring their lessons to bear in terms of reviewing the practicality of this Bill and how it would work.

II. H.R. 1772 Addresses Several Core Problems With Current Processes.

H.R. 1772 addresses several core problems with current processes. First, the Bill levels the playing field by requiring mandatory employment verification. Second, it reduces the burden on employers by combining the duplicative Form I-9 and E-Verify requirements into a single process. With a strong pre-emption provision, the Bill also addresses the complexity of multiple state requirements. The Bill provides a good-faith defense for employers who appropriately follow the process. Finally, the Bill provides employers with the authorization to complete a verification review of current employees in a consistent manner.

A. H.R. 1772 Addresses The Need for a Mandatory Verification System Using Existing Tools.

A key component of H.R. 1772 is the requirement of a mandatory verification system built around the government’s current system, E-Verify. This makes sense. E-Verify has made significant progress over the past several years in terms of new participants as well as technological improvements. It has proven to be a critically

important tool for employers to use, free of charge, in an effort to determine an individual's employment eligibility. The metrics on E-Verify use, accuracy, and speed are strong and improving all the time.

Rather than suggesting a whole new system as some suggest or inserting burdensome new processes into existing E-Verify protocols, it makes sense to build on the system already in place. A good starting point is making the system mandatory. Another suggestion would be to build tools to assist employers with the compliance requirements within the current system.

Although now a sizeable number of industry leaders are on E-Verify, in many industries E-Verify participation is still the exception rather than the rule. It is critical that the system be made mandatory to level the playing field and increase compliance. Requiring E-Verify on a mandatory basis will also help address the disconnect some employers currently feel. What I often hear from employers, particularly in high-risk industries, is that they go on E-Verify but their competitors do not, and that their competitors continue to engage in high-risk hiring practices, undermining the market.

B. H.R. 1772 Appropriately Streamlines and Simplifies the Verification Process.

Currently, employers who are utilizing E-Verify must also separately complete the Form I-9. This form requires an employer and employee to complete two pages of biographic information – including much of the information later provided to E-Verify. The Form I-9 is not intuitive. It has an employer reference handbook that is 65 pages long.

After completing the Form I-9, participating employers then go through the E-Verify process where they have to provide much of the same information again for purposes of the electronic employment eligibility process. For employers that are not using an electronic I-9 or a hybrid system, they are required to manually type in all the information that is then sent to E-Verify. This type of duplication makes no sense.

For employers, the duplication also is problematic because employers can be fined or assessed penalties based on errors on their I-9s even though the employees were found to be “Employment Authorized” through the E-Verify system. Examples of such errors include a failure to check a box indicating the employee’s status even where appropriate documents are recorded or record the issuing authority of a Social Security card. Even when employers are allowed to correct those paperwork errors, they are still spending time and often significant money to make a piece of paper “neat” and “technically accurate” for the regulators. Such a focus on the technical side of the I-9 defeats the underlying purpose – ensuring that the employees are authorized to work. H.R. 1772 addresses this issue by combining the I-9 data elements with the E-Verify data elements into one single process for employers.

C. H.R. 1772’s Pre-Emption Provision Provides Employers With a Federal, Consistent Requirement.

One of the additional challenges faced by employers is navigating the federal and state requirements relating to employment eligibility. In an attempt to step-up a perceived lack of federal enforcement of employment laws, many states and even local governments have developed their own laws mandating E-Verify. Although the purpose

behind these laws makes sense, it has been difficult for some larger employers with national footprints to manage all the requirements – which are at times inconsistent in the documentation required or other issues. Tracking of such requirements is unmanageable. Section 6 of H.R. 1772 addresses this issue by expressly preempting state laws mandating E-Verify participation.

D. H.R. 1772 Permits Employers to Use E-Verify on Existing Employees

One additional challenge employers often have is ensuring that their current workforce is fully authorized. Under current law, employers in most situations are prohibited from utilizing E-Verify on current employees. Although there are methods for employers to make determinations on current employees, these methods are often more burdensome and costly than E-Verify. And, if not managed appropriately, these methods can lead to unintentional discriminatory actions. To address this, Section 2 of H.R. 1772 allows employers to utilize E-Verify on existing employees. It is important to ensure that this is done in a non-discriminatory way, and the Bill requires that voluntary verifications of existing employees be done consistently to avoid problems.

E. H.R. 1772 Gives Employers A Good Faith Defense.

One of the most pressing issues for employers is a concern that they will be a subject of government investigation or, worse, penalized, even when acting in good faith. Section 5 of H.R. 1772 appropriately provides a good faith defense for employers using E-Verify in good faith. Although this would not protect employers who willfully turn a blind eye to identity theft or other patterns relating to unauthorized workers, it ensures

that an inadvertent error with the mandated electronic system will not result in harm to the company.

III. H.R. 1772 Recognizes a Significant Weakness in E-Verify and Requires E-Verify to Improve Identity Theft Capabilities

One of the challenges employers face is that the E-Verify system does not have a foolproof way to recognize identity theft. The system's Achilles heel remains its reliance on the accuracy of, and limitations on, information that is input into the system. If an employer is unable to confirm that the identity documents presented belong to the individual who presents them, what value is there to the "Employment Authorized" message from E-Verify? It is merely confirming the authorization of the data entered.

Even though USCIS has made considerable progress (and despite USCIS's ongoing efforts in this area), photo matching is still not available on the primary documents presented by employees: driver's licenses and state identification cards. And, absent an identity tool tied to E-Verify, employers have been left to serve as document detectives. The need to connect identity is not limited to work authorization concerns. Indeed, the 9/11 Commission came to the same conclusion that employers have known for a long time: Identity documents are only as good as the information they contain. Without an ability to match an individual to the identity on their document, drivers' licenses and state-issued identity cards remain vulnerable to fraudulent use.

RealID was poised to correct this loophole and provide conclusive matches to drivers' licenses and their holders. In fact, despite the retrenchment from RealID in this Administration, many states have pressed ahead and are now meeting established

benchmarks for implementation. However, drivers' licenses in many states are still unsecure.

The good news is that there are ways to improve the current system. H.R. 1772 recognizes the potential for identity verification through the E-Verify system by proposing an authentication pilot in Section 12. Many models currently exist for such a process. The private sector has developed mechanisms to address identity theft, while protecting the rights of employees and ensuring appropriate treatment of asylees and refugees. One such system is a software program I developed with several colleagues is called SecureID (www.icssecureid.com). This system leverages public sector data and other information to provide real-time algorithms and consistent screening for employees, in conjunction with the Form I-9 and E-Verify process. The SecureID system avoids the problem of making rank and file HR managers identity investigators, who in their well-intentioned efforts to promote a legal workforce only ask certain new hires questions based on where their documents were issued or because their English is limited or not spoken.

The SecureID tool has proven to be extremely effective for employers who have faced significant identity fraud challenges with non "photo matched" documents, and has offered managers a consistent process to address individuals that change their status while employed based on adjustments (such as the recent DACA announcement). Employers have also used the system to address Third-Party notifications relating to allegations that information submitted by a certain employee in fact belongs to another person. Rather than starting from scratch, E-Verify can be augmented with SecureID or other identity verification products.

In my view, in attempting to effectively address the magnet of unauthorized employment, employers have been unfairly saddled with a significant burden related to interior enforcement of our immigration laws. H.R. 1772 takes some positive steps to address some of these burdens and provide additional tools to employers. We are appalled to learn when our law enforcement has inadequate resources to properly perform their duties. Similarly, we should be equally appalled that the government has given a tremendous responsibility to America's businesses, large and small, and yet to date, have only armed them with bureaucratic procedures and limited tools to perform their task.

I appreciate the opportunity to testify before you, and would welcome the opportunity to answer any questions you may have.

Mr. GOWDY. Mr. Mondì.

**TESTIMONY OF DOMINICK MONDI, EXECUTIVE DIRECTOR,
NEW JERSEY NURSERY AND LANDSCAPE ASSOCIATION**

Mr. MONDI. Thank you. Good morning, Chairman Gowdy, Ranking Member Lofgren, and honorable Members of the Subcommittee. Thank you for the opportunity to come to Washington today to discuss this very important topic of immigration reform, E-Verify and the Legal Workforce Act.

With this renewed debate, Congress now has a chance to repair our broken immigration system with legislation that addresses border security and employment verification, earned legalization, programs for future legal immigration, and guestworker programs.

As for the E-Verify piece, no one has more to gain from the implementation and enforcement of an improved employment-eligibility verification system than the honest small businessmen and -women who are trying to compete on a level playing field. Good business owners don't look to the government to create competitive advantages, of course, but rather to provide that level playing field, and a comprehensively reformed immigration system can help achieve that end.

Unfortunately, the implementation of E-Verify in a vacuum outside the context of a comprehensive immigration package will have the unintended consequence of pushing more labor to the black market, increasing staffing burdens, and ultimately hurting the thousands of small businesses in the nursery, landscape and like-minded service industries. This is not what we need out of immigration reform.

While we certainly don't defend the use of unauthorized workers knowingly or unknowingly, there is a reality that a large part of this workforce has been trained and has advanced, contributing their skills and talents to the good employers and businesses who make good-faith efforts to follow the law.

Should mandatory E-Verify force much of this workforce off the books with no avenue to legal work status, the loser is the honest business, and the winner is the dishonest company who drives down prices and wages by taking up the skilled labor under the table. There are over 90,000 landscape companies in the country, and most average under 20 employees throughout the year. These are truly small businesses that rely heavily on labor. These thousands of small businesses need and desperately want a safe, legal and available labor pool to meet their year-round and seasonal needs, but if a piecemeal enforcement-only policy is pursued instead of a comprehensive fix, and the existing workforce is displaced, where will the labor come from?

It would be wrong, of course, to state there are no native-born Americans who are willing or able to do this work. I myself have worked in the landscape industry my entire life starting at age 16. Our Nation's demographics, educational and employment opportunities, however, have changed over the last 50 years. There are certainly some willing to do the work, I meet them all the time, but the pool to draw from is smaller than it has ever been and does not meet the overall needs of our economy.

An older, slower-growing, better-educated society, while a good thing in many regards, is the contributing factor to the difficulties of many businesses in our industry and others like it have in finding qualified, hard-working labor. The ag sector, of course, would be hardest hit, of course, with 50 to 75 percent of workers undocumented. We need proactive, forward-thinking, and comprehensive immigration reform to address these challenges for the next generation of business owners and workers in our industry.

In previous testimony before this Committee, it has been encouraging to hear about the improvements in the E-Verify system. And despite the recent and forthcoming improvements, many of our employers will face special challenges using a system like E-Verify due to factors like limited high-speed Internet access, high seasonal hiring and turnover, remote or nonoffice hiring, and lack of dedicated human resource personnel staff. We believe it is essential that the program is simplified for users, that error rates are minimized, and that identity theft concerns are addressed if E-Verify is to be phased in for all employers. As I understand it, this still does make strides in that direction, but the phase-in must coincide with a broad reform package.

In conclusion, our organization supports the use of E-Verify, but only as part of a comprehensive approach modernizing our immigration laws to help the needs of our small businesses who rely on an immigrant workforce. If enacted as an isolated measure, however, we believe mandatory E-Verify will be a clear net negative to our industry and will harm small businesses across the range of sectors, do serious damage to the economy.

Thank you, and I look forward to any questions.

Mr. GOWDY. Thank you, Mr. Mondì.

[The prepared statement of Mr. Mondì follows:]

**The Written Testimony of Dominick Mondì, Executive Director
New Jersey Nursery and Landscape Association**

Before the House Judiciary Subcommittee on Immigration and Border Security

**Hearing on H.R. 1772 the Legal Workforce Act
May 16, 2013**

Introduction and Background on NJNLA

Chairman Gowdy, Ranking Member Lofgren, and members of the Subcommittee, thank you for the opportunity to come to Washington today to join the discussion on the very important topics of immigration reform, E-Verify, and the "Legal Workforce Act" (H.R. 1772).

The New Jersey Nursery and Landscape Association is comprised of Nursery Producers, Landscape Professionals, Garden Centers, and Greenhouse Growers. First established in 1915, our diverse organization represents an industry that contributes over \$4 billion to New Jersey's economy annually and employs 39,000 people statewide. Nationally, nursery and greenhouse growers produce crops that represent 15% of all farm crop cash receipts. The entire industry contributes in excess of \$70 billion in economic output annually.

Our organization has immigration reform interests in line with those of other state and national organizations, both in the green industry and in other small business and service related industries. We feel the issue of our broken immigration system hurts business and weakens the economy. Well thought-out reform therefore is paramount to the success of small business, especially in the agricultural and service sectors, now and in the future.

With the renewed debate in Congress on the subject of modernizing our immigration system, Congress now has a chance to get it right, with legislation that addresses border security, employment verification, earned legalization, and programs for future legal immigration and worker programs. The bi-partisan S. 744 under consideration now in the Senate Judiciary Committee is an encouraging development. This package takes the broad, comprehensive approach to modernizing our immigration laws that is needed. Within such a comprehensive package, we believe E-Verify or a similar system is an important part of the overall solution on immigration. But, in the stand-alone form proposed in H.R. 1772, mandatory E-Verify threatens to be seriously damaging to small businesses and the economy.

E-Verify's Proper Role: A Component of Comprehensive Immigration Reform

We recognize that E-Verify is sure to play a role as a component in any comprehensive approach to immigration reform. With estimates ranging up to as many as 40% of unauthorized immigrants here having overstayed visas, enhanced border enforcement alone will not achieve the security goals so many want. No one has more to gain from the implementation and enforcement of an improved employment eligibility verification system including E-Verify than the honest small businessmen and women who are trying to compete on a level playing field. Unscrupulous employers who are willing to circumvent good and legal labor practices poison the competitive marketplace, suppress prices and hold down wages. This is a rampant problem in professions like landscaping where the cost of entry is low. Good business owners don't ask for the government to create competitive advantages, but rather to provide a level playing field, and a reformed immigration system complete with workforce legalization, future flow measures, adequate guest worker programs, and workplace security can help achieve that end.

Impact of Stand-Alone E-Verify Legislation on Small Businesses That Rely on Low Skill Labor

I would like to start by offering a brief comment on the question of “skill.” Labor needs in our industry are often described as “low-skilled” or “lesser skilled”. We feel that this distorts the reality. In fact, most workers in our industry develop highly specialized skills, even though most jobs may not require extensive formal education. For example, one New Jersey nursery relies on their seasonal workers to fill a position entitled ‘Order Puller’. This person is not only responsible for understanding plant sizing and quality standards, but must be able to read and understand the botanical names for over 100 different types of plants. In the landscape trade, the proper pruning of plants to minimize insect and disease intrusion opportunities while creating the desired appearance and new growth is a skill that can only be learned with hands on training and experience.

Unfortunately, the implementation of E-Verify as a stand-alone approach to reforming employment eligibility verification would lead to serious negative consequences for our employers and the economy. Mandated in a vacuum, outside the context of a comprehensive immigration package, E-Verify will have the unintended consequence of pushing more labor to the black market, increasing staffing burdens, and ultimately hurting the thousands of small businesses in the nursery, landscape, and like-minded service industries. This is not what we need out of immigration reform.

While we certainly don’t defend the use of unauthorized workers, knowingly or unknowingly, there is a reality that a large part of this workforce has been trained and has advanced, contributing their skills and talents to good employers and businesses who make good faith efforts to follow the law. In agriculture in particular, experts estimate that upwards of 70% of farm workers lack proper immigration status. Industries with significant entry level, manual labor, and seasonal jobs face challenges too.

Should mandatory E-Verify force much of this workforce 'off the books' with no avenue to legal work status, the loser is the honest business, and the winner is the dishonest company driving down prices and wages by taking up this skilled labor 'under the table'. There are over 90,000 landscape companies in the country, and most average under 20 employees throughout the year. Over 75% of our members report employing 25 employees or less. These are truly small businesses that rely heavily on labor. These thousands of small businesses need, and desperately want, a safe, legal, and available labor pool to meet their year round and seasonal needs. Many of these businesses would refuse to work with black market labor, and the competitive disadvantage would hurt them, if not force them out of business. If a piecemeal enforcement-only policy is pursued instead of a real comprehensive fix, and the existing workforce is displaced, where will the labor come from?

Why Sufficient Labor is Not Available Without Immigration Reform

It would be wrong to state that there are 'no' native born Americans who are willing or able to do this work. I myself have worked in the landscape industry my entire life, starting at age 16, hand grading lots for new homes. Our nation's demographics, educational and employment opportunities, however, have changed over the last 50 years. There are certainly some willing to do the work – I meet them all the time – but the pool to pull from is smaller than it has ever been and does not meet the overall needs of our economy.

According to the US Census bureau, in 1960 roughly 10% of Americans had a college degree and only about 40% had graduated high school. By 2010 those numbers will have swelled to 30% with college degrees and over 85% with high school diplomas. The increased education of our population should be a net benefit to our economy, but does not help fill more entry-level positions on which many ambitious and educated Americans build their businesses, and subsequently their lives. Consider as well the increasing age of our population. The median age of our population has grown from 29.5 in 1960 to

37.2 in 2010. The population is also not growing at the same rate as it did a half century ago. An older, slower growing, better educated society is a key contributing factor to the difficulties that many businesses in our industry and others like it have in finding qualified, hard-working labor. We need proactive, forward-thinking, and comprehensive immigration reform to address these challenges for the next generation of business owners and workers in our industry.

Despite New Jersey's unemployment rate being higher than the national average, many employers I speak with talk about their difficulty finding qualified and hard-working employees. One member firm I spoke with recently told me that despite advertising online and in local print publications, she is still struggling to meet her peak seasonal labor needs. Based on my conversations with others in the landscape industry, her experiences are not uncommon. It has been reported recently that there is only one major landscape company in the country that is utilizing E-Verify. This one industry accounts for over 90,000 small businesses across the country who are already struggling to meet their annual and peak seasonal labor needs, even with an available, albeit unauthorized, labor pool in place. Mandatory E-Verify alone, without some corresponding legal options for businesses to replace the lost labor, could severely undermine this industry and create a large 'black market' for lesser skilled labor.

Our growers face daunting challenges as well. New Jersey agriculture is among the nation's most labor-intensive; the state ranks 5th in terms of percentage of farm income spent on hired labor. Farm Credit East has analyzed the potential impacts of an enforcement-only (as in, stand-alone E-Verify) policy on the farm sector in the states of New Jersey, New York, Connecticut, Massachusetts, and New Hampshire. The analysis found that 1,664 farms with annual production of \$1.6 billion, nearly 20,000 on-farm jobs and nearly 55,000 off-farm but farm-dependent jobs in just these five states would be jeopardized by an enforcement-only approach, such as mandating E-Verify without comprehensive immigration reform.

Moving Forward with Comprehensive Reform Efforts

Our businesses need leadership from Congress to advance a common sense, comprehensive immigration reform package that modernizes our immigration laws and meets the needs of businesses across all sectors of the economy. We recognize that some form of E-Verify is likely to be a part of that package. We thank Congressman Smith, bill sponsors, and this committee for taking this step in advancing the immigration reform conversation, but we remain seriously concerned that a piecemeal approach to reform will only distract from the needed focus on a comprehensive solution.

In previous testimony before this committee, it has been encouraging to hear about the improvements in the E-Verify system, including the reduction in error rates, future plans to make the program more accessible, and minimizing unintended consequences on the smallest businesses. Despite these recent and forthcoming improvements, many of our employers will face special challenges using a system like E-Verify due to factors like limited access to high-speed internet, high seasonal hiring and turnover, remote or non-office hiring, and lack of dedicated human resources professional staff. We believe it is essential that the program is simplified for users, that error rates are minimized, and that identity theft concerns are addressed if E-Verify is to be phased in for all employers, and that phase in must coincide with a broad reform package.

In conclusion, our organization supports the use of E-Verify, but only as part of a comprehensive approach to modernizing our immigration laws that simultaneously addresses the other needs of the many small businesses who rely on an immigrant workforce. If enacted as an isolated measure, however, we believe mandatory E-Verify will be a clear net negative to our industry, will harm small businesses across a range of sectors, and will do serious damage to the U.S. economy.

Mr. GOWDY. Thank all our witnesses for staying within the time parameters.

The Chair will now recognize the gentleman from Virginia, the Chairman of the full Committee, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

I appreciate the testimony of all of our witnesses. And I will start with you, Mr. Amador. I very much appreciate your testimony and

wondered if would you explain why the National Restaurant Association believes an E-Verify check should have an end date.

Mr. AMADOR. Well, as is currently drafted, one of the problems that we are having is with extent of nonconfirmations that go on forever and forever, you know, it could be several months. Under the law you still have to send them to training, you still need to do all these things. And you have to—it is an expenditure for an employer to do all of these things without knowing whether he is going to be able keep this employee or not.

So one of the things that my members keep emphasizing to me is but it has to be clear, and it has to have an end date, because we want to know whether this employee is going to continue on our payrolls or we are going to have to let him go. And we understand, you know, we have been talking to counsel and looking at the bill. We like, you know, the 10 days, 3 days and then 10 days, and then under certain circumstances 23 days should be enough for the government to tell us whether the name and the Social Security number of that individual that is working already inside a premises is authorized to do so.

Mr. GOODLATTE. Very good.

Ms. Wood, you note in your written testimony that having to comply with many different State and local employment-eligibility verification laws has been difficult for some larger employers with national footprints to manage all the requirements. Would you comment on those difficulties, and might companies avoid doing business in certain States or localities because of competing laws?

Mr. AMADOR. It creates—

Mr. GOODLATTE. You can comment on it, too, but we will go to Ms. Wood.

Ms. WOOD. We are probably on the same page on this one, I think. You know, to say that a company—you don't want companies to think, I shouldn't expand in Colorado because their additional verification sheet is going to make life difficult. And, you know, HR managers have difficult jobs as it is. We want them to spend all their energy making sure that their workforce is authorized as well as managing other tasks. Right now, when there are a number of different competing requirements, it is tough for them to do it effectively, be as compliant as they want. So I think this bill takes good strides in making, you know, a Federal E-Verify mandate and yet allowing States to have some ability to do certain things without allowing them to impose new requirements.

Mr. GOODLATTE. Very good.

And, Ms. Blitstein, in the year that NC State has been using E-Verify, have you had situations in which E-Verify helped identify situations in which documents presented by an individual for the I-9 process were not, in fact, valid even though they looked valid on their face, as current law requires?

Ms. BLITSTEIN. Yes, to my knowledge we have had about two, maybe three at most, but two that I can clearly remember, where the individual presented documentation that on its face appeared to be valid, and then, through the E-Verify checks, we realized that it was, in fact, very good—in one case a very good fake and in another case not quite as good. But the system did catch those, and then we ended that employment.

Ms. WOOD. And if I could add just one thing to that. I work with a lot of high-risk industries. When they come onto E-Verify for the first time, they find a lot of instances where there are final nonconfirmations. Of course, then the pattern shifts, and it is just identity theft. But early on I think they find it very helpful, particularly the photo-matching tool, because even if you do regular training for HR managers on how to identify fraudulent documents, there is turnover in that position as well, and it is just tough for them to keep up on the latest changes. So I think E-Verify and the photo-matching tool has been extremely effective for that purpose.

Mr. GOODLATTE. Thank you.

And, Mr. Mondri, what percentage of your industry's employees are not authorized to work in the U.S.? If, as you state in your testimony, unscrupulous employers who employ illegal workers, employees in the competitive marketplace—I am quoting you—suppress prices and hold down wages, why would you not want all of your competitors to be required to use E-Verify as soon as possible?

Mr. MONDI. Sure. I can't give you a specific percentage. There hasn't been good reporting on that, so I don't have a specific number for you.

The challenge that a lot of businesses in our industry have now is that there is already a bottom-feeding tier, if you will, of employers who are paying cash under the table, who are not necessarily following existing laws, and there is no reason to believe that they would discontinue that practice. Obviously it would depend somewhat on how enforcement was enforced.

The challenge would be that if they are already not following those practices, and the middle-tier employers who are forced to do E-Verify, and maybe they have some undocumented workers that they don't even know about, and all of that now forces—that part of the workforce gets displaced downward, there is actually an expanded labor pool for that bottom market, and the good employees have a problem.

Mr. GOODLATTE. Got it. But one would presume that if we made this mandatory, that one of the keys to that is not just making it mandatory that that bottom employer, as you described them, use the system, but that we have an aggressive system to make sure that they are indeed using the system.

So I am sure you would agree that that should be a part of this. In fact, in this legislation, while there have been concerns expressed by some that we not have 50 different States having 50 different E-Verify systems, we have also recognized that the States have a role in helping the Federal Government, which may have more limited resources, in checking to see if businesses are indeed using E-Verify to have a much greater compliance effort there to check to make sure businesses are indeed using it.

So once we have the system up and operating, we want it to work fairly for the employer and the prospective employee, but we also want to make sure that everyone is using it. That is really the whole point of the legislation, to have it mandatory so everyone is using it, including the people who are getting away with things today that they shouldn't be getting away with.

Mr. MONDI. I agree 100 percent. And one of the unique—more unique challenges of the landscape industry, like maybe some con-

struction trades, is the oftentimes lack of any centralized office or location. So we see with environmental regulations as well where certain companies, it is hard to track them down if they are dodging license fees or things like that because you can go to their office if you want—it is generally a room in a house, or maybe it is a small yard where the owner is—but he picks up his work to and from the yard—his labor to and from the yard, they are off site in different locations, sometimes not just day to day, but hour to hour, and unfortunately it becomes a real challenge.

Mr. GOODLATTE. Thank you very much.

My time is expired. Thank you, Chairman.

Mr. GOWDY. I thank the gentleman from Virginia.

The Chair will now recognize the gentlelady from California Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

And I would like to follow up with Chairman Goodlatte's line of inquiry, Mr. Mondri, if I can, because if I am hearing you correctly, there is an important goal that I think all of us would share, which is that everybody comply with the same rules so that it is a level playing field, nobody cheats and gets ahead.

But there is an additional element, I think, and this is really my question, which is if there is not enough people to actually hire to do the job, then what? So you are in New Jersey with the landscape association. In the last Congress, you know, some people actually said that it wouldn't be so bad if people and landscaping and agriculture were denied access to needed workers; that then they would just go to mechanized efforts, and they would fill in with technology the loss of human capital.

Would that work in the landscaping industry? I mean, the estimate is—we don't know, of course, but the estimate is that over half of the employees may not have their proper papers, they may have given a false document or the like. I am not suggesting that every employer knowingly hired someone not authorized. Would it work if half or two-thirds of the employees in the landscaping business in New Jersey were no longer available to hire?

Mr. MONDI. Well, no. I mean, you would start to fundamentally change the structure of the whole industry. Traditionally you are talking about people who are younger and can handle working outside a lot and things like that. And as our demographic shifts, that labor pool is getting smaller.

You know, on the agriculture side, we have a lot of nursery producers, high labor. If a lot of that production just shifted away from high-labor practices, you would see a loss of access to local food, especially crop growers shifted to other practices, or you would see a loss of open space in farmland, which is certainly not something that I would think we would want either. New Jersey prides itself, the Garden State, on its agriculture.

On the landscape industry it proposes a lot of challenges as well. You start to actually see a separation. You might actually get to the point where if there are just less people to do the work, and there is less companies doing the work, a hyperinflation of the industry, which would start to make home landscaping, gardening, lawn maintenance, things which many average Americans and certainly in New Jersey can enjoy these days start to become unrea-

sonable, start to create this higher tier of estate gardener—you know, you go back to the estate gardener sort of status for that community—while possibly having some sort of an undercurrent down below.

And it is tough to say without having an exact number of—or exact percentage of the workforce that is undocumented, but I can tell you in preparation for today, calling my members and asking questions, New Jersey has high unemployment, and employers are advertising online and in print and everywhere you would traditionally do that, and they are having a very hard time finding employees to do the type of work that they need. So it is already a challenge, and if that workforce that is in place was displaced, it would only get worse.

Ms. LOFGREN. So, what—if you are seeking some percentage of immigrants in the workforce, is there any way for people to legally come?

I remember years ago, I was so honored when Dr. Richard Land from the Southern Baptist Convention was a witness before a Subcommittee, and I always mention that because I don't want to steal his line. It was a great line. And he said for years, we had two signs at the southern border. One sign said "No Trespassing," and the other sign said "Help Wanted."

And there is only 5,000 visas a year for unskilled workers without a college diploma. Are you able to meet the needs in New Jersey with those 5,000 visas in our current system?

Mr. MONDI. Yeah. We have a lot of employees that are using the H-2B program right now for some of this temporary seasonal labor, and it is tough to find one that doesn't have complications with the system, and any—no system is perfect.

Ms. LOFGREN. There is a cap on that as well that is usually met right away.

Mr. MONDI. There is a cap on that, and in the lowest of our economic times a few years ago, it was okay. I tell you those few years before that, that cap was met within the first—you know, first week of filings, and it was a real problem. And even now, you know, and anecdotally, you know, speaking with someone—one of my members on the way up here, they, you know, asked for 20 employees, and they got 16, and 4—4 are still stuck in their home country.

And you know, when you are talking about seasonal work and not seasonal like, well, Christmas is coming, so we need to hear more salespeople, but when we are talking about seasonal where when the spring hits, it is time to go, you need your workers when you need them or you lose work, you lose revenue, and that—obviously, that is a problem. So—

Ms. LOFGREN. I see that my time has expired. I thank the Chairman, and I yield back.

Mr. GOWDY. I thank the gentlelady from California.

The Chair will now recognize the gentleman from Texas Judge Poe.

Mr. POE. Thank you, Mr. Chairman. Thank you all for being here.

As we progress through this whole numerous issues on immigration, and I think there are numerous issues, that as I look at immi-

gration law, you take any subject, and it is broken all the way up and down the ladder. And I thank—I commend the Chairman for being methodical of taking one issue at a time and trying to solve each of those.

When it comes to workers, I used to be one that thought that Americans, if they needed work, they would take any job. Well, we have been proven wrong about that in the last hearing. We had the Georgia peach orchard guy. I don't know if they grow peaches in South Carolina or not, but—

Mr. GOWDY. We grow them more than they do in Georgia, Judge Poe.

Mr. POE. We don't grow too many.

But anyway, American farmer wanted to hire 2,000 workers, put all the ads out, hired every American that applied, 490-some-odd. Peach season is over, he had three Americans working for him. Americans don't take those jobs. They have other options.

My own philosophy is when it comes to workers, temporary guestworkers on both ends, high-skilled and low-skilled, we need as many as we need. Sure, hire Americans first, make sure we fill those low-skill, high-skill jobs with Americans first, but how many do we need? Well, we need, like I said, as many as we need, and the marketplace will drive us on that.

I don't think we should set arbitrary numbers. I don't think the labor union should, the Chamber of Commerce. Congress has to figure out a way. Maybe that fluctuates from year to year, I don't know. But my philosophy is marketplace driven, and this is—the issue of verifying who is working and who is not working, and making sure that we keep up with workers and they go home when they are supposed to go home, all those issues, I commend Chairman Smith trying to make that simpler.

But I say all that to say this: What do they do in other countries? We are not the only country in the world that has faced this tremendous issue. Have any of you done research with the other 194 countries there are in the world, if we count Texas, 195 countries left in the world, on this specific issue? And how do they solve this E-Verify concept that we are talking about? Any of you want to weigh in on that?

Mr. AMADOR. Well, it is a big question, yes. A lot of countries have done many different things. I am not saying that they should be appropriate for the United States, but even if you look at Europe, they solve their problem by just uniting and letting poor countries send workers to rich countries, and that is how they solve their problem.

They have similar ways of verifying identity. They have different ways of verifying identity. I know in France, you as an employer are required to send a list every month to the government, you know, with everybody you hire. There are different ways of doing it. From the perspective of the United States, I think building in a system that employers are becoming more familiar with, I think, is the right way to go.

On the issue of workers, as you mentioned, I think the—we do not support the W visa part of the Gang of 8 proposal. We like the big bill as a whole, but, you know, again, maybe negotiating all of those things ends up creating a lot of flaws. So I would hope, you

know, that this committee, after taking E-Verify, will look at—I know you are looking at agriculture next, but look at other portions and maybe come up with better titles, you know, so when you go to conference, you are able to come up with a better package.

Mr. POE. Any of the other three of you want to weigh in on that?

Ms. Wood.

Ms. WOOD. I would just say that I think E-Verify, it is a pretty good system, and it is increasingly doing kind of a better and better job. We don't have a demand side down, which is part of the reason we need to have kind of effective comprehensive immigration reform, but I think the E-Verify system, in a country that does not want a national ID card, is doing a pretty good job, and I think the government is making it easier and easier.

When I was in the government, and now that was several years ago, we would meet with many other countries to talk about migration challenges, and they would ask advice for us—from us, and we would ask advice from them. So it is not my experience that somebody else really has it solved. You know, Australia has an advantage because it is harder to get there, you know. Kind of there are those kinds of things.

Mr. POE. That is right.

Ms. WOOD. And other countries that have national ID cards can kind of focus on that. But, you know, we worked with several countries on effective worksite enforcement and challenges, because I think global migration patterns and issues, it is a real challenge for everyone, but I do think, you know, we are actually making some progress, so I would hope we stick with this horse.

Mr. POE. I have one other comment or question.

Mr. Amador, if I own a franchise in Humble, Texas. Let us use Chik-fil-A. I am a franchise owner. Who is responsible for checking my employees? Is it me, is it a third party, or is it Chik-fil-A corporate?

Mr. AMADOR. No. It is the franchisee. I mean, one of the biggest misconceptions in our industry is when you see a brand name, you are thinking it is a huge company behind it, and a lot of them is just really a mom and pop, you know, that may own two or three franchisees or maybe just one, and he is responsible for his employees. That is the way it is involved, because, you know, liability and other matters. So he has to be able to operate it as well as somebody that may own 100 or so franchises that may have—

Mr. POE. It is the franchise owner that is responsible for the employees.

Mr. AMADOR. That is correct.

Mr. POE. All right. I yield back. Thank you, Mr. Chairman.

Mr. GOWDY. Thank you, gentleman from Texas.

The Chair will now recognize the gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Mr. Chairman, may I be skipped temporarily? I have a—someone waiting.

Mr. GOWDY. Certainly

Mr. CONYERS. Thank you very much.

Mr. GOWDY. I believe we would then go to Mr. Gutierrez, the gentleman from Illinois

Mr. GUTIERREZ. Thank you so much.

Mr. GOWDY. Yes, sir

Mr. GUTIERREZ. I want to, first of all, thank all of the witnesses, and I want to say to my colleagues on both sides of the aisle I am ready to support a vigorous, rigorous program to verify employees. I do not want to see a continuation of a permanent underclass of workers in this country. I want to fix our broken immigration system.

I think that essential and critical to any comprehensive immigration reform package is to have E-Verify, and I want to make sure it works. I want to make sure that, as we have—we are suggesting today, that if there is an employer in America who wishes to hire an undocumented worker, that the full weight of the law is applied to that individual. And I would hope that as part of any process we make tests, especially in the first few months, that when we catch any scoundrels out there attempting to hire undocumented workers, that we enforce the full force of the law against them, because, you know, it takes two. It takes also—not every employer is hoodwinked by someone with false papers. There are employers who knowingly and willingly undermine American citizen workers by giving workers, undocumented workers, and I want to end that. I want to end it not only for the American workers, but I want to end the inherent exploitation that exists of the undocumented worker.

I think we need to understand that I am for E-Verify because I want everybody verified for the system. We have a great Nation. Things are getting better. And how are they getting better? Everybody tells us, OSHA tells us, American workers are safer than ever before. Tragically, 13 die every day and never come home, but they are safer. But when you extract Latinos from the group, more Latinos are getting hurt on the job, and more Latinos are dying at the job as the rate is declining for the overall pool of American workers.

I want that to end, so I am ready for E-Verify. I am ready to verify everyone. But let me just suggest the following. In the absence of a comprehensive immigration reform package, where are the votes to get the public policy? They are certainly not going to come from this side of the aisle, and we are going to have difficulty in reaching a grand bargain. And this, I want to state categorically, is part of the bargain, an essential fundamental part of any agreement in comprehensive immigration reform: enforcement, internal enforcement. It will stop and not allow a future event where, years to come, we have millions of other undocumented workers exploited again.

So if you look at this from my point of view, and the humanity, and the safety, and the justice of immigrants and working men and women, or from a public safety point of view, or from an economic point of view, take the view you wish, we should be able to reach an agreement on comprehensive immigration reform.

Now, if you allow the 11 million out there, then what you are asking me is to take our broken immigration system and unleash upon them an E-Verify system that is only going to make them go deeper into a more exploitive state where there will be more people that can prey upon them, I can't do that. I can do this, and I will

encourage all of my colleagues to do this in good faith, to keep America safe.

So, I want to thank you, Chairman Gowdy, for putting this hearing together. I hope we continue to have hearings like this. I think E-Verify is important. I believe we can make America safer, and make our workers safer, and live by this adage: Any job created in America should go to an American first, but there is plenty of work for others to come to this country, as they have in the past, to do.

Thank you so much, Chairman Gowdy.

Mr. GOWDY. Thank the gentleman from Illinois.

The Chair would now recognize the gentleman from Texas Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I am tempted to ask for 10 minutes, my 5 minutes plus the 5 minutes Mr. Gutierrez did not use for questions. I can only say that about a friend. I appreciate and admire Mr. Gutierrez very much for all that he has contributed to the immigration reform debate.

And I do want to say it is nice to hear everyone who is here as a witness, and, in fact, all my colleagues support E-Verify either alone or often in conjunction with other immigration reforms, and I certainly appreciate that.

Mr. Amador, I would like to start off with you, if I could. I don't know if I heard you mention in your oral statement the recent survey that was taken by the National Restaurant Association. Did you mention that in your opening statement?

Mr. AMADOR. Go ahead.

Mr. SMITH. The recent survey that was taken.

Mr. AMADOR. Yes.

Mr. SMITH. Could you go into some detail about that survey, because I think it is very instructive.

Mr. AMADOR. Sure. We—we just issued a survey that was completed late last year. We got more responses than we thought we were going to get. We got about 800 of our members, large, small suppliers. So we got a very good picture of a membership comment on E-Verify, you know, both members that use it, members that did not use it.

One thing that, you know, until now and last time we testified, the National Restaurant Association testified before the Committee, it was all anecdotal. Now we have the evidence, you know, and the evidence shows that our—the larger companies, you know, the larger members, already 49 percent of them are using E-Verify, and out of those, two-thirds of those that are using E-Verify sign up to it voluntarily.

One thing I will mention is, I mean, this whole idea that we cannot do enforcement alone, it is already happening. I mean, my members are seeing it. It is true that I get a lot of push-back from my guys in California as to why are you supporting the Legal Workforce Act; it is not going to be mandated here. Well, more and more it is mandated across borders, and it is having different mandates, and that is one of the complaints. They are signing up, and they are viewing that it is not just signing to E-Verify, it is signing to E-Verify of Colorado, E-Verify of Arizona, and they want a neutral playing ground, you know, where they have one law to follow.

From those that are not using E-Verify, I would say that the number one comment that they said was, well, we don't have an HR department, and we would like some options.

Mr. SMITH. Okay. Mr. Amador, I just wanted to make the point that I thought the survey also showed specifically that 79 percent of restaurant owners view E-Verify as 100 percent accurate. Is that—is that the final—

Mr. AMADOR. They found that to the best of their knowledge, that it was 100 percent accurate.

Mr. SMITH. When you can find 79 percent of any group of individuals thinking that anything is 100 percent accurate, that has got to be a new record either in the private sector or in the public sector.

Mr. AMADOR. It was that answer I did not expect, and we were happy to see it. Another one that was very interesting is 80 percent of those that use E-Verify recommended E-Verify to their colleagues.

Mr. SMITH. And to your knowledge, the use of E-Verify, the cost is minimal by the various owners?

Mr. AMADOR. That is what they were saying in the survey. One comment is for those that did not use it. For those that use it, already have Internet access, already have the framework in place.

Mr. SMITH. Right. And then what is the average time that it takes to check in a potential or future employee?

Mr. AMADOR. It takes—it takes minutes.

Mr. SMITH. You could say 2 to 3 minutes.

Mr. AMADOR. And if you want to—excuse me?

Mr. SMITH. Two to 3 minutes is what I have heard. Is that accurate?

Mr. AMADOR. Two to 3 minutes. And the number one complaint with it, which was the original question at the beginning of the hearing, was the tentative nonconfirmation throws a wrench into the system. So the 2 or 3 minutes we love, but then the tentative nonconfirmation adds additional cost to—

Mr. SMITH. Right. And the nonconfirmation shouldn't be a surprise, maybe particularly in the restaurant business, but in any business, because across the country about 5 percent of the workforce is illegal. So when we find out that 5 percent across the board doesn't—don't get confirmed, that is not a flaw in the system; that is actually showing that the system works.

Mr. AMADOR. And the concern that they have with exemptions that—exceptions that have been created in other States is they may need—it is a very neighborly business, right, so you turn somebody down, and they say, then I go to another restaurant that is exempted, because it happens perhaps throughout—

Mr. SMITH. That is why everybody needs to use E-Verify.

Mr. AMADOR. Right.

Mr. SMITH. Thank you.

Ms. Blitstein, I wanted to go back to your statement, and I wanted to really clarify for the record, when you talked about applying E-Verify to the current employees, that I wanted to make sure that you and others understood that the bill, yes, does apply to current employees when it comes to Federal contractors, for example, but as far as all other businesses, when we are talking about future

employees. So the burden is not going to be there, the burden that you might feel, and we can talk more about what to do about it, but that burden is not going to apply in, I would say, 99 percent of the cases.

The bill allows an employer to check current employees if they check all employees, and that is in an effort to avoid discrimination. But again, that is voluntary. We don't force everybody to check their current workforce. I just want to make sure that that was clear.

I appreciate your saying that E-Verify works as intended, and that it is a balanced approach as would—as well.

Is my time already up? Maybe I will go into Mr. Gutierrez's 5 minutes. No. No.

My time is up. Ms. Wood, let me just thank you for your testimony very quickly, and may I ask you what benefit you think E-Verify has for American workers? Sometimes that gets lost. We all talk about foreign workers. I don't think we talk enough about the benefits to American workers. And, Mr. Chairman, if I could ask your indulgence for her to answer that one question.

Mr. GOWDY. Certainly.

Ms. WOOD. Well, E-Verify provides kind of an even playing field for authorized workers when they apply to the system, and so it encourages employers to have, you know, wages and other things that are not undercut because they are depending on an illegal and unauthorized workforce.

Mr. SMITH. Okay. Thank the gentleman from Texas.

The Chair would now recognize the gentlelady from Texas Ms. Jackson Lee.

Ms. JACKSON LEE. I think that has a certain ring to it. Thank you very much, Mr. Chairman.

And as my good friend Mr. Smith was leaving, let me thank you and the Ranking Member. And I wanted to make mention of the fact for the record that yesterday we completed in Homeland Security one of the components to comprehensive immigration reform, which is a very strong border security bill, and I wanted to make mention for this Committee that Mr. Smith and I joined on an amendment that covered operational control for—oh, I am sorry. I thought you had stepped away—operational control for the entire border. And I just wanted to show a sign of bipartisanship and comfort for this Committee as we look at these issues that are enormously important, and if I might do an advertisement, I hope that we will consider that bill as a component to the process of comprehensive immigration reform.

Let me thank the witnesses. Mr. Amador, it is good to see you again. We have had a long journey of working together. But I really want to take a moment and thank the National Restaurant Association. We have worked with them over the years, but I do want to thank them for being such an enormous economic engine, and coming from Texas and Houston with such a large membership, certainly my friends, I have been in their restaurants, I have met with them, I understand the challenges that they have, and I would also say that they seek to hire anyone who will come and be a good worker, and do the job, and stay on the job.

You have given opportunity to young people. I am hearing that you are hiring seniors because seniors are coming back to work, and in between. And there are people at your—in your business—businesses that use the restaurant job as their income for their family, so I think your work is very important.

And I wanted to just ask a straight-out question because I wanted to make sure we were correct. The National Restaurant Association is supporting a comprehensive immigration reform; is that not the case?

Mr. AMADOR. We support immigration reform whether it is one piece at a time, whether it is only DACA. We supported DACA by itself. We support the Legal Workforce Act, and we support legalization of work—legal work status for I wouldn't say all, but certainly a great number of the 11 million.

Ms. JACKSON LEE. My understanding is that you are going on record for access to legalization for the 11-, 12 million undocumented individuals?

Mr. AMADOR. Of course, with caveats as, you know, if you have a criminal record and things like that.

Ms. JACKSON LEE. Well, our bill will cover all that.

Mr. AMADOR. But other than that, yes

Ms. JACKSON LEE. You are.

And you would—you would certainly be happy if components of what you are interested in came out in the form of a comprehensive immigration package.

Mr. AMADOR. Correct.

Ms. JACKSON LEE. So we can work together.

I wanted to just go over some—and thank you for that. And I want to look very closely at this legislation. Certainly our Chairman has made a great effort. One of the things that I want to explore the Chairman of the full Committee for and the Ranking Member is that we do have regular order, and that this Committee has the ability to participate in the process, and hopefully we will find that there are people here who will work for the greater good.

I want to ask Ms.—is it Blitstein?

Ms. BLITSTEIN. Blitstein.

Ms. JACKSON LEE. Blitstein, let me get that correct. One of the things that I wanted to raise very quickly is the question of due process and the ability to challenge the idea that I am documented. Do you have an answer to that? There is no provision in this bill for due process. If someone has claimed falsely that they are not—they don't verify them, but they are a citizen, or they have status?

Ms. BLITSTEIN. CUPA-HR would be in support of measures that could afford someone due process. No system is completely perfect, and while we certainly support the Legal Workforce Act, that doesn't mean—because there is no provision, that doesn't mean that we wouldn't be supportive of—of some mechanism like that.

Ms. JACKSON LEE. That would be very helpful. Thank you.

I want to go back to Mr. Amador. One of the major concerns about E-Verify has been raised. Historically the system returns an unacceptably high percentage of both erroneous confirmations and erroneous nonconfirmations. And we have heard testimony from USCIS early this year that improvements have been made. Will

that pose a problem? And I have heard from the restaurant association that that has been a problem.

Mr. AMADOR. It used to be a bigger problem. And again, you know, we had originally opposed—and this is years ago when it was first mandated, we had opposed E-Verify, but the improvements are significant, and our members are telling us that, you know, when people go back, they are able to fix those problems.

Ms. JACKSON LEE. But you would want to make sure that those problems would be fixed.

Mr. AMADOR. Well, of course, you know, we would like the system to always improve, but that doesn't mean it shouldn't be mandated, because it is working for the purpose intended.

Ms. JACKSON LEE. I appreciate it.

Mr. MONDI, I am sorry. Let me just—appreciate your industry as well, and I don't want you to have to go out of business. What about the idea of how much this would cost maybe for the employer, for the employee, and fraudulent documents? And in your industry it is seasonal, what kind of major impact that would have on you.

Mr. MONDI. So—

Ms. JACKSON LEE. How much—how much the system would cost, maybe cost the user, et cetera.

Mr. MONDI. If—

Ms. JACKSON LEE. Added cost.

Mr. MONDI. It would add a lot of cost in lost time. So actual dollars spent, if the technology advancements do come to fruition the way they have been suggested they may, with smartphone application and telephonic things, that might be very helpful. If your office is the cab of your pickup truck, however, any sort of additional paperwork burden is just that. It takes more time, it takes more time in the office, less time in the field. You are talking about owner/operators who will spend as much time with their hands on the shovel as they do on a keyboard, right?

So the biggest loss of money is going to be through additional time and administrative burdens. They don't have HR staff; you know, they cover every aspect of the business. And so when you are off site, when you do don't have an office, and you don't have dedicated office staff, any types of challenge—any type of paperwork burdens become a challenge.

Ms. JACKSON LEE. Let me thank the witnesses, and again, if I might add my appreciation for the restaurant association and the work Mr. Amador has done with us. Can we continue to work together?

Mr. AMADOR. Yes.

Ms. JACKSON LEE. I would love to do that.

I want to thank the Chairman, and I yield back.

Mr. GOWDY. Thank the gentlelady from Texas.

The Chair would now recognize the gentleman from Iowa Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I want to thank the witnesses for your testimony here today. And as I listen to the theme through here, that there is work that Americans won't do, and having spent my life for a time with a shovel in my hands or down in the ditch, and actually I haven't

found anything that I won't do, or anything I can't get my sons to do, or anything that I can't get our crew to do. Whether it is 126 degrees heat index or 60 below windchill, we will do what needs to be done.

And there are an awful lot of Americans that are naturalized, native-born Americans that are out there in the cold and the wind and the heat in the ditch doing this work every single day, and I pay attention. Around this city I can send my staff out with a video camera, and we could find you all kinds of work done in this city done by Americans that are doing work that Americans won't do.

So I just—I wanted to put that particular thing, perhaps, to rest, although it keeps recurring year by year, and make the point that, for example, 75 percent of illegal aliens in this country have less than a high school degree, high school degree or less, and a household headed by a high school—someone with a high school—without a high school degree will draw down—will pay in taxes about \$11,469 in taxes, and they will receive about \$46,582 in benefits. That is a net fiscal deficit of \$35,113.

What we are talking about here is a Nation that has a cradle-to-grave welfare system. This is not 1900. This isn't 1907 when the previous wave of immigration peaked. This is the cradle-to-grave welfare system in the United States, and Milton Friedman said clearly that the—an open borders program and a cradle-to-grave welfare system cannot coexist, and that is what we are doing here.

What we are doing is, speaking of the comprehensive immigration reform policy that has recurred here, is that we are really talking about taxpayers subsidizing the difference between the cost of sustaining a household and the wages that can be drawn into that household from someone who is—who is, I will say, of lower education, not necessarily lower skills. And I would ask unanimous consent to introduce into the record the Robert Rector report of the Heritage Foundation dated May 6, 2013, and ask a unanimous consent, Mr. Chairman.

Mr. GOWDY. Without objection.

[The information referred to follows:]



The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer

by Robert Rector and Jason Richwine, PhD

SPECIAL REPORT
from THE DOMESTIC POLICY STUDIES DEPARTMENT

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*The Fiscal Cost of Unlawful Immigrants
and Amnesty to the U.S. Taxpayer*

Robert Rector and Jason Richwine, PhD

About the Authors

Robert Rector is Senior Research Fellow in the Domestic Policy Studies Department at The Heritage Foundation.

Jason Richwine, PhD is Senior Policy Analyst for Empirical Studies in the Domestic Policy Studies Department at The Heritage Foundation.

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer

Robert Rector and Jason Richwine, PhD

Executive Summary

Unlawful immigration and amnesty for current unlawful immigrants can pose large fiscal costs for U.S. taxpayers. Government provides four types of benefits and services that are relevant to this issue:

- **Direct benefits.** These include Social Security, Medicare, unemployment insurance, and workers' compensation.
- **Means-tested welfare benefits.** There are over 80 of these programs which, at a cost of nearly \$900 billion per year, provide cash, food, housing, medical, and other services to roughly 100 million low-income Americans. Major programs include Medicaid, food stamps, the refundable Earned Income Tax Credit, public housing, Supplemental Security Income, and Temporary Assistance for Needy Families.
- **Public education.** At a cost of \$12,300 per pupil per year, these services are largely free or heavily subsidized for low-income parents.
- **Population-based services.** Police, fire, highways, parks, and similar services, as the National Academy of Sciences determined in its study of the fiscal costs of immigration, generally have to expand as new immigrants enter a community; someone has to bear the cost of that expansion.

The cost of these governmental services is far larger than many people imagine. For example, in 2010, the average U.S. household received \$31,584 in government benefits and services in these four categories.

The governmental system is highly redistributive. Well-educated households tend to be *net tax contributors*: The taxes they pay exceed the direct and means-tested benefits, education, and population-based services they receive. For example, in 2010, in the whole U.S. population, households with college-educated heads, on average, received \$24,839 in government benefits while paying \$54,089 in taxes. The average college-educated household thus generated a fiscal surplus of \$29,250 that government used to finance benefits for other households.

Other households are *net tax consumers*: The benefits they receive exceed the taxes they pay. These households generate a "fiscal deficit" that must be financed by taxes from other households or by government borrowing. For example, in 2010, in the U.S. population as a whole, households headed by persons without a high school degree, on average, received \$46,582 in government benefits while paying only \$11,469 in taxes. This generated an average fiscal deficit (benefits received minus taxes paid) of \$35,113.

The high deficits of poorly educated households are important in the amnesty debate because the typical unlawful immigrant has only a 10th-grade education. Half of unlawful immigrant households are headed by an individual with less than a high school degree, and another 25 percent of household heads have only a high school degree.

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Some argue that the deficit figures for poorly educated households in the general population are not relevant for immigrants. Many believe, for example, that lawful immigrants use little welfare. In reality, lawful immigrant households receive significantly more welfare, on average, than U.S.-born households. Overall, the fiscal deficits or surpluses for lawful immigrant households are the same as or higher than those for U.S.-born households with the same education level. Poorly educated households, whether immigrant or U.S.-born, receive far more in government benefits than they pay in taxes.

In contrast to lawful immigrants, unlawful immigrants at present do not have access to means-tested welfare, Social Security, or Medicare. This does not mean, however, that they do not receive government benefits and services. Children in unlawful immigrant households receive heavily subsidized public education. Many unlawful immigrants have U.S.-born children; these children are currently eligible for the full range of government welfare and medical benefits. And, of course, when unlawful immigrants live in a community, they use roads, parks, sewers, police, and fire protection; these services must expand to cover the added population or there will be "congestion" effects that lead to a decline in service quality.

In 2010, the average unlawful immigrant household received around \$24,721 in government benefits and services while paying some \$10,334 in taxes. This generated an average annual fiscal deficit (benefits received minus taxes paid) of around \$14,387 per household. This cost had to be borne by U.S. taxpayers. Amnesty would provide unlawful households with access to over 80 means-tested welfare programs, Obamacare, Social Security, and Medicare. The fiscal deficit for each household would soar.

If enacted, amnesty would be implemented in phases. During the first or interim phase (which is likely to last 13 years), unlawful immigrants would be given lawful status but would be denied access to means-tested welfare and Obamacare. Most analysts assume that roughly half of unlawful immigrants work "off the books" and therefore do not pay income or FICA taxes. During the interim phase, these "off the books" workers would have a strong incentive to move to "on the books" employment. In addition, their wages would likely go up as they

sought jobs in a more open environment. As a result, during the interim period, tax payments would rise and the average fiscal deficit among former unlawful immigrant households would fall.

After 13 years, unlawful immigrants would become eligible for means-tested welfare and Obamacare. At that point or shortly thereafter, former unlawful immigrant households would likely begin to receive government benefits at the same rate as lawful immigrant households of the same education level. As a result, government spending and fiscal deficits would increase dramatically.

The final phase of amnesty is retirement. Unlawful immigrants are not currently eligible for Social Security and Medicare, but under amnesty they would become so. The cost of this change would be very large indeed.

- As noted, at the current time (before amnesty), the average unlawful immigrant household has a net deficit (benefits received minus taxes paid) of \$14,387 per household.
- During the interim phase immediately after amnesty, tax payments would increase more than government benefits, and the average fiscal deficit for former unlawful immigrant households would fall to \$11,455.
- At the end of the interim period, unlawful immigrants would become eligible for means-tested welfare and medical subsidies under Obamacare. Average benefits would rise to \$43,900 per household; tax payments would remain around \$16,000; the average fiscal deficit (benefits minus taxes) would be about \$28,000 per household.
- Amnesty would also raise retirement costs by making unlawful immigrants eligible for Social Security and Medicare, resulting in a net fiscal deficit of around \$22,700 per retired amnesty recipient per year.

In terms of public policy and government deficits, an important figure is the aggregate annual deficit for all unlawful immigrant households. This equals the total benefits and services received by all unlawful immigrant households minus the total taxes paid by those households.

- Under current law, all unlawful immigrant households together have an aggregate annual deficit of around \$54.5 billion.
- In the interim phase (roughly the first 13 years after amnesty), the aggregate annual deficit would fall to \$43.4 billion.
- At the end of the interim phase, former unlawful immigrant households would become fully eligible for means-tested welfare and health care benefits under the Affordable Care Act. The aggregate annual deficit would soar to around \$106 billion.
- In the retirement phase, the annual aggregate deficit would be around \$160 billion. It would slowly decline as former unlawful immigrants gradually expire.

These costs would have to be borne by already overburdened U.S. taxpayers. (All figures are in 2010 dollars.)

The typical unlawful immigrant is 34 years old. After amnesty, this individual will receive government benefits, on average, for 50 years. Restricting access to benefits for the first 13 years after amnesty therefore has only a marginal impact on long-term costs.

If amnesty is enacted, the average adult unlawful immigrant would receive \$592,000 more in government benefits over the course of his remaining lifetime than he would pay in taxes.

Over a lifetime, the former unlawful immigrants together would receive \$9.4 trillion in government benefits and services and pay \$3.1 trillion in taxes. They would generate a lifetime fiscal deficit (total benefits minus total taxes) of \$6.3 trillion. (All figures are in constant 2010 dollars.) This should be considered a minimum estimate. It probably understates real future costs because it undercounts the number of unlawful immigrants and dependents who will actually receive amnesty and underestimates significantly the future growth in welfare and medical benefits.

The debate about the fiscal consequences of unlawful and low-skill immigration is hampered by a number of misconceptions. Few lawmakers really understand the current size of government and the scope of redistribution. The fact that the average household gets \$31,600 in government benefits each

year is a shock. The fact that a household headed by an individual with less than a high school degree gets \$46,600 is a bigger one.

Many conservatives believe that if an individual has a job and works hard, he will inevitably be a net tax contributor (paying more in taxes than he takes in benefits). In our society, this has not been true for a very long time. Similarly, many believe that unlawful immigrants work more than other groups. This is also not true. The employment rate for non-elderly adult unlawful immigrants is about the same as it is for the general population.

Many policymakers also believe that because unlawful immigrants are comparatively young, they will help relieve the fiscal strains of an aging society. Regrettably, this is not true. At every stage of the life cycle, unlawful immigrants, on average, generate fiscal deficits (benefits exceed taxes). Unlawful immigrants, on average, are always tax consumers; they never once generate a "fiscal surplus" that can be used to pay for government benefits elsewhere in society. This situation obviously will get much worse after amnesty.

Many policymakers believe that after amnesty, unlawful immigrants will help make Social Security solvent. It is true that unlawful immigrants currently pay FICA taxes and would pay more after amnesty, but with average earnings of \$24,800 per year, the typical unlawful immigrant will pay only about \$3,700 per year in FICA taxes. After retirement, that individual is likely to draw more than \$3.00 in Social Security and Medicare (adjusted for inflation) for every dollar in FICA taxes he has paid.

Moreover, taxes and benefits must be viewed holistically. It is a mistake to look at the Social Security trust fund in isolation. If an individual pays \$3,700 per year into the Social Security trust fund but simultaneously draws a net \$25,000 per year (benefits minus taxes) out of general government revenue, the solvency of government has not improved.

Following amnesty, the fiscal costs of former unlawful immigrant households will be roughly the same as those of lawful immigrant and non-immigrant households with the same level of education. Because U.S. government policy is highly redistributive, those costs are very large. Those who claim that amnesty will not create a large fiscal burden are simply in a state of denial concerning the underlying

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redistributional nature of government policy in the 21st century.

Finally, some argue that it does not matter whether unlawful immigrants create a fiscal deficit of \$6.3 trillion because their children will make up for these costs. This is not true. Even if all the children of unlawful immigrants graduated from college, they would be hard-pressed to pay back \$6.3 trillion in costs over their lifetimes.

Of course, not all the children of unlawful immigrants will graduate from college. Data on intergenerational social mobility show that, although the children of unlawful immigrants will have substantially better educational outcomes than their parents, these achievements will have limits. Only 13 percent are likely to graduate from college, for

example. Because of this, the children, on average, are not likely to become net tax contributors. The children of unlawful immigrants are likely to remain a net fiscal burden on U.S. taxpayers, although a far smaller burden than their parents.

A final problem is that unlawful immigration appears to depress the wages of low-skill U.S.-born and lawful immigrant workers by 10 percent, or \$2,300, per year. Unlawful immigration also probably drives many of our most vulnerable U.S.-born workers out of the labor force entirely. Unlawful immigration thus makes it harder for the least advantaged U.S. citizens to share in the American dream. This is wrong; public policy should support the interests of those who have a right to be here, not those who have broken our laws. ■

The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer

Robert Rector and Jason Richwine, PhD

Introduction

Each year, families and individuals pay taxes to the government and receive back a wide variety of services and benefits. A fiscal deficit occurs when the benefits and services received by one group exceed the taxes paid. When such a deficit occurs, other groups must pay for the services and benefits of the group in deficit. Each year, therefore, government is involved in a large-scale economic transfer of resources between different social groups.

Fiscal distribution analysis measures the distribution of total government benefits and taxes in society. It provides an assessment of the magnitude of government transfers between groups.

This paper provides a fiscal distribution analysis of households headed by unlawful immigrants: individuals who reside in the U.S. in violation of federal law. The paper measures the total government benefits and services received by unlawful immigrant households and the total taxes paid. The difference between benefits received and taxes paid represents the total resources transferred by government on behalf of unlawful immigrants from the rest of society.

Identifying the Unlawful Immigrant Population

The U.S. Department of Homeland Security (DHS) estimates that there were 11.5 million undocumented, or unlawful, foreign-born persons in the U.S. in January 2011.¹ These estimates are based on

the fact that the number of foreign-born persons appearing in U.S. Census surveys is considerably greater than the actual number of foreign-born persons who are permitted to reside lawfully in the U.S. according to immigration records.

For example, in January 2011, some 31.95 million foreign-born persons (who arrived in the country after 1980) appeared in the annual Census survey, but the corresponding number of lawful foreign-born residents in that year (according to government administrative records) was only 21.6 million.² DHS estimates that the difference—some 10.35 million foreign-born persons appearing in the Census American Community Survey (ACS)—was comprised of unauthorized or unlawful residents. DHS further estimates that an additional 1.15 million unlawful immigrants resided in the U.S. but did not appear in the Census survey, for a total of 11.5 million unlawful residents.³

DHS employs a “residual” method to determine the characteristics of the unlawful immigrant population. First, immigration records are used to determine the gender, age, country of origin, and time of entry of all foreign-born lawful residents. Foreign-born persons with these characteristics are subtracted from the total foreign-born population in Census records; the leftover, or “residual,” foreign-born population is assumed to be unlawful. This procedure enables DHS to estimate the age, gender, country of origin, date of entry, and current U.S. state of residence of the unlawful immigrant population in the U.S.

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TABLE 1

**Characteristics of the Unlawful
Immigrant Population, 2010**

Number of Persons	
Total	11.5 million
Appearing in Census Records	10.34 million
Not in Census	1.15 million
Year of Arrival	
2000-2011	45%
1990-1999	38%
Pre-1990	18%
Age	
Under 18	11%
18 to 24	13%
25 to 34	35%
35 to 44	29%
45 and older	12%
Sex	
Male	54%
Female	46%
Region of Origin	
North and Central America	77%
Mexico	60%
Asia	11%
South America	7%
Europe	2%
Other	3%

Sources: Heritage Foundation calculations using data from the U.S. Census Bureau, 2010 Current Population Survey. Calculations were designed to match figures from the U.S. Department of Homeland Security. See Appendix Table 1 for more information.

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The current Heritage Foundation study uses the DHS reports on the characteristics of unlawful immigrants to identify in the Current Population Survey (CPS) of the U.S. Census a population of foreign-born persons who have a very high probability of being unlawful immigrants.⁴ (The Current Population Survey is used in place of the similar American Community Survey because it has more detailed income and benefit information.)

The procedures used to identify unlawful immigrants in the CPS are similar to those used in studies

of the unlawful immigrant population produced by the Pew Hispanic Center, the Center for Immigration Studies, and the Migration Policy Institute. Selection procedures included the following:

1. The unlawful immigrant population identified in the CPS matched as closely as possible the age, gender, country of origin, year of arrival, and state of residence of the unlawful immigrant population identified by DHS.
2. Foreign-born persons who were current or former members of the armed forces of the U.S. or current employees of federal, state, and local governments were assumed to be lawful residents.
3. Since it is unlawful for unlawful immigrants to receive government benefits such as Social Security, Medicare, Medicaid, and public housing, individuals reporting personal receipt of such benefits were assumed to be lawfully resident.
4. Principles of consistency were applied within families; for example, children of lawful residents were assumed to be lawful.

Additional information on the procedures used to identify unlawful immigrants in the CPS is provided in Appendix B. It should also be noted that the Heritage Foundation analysis matched the DHS figures as closely as possible.⁵

The characteristics of the unlawful immigrant population estimated for the present analysis are shown in text Table 1. In 2010, there were 11.5 million unlawful immigrants in the U.S. Some 10.34 million of these appeared in the annual Current Population Survey and were identified by the residual method described above. Following the DHS estimate, an additional 1.15 million unlawful immigrants were assumed to reside in the U.S. but not to appear in Census surveys.

As Table 1 shows, 84 percent of unlawful immigrants came from Mexico, the Caribbean, and Central or South America; 11 percent came from Asia; and 5 percent came from the rest of the world. Unlawful immigrants were almost equally split by gender: 54 percent were males, and 46 percent were females.

TABLE 2

Demographic Characteristics of U.S. Households, 2010

	HOUSEHOLDS HEADED BY:		
	Unlawful Immigrant	Lawful Immigrant	Non-Immigrant
Number of households	3,444,955	12,601,544	102,702,224
Number of persons in household	12,708,875	39,089,280	253,161,268
Number of earners in households	5,417,751	18,082,129	127,598,880
Persons per household	3.7	3.1	2.5
Adults per household	2.1	2.3	1.9
Children per household	1.6	0.8	0.6
Earners per household	1.6	1.4	1.2
Earnings per household	\$38,988	\$59,071	\$53,937
Earnings per worker	\$24,791	\$41,167	\$43,413
Average household total income	\$40,993	\$68,931	\$68,095
Median age of householder	34	49	50
Percent of households headed by persons 65 and older	0.6%	19.4%	22.3%
Percent of persons in household who were 65 or older	1.1%	11.1%	13.7%
Percent of persons in household who were 16 to 64	59.7%	65.9%	65.7%
Percent of persons in household who were under age 18	42.3%	26.3%	23.4%
Percent of persons in household who are poor	35.1%	18.8%	13.6%

Note: The figures for unlawful immigrant households exclude 11 million adult U.S. citizens and adult lawful immigrants who resided in the household.
Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey.

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Characteristics of Unlawful Immigrants and Unlawful Immigrant Households

Any analysis of the fiscal costs of unlawful immigration must deal with the fact that a great many unlawful immigrants are parents of U.S.-born children. For example, the Pew Hispanic Center estimates that in 2010, there were 5.5 million children residing in the U.S. who have unlawful immigrant parents. Among these children, some 1 million were born abroad and were brought into the U.S. unlawfully; the remaining 4.5 million were born in the U.S. and are treated under law as U.S. citizens. Overall, some 8 percent of the children born in the U.S. each year have unlawful immigrant parents.⁶

The presence of these 4 million native-born children with unlawful immigrant parents is a direct result of unlawful immigration. These children would not reside in the U.S. if their parents had not chosen to enter and remain in the nation unlawfully. Obviously, any analysis of the fiscal cost of unlawful immigration must therefore include the costs associated with these children, because those costs are

a direct and inevitable result of the unlawful immigration of the parents. The costs would not exist in the absence of unlawful immigration.

To address that issue, the present study analyzes the fiscal costs of all households headed by unlawful immigrants. (Throughout this study, the terms “households headed by an unlawful immigrant” and “unlawful immigrant households” are used synonymously.)

In 2010, 3.44 million such households appeared in the CPS. These households contained 12.7 million persons including 7.4 million adults and 5.3 million children. Among the children, some 930,000 were unlawful immigrants, and 4.4 million were native-born or lawful immigrants.⁷

Table 2 shows the characteristics of unlawful immigrant households in comparison to non-immigrant and lawful immigrant households. Unlawful immigrant households are larger than other households, with an average of 3.7 persons per household compared to 2.5 persons in non-immigrant households.⁸

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TABLE 3

Household Differences in Education Level, 2010

	HOUSEHOLDS HEADED BY:		
	Unlawful Immigrant	Lawful Immigrant	Non-Immigrant
Persons without a high school degree	50.7%	19.9%	9.6%
Persons with only a high school degree	26.6%	23.6%	29.8%
Persons with some college	12.8%	20.1%	29.9%
Persons with a college degree or more	9.9%	36.4%	30.7%
Total	100.0%	100.0%	100.0%

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey.

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Unlawful immigrant households have more wage earners per household: 1.6 compared to 1.2 among non-immigrant households. However, the average earnings per worker are dramatically lower in unlawful immigrant households: \$24,791 per worker compared to \$43,413 in non-immigrant households. Contrary to conventional wisdom, non-elderly adult unlawful immigrants are not more likely to work than are similar non-immigrants.

The heads of unlawful immigrant households are younger, with a median age of 34 compared to 50 among non-immigrant householders. Partly because they are younger, unlawful immigrant households have more children, with an average of 1.6 children per household compared to 0.6 among non-immigrant households. The higher number of children tends to raise governmental costs among unlawful immigrant households. (Both lawful and unlawful children in unlawful immigrant households are eligible for public education, and the large number of children who were born in the U.S. are also eligible for means-tested welfare benefits such as food stamps, Medicaid, and Children's Health Insurance Program benefits.)

By contrast, there are very few elderly persons in unlawful immigrant households. Only 1.1 percent of persons in those households are over 65 years of age compared to 13.7 percent of persons in non-immigrant households. The absence of elderly persons in unlawful immigrant households significantly reduces current government costs; however, if unlawful immigrants remain in the U.S. permanently, the number who are elderly will obviously increase significantly.

Unlawful immigrant households are far more likely to be poor. Over one-third of unlawful

immigrant households have incomes below the federal poverty level compared to 18.8 percent of lawful immigrant households and 13.6 percent of non-immigrant households.

Education Level of Unlawful Immigrant Households

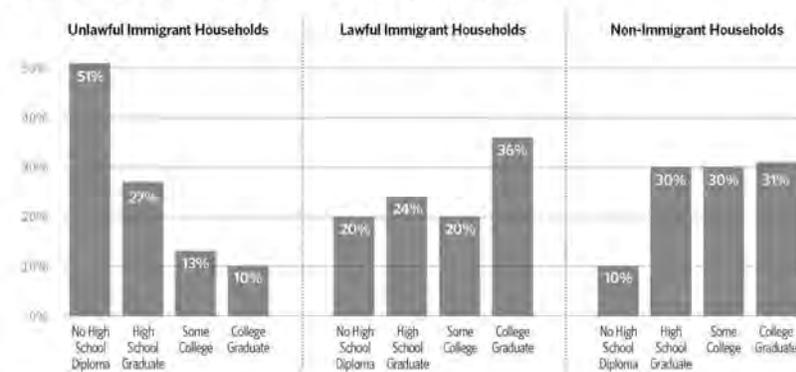
The low wage level of unlawful immigrant workers is a direct result of their low education levels. As Table 3 shows, half of unlawful immigrant households are headed by persons without a high school degree; more than 75 percent are headed by individuals with a high school degree or less. Only 10 percent of unlawful immigrant households are headed by college graduates. By contrast, among non-immigrant households, 9.6 percent are headed by persons without a high school degree, around 40 percent are headed by persons with a high school degree or less, and nearly one-third are headed by college graduates.

The current unlawful immigrant population thus contains a disproportionate share of poorly educated individuals. These individuals will tend to have low wages and pay comparatively little in taxes.

There is a common misconception that the low education levels of recent immigrants are part of a permanent historical pattern and that the U.S. has always admitted immigrants who were poorly educated relative to the native-born population. Historically, this has not been the case. For example, in 1960, recent immigrants were no more likely than non-immigrants to lack a high school degree. By 1998, recent immigrants were almost four times more likely to lack a high school degree than were non-immigrants.⁹

CHART 1

Households by Education Level of Head of Household



Note: Figures have been rounded.

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix Tables for more information.

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As the relative education level of immigrants fell in recent decades, so did their relative wage levels. In 1960, the average immigrant male in the U.S. actually earned more than the average non-immigrant male. As the relative education levels of subsequent waves of immigrants fell, so did relative wages. By 1998, the average immigrant earned 23 percent less than the average non-immigrant earned.¹⁰

Aggregate Cost of Government Benefits and Services

Any analysis of the distribution of benefits and taxes within the U.S. population must begin with an accurate count of the cost of all benefits and services provided by the government. The size and cost of government is far larger than many people imagine. In fiscal year (FY) 2010, the expenditures of the federal government were \$3.46 trillion. In the same year, expenditures of state and local governments were \$1.94 trillion. The combined value of federal, state, and local expenditures in FY 2010 was \$5.4 trillion.¹¹

This sum is so large that it is difficult to comprehend. One way to grasp the size of government more readily is to calculate average expenditures per

household. In 2010, there were 120.2 million households in the U.S.¹² (This figure includes both multi-person families and single persons living alone.) The average cost of government spending thus amounted to \$44,932 per household across the U.S. population.¹³

The \$5.4 trillion in government expenditure is not free; it must be paid for by taxing or borrowing economic resources from Americans or by borrowing from abroad. In FY 2010, federal taxes amounted to \$2.12 trillion. State and local taxes and related revenues amounted to \$1.98 trillion.¹⁴ Together, federal, state, and local taxes amounted to \$4.11 trillion. Taxes and related revenues came to 75 percent of the \$5.4 trillion in expenditures. The gap between taxes and spending was financed by government borrowing.

Types of Government Expenditure

After the full cost of government benefits and services has been determined, the next step in analyzing the distribution of benefits and taxes is to determine the beneficiaries of specific government programs. Some programs, such as Social Security, neatly parcel out benefits to specific individuals.

number of police and firefighters will generally need to expand proportionally.

In *The New Americans*, a study of the fiscal costs of immigration published by the National Academy of Sciences, the National Research Council (NRC) argued that if service remains fixed while the population increases, a program will become "congested," and the quality of service for users will deteriorate. Thus, the NRC uses the term "congestible goods" to describe population-based services.¹⁸ Highways are an obvious example. In general, the cost of population-based services can be allocated according to an individual's estimated utilization of the service or at a flat per capita cost across the relevant population.

A subcategory of population-based services is government administrative support functions such as tax collections and legislative activities. Few taxpayers view tax collection as a government benefit; therefore, assigning the cost of this "benefit" appears to be problematic.

The solution to this dilemma is to conceptualize government activities into two categories: primary functions and secondary functions.

- *Primary functions* provide benefits directly to the public; they include direct and means-tested benefits, education, ordinary population-based services such as police and parks, and public goods.
- By contrast, *secondary or support functions* do not provide direct benefits to the public but do provide necessary support services that enable the government to perform primary functions. For example, no one can receive food stamp benefits unless the government first collects taxes to fund the program. Secondary functions can thus be considered an inherent part of the "cost of production" of primary functions, and the benefits of secondary support functions can be allocated among the population in proportion to the allocation of benefits from government primary functions.

Government spent \$871 billion on population-based services in FY 2010. Of this amount, some \$769.6 billion went for ordinary services such as police and parks, and \$101.4 billion went for administrative support functions.

Interest and Other Financial Obligations Relating to Past Government Activities. Often,

tax revenues are insufficient to pay for the full cost of government benefits and services. In that case, government will borrow money and accumulate debt. In subsequent years, interest payments must be paid to those who lent the government money. Interest payments for the government debt are in fact partial payments for past government benefits and services that were not fully paid for at the time of delivery.

Similarly, government employees deliver services to the public. Part of the cost of the service is paid for immediately through the employee's salary, but government employees are also compensated by future retirement benefits. To a considerable degree, expenditures of public-sector retirement are therefore present payments in compensation for services delivered in the past. The expenditure category "interest and other financial obligations relating to past government activities" thus includes interest and principal payments on government debt and outlays for government employee retirement. Total government spending on these items equaled \$533.3 billion in FY 2010.¹⁹

While direct benefits, means-tested benefits, public education, and population-based services will grow as more immigrants take up residence in the United States, this is not the case for interest payments on the debt and related costs. These costs were fixed by past government spending and borrowing and are largely unaffected, at least in the intermediate term, by immigrants' entry into the United States. While an increased inflow of immigrants will lead to an increase in most forms of government spending, it will not cause an increase in interest payments on government debt in the short term.

To assess the fiscal impact of unlawful immigrants, therefore, the present report follows the procedures used by the National Research Council in *The New Americans*: That is, it ignores the costs of interest on the debt and similar financial obligations when calculating the net tax burden imposed by lawful and unlawful immigrant households.²⁰

On the other hand, while unlawful immigrant households do not increase government debt immediately, such households will, on average, increase government debt significantly over the long term. For example, if an unlawful immigrant household generated a net fiscal deficit (benefits received minus taxes paid) of \$20,000 per year and roughly 20 percent of that amount was financed each year by

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TABLE 4

Aggregate Government Expenditures and Revenues: FY 2010

Government Expenditures				
	Federal Expenditures (millions of dollars)	State and Local Expenditures (millions of dollars)	Total Expenditures (millions of dollars)	Average Expenditure per Household (dollars)
Direct benefits	1,185,313	147,875	1,333,188	\$11,088
Means-tested benefits	661,990	172,908	834,898	\$6,944
Education benefits	93,284	664,755	758,039	\$6,304
Population-based services	249,187	622,368	871,554	\$7,249
Interest and other spending due to past government services	224,403	308,943	533,347	\$4,436
Pure public goods expenditures	1,049,394	22,193	1,071,586	\$8,912
Total expenditures	3,463,571	1,939,041	5,402,612	\$44,932
Total expenditures less public good expenditures and expenditures for past services	2,189,774	1,607,905	3,797,679	\$31,584

Government Revenues				
	Federal Revenues (millions of dollars)	State and Local Revenues (millions of dollars)	Total Revenues (millions of dollars)	Average Revenues per Household (dollars)
Taxes and fees	2,122,445	1,536,017	3,658,462	\$30,427
Earnings on government assets: (government employee retirement funds, and related income)		448,555	448,555	
Total government revenues	2,122,445	1,984,572	4,107,017	

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix Tables 1 and 2 for more information.

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government borrowing, then the immigrant household would be responsible for adding roughly \$4,000 to government debt each year. After 50 years, the family's contribution to growth in government debt would be around \$200,000. While these potential costs are significant, they are outside the scope of the current paper and are not included in the calculations presented here.

Pure Public Goods. Economic theory distinguishes between "private consumption goods" and pure public goods. Economist Paul Samuelson is credited with first making this distinction. In his seminal 1954 paper "The Pure Theory of Public Expenditure,"²¹ Samuelson defined a pure public

good (or what he called a "collective consumption good") as a good "which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtractions from any other individual's consumption of that good." By contrast, a "private consumption good" is a good that "can be parceled out among different individuals." Its use by one person precludes or diminishes its use by another.

A classic example of a pure public good is a lighthouse: The fact that one ship perceives the warning beacon does not diminish the usefulness of the lighthouse to other ships. Another clear example of a governmental pure public good would be a future

cure for cancer produced by government-funded research: The fact that non-taxpayers would benefit from this discovery would neither diminish its benefit nor add extra costs to taxpayers. By contrast, an obvious example of a private consumption good is a hamburger: When one person eats it, it cannot be eaten by others.

Direct benefits, means-tested benefits, and education services are private consumption goods in the sense that the use of a benefit or service by one person precludes or limits the use of that same benefit by another. (Two people cannot cash the same Social Security check.) Population-based services such as parks and highways are often mentioned as “public goods,” but they are not pure public goods in the strict sense described above. In most cases, as the number of persons using a population-based service (such as highways and parks) increases, the service must either expand (at added cost to taxpayers) or become “congested,” in which case its quality will be reduced. Consequently, use of population-based services such as police and fire departments by non-taxpayers does impose significant extra costs on taxpayers.

Government pure public goods are rare; they include scientific research, defense, spending on veterans, international affairs, and some environmental protection activities such as the preservation of endangered species. Each of these functions generally meets the criterion that the benefits received by non-taxpayers do not result in a loss of utility for taxpayers. Government pure public good expenditures on these functions equaled \$978 billion in FY 2010. Interest payments on government debt and related costs resulting from public good spending in previous years add an estimated additional cost of \$93.5 billion, bringing the total public goods cost in FY 2010 to \$1,071.5 billion.

An immigrant's entry into the country neither increases the size and cost of public goods nor decreases the utility of those goods to taxpayers. In contrast to direct benefits, means-tested benefits, public education, and population-based services, the fact that unlawful and low-skill immigrant households may benefit from public goods that they do not pay for does not add to the net tax burden on other taxpayers.

This report therefore follows the same methods employed by the National Research Council in *The New Americans* and excludes public goods from the

count of benefits received by unlawful immigrant households.²³ (For a further discussion of pure public goods, see Appendix G.)

Summary: Total Expenditures. As Table 4 shows, overall government spending in FY 2010 came to \$5.40 trillion. Direct benefits had an average cost of \$11,088 per household across the whole population, while means-tested benefits had an average cost of \$6,944 per household. Education benefits and population-based services cost \$6,304 and \$7,249 per household, respectively. Interest payments on government debt and other costs relating to past government activities cost \$4,436 per household. Pure public good expenditures comprised 20 percent of all government spending and had an average cost of \$8,912 per household.

Excluding spending on public goods, interest on the debt, and related financial obligations, total spending came to \$31,584 per household across the entire population.

Taxes and Revenues

Total taxes and revenues for federal, state, and local governments amounted to \$4.107 trillion in FY 2010. The federal government received \$2.12 trillion in revenue, while state and local governments received \$1.98 trillion.

A detailed breakdown of federal, state, and local taxes is provided in Appendix Tables 6 and 7. The biggest revenue generator was the federal income tax, which cost taxpayers \$899 billion in 2010, followed by Federal Insurance Contribution Act (FICA) taxes, which raised \$812 billion. Property tax was the biggest revenue producer at the state and local levels, generating \$442 billion, while general sales taxes gathered \$285 billion.

Over 90 percent of the revenues shown in Appendix Tables 6 and 7 are conventional taxes and revenues; the remaining 9 percent (\$449 billion) are earnings from government assets, primarily assets held in state and local government employee pension funds. About one-quarter of these revenues were used to fund current retirement benefits; the rest were accumulated for future use.

Unlike general taxes, these earnings are not mandatory transfers from the population to the government, but rather represent an economic return on assets the government owns or controls. Because they do not represent payments made by households to the government, these earnings are not included

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TABLE 5

Government Benefits Received and Taxes Paid: All U.S. Households, 2010

ALL FIGURES ARE DOLLARS PER HOUSEHOLD

	Households Headed by Persons Without a High School Degree	Households Headed by Persons With a High School Degree	Households Headed by Individuals With Some College	Households Headed by Persons With a College Degree or More	All Households
Government Benefits Received per Household					
Direct benefits	\$13,837	\$13,301	\$10,201	\$8,713	\$11,088
Educational benefits	\$6,999	\$5,847	\$7,099	\$5,730	\$6,304
Means-tested benefits	\$18,336	\$8,070	\$6,009	\$2,227	\$6,944
Population-based services	\$7,410	\$6,941	\$6,499	\$8,169	\$7,248
Total benefits and services	\$46,582	\$34,159	\$29,808	\$24,839	\$31,584
Taxes Paid per Household					
Federal taxes paid	\$5,914	\$10,837	\$14,667	\$31,533	\$17,652
State and local taxes paid	\$5,554	\$8,507	\$9,455	\$22,556	\$12,775
Total taxes paid	\$11,469	\$19,344	\$24,122	\$54,089	\$30,426
Fiscal deficit or surplus per household	-\$35,113	-\$14,815	-\$5,686	\$29,250	-\$1,158

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix Tables for more information.

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in the fiscal balance analysis presented in the body of this paper. If they were included, they would alter the fiscal balance of current government retirees; therefore, they are irrelevant to the main topic of this paper: the fiscal balance of unlawful immigrants.

Summary of Estimation Methodology

The accounting framework used in the present analysis is the same framework employed by the National Research Council of the National Academy of Sciences in *The New Americans*.²⁷ Following that framework, the present study:

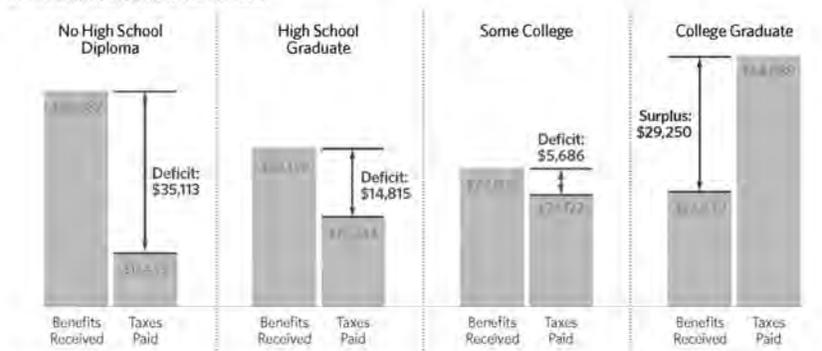
1. Excludes public goods costs such as defense and interest payments on government debt;
2. Treats population-based or congestible services as fully private goods and assigns the cost of those services to immigrant households based either on estimated use or on the immigrant share of the population;²⁸
3. Includes the welfare and educational costs of immigrant and non-immigrant minor children and assigns those costs to the child's household;
4. Assigns the welfare and educational costs of minor U.S.-born children of immigrant parents in the immigrant household; and
5. Assigns the cost of means-tested and direct benefits according to the self-reported use of those benefits in the CPS.

Clearly, any study that does not follow this framework may reach very different conclusions. For example, any study that excludes the welfare benefits and educational services received by the minor U.S.-born children of unlawful immigrant parents from the costs assigned to unlawful immigrant households will reach very different conclusions about the fiscal consequences of unlawful immigration.

CHART 2

Government Benefits Received and Taxes Paid: All U.S. Households, 2010

BY EDUCATION OF HEAD OF HOUSEHOLD



Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey, and U.S. Bureau of Labor Statistics, 2010 Consumer Expenditure Survey. Summaries of data sets are provided in the Appendix.

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An important principle in the analysis is that receipt of means-tested benefits and direct benefits was not imputed or assigned to households arbitrarily. Rather, the cost of benefits received was based on the household's self-report of benefits in the U.S. Census Bureau's Current Population Survey.²⁵ For example, the cost of the food stamp benefits received is based on the food stamp benefits data provided by the household. If the household stated it did not receive food stamps, then the value of food stamps within the household would be zero.

Data on attendance in public primary and secondary schools were also taken from the CPS; students attending public school were then assigned educational costs equal to the average per-pupil expenditures in their state. Public post-secondary education costs were calculated in a similar manner.

Wherever possible, the cost of population-based services was based on the estimated utilization of the service by unlawful immigrant households. For example, each household's share of public transportation expenditures was assumed to be proportional to its share of spending on public transportation as reported in the Bureau of Labor Statistics Consumer Expenditure Survey (CEX). When data on utilization

of a service were not available, the household's share of population-based services was assumed to equal its share of the total U.S. population.

Federal and state income taxes were calculated based on data from the CPS. FICA taxes were also calculated from CPS data; both the employer and employee share of FICA taxes were assumed to fall on workers. Corporate income taxes were assumed to be borne partly by workers and partly by owners; the distribution of these taxes was estimated according to the distribution of earnings and property income in the CPS.

Sales, excise, and property tax payments were based on consumption data from the Consumer Expenditure Survey.²⁶ For example, if the CEX showed that households headed by persons without a high school degree accounted for 10 percent of all sales of tobacco products in the U.S., those households were assumed to pay 10 percent of all tobacco excise taxes.

Certain specific adjustments were made for unlawful immigrant households. Since 45 percent of unlawful immigrants are believed to work "off the books," the federal and state income tax and FICA tax payments that Census imputes for each

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TABLE 6

Government Benefits Received and Taxes Paid per Household, 2010 (Page 1 of 2)

NON-IMMIGRANT HOUSEHOLDS					
ALL MONETARY FIGURES ARE DOLLARS PER HOUSEHOLD	Households Headed by Persons Without a High School Degree	Households Headed by Persons With a High School Degree	Households Headed by Individuals With Some College	Households Headed by Persons With a College Degree or More	All Households
Number of households	10,083,618	31,099,308	30,986,396	31,857,640	104,026,960
Percentage of households	9.7%	29.9%	29.8%	30.6%	100.0%
Government Benefits Received per Household					
Direct benefits	\$16,461	\$13,884	\$10,454	\$9,004	\$11,617
Educational benefits	\$4,930	\$5,341	\$6,897	\$5,463	\$5,802
Means-tested benefits	\$19,150	\$8,147	\$6,091	\$1,891	\$6,685
Population-based services	\$6,408	\$6,740	\$6,490	\$8,333	\$7,121
Total benefits and services	\$46,949	\$34,112	\$29,931	\$24,691	\$31,226
Taxes Paid per Household					
Federal taxes paid	\$5,387	\$10,944	\$14,762	\$31,878	\$17,954
State and local taxes paid	\$5,509	\$8,525	\$9,447	\$23,068	\$12,961
Total taxes paid	\$10,896	\$19,469	\$24,209	\$54,945	\$30,916
Fiscal deficit or surplus per household	-\$36,053	-\$14,642	-\$5,722	\$30,255	-\$310
LAWFUL IMMIGRANT HOUSEHOLDS					
ALL MONETARY FIGURES ARE DOLLARS PER HOUSEHOLD	Households Headed by Persons Without a High School Degree	Households Headed by Persons With a High School Degree	Households Headed by Individuals With Some College	Households Headed by Persons With a College Degree or More	All Households With Lawful Immigrant Heads
Number of households	2,558,106	3,015,088	2,561,737	4,631,877	12,766,808
Percentage of households	20.0%	23.6%	20.1%	36.3%	100.0%
Government Benefits Received per Household					
Direct benefits	\$12,212	\$10,639	\$9,094	\$7,204	\$9,398
Educational benefits	\$9,786	\$8,748	\$8,873	\$7,213	\$8,424
Means-tested benefits	\$19,762	\$10,093	\$7,022	\$3,549	\$9,040
Population-based services	\$8,439	\$8,030	\$7,487	\$9,017	\$8,361
Total benefits and services	\$50,200	\$37,511	\$32,476	\$26,982	\$35,223
Taxes Paid per Household					
Federal taxes paid	\$7,207	\$10,897	\$15,416	\$30,897	\$18,320
State and local taxes paid	\$6,000	\$8,287	\$9,572	\$20,614	\$12,659
Total taxes paid	\$13,207	\$19,184	\$24,988	\$51,511	\$30,879
Fiscal deficit or surplus per household	-\$36,993	-\$18,327	-\$7,489	\$24,529	-\$4,344

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TABLE 6

Government Benefits Received and Taxes Paid per Household, 2010 (Page 2 of 2)

UNLAWFUL IMMIGRANT HOUSEHOLDS					
ALL MONETARY FIGURES ARE DOLLARS PER HOUSEHOLD	Households Headed by Persons Without a High School Degree	Households Headed by Persons With a High School Degree	Households Headed by Individuals With Some College	Households Headed by Persons With a College Degree or More	All Households With Unlawful Immigrant Heads
Number of households	1,746,857	916,231	440,179	341,688	3,444,955
Percentage of households	51%	27%	13%	10%	100%
Government Benefits Received per Household					
Direct benefits	\$45	\$50	\$47	\$19	\$44
Educational benefits	\$15,514	\$13,067	\$10,501	\$9,508	\$13,627
Means-tested benefits	\$6,235	\$3,755	\$2,006	\$815	\$4,497
Population-based services	\$7,564	\$6,033	\$5,039	\$4,783	\$6,553
Total benefits and services	\$29,348	\$22,905	\$17,593	\$15,125	\$24,721
Taxes Paid per Household					
Federal taxes paid	\$4,284	\$4,694	\$6,160	\$10,339	\$5,233
State and local taxes paid	\$4,579	\$4,418	\$4,869	\$9,901	\$5,101
Total taxes paid	\$8,863	\$9,111	\$11,029	\$20,240	\$10,334
Fiscal deficit or surplus per household	-\$20,485	-\$13,794	-\$6,564	\$5,115	-\$14,387

Note: The count of households includes households in the Current Population Survey and a small number of persons residing in nursing homes.
Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix Tables for more information.

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household were reduced by 45 percent among unlawful immigrant households. The values of the Earned Income Tax Credit and Additional Child Tax Credit that Census imputes based on family income were reduced to zero for unlawful immigrant families since they are not eligible for those benefits. Immigrant children enrolled in government medical programs were assumed to have half the actual cost of non-immigrant children.²⁷ And unlawful immigrant families were assumed to use parks, highways, and libraries less than lawful households with the same income.

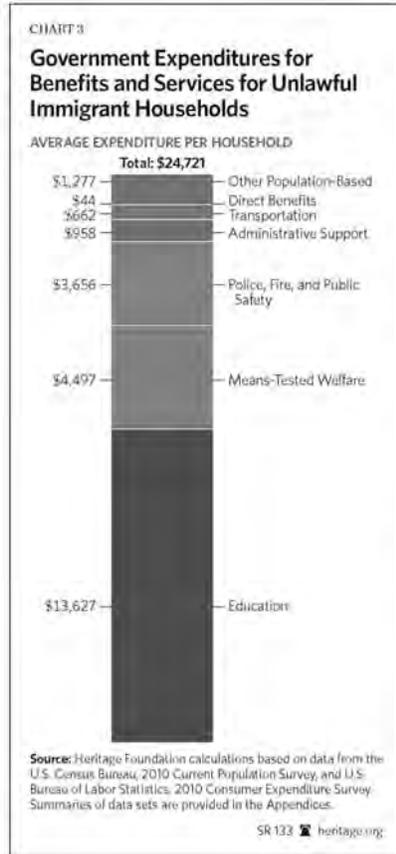
Finally, about 9 percent of the persons in unlawful immigrant households are adult lawful immigrants or U.S. citizens. The benefits received and taxes paid by these individuals have been excluded from the analysis. The overall methodology of the study is described in detail in the Appendices.

Distribution of Government Benefits and Taxes in the U.S. Population

Table 5 shows government benefits received and taxes paid by the average household in the whole U.S. population. In FY 2010, the average household received a total of \$31,584 in government direct benefits, means-tested benefits, education, and population-based services. The household paid \$30,426 in federal, state, and local taxes. Since the benefits received exceeded taxes paid, the average household had a fiscal deficit of \$1,158 that had to be financed by government borrowing.

If earnings in government employee retirement funds were included in the analysis, this small average household deficit would be largely erased. Nonetheless, these figures show that the taxes paid by U.S. households overall barely cover the cost of immediate services received (direct benefits, means-tested aid, education, and population-based

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services).²⁰ Public goods such as defense and interest on government debt are funded by government borrowing.

However, these average household figures mask great differences between different types of households. Individual households have different fiscal balances. Many households are *net tax contributors*: The taxes they pay exceed the direct and means-tested benefits, education, and population-based

services they receive. These households generate a “fiscal surplus” that government uses to finance benefits and services for other households. By contrast, other households are net tax consumers: The government benefits and services received by these households exceed taxes paid. These households generate a “fiscal deficit” that must be financed by taxes from other households or by government borrowing.

Table 5 shows that a critical factor in determining the fiscal balance of a household is the education of the head of household. Individuals with higher education levels earn more, pay more in taxes, and receive fewer government benefits. Less-educated individuals tend to receive more in government benefits and pay less in taxes.

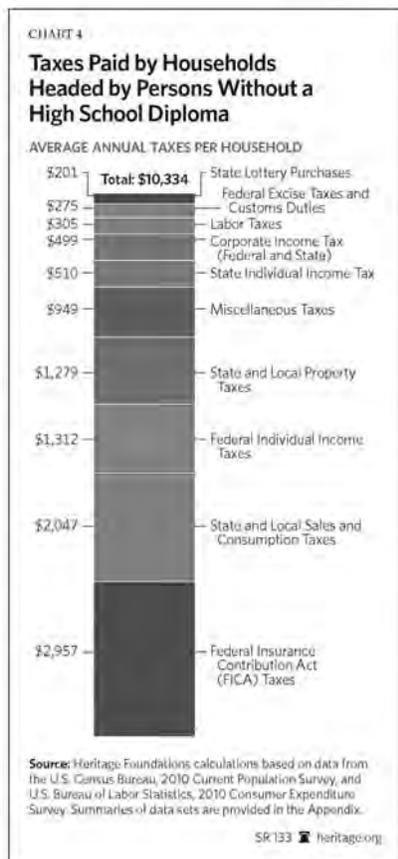
Chart 2 shows the average fiscal balance for all U.S. households based on the education level of the head of household. At one extreme are households with college-educated heads; on average, these households receive \$24,839 in government benefits while paying \$54,089 in taxes. The average college-educated household thus generates a fiscal surplus of \$29,250 that government uses to finance benefits for other households.

At the other extreme are households headed by persons without a high school degree. On average, these households receive \$46,582 in government benefits (direct, means-tested, education, and population-based services) while paying only \$11,469 in taxes. This generates an average fiscal deficit (benefits received minus taxes paid) of \$35,113.

The large average fiscal deficit of less-educated households has a bearing on the immigration debate because immigrant families (both lawful and unlawful) have, on average, far lower education levels than non-immigrants. For example, as Table 3 shows, half of unlawful immigrant household heads do not have a high school degree, and another 27 percent have only a high school diploma.

Household Fiscal Balances and Immigration

Table 6 shows the fiscal balance for non-immigrant, lawful immigrant, and unlawful immigrant households. Unlawful immigrant households have the largest annual fiscal deficits at \$14,387 per household. Lawful immigrant households have an average annual fiscal deficit of \$4,344, and non-immigrant households have a deficit of \$310, meaning that taxes paid roughly equal benefits received.²¹



Lawful immigrant households have higher fiscal deficits than non-immigrants for two reasons. The first is lower education levels; 20 percent of lawful immigrant households are headed by individuals without a high school diploma, compared to 10 percent among non-immigrant households. The second reason is high levels of welfare use. There is a popular misconception that immigrants use little welfare. The opposite is true. In fact, lawful

immigrants receive the highest level of welfare benefits.

At \$9,040, lawful immigrants' annual welfare benefits are a third higher than non-immigrants' benefits. This seems paradoxical because lawful immigrants are barred from receiving nearly all means-tested welfare during their first five years in the U.S. As Table 6 shows, this temporary ban has virtually no impact on the overall use of welfare because (a) the ban does not apply to children born inside the U.S. and (b) receipt of welfare occurs continually throughout a lifetime and therefore is little affected by a five- or 10-year moratorium on receipt of aid.

The lack of effectiveness of the five-year ban on welfare receipt in controlling total welfare costs has a direct bearing on the debate about amnesty legislation. It is noteworthy that the highest level of welfare use shown in Table 6 is \$19,762 per household per year among lawful immigrant households headed by individuals without a high school diploma. This figure is important because similar levels of welfare use can be expected among unlawful immigrant households receiving amnesty.

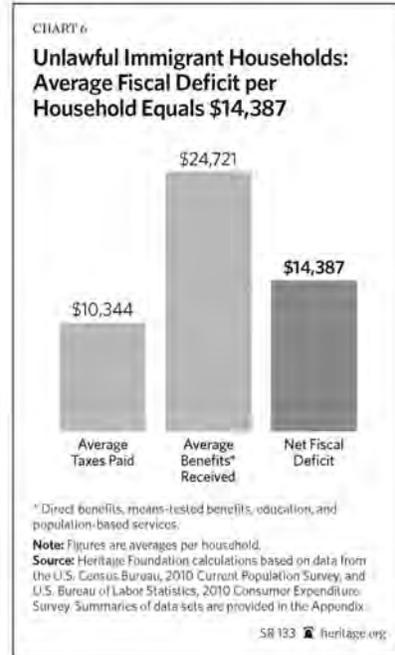
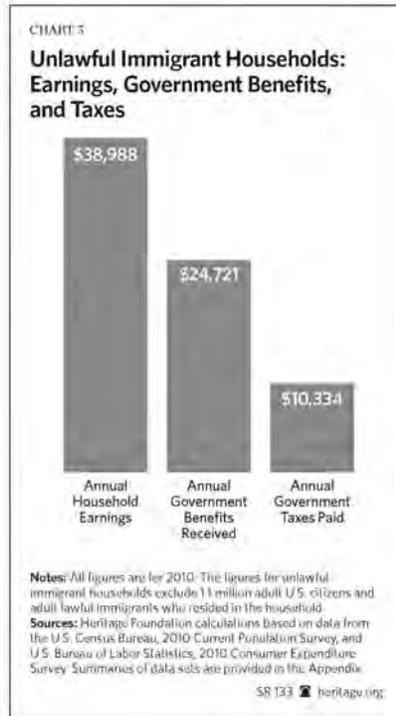
Another important point is that the level of welfare benefits received by unlawful immigrant households is significant, despite the fact that unlawful immigrants themselves are ineligible for nearly all welfare aid. The welfare benefits received by unlawful immigrant households go to U.S.-born children within these homes. If undocumented adults within these households are given access to means-tested welfare programs, per-household benefits will reach very high levels.

Cost of Government Benefits and Services Received by Unlawful Immigrant Households

As noted, in 2010, some 3.44 million unlawful immigrant households appeared in Census surveys. Appendix Table 8 shows the estimated costs of government benefits and services received by these households in 73 separate expenditure categories. The results are summarized in Chart 3.

Overall, households headed by an unlawful immigrant received an average of \$24,721 per household in direct benefits, means-tested benefits, education, and population-based services in FY 2010. Education spending on behalf of these households averaged \$13,627, and means-tested aid (going mainly to the

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U.S.-born children in the family) averaged \$4,497. Spending on police, fire, and public safety came to \$3,656 per household. Transportation added another \$662, and administrative support services cost \$958. Direct benefits came to \$44. Miscellaneous population-based services added a final \$1,277.

Taxes and Revenues Paid by Unlawful Immigrant Households. Appendix Table 9 details the estimated taxes and revenues paid by unlawful immigrant households in 34 categories. The results are summarized in Chart 4.

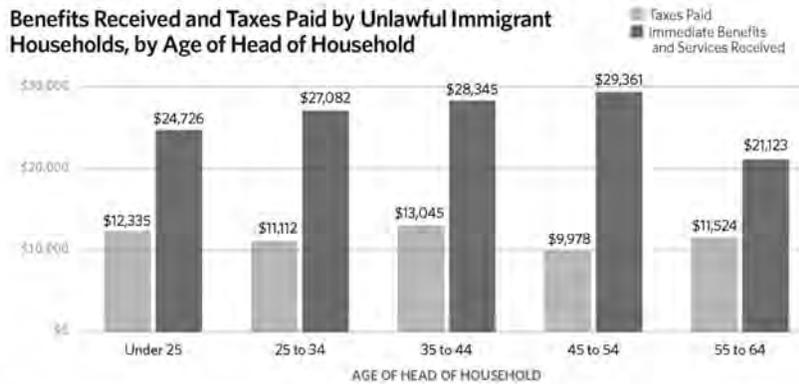
Total federal, state, and local taxes paid by unlawful immigrant households averaged \$10,334 per household in 2010. Federal and state individual income taxes comprised less than a fifth of total taxes paid. Instead, taxes on consumption and

employment (FICA) produced nearly half of the tax revenue for unlawful immigrant households. (The analysis assumes that workers pay both the employer and employee share of FICA tax.) Property taxes (shifted to renters) and corporate profit taxes (shifted to workers) also form a significant part of the tax burden.

It is worth noting that FICA and income taxes reported in Chart 4 have been reduced because the analysis assumes that 45 percent of unlawful immigrant earners work off the books. If all unlawful immigrant workers were employed on the books, these tax payments would increase significantly.

Balance of Taxes and Benefits. On average, unlawful immigrant households received \$24,721 per household in government benefits and services in FY 2010. This figure includes direct benefits, means-tested benefits, education, and population-based services received by the household but excludes the

CHART 7

Benefits Received and Taxes Paid by Unlawful Immigrant Households, by Age of Head of Household

Note: Benefits include direct and means-tested benefits, public education, and population-based services. Lawful residents are included in these figures.

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey, and U.S. Bureau of Labor Statistics, 2010 Consumer Expenditure Survey. Summaries of data sets are provided in the Appendix.

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cost of public goods, interest on the government debt, and other payments for prior government functions. By contrast, unlawful immigrant households on average paid only \$10,334 in taxes. Thus, unlawful immigrant households received \$2.40 in benefits and services for each dollar paid in taxes.

Many politicians believe that households that maintain steady employment are invariably net tax contributors, paying more in taxes than they receive in government benefits. Chart 5 shows why this is not the case. As Table 2 shows, unlawful immigrant households have high levels of employment, with 1.6 earners per household and average annual earnings of around \$39,000 for all workers in the household. But with average government benefits at \$24,721, unlawful immigrant households actually receive 63 cents in government benefits for every dollar of earnings.

To achieve fiscal balance, with taxes equal to benefits, the average unlawful immigrant household would have to pay nearly two-thirds of its income in taxes. Given this simple fact, it is obvious that unlawful immigrant households can never pay enough taxes to cover the cost of their current government benefits and services.

Net Annual Fiscal Deficit. The net fiscal deficit of a household equals the cost of benefits and services received minus taxes paid. As Chart 6 shows, when the costs of direct and means-tested benefits, education, and population-based services are counted, the average unlawful immigrant household had a fiscal deficit of \$14,387 (government expenditures of \$24,721 minus \$10,334 in taxes) in 2010.

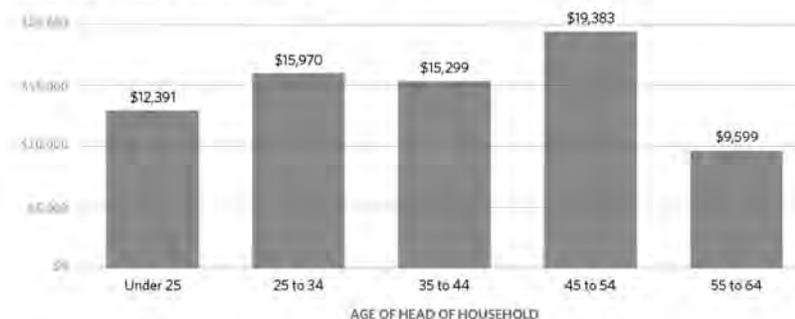
For the average unlawful immigrant household to become fiscally solvent, with taxes paid equaling immediate benefits received, it would be necessary to increase the household's tax payments to 240 percent of current levels. Alternatively, unlawful immigrant households could become solvent only if all means-tested welfare and nearly all public education benefits were eliminated.

Age Distribution of Benefits and Taxes Among Unlawful Immigrant Households. Many political decision makers believe that because unlawful immigrant workers are comparatively young, they can help to relieve the fiscal strains of an aging society. Charts 7 and 8 show why this is not the case. These charts separate the 3.44 million unlawful immigrant households into five categories based on the age of the head of household.

**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
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CHART 8

**Annual Fiscal Deficit per Unlawful Immigrant Household,
by Age of Head of Household**



Notes: Fiscal deficit equals benefits and services received minus taxes paid. Benefits include direct and means-tested benefits, public education, and population-based services. Lawful residents are included in these figures.
Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey, and U.S. Bureau of Labor Statistics, 2010 Consumer Expenditure Survey. Summaries of data sets are provided in the Appendices.

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The benefits levels in Chart 7 again include direct benefits, means-tested benefits, public education, and population-based services. These benefits start at \$24,726 for households headed by immigrants under 25 years of age and rise to \$28,000 to \$29,000 per year as the heads of household reach their 30s and 40s. The increase is driven by a rise in the number of children in each home. As the age of the head of household reaches the late 50s, the number of children in the home falls, and benefits dip to around \$21,000 per year. Annual tax payments vary little by the age of the householder, averaging around \$12,000 per year in each age bracket.

The critical fact shown in Chart 7 and Chart 8 is that, for each age category, the benefits received by unlawful immigrant households exceed the taxes paid. At no point in the life cycle does the average unlawful immigrant household pay more in taxes than it takes out in benefits. In each age category, unlawful immigrant households receive roughly \$2.00 in government benefits for each dollar paid in taxes. Between ages 45 and 54 (generally considered prime earning years), unlawful immigrants actually receive nearly \$3.00 in benefits for each dollar paid in taxes.

These figures belie the notion that government can relieve financial strains in Social Security and other programs simply by importing younger unlawful immigrant workers. The fiscal impact of an immigrant worker is determined far more by education and skill level than by age. Low-skill immigrant workers (whether lawful or unlawful) impose a net drain on government finance as soon as they enter the country and add significantly to those costs every year they remain.

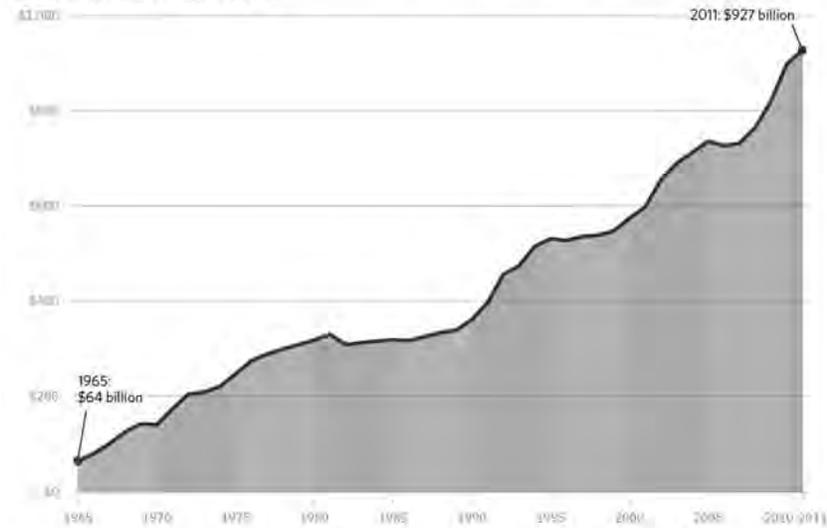
Chart 8 shows the net fiscal deficits (benefits minus taxes) for each age category. The fiscal deficits reach a peak of over \$19,000 per year for households with heads between 45 and 54 years old. The average deficit then falls to around \$10,000 per year for households with heads between 55 and 64 years old. The number of unlawful immigrant households declines sharply with age. There are very few unlawful immigrant households with heads over age 65.

Aggregate Annual Net Fiscal Costs. In 2010, 3.44 million unlawful immigrant households appeared in the Current Population Survey. The average net fiscal deficit per household was \$14,387. Most experts believe that at least 350,000 more

CHART 9

Total Federal and State Means-Tested Welfare Spending, 1965–2011

IN BILLIONS OF CONSTANT 2011 DOLLARS

**Note:** Figures show total federal and state means-tested welfare spending, in cash, food, housing, medical care, and social services.**Source:** The Heritage Foundation, from current and previous Office of Management and Budget documents and other official government sources.

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unlawful immigrant households resided in the U.S. but were not reported in the CPS.

Assuming that the fiscal deficit for these unreported households was the same as the fiscal deficit for the unlawful immigrant households in the CPS, the total annual fiscal deficit (total benefits received minus total taxes paid) for all 3.79 million unlawful immigrant households together equaled \$54.5 billion (the deficit of \$14,387 per household times 3.79 million households). This sum includes direct and means-tested benefits, education, and population-based services.

Adjusting Future Deficit Estimates for the Potential Impact of the 2010 Recession

In 2010, the economy was in recession. In a recession, overall income and tax revenue will be

lower; some benefits such as unemployment insurance will be dramatically higher. The recession may therefore have increased the fiscal deficit of unlawful immigrant households relative to non-recession years. However, the impact of a recession will not be uniform across all socioeconomic groups.

Evidence suggests that the recession had at best a modest impact on the fiscal status of unlawful immigrant households. For example, while incomes dropped significantly during the recession, most of the drop occurred in property income; the National Income and Product Accounts (which measure the whole economy) show that total nominal wages fell by only 2.3 percent from 2008 to 2010. Some 95 percent of the income of unlawful immigrant households comes from wages.

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As measured in the CPS, the constant-dollar income of the average unlawful immigrant household was the same in 2010 as in 2006. The measured income of unlawful immigrants may be comparatively stable during a recession because unemployed unlawful immigrants return to their country of origin and thereby disappear from Census records. If the average unlawful immigrant household lost income during the recession, the drop was modest.

What about welfare spending? There is a popular conception that welfare spending is like a roller coaster, rising sharply during a recession and falling when the recession ends. This pattern applies somewhat to food stamps but not to means-tested welfare in general. Historically, overall means-tested spending does rise during a recession but does not fall noticeably when the recession ends.

This pattern is shown in Chart 9, which shows total means-tested spending over time adjusted for inflation. The chart shows a dramatic rise in costs over time. Periods of rapid increase are followed by spending plateaus, but there are no significant dips in post-recession periods. Following this pattern, the Obama budget shows that constant-dollar per capita means-tested spending will not decline over the next decade.³⁰

Despite these caveats, the estimates of future fiscal deficits in the rest of this paper will be adjusted for the potential effects of the recession on the 2010 data. Specifically, the analysis reduces future unemployment benefits and food stamp benefits by 66 percent and 25 percent below 2010 levels, respectively. These adjustments are firmly backed by evidence and included in all of the figures on future-year deficits.

In addition, the analysis increases future tax payments by unlawful immigrants upward by 5 percent and reduces future overall means-tested welfare benefits downward by 5 percent to compensate for the impact of the recession on 2010 data. These adjustments are more speculative; their impact is shown separately in Table 7 and in subsequent tables. The latter adjustments reduce projected future fiscal deficits among unlawful immigrant households by about 5 percent.

**Fiscal Impact of Amnesty
or “Earned Citizenship”**

In recent years, Congress has considered various comprehensive immigration reform proposals. One key feature of these proposals has been that

all or most current unlawful immigrants would be allowed to stay in the U.S. and become U.S. citizens.

In most legislative proposals, amnesty or “earned citizenship” would have three phases. First, unlawful immigrants would be placed in a provisional status that would allow them to remain in the U.S. lawfully. After five to 10 years in this provisional status, most former unlawful immigrants would be granted legal permanent resident (LPR) status. After five years in LPR status, the individuals would be allowed to become U.S. citizens. The interval between initial amnesty and citizenships would thus stretch for 10 to 15 years or longer.

The fiscal impact of amnesty would vary greatly depending on the time period examined. The present paper will analyze the fiscal consequences of amnesty in four phases.

- **Phase 1: Current Law or Status Quo.** This is the fiscal status at the present time prior to amnesty.
- **Phase 2: The Interim Phase.** This phase would include the period in which amnesty recipients were in provisional status followed by the first five years of legal permanent residence. During the interim phase, tax revenues would go up as more former unlawful immigrants began to work “on the books” but would remain barred from receiving means-tested welfare and probably Obamacare health care subsidies. The overall net fiscal cost of the former unlawful immigrant population could be expected to decline slightly during this period. The length and programmatic boundaries of the interim phase would obviously vary in different bills, but five to 15 years would be typical.
- **Phase 3: Full Implementation of Amnesty.** At the end of the interim phase, all amnesty bills would provide the amnesty recipients (former unlawful immigrants) with full eligibility for more than 80 means-tested welfare programs as well as health care subsidies under the Affordable Care Act (ACA, or Obamacare). The resulting increase in outlays would be substantial.
- **Phase 4: Retirement Years.** Under current law, unlawful immigrants are not eligible for Social Security and Medicare benefits. All amnesty legislation would allow recipients of amnesty to obtain eligibility for these programs.

TABLE 7

Fiscal Deficits During the Phases of Amnesty (Page 1 of 2)

UNLAWFUL IMMIGRANT HOUSEHOLDS BEFORE AMNESTY					
ALL MONETARY FIGURES ARE DOLLARS PER HOUSEHOLD, UNLESS OTHERWISE INDICATED	Households Headed by Immigrants Without a High School Degree	Households Headed by Immigrants With a High School Degree	Households Headed by Immigrants With Some College	Households Headed by Immigrants With a College Degree or More	All Households With Immigrant Heads
Number of households	1,746,857	916,231	440,179	341,688	3,444,955
Percentage of households	51%	27%	13%	10%	100%
Government Benefits Received per Household					
Direct benefits	\$45	\$50	\$47	\$19	\$44
Educational benefits	\$15,514	\$13,067	\$10,501	\$9,508	\$13,627
Means-tested benefits	\$6,235	\$3,755	\$2,006	\$815	\$4,497
Population-based services	\$7,554	\$6,033	\$5,039	\$4,783	\$6,553
Total benefits and services	\$29,348	\$22,905	\$17,593	\$15,125	\$24,721
Taxes Paid per Household					
Federal taxes paid	\$4,284	\$4,694	\$6,160	\$10,339	\$5,233
State and local taxes paid	\$4,579	\$4,418	\$4,859	\$9,901	\$5,101
Total taxes paid	\$8,863	\$9,111	\$11,029	\$20,240	\$10,334
Fiscal deficit or surplus per household	-\$20,485	-\$13,794	-\$6,564	\$5,115	-\$14,387
UNLAWFUL IMMIGRANT HOUSEHOLDS AFTER AMNESTY—INTERIM PHASE					
ALL MONETARY FIGURES ARE DOLLARS PER HOUSEHOLD, UNLESS OTHERWISE INDICATED	Households Headed by Immigrants Without a High School Degree	Households Headed by Immigrants With a High School Degree	Households Headed by Immigrants With Some College	Households Headed by Immigrants With a College Degree or More	All Households With Immigrant Heads
Government Benefits Received per Household					
Direct benefits	\$1,381	\$1,075	\$1,072	\$688	\$1,191
Educational benefits	\$15,514	\$13,067	\$10,501	\$9,508	\$13,627
Means-tested benefits	\$6,235	\$3,755	\$2,006	\$815	\$4,497
Population-based services	\$9,435	\$7,526	\$6,271	\$6,230	\$6,189
Total benefits and services	\$32,564	\$25,423	\$19,849	\$17,241	\$27,504
Taxes Paid per Household					
Federal taxes paid	\$7,388	\$8,120	\$10,627	\$17,456	\$8,994
State and local taxes paid	\$5,353	\$5,331	\$6,002	\$11,882	\$6,077
Total taxes paid	\$12,741	\$13,451	\$16,629	\$29,338	\$15,071
Fiscal deficit or surplus per household	-\$19,823	-\$11,972	-\$3,220	\$12,098	-\$12,433
Post-Recession Adjustments					
Means-tested welfare decrease	\$312	\$188	\$100	\$41	\$225
Tax increase	\$637	\$673	\$831	\$1,467	\$754
Recession-adjusted deficit per household	-\$18,874	-\$11,112	-\$2,288	\$13,605	-\$11,455

**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
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TABLE 7

Fiscal Deficits During the Phases of Amnesty (Page 2 of 2)

UNLAWFUL IMMIGRANT HOUSEHOLDS AFTER AMNESTY—FULL IMPLEMENTATION					
ALL MONETARY FIGURES ARE DOLLARS PER HOUSEHOLD, UNLESS OTHERWISE INDICATED	Households Headed by Immigrants Without a High School Degree	Households Headed by Immigrants With a High School Degree	Households Headed by Immigrants With Some College	Households Headed by Immigrants With a College Degree or More	All Households With Immigrant Heads
Government Benefits Received per Household					
Direct benefits	\$2,682	\$1,994	\$1,845	\$1,208	\$2,246
Educational benefits	\$15,514	\$13,067	\$10,501	\$9,508	\$13,627
Means-tested benefits	\$20,093	\$11,015	\$6,798	\$2,893	\$14,263
Affordable Care Act health care benefits	\$8,334	\$5,838	\$3,805	\$775	\$6,342
Population-based services	\$9,435	\$7,526	\$6,271	\$6,230	\$8,189
Total benefits and services	\$56,058	\$39,441	\$29,130	\$20,614	\$44,666
Taxes Paid per Household					
Federal taxes paid	\$7,459	\$8,198	\$10,730	\$17,624	\$9,081
State and local taxes paid	\$5,405	\$5,383	\$6,060	\$11,997	\$6,135
Total taxes paid	\$12,864	\$13,580	\$16,789	\$29,620	\$15,216
Fiscal deficit or surplus per household	-\$43,195	-\$25,861	-\$12,340	\$9,006	-\$29,450
Post-Recession Adjustments					
Means-tested welfare decrease	\$1,005	\$551	\$335	\$145	\$713
Tax increase	\$643	\$679	\$889	\$1,481	\$761
Recession-adjusted deficit per household	-\$41,547	-\$24,631	-\$11,165	\$10,632	-\$27,976

Note: Aggregate fiscal deficit figures equal the per household amounts times 3.79 million unlawful immigrant households.

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix tables for more information.

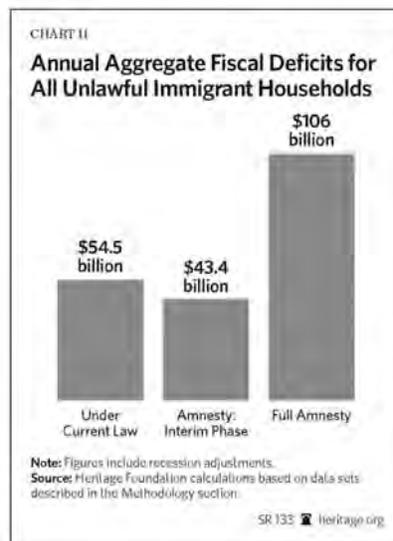
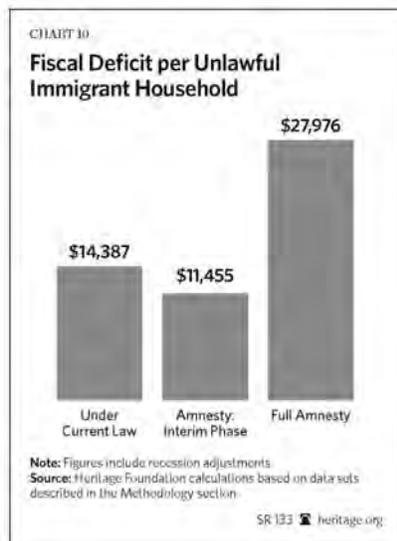
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Immediately after enactment of amnesty, former unlawful immigrants with jobs would begin to acquire credits toward future Social Security and Medicare eligibility. Once they had completed 40 quarters (or 10 years) of employment, they would become eligible for Social Security old age benefits and Medicare and would begin to receive benefits upon reaching retirement age.

In addition, under amnesty, former unlawful immigrants would probably be able to obtain credits toward Social Security for work performed during their time of unlawful residence if they could show that FICA taxes were paid for

that employment. Upon reaching the retirement age of 67, former unlawful immigrants could begin to draw Social Security and Medicare benefits. They would also be eligible for other government benefits such as public housing, food stamps, and Medicaid payments for nursing home care. Given the present age of most unlawful immigrants, these retirement costs would not emerge for several decades, but they would be quite large when they did occur.

The median age for current adult unlawful immigrants is 34. Given amnesty, these individuals would, on average, continue to pay taxes and



receive benefits for five decades. From this perspective, placing a temporary moratorium on receipt of welfare and Obamacare subsidies would have only a marginal impact on overall costs.

Postponing the date when amnesty recipients would receive welfare and Obamacare is important politically, however, because it hides the real costs of amnesty during the all-important 10-year “budget window” employed by the Congressional Budget Office (CBO). Concealing the actual costs of legislation by delaying program expansion until after the end of the CBO 10-year budget window is a time-worn legislative trick in Washington. This budgetary ploy can be very effective in deluding both politicians and the public about the actual costs of legislation.

When amnesty legislation is rolled out in Congress, the public should expect to see this strategy of deception in full force. Nearly all fiscal discussion in Congress and the press will focus on the deliberately low temporary costs during the interim phase. The far more significant longer-term costs will be largely ignored. No politician who is serious

about government spending and deficits should promote this deceptive budgetary gimmick, and the public should not be fooled by it.

Fiscal Changes During the Interim Phase

During the initial interim phase, amnesty would produce three fiscal changes: an increase in tax revenue, an increase in Social Security and Medicare payments for disabled persons and survivors, and an increase in some population-based costs as former unlawful immigrants become more comfortable using government services. This section analyzes those changes.

As noted earlier, nearly all experts believe that much employment of unlawful immigrants occurs “off the books.” Since taxes are not paid on this hidden employment, the result is less government revenue. After amnesty, former unlawful immigrants would have a strong incentive to shift to “on the books” employment because a consistent record of official employment would probably be necessary for these individuals to remain in the U.S. and to progress toward LPR status.

**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
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TABLE 8

Total Fiscal Deficit for All Unlawful Immigrant Households

IN MILLIONS OF 2010 DOLLARS	Current Law	Interim Phase After Amnesty	Full Implementation of Amnesty
Government Benefits Received by All Unlawful Immigrant Households			
Direct benefits	\$167	\$4,515	\$8,512
Educational benefits	\$51,646	\$51,646	\$51,646
Means-tested benefits	\$17,045	\$17,045	\$54,055
Affordable Care Act health care benefits			\$24,036
Population-based services	\$24,836	\$31,035	\$31,035
Total benefits and services	\$93,693	\$104,240	\$169,284
Taxes Paid by All Unlawful Immigrant Household			
Federal taxes paid	\$19,834	\$34,088	\$34,415
State and local taxes paid	\$19,333	\$23,031	\$23,252
Total taxes paid	\$39,166	\$57,118	\$57,668
Total annual fiscal deficit for all unlawful immigrant households	-\$54,527	-\$47,122	-\$111,616
Post-Recession Adjustments			
Means-tested welfare decrease	\$852	\$852	\$2,703
Tax increase	\$1,958	\$2,856	\$2,883
Recession-adjusted annual fiscal deficit for all unlawful immigrant households	-\$51,716	-\$43,414	-\$106,030

Note: Aggregate fiscal deficit figures equal the per household amounts times 3.79 million unlawful immigrant households.

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix tables for more information.

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The present analysis assumes that at the current time, some 55 percent of unlawful immigrant workers work on the books and 45 percent work off the books. The analysis assumes that if amnesty were enacted, 95 percent of future employment of the former unlawful immigrants would occur on the books. This would increase payments of federal and state income taxes, FICA taxes, and other labor taxes (such as unemployment and work compensation fees) by nearly \$14 billion per year.

After amnesty, former unlawful immigrants would be able to seek employment more openly and compete for a wider range of positions. Research from the amnesty in 1986 shows that this led to significant wage gains among amnesty recipients, but amnesty also made individuals eligible for unemployment insurance and other programs that support individuals when they are not working, and this led to a decline in employment among workers

receiving amnesty. These two effects offset each other, yielding a net overall gain of 5 percent in wages.⁴¹ This 5 percent wage boost is included in the analysis and leads to an increase in income, FICA, and consumption tax payments of around \$3 billion per year.

The analysis also assumes that after amnesty, former unlawful immigrant households would be more likely to use highways, autos, and airports; this would result in an increase in related taxes and fees of roughly \$800 million per year. Overall, amnesty would increase tax revenue and fees by some \$18 billion per year, or roughly \$4,700 per former unlawful immigrant household.

As former unlawful immigrants began to work on the books using their own names and Social Security numbers, their eligibility for unemployment insurance benefits and workers' compensation would increase. These benefits would likely

TABLE 9

Lawful Immigrants Over Age 65: Per-Person Benefits and Taxes, 2010

ALL FIGURES ARE DOLLARS PER PERSON	Lawful Immigrant Persons Without a High School Degree	Lawful Immigrant Persons With Only a High School Degree	Lawful Immigrant Persons With Some College	Lawful Immigrant Persons Who Are College Graduates	Total Lawful Immigrant Persons Over Age 65
Government Benefits Received per Person					
Direct benefits	\$17,845	\$19,503	\$21,120	\$20,805	\$19,477
Educational benefits	\$0	\$0	\$0	\$0	\$0
Means-tested benefits	\$10,620	\$5,623	\$3,989	\$4,295	\$6,772
Population-based services	\$3,109	\$3,020	\$3,317	\$3,541	\$3,239
Total benefits and services	\$31,574	\$28,146	\$28,426	\$28,641	\$29,488
Taxes Paid per Person					
Federal taxes paid	\$1,403	\$2,293	\$6,428	\$12,269	\$4,886
State and local taxes paid	\$2,518	\$4,107	\$8,476	\$10,325	\$5,678
Total taxes paid	\$3,921	\$6,400	\$14,905	\$22,594	\$10,564
Fiscal deficit or surplus per person	-\$27,653	-\$21,746	-\$13,521	-\$6,047	-\$18,924

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix tables for more information.

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reach levels comparable to those received by lawful immigrant families with similar socioeconomic characteristics.³²

In contrast to old age benefits, Social Security disability, survivor's benefits, and related Medicare are available well before retirement age. Any amnesty law would make former unlawful immigrants and their kin eligible for these benefits. For example, a worker who had five years of credited employment would receive disability benefits if he became unable to work. Ten years of credited employment would make a worker's family eligible for survivor benefits upon the worker's death.

Former unlawful immigrants would begin to receive these benefits not long after amnesty, and the number receiving benefits would grow over time. Eventually, the per-household disability and survivor benefits and accompanying Medicare received by former unlawful immigrant households would likely equal the benefits received by current lawful immigrants: roughly \$1,600 per household per year.³³ However, during the first decade after amnesty, the benefit increase would be much less.

The present analysis assumes that unlawful

immigrant households are less likely to use certain government services such as parks, highways, libraries, and airports than are lawful households with the same level of income. However, if unlawful immigrant households are granted amnesty, their utilization of these government services will increase.

Over time, the use of these services by former unlawful households would likely match their use by current lawful immigrant and non-immigrant households with similar demographic characteristics. The resulting increase in population-based government services would raise government costs by around \$2,000 per household. Increased receipt of unemployment insurance, workers' compensation, disability benefits, and population-based services would increase the overall government benefits received by former unlawful immigrant households by nearly \$11 billion per year.

Fiscal Impact of the Full Implementation of Amnesty

Federal and state governments currently spend over \$830 billion per year on more than 80 different

**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
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TABLE 10

Unlawful Immigrants Over Age 65: Projected Fiscal Balances per Person

ALL MONETARY FIGURES ARE DOLLARS PER PERSON IN 2010 DOLLARS	Unlawful Immigrant Persons Without a High School Degree	Unlawful Immigrant Persons With Only a High School Degree	Unlawful Immigrant Persons With Some College	Unlawful Immigrant Persons Who Are College Graduates	Total Unlawful Immigrant Persons Over Age 65
Number of persons (millions)	5.34	2.74	1.12	0.93	10.13
Government Benefits Received per Person					
Direct benefits	\$17,845	\$19,503	\$21,120	\$20,805	\$18,927
Educational benefits	\$0	\$0	\$0	\$0	\$0
Means-tested benefits	\$10,620	\$5,623	\$3,989	\$4,295	\$7,955
ObamaCare	\$1,112	\$731	\$367	\$774	\$816
Population-based services	\$3,109	\$3,020	\$3,317	\$3,541	\$3,148
Total benefits and services	\$32,687	\$28,877	\$28,793	\$29,415	\$30,846
Taxes Paid per Person					
Federal taxes paid	\$1,403	\$2,293	\$6,428	\$12,269	\$3,195
State and local taxes paid	\$2,518	\$4,107	\$8,476	\$10,325	\$4,322
Total taxes paid	\$3,921	\$6,400	\$14,905	\$22,594	\$7,517
Fiscal deficit or surplus per person	-\$28,765	-\$22,477	-\$13,888	-\$6,821	-\$23,329
Post-Recession Adjustments					
Means-tested welfare decrease	\$531	\$281	\$199	\$215	\$339
Tax increase	\$118	\$192	\$447	\$678	\$317
Recession-adjusted deficit per person	-\$28,117	-\$22,004	-\$13,241	-\$5,928	-\$22,673

Source: Heritage Foundation calculations based on data from the U.S. Census Bureau, 2010 Current Population Survey. See Appendix tables for more information.

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means-tested aid programs. U.S.-born children of unlawful immigrants are currently eligible for aid through most of these programs, but foreign-born children who are in the country unlawfully and adult unlawful immigrants are generally not eligible for aid.

At present, all amnesty proposals would make adult unlawful immigrants and their foreign-born children fully eligible for these programs at the end of the waiting period. As a result, welfare benefits in former unlawful households would likely rise to the level of those received by current lawful immigrant families with similar socioeconomic characteristics. This would mean a sharp increase in benefits from programs such as Temporary Assistance for Needy Families, the Earned Income Tax Credit, Medicaid, public housing, and food stamps.

Overall, annual welfare costs would rise to around \$13,700 per household among former unlawful households. Amnesty would increase overall welfare costs to \$51 billion per year for this group.²⁴

Starting in 2014, the Affordable Care Act will begin to provide various forms of aid, including expanded Medicaid, premium subsidies, and cost-sharing subsidies, to lower-income individuals who lack health insurance. Unlawful immigrants are currently ineligible for this aid. Under amnesty or “earned citizenship,” unlawful immigrants would obtain full eligibility for these benefits, although access to aid would probably be delayed until the end of the interim period.

The estimated cost of benefits from Obamacare to former unlawful immigrant households would be \$24 billion per year.²⁵

TABLE 11

Long-term Costs of Unlawful Immigrants After Amnesty

	Duration	Total Cost of Government Benefits Received (trillions of 2010 dollars)	Total Taxes Paid (trillions of 2010 dollars)	Total Fiscal Deficit: Taxes Minus Benefits (trillions of 2010 dollars)
Interim phase of amnesty	13 years	\$1.32	\$0.77	-\$0.55
Full amnesty	Average 20 years	\$3.13	\$1.14	-\$1.99
Retirement	Average 18 years	\$4.65	\$1.20	-\$3.45
Parents of amnesty recipients		\$0.30	\$0.04	-\$0.26
Total costs after amnesty		\$9.40	\$3.14	-\$6.26
Long-term total under existing law (trillions of 2010 constant dollars)		\$1.78	\$0.80	-\$0.98
Total change produced by enactment of amnesty (trillions of 2010 constant dollars)		\$7.62	\$2.34	-\$5.28
Lifetime cost per adult unlawful immigrant* (2010 constant dollars)		\$898,000	\$306,000	\$592,000

* Total cost after amnesty divided by the number of adult unlawful immigrants in the U.S. in 2010.

Note: All figures include post-recession adjustments.

Source: Heritage Foundation calculations.

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Overall Fiscal Impact of Amnesty or “Earned Citizenship”

Table 7 and Chart 10 show the average fiscal balances of unlawful immigrant households during the three stages: before amnesty, the interim period after amnesty, and full implementation of amnesty. At the current time, before amnesty, the average unlawful immigrant household has a fiscal deficit of \$14,387 per year. During the interim period immediately following amnesty, tax revenues would increase more than government benefits, and the average fiscal deficit among the former unlawful households would fall to \$11,455 per household.³⁶ (This figure, however, assumes there would be no expansion of government medical care to poor amnesty recipients for a full decade after amnesty is enacted; this seems politically implausible.)

When the interim phase ends, amnesty recipients would become eligible for means-tested welfare and health care benefits under the Affordable Care Act. At that point, annual government benefits would rise to around \$43,900 for the average former unlawful immigrant household.³⁷ Tax payments would remain at around \$16,000 per household, yielding an annual fiscal deficit (benefits minus taxes paid) of around \$28,000 per household.³⁸

Table 8 and Chart 11 show the aggregate fiscal balance for all unlawful immigrant households in the three stages.³⁶ All of the figures in Table 8 and Charts 10 and 11 are adjusted for future inflation and presented in 2010 constant dollars.⁴⁰

- Before amnesty, all unlawful immigrant households together received \$93.7 billion per year in government benefits and services and paid \$39.2 billion, yielding an aggregate annual deficit of \$54.5 billion.
- In the interim phase after amnesty, aggregate government benefits and services would rise to \$103.4 billion per year, but tax revenue would rise to around \$60 billion; as a consequence, the aggregate annual deficit would fall slightly to \$43.4 billion. (These figures include all post-recession adjustments.)
- At the end of the interim phase, former unlawful immigrant households would become fully eligible for means-tested welfare and health care benefits under the Affordable Care Act. Total annual government benefits and services would soar to \$166.5 billion; tax revenue would remain at around \$60.5 billion, yielding an aggregate

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annual fiscal deficit of \$106 billion. (These figures include all post-recession adjustments.)

**Long-Term Retirement Costs for Former
Unlawful Immigrants Under Amnesty**

One major fiscal consequence of amnesty is that nearly all current unlawful immigrants would become eligible for Social Security and Medicare and would receive benefits from those programs when they reach retirement age. In most cases, the few who did not obtain eligibility for Social Security and Medicare would receive support from Supplemental Security Income and Medicaid. As they aged, former unlawful immigrants would also be eligible for nursing home care funded by Medicaid. The cost of these benefits would be quite large.

One way to estimate the future retirement costs of unlawful immigrants under amnesty is to examine the average benefits currently received by lawful immigrants over age 65 whose education levels match those of unlawful immigrants. The figures for lawful immigrants over age 65 are shown in Table 9. (Once individuals move into retirement years, it is more accurate to analyze persons rather than households. Thus, in contrast to the previous tables in this paper, Table 9 presents benefits and taxes per immigrant rather than per household.)

Table 9 reports the actual benefits received and taxes paid per person in 2010 by lawful immigrants over age 65. For example, the average elderly lawful immigrant who lacked a high school degree received \$31,574 in annual government benefits and services and paid \$3,921 in taxes, yielding an annual fiscal deficit of \$27,653.

Table 10 shows the estimated fiscal balances of adult amnesty recipients over age 65 if amnesty were enacted. (Again, the estimated benefits received and taxes paid are modeled on the actual current figures for elderly lawful immigrants.) Given amnesty, the average former unlawful immigrant age 65 or older would receive around \$30,500 per year in benefits. Social Security benefits would come to around \$10,000 per year; Medicare would add another \$9,000. Retirees would receive some \$7,600 in means-tested welfare, primarily in Medicaid nursing home benefits, general Medicaid, and SSI.⁴¹ Population-based benefits would add another \$3,100 in costs. The average amnesty recipient would pay around \$7,800 in taxes, resulting in an average annual fiscal deficit of roughly \$22,700

per retiree.⁴² (All figures include post-recession adjustments.)

Retiring at age 67, amnesty recipients could be expected to receive benefits for 18 to 19 years on average.⁴³ This would produce a long-term fiscal deficit cost of \$420,000 per person during retirement.

Parents of Amnesty Recipients

An additional consequence of legalization is that when amnesty recipients become citizens, they would have the unconditional right to bring their parents to the U.S. On arrival, the parents would become legal permanent residents with the right to obtain citizenship in five years. They would probably be eligible for Obamacare immediately; after five years, they would become eligible for Supplemental Security Income (at \$8,500 per year) and other means-tested benefits. The right to bring parents to the U.S. to become citizens is automatic and unlimited. As many as 15 million to 20 million parents would become eligible for legal permanent residence under an amnesty law.

Not all of these individuals would come to the U.S. Historically, one parent has been brought to the U.S. for every seven non-elderly adult immigrants. Following this ratio, 10 million adult amnesty recipients would be likely to bring 1.5 million parents to the country as lawful residents.

For the most part, these parents would be poor and heavily dependent on taxpayers. Typical costs would probably be around \$20,000 per parent per year for welfare and medical care. The parents would be elderly on arrival and might receive benefits for five to 10 years. In that case, the total cost to taxpayers would be about \$260 billion.⁴⁴

**Lifetime Fiscal Costs of Unlawful
Immigrants Following Amnesty**

Most discussions of the fiscal consequences of unlawful immigration and amnesty focus on the next five to 10 years, but amnesty, by definition, entitles each unlawful immigrant with lifetime eligibility for the full array of government benefits. The average adult unlawful immigrant is currently 34 years old and has a life expectancy of 50 more years. Under amnesty, that means 50 years of government benefits funded by U.S. taxpayers.

If amnesty is enacted, some 3.74 million unlawful immigrant households will be given eventual access to welfare and other entitlements. Of course, amnesty

recipients will not live forever. Given standard mortality statistics, it is possible to estimate the decline in the number of adult unlawful immigrants/amnesty recipients and corresponding households year by year in the future.⁴⁵ Table 7 gave the estimated fiscal deficit per household during the interim period and during full implementation of amnesty. By combining these per-household deficit figures with the expected number of surviving households headed by an amnesty recipient, it is possible to estimate the total lifetime fiscal costs of current unlawful households after amnesty but prior to retirement age.

Table 10 gave the estimated per-person fiscal cost of amnesty recipients after retirement. Combining this per-person deficit figure with the expected number of surviving individuals in each year after retirement yields an estimated total fiscal cost for amnesty recipients after retirement. If the total fiscal costs in the interim, full amnesty, and retirement periods are summed, the result is the estimated lifetime fiscal costs for unlawful immigrants after amnesty.

Table 11 shows the lifetime costs. During the interim phase, the former unlawful immigrant households would generate a net fiscal cost (benefits received minus tax paid) of \$550 billion. During the full phase of amnesty (but prior to retirement), the net fiscal deficit would be \$1.99 trillion. After retirement, amnesty recipients would run a fiscal deficit of \$3.45 trillion. Parents brought into the U.S. by amnesty recipients would generate another \$260 billion in net fiscal costs.

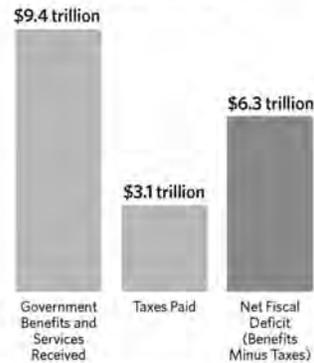
If amnesty were enacted tomorrow, current unlawful immigrants (along with their minor children and dependent parents) would subsequently receive around \$9.4 trillion in government benefits over the span of a lifetime.⁴⁶ The lifetime taxes paid by the amnesty recipients would come to \$3.1 trillion. The total fiscal deficit (total benefits received minus taxes paid) would equal \$6.3 trillion. (All figures are in constant 2010 dollars.)

Put another way, if amnesty were enacted, the average adult unlawful immigrant would subsequently receive \$898,000 in government benefits over the course of a lifetime and pay \$306,000 in taxes over the same period. The average lifetime fiscal deficit (benefit received minus taxes paid) would be around \$592,000 for each adult amnesty recipient.

These costs would be spread over the lifetime of the amnesty recipients. More than 90 percent of

CHART 12

Lifetime Costs of Unlawful Immigrants After Amnesty



Note: Figures include recession adjustments.
Source: Heritage Foundation calculations based on data sets described in the Methodology section.

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the fiscal costs would occur during a 50-year period after amnesty.

The policy of barring amnesty recipients from receiving welfare and Obamacare during a short period after amnesty is usually trumpeted as a means of eliminating the potential costs of amnesty. In reality, postponing access to government benefits has only a marginal impact on fiscal costs. If amnesty recipients are barred from receiving welfare aid and health benefits from Obamacare for 13 years after initial amnesty, the total fiscal deficit falls by 12 percent from \$7.1 trillion to \$6.3 trillion.

How Much Does Amnesty Add to Existing Costs?

The \$6.3 trillion figure represents the lifetime fiscal costs of unlawful immigrant households after amnesty. It does not represent the increased fiscal costs caused by amnesty alone. The increased lifetime costs caused by amnesty would equal \$6.3 trillion minus the estimated lifetime fiscal costs of

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TABLE 12

**Projected Educational Attainment and Fiscal Status of Children
from Unlawful Immigrant Households Upon Reaching Adulthood**

	Does Not Complete High School	High School Graduate	Some College	College Graduate	Average for Whole Group
Percent of children attaining each education level attained as adults	17.82%	17.78%	50.60%	12.83%	
Average fiscal deficit per household (based on non-immigrant households in 2010)	-\$38,834	-\$16,551	-\$7,282	\$29,694	-\$9,737
Average fiscal deficit per household with post-recession adjustment	-\$35,863	-\$14,690	-\$5,868	\$31,805	-\$7,890

Note: Figures include estimated benefits under the Affordable Care Act. Deficit figures are in 2010 dollars.

Source: National Center for Educational Statistics, "National Education Longitudinal Study of 1988," <http://nces.ed.gov/surveys/nels88/> (accessed April 19, 2013).

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unlawful immigrant households under current law. Calculating the latter figure is not easy.

As noted, there currently are few unlawful immigrants over age 50. This may be because unlawful immigrants, arriving as young adults over the past 15 to 20 years, have simply not yet reached age 50. It may also be that unlawful immigrants, being unable to access the U.S. welfare and retirement systems under current law, simply go back to their country of origin as they get older. If one assumes that under current law, most unlawful immigrants will return to their country of origin around age 55, the lifetime fiscal costs of unlawful immigrants under current law are comparatively low: only around \$1 trillion. The net increased fiscal costs generated by amnesty would be around \$5.3 trillion (\$6.3 trillion minus \$1 trillion.)

However, there is a loophole in existing law that may allow many or most current unlawful immigrants to achieve lawful status and obtain benefits from the welfare system, Social Security, Medicare, Obamacare, and Medicaid. Given access to the U.S. entitlement system, it seems unlikely that most unlawful immigrants would choose to return to their native countries empty-handed. The loophole in existing law is the open-ended provision of green cards to the foreign-born parents of U.S. citizens.

A majority of adult unlawful immigrants have children who were born in the U.S. When these children reach age 21, they can immediately demand that their unlawful immigrant parents be given a green card

(legal permanent residence) as parents/immediate relatives. The number of green cards (or visas for legal permanent residence) available to parents is unlimited, and the visas will be granted almost automatically. Once the parent spends five years in legal permanent residence, he immediately becomes eligible for welfare and citizenship. As a legal resident, the parent may also be given credit in the Social Security system for work performed previously as an unlawful immigrant. This would contribute to future eligibility for Social Security and Medicare benefits.

If millions of unlawful immigrants utilize the parent visa option in the future and thereby obtain legal permanent residence and/or citizenship, the cost to the taxpayers could run into the trillions. Thus, ironically, the increased fiscal costs generated by amnesty may be reduced by the fact that many unlawful immigrants already have potential long-term access to Social Security, Medicare, Obamacare, and means-tested welfare through a loophole in current law.

Policymakers who are interested in future government solvency should close this loophole by prohibiting any individual who has fathered or mothered a child in the U.S. while he or she was an unlawful immigrant from ever receiving an immediate relative/parent visa. This would prevent unlawful immigrants from gaining legal permanent residence and citizenship simply because they have children born in the U.S.

Will the Children of Unlawful Immigrants Repay Their Parents' Costs?

It is often argued that the fiscal burdens produced by unlawful immigrants are irrelevant because their children will become vigorous net tax contributors, producing fiscal surpluses that will more than pay for any costs their parents have generated. This is not true. As this paper has shown, the degree to which the children of unlawful immigrants become net fiscal contributors (rather than tax consumers) will depend largely on their educational attainment. Moreover, even if all of the children of unlawful immigrants became college graduates, they would be very hard-pressed to pay back \$6.3 trillion in net costs even over the course of their entire lives.

Of course, not all of these children will graduate from college; many will have substantially lower educational achievements. The National Educational Longitudinal Study (NELS) reports the intergenerational educational attainment of U.S. children based on the educational attainment of their parents.¹⁷ Table 12 uses data from the NELS survey to predict the educational attainment of the children of unlawful immigrants based on ethnicity and their parents' education level. Although these children will clearly do better than their parents, 18 percent are still likely to leave school without a high school degree, and only 13 percent are likely to graduate from college.

Based on this level of educational attainment, the children of unlawful immigrants, on average, will become net tax consumers rather than net taxpayers: The government benefits they receive will exceed the taxes they pay.¹⁸ If the children of unlawful immigrants were adults today and had the levels of education predicted in Table 12, they would have an average fiscal deficit of around \$7,900 per household.

The odds that the children of unlawful immigrants, on average, will become strong net taxpayers are minimal. Indeed, for these children even to become fiscally neutral (taxes paid equal to benefits received), the percent that graduate from college would need to rise to 30 percent, and the percent without a high school diploma would need to fall to 10 percent. In reality, unlawful immigrants will be net tax consumers, placing a fiscal burden on other taxpayers not only in the first generation, but in the second generation as well.

Will Unlawful Immigrants Contribute to the Solvency of Social Security and Medicare?

It is often argued that unlawful immigrants have a positive impact on U.S. taxpayers because they pay taxes into the Social Security trust fund. Unlawful immigrant workers do pay Social Security or FICA taxes; the median unlawful immigrant worker currently pays about \$2,070 per year in FICA taxes.¹⁹

If amnesty encouraged all former unlawful immigrant workers to work on the books, that number would rise to around \$3,770. A worker who paid this amount into Social Security for 35 years would contribute \$132,000. Upon retiring, this individual would receive \$14,650 per year in Social Security benefits and \$10,074 per year in Medicare benefits.²⁰ Over an average span of 18 years of retirement, the total Social Security and Medicare benefits received by this individual would come to \$445,000. Thus, the retirement benefits received would be more than three times the taxes paid into the system.²¹

Moreover, taxes and benefits must be viewed holistically. It is a mistake to look at the Social Security trust fund in isolation. Unlawful immigrants draw benefits from many other government programs besides Social Security. If an individual pays \$3,700 per year into the Social Security trust fund but simultaneously draws a net \$25,000 per year (benefits minus taxes) out of general government revenue, the solvency of government has not improved. In reality, other taxpayers, including many Social Security recipients, will face higher taxes in order to subsidize unlawful immigrant households.

Caveat: Understating Future Welfare and Medical Benefits

The fiscal analysis in this paper, presented in Table 11 and Chart 12, takes the current fiscal status of households and projects that status forward into future years. All figures are presented in 2010 dollars. One problem with this approach is that it assumes that means-tested welfare and medical benefits per household will grow no faster than general inflation for the next 50 years. Households are assumed to receive no greater welfare benefits in 2035 than they did in 2010. The historical record suggests that this is highly unlikely.

For nearly every year for the past half-century, welfare spending per capita has increased much faster than inflation. In fact, constant-dollar

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spending per person today is six times higher than it was 50 years ago. By contrast, the analysis in this paper assumes that for the next 50 years, per capita welfare benefits will rise no faster than inflation. While this assumption simplifies the analysis, it is likely an underestimate.

The same problem applies to medical benefits. The inflation rate is higher for medical care than for other goods. In addition, when new medical treatment and technology become available, they are provided through government medical programs, broadening the scope of service and increasing costs for taxpayers. The main analysis in this paper assumes that the cost of medical services per beneficiary will grow no faster than inflation for the next 50 years. This is likely an underestimate and probably results in an understatement of future spending.⁵²

**Additional Factors That
Could Raise Future Fiscal Costs**

There are a number of demographic, economic, and policy factors that could raise the short-term and long-term fiscal deficit estimates presented in Tables 8 and 11. These include demographic variables that affect the number of amnesty recipients and their dependents and economic factors that would affect the future economic growth rate.

1. Potential Undercount of Unlawful Immigrants. The analysis in this paper assumes that there are currently 11.5 million immigrants in the U.S. based on DHS estimates. The DHS estimates that there are some 10.4 million unlawful immigrants recorded in Census surveys and 1.1 million more who are not reported by the Census. While the first number is based on firm evidence, the second is merely a guess. The number of unlawful immigrants who reside in the U.S. but do not respond to Census surveys may be far more than 1.1 million. These extra unlawful immigrants would tend to be single adults, since children would show up in birth or school records.

The fact that the actual number of unlawful immigrants can be far greater than 11.5 million is another reason that amnesty is a bad policy. If the number of unlawful immigrants is actually 20 percent greater than the 11.5 million assumed

in this paper, the long-term fiscal cost of amnesty would increase proportionately, adding perhaps \$1.2 trillion to the lifetime fiscal deficit.⁵³

2. Cheating in Amnesty. In the 1986 amnesty, an estimated 25 percent of the amnesties granted were fraudulent.⁵⁴ In the past 20 years, the underground industry producing fraudulent documents has grown vastly larger and more sophisticated. In the proposed new amnesty, the fraud rate could be as high as or higher than in 1986, resulting in far more than 11 million amnestied individuals. If cheating increased the number of amnesty recipients by 25 percent, the added lifetime fiscal cost would be \$1.5 trillion.

3. Exclusion of 20 Percent of Unlawful Immigrants During the Interim and Full Implementation Phases of the Analysis. This analysis estimates costs for persons living in households headed by unlawful immigrants during the interim and full amnesty phases. However, about 20 percent of unlawful immigrants do not reside in those households. Any fiscal costs associated with that 20 percent are therefore omitted from the analysis; this is likely to lead to an underestimate of total costs. (In the retirement phase, however, all unlawful immigrants who were adults in 2010 are included in the analysis, not just those residing in unlawful immigrant households.)

4. Spouses and Children Brought from Abroad. Any amnesty or legalization will automatically grant amnesty recipients the right to bring spouses and minor children from abroad to reunify families. This reunification would probably occur during the interim phase. Once admitted to the U.S., the children would receive heavily subsidized public education; over time, both children and spouses would become eligible for means-tested welfare and Obamacare. The number of spouses and dependent children who would be brought into the U.S. as a result of amnesty is uncertain, but the added fiscal costs could be considerable. If an additional one million spouses and dependent children were brought to the U.S. as a result of amnesty, the added lifetime fiscal cost would be around \$600 billion.

5. Triggering of Additional Chain Migration by Relatives. Social and kinship networks are important factors in increasing immigration flows. Once unlawful immigrant households were legalized, there would be an increased tendency for brothers, sisters, and cousins to migrate from abroad both lawfully and unlawfully to join their relatives. Thus, other things being equal, amnesty would likely increase future unlawful immigration, in turn increasing future fiscal costs.

6. Amnesty as a Magnet for Future Unlawful Immigration. The U.S. enacted a much smaller amnesty for unlawful immigrants in 1986. The public was promised that the 1986 amnesty was a one-time affair that would never be repeated. Despite this promise, the 1986 amnesty was probably a factor in encouraging the subsequent surge in unlawful immigration, since it signaled that the U.S. might take a lenient stance toward unlawful immigrants in the future. If the U.S. now enacts a second amnesty, it will have established a very strong precedent for serial amnesties. The prospect of recurring amnesties would certainly make future unlawful immigration more attractive, drawing more unlawful immigrants into the country and significantly increasing long-term fiscal costs.

7. Dynamic Effects of Increased Fiscal Deficits. The core analysis in this paper indicates that amnesty would increase net governmental costs by perhaps \$6.3 trillion. These added costs would have to be financed either by higher taxes or by greater government borrowing leading to a higher national debt. Higher taxes or a higher national debt in turn would reduce future economic growth, thereby lowering future tax revenues. This dynamic feedback effect has not been included in the calculations in the paper.

Additional Factors That Could Reduce Future Fiscal Costs

1. Reduced Number of Amnesty Recipients. Not all current unlawful immigrants will necessarily receive amnesty. Some individuals may not apply. Others may not be able to demonstrate residence. Others will fail the criminal background check. If 10 percent of the unlawful

immigrants currently residing in the U.S. did not receive amnesty and instead returned to their country of origin, lifetime fiscal costs would be reduced proportionately, resulting in roughly \$600 billion in savings.

2. Increased Emigration. The core long-term analysis presented in Table 11 assumes an emigration rate of 5 percent among amnesty recipients. Certainly, amnesty recipients would have a very strong financial incentive to remain in the country to receive nearly free education for their children and eventually obtain access to welfare, Obamacare, Social Security, and Medicare. Nonetheless, some amnesty recipients would return to their country of origin.

If this emigration occurred before the individual obtained eligibility for Social Security and Medicare, there would be considerable cost savings. If the individual emigrated after establishing eligibility for those programs, the cost saving would be less. The core analysis assumes that 5 percent of unlawful immigrants would emigrate before establishing eligibility for Social Security and Medicare. If, instead, 10 percent emigrated, the lifetime fiscal costs might be reduced by roughly \$300 billion.

3. Increased Recessionary Adjustments. The recession in 2010 may have reduced tax payments from unlawful immigrants and temporarily increased welfare assistance. In response to this issue, the analysis has reduced estimated future benefits in the unemployment insurance and food stamp programs, increased future estimated tax revenues by 5 percent, and decreased long-term receipt of welfare benefits by 5 percent. All of these adjustments are included in the lifetime fiscal cost figures appearing in table 11.

There is considerable evidence that the last two adjustments are not absolutely necessary; nonetheless, some may argue that even greater post-recessionary adjustments should be considered. In general, an increase of one percentage point in the tax loss estimate, combined with a one percentage point decrease in the future welfare benefits will lower the estimated lifetime deficit of amnesty recipients by 1 percent. Setting the

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post-recessionary tax loss estimate at 10 percent (rather than 5 percent) and reducing future welfare benefits by 10 percent (rather than 5 percent) would thus increase the estimated lifetime fiscal deficit by an added 5 percent, or \$315 billion.

Altogether, the variables discussed above suggest that the number of amnesty recipients and dependents may well be much higher than the numbers assumed in this paper. This could have a considerable impact on future costs. If the number were 30 percent greater, for example, the lifetime fiscal costs could rise to nearly \$9 trillion.

Possible Indirect Fiscal Effects

The analysis presented in this paper reflects the direct fiscal impact of unlawful immigrants. It reports the benefits received and taxes paid by those immigrants. However, there can be other indirect fiscal consequences of unlawful immigration. For example, unlawful immigrants augment the U.S. labor force and thereby expand the gross domestic product (GDP) by roughly 2 percent. Unlawful immigrants themselves capture most of the gain from this expanded production through their wages, and taxes on the immigrants' wages and consumption are already incorporated into the analysis.

But the owners of businesses that employ the unlawful immigrants also receive income from their investment in the enterprises in which the immigrants work. The difficulty lies in determining whether the investment in enterprises employing unlawful immigrants represents a net expansion of the stock of investment or merely a reallocation of investment that would have existed without the presence of the immigrant labor. New investment would be unlikely to occur unless the increased labor supply had reduced wages. New net investment would result in new income, and this added income would be taxed by government in a variety of ways. Even though the unlawful immigrants would not pay these taxes themselves, their employment would have triggered the extra tax revenue.

In the extreme case, one might assume that all of the investment associated with unlawful immigrant labor represents a net increase in capital stock. Since unlawful immigrants earn about 2 percent of all wages in the U.S. economy, this might coincide with a 2 percent increase in business profits and capital income. If this were the case, the result would be

a roughly \$8.5 billion increase in federal, state, and local revenue from a variety of different taxes; this indirect tax gain would amount to roughly \$2,500 per unlawful immigrant household.⁵⁵ The future lifetime tax gain due to unlawful immigrants from this source could be around \$280 billion. Again, the difficulty with this calculation lies in the assumption that all of the capital invested in the employment of unlawful immigrants represents a net increase rather than a reallocation of capital stock.

Conversely, there may be other indirect effects that substantially increase the fiscal drain created by unlawful immigrants. An additional indirect fiscal effect would occur if the presence of immigrant workers in the U.S. reduced the wages or employment of competing non-immigrant workers. For example, Harvard professor George Borjas has estimated that the very large influx of immigrant workers between 1980 and 2000 lowered the wages of the average non-immigrant worker by 3.2 percent. In particular, the disproportionate influx of low-skill immigrants was estimated to reduce the wages of low-skill native workers by 8.9 percent.⁵⁶

The National Research Council has estimated that a 10 percent increase in the labor supply lowers the wage for similarly skilled workers by 3 percent.⁵⁷ In 2010, unlawful immigrants constituted about 25 percent of employed adults with less than a high school degree. This means that unlawful immigrants have increased the labor supply of individuals without a high school degree by one-third.

Applying the NRC ratio, the wages of legal residents without a high school diploma have been reduced by about 10 percent due to unlawful immigration. This amounts to \$23.1 billion in lost income, or about \$2,300 per worker. A wage loss of \$23 billion would result in around \$8 billion in lost tax revenue (income, FICA, and consumption taxes) and perhaps \$6 billion in added welfare costs. The overall indirect fiscal loss to government would be around \$14 billion per year.

Another potential impact of unlawful immigration is a reduction in employment rates for native workers. This may be of particular importance for youth and black male workers.⁵⁸ Heavy competition for jobs can discourage less-skilled workers, leading them to leave the labor force. As immigrants become the majority of workers in certain occupations, networking and word-of-mouth regarding job openings⁵⁹ may increasingly exclude natives. Finally,

the abundance of unlawful immigrant labor helps employers to avoid expending effort on recruiting potential U.S.-born workers from underemployed areas, such as Appalachia or Midwestern industrial towns.

Even if just one out of five unlawful immigrant workers displaced a legal resident from a job, wage losses could amount to \$14 billion annually. The tax loss and added welfare costs from this could reach \$10 billion per year. The lifetime fiscal loss to government due to wage and job loss among U.S. citizens and lawful immigrants might be around \$790 billion. In addition, the decline in jobs and wages for lower-skill males may contribute to the long-term decline in marriage in low-income communities; the social and fiscal consequences of this decline are enormous.

Because figures are imprecise, none of the indirect fiscal effects discussed in this section is included in the fiscal analysis in this paper.

Potential Economic Gains and Losses from Unlawful Immigration

While the fiscal consequences of unlawful immigration are strongly negative, some argue that unlawful immigrants create economic benefits that partially compensate for the net tax burdens they create. For example, it is frequently argued that unlawful immigration is beneficial because unlawful immigrant workers expand the gross domestic product. While it is true that unlawful immigrants enlarge GDP by roughly 2 percent, the problem with this argument is that the immigrants themselves capture most of the gain from expanded production in their own wages.⁶¹ Metaphorically, while unlawful immigrants make the American economic pie larger, they themselves consume most of the slice that their labor adds.

The central issue in the debate over the costs and benefits of unlawful immigration is not whether such immigration makes U.S. GDP larger (clearly, it does), but whether unlawful immigration raises the post-tax income of the average non-immigrant American. Given the very large net tax burden that unlawful immigrants impose on U.S. society, such immigrants would have to raise the incomes of non-immigrants to a remarkable degree to have a net beneficial effect.

Policy Issues

There are approximately 3.7 million unlawful immigrant households in the U.S. These households impose a net fiscal burden (benefits received minus

taxes paid) of around \$54.5 billion per year. The fiscal cost of unlawful and low-skill immigrants will be increased in the future by government policies that increase the number of low-skill immigrants, the immigrants' length of stay in the U.S., or the access of unlawful immigrants to government benefits. Conversely, fiscal costs will be reduced by policies that decrease these variables.

Clearly, immigration policy has enormous fiscal implications. Consistent with principles for immigration reform laid out elsewhere,⁶² immigration policy should be changed in the following ways to reduce the costs of unlawful and low-skill immigration to the taxpayer:

1. Enforce the current law against employing unlawful immigrants. Unlawful immigrants are predominantly low-skilled. Over time, they impose large costs on the taxpayer. In 1986, the U.S. gave amnesty to 3 million unlawful aliens in exchange for a prohibition on hiring unlawful immigrants in the future. While amnesty was granted, the law against hiring unlawful immigrants was never enforced in more than a token manner. As a result, there are now at least 11.5 million unlawful immigrants in the U.S.

Because the majority of unlawful immigrants come to the U.S. for jobs, serious enforcement of the ban on hiring unlawful labor would substantially reduce the employment of unlawful aliens and encourage many to leave the U.S. Reducing the number of unlawful immigrants in the nation and limiting the future flow of unlawful immigrants would also reduce future costs to the taxpayer.

2. Do not grant amnesty to unlawful immigrants. Granting amnesty to unlawful immigrants would confer entitlement to welfare, Social Security, and Medicare for the amnesty recipients. This would be ruinously expensive to U.S. taxpayers.

3. Eliminate "back door amnesty." This could be done by closing the loophole in current law that permits unlawful immigrants to become U.S. citizens because they have U.S.-born children. Roughly half of unlawful immigrants have U.S.-born children. When these children reach age 21, they can demand that their parents be given

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a visa, which grants the parents legal permanent residence; this gives the parents access to the U.S. welfare system and puts them on a potential path to U.S. citizenship. This provision, which operates automatically and cannot be stopped under current law, could be called “back door amnesty.”

Current law should be changed to prohibit any individual who conceived or gave birth to a child in the U.S. while that individual was unlawfully present in the U.S. from ever receiving an immediate relative/parent visa that provides legal permanent residence. Closing that loophole could save the taxpayers trillions of dollars over the long term.

- 4. Ensure that any guest worker program is truly temporary and not a gateway to welfare entitlements.**⁶² A program that involves long-term residence and permits access to welfare, Social Security, Medicare, and public education would be enormously expensive for the U.S. taxpayer. For example, if the “guest worker” brings school-age children with him, each child will generate, on average, \$12,300 in public education costs that must be funded by U.S. taxpayers. Similarly, even if formally barred from receiving welfare assistance, guest workers’ low-income families would be likely to receive aid simply because welfare agencies would be reluctant to deny services to families that appear to be in need of aid. Finally, bringing a family into the U.S. would make it far less likely that the guest worker would actually return home, and continued residence in the U.S. would increase fiscal costs.

Granting U.S. citizenship to guest workers’ children born in the U.S. would raise fiscal costs. If a child born to a guest worker is granted U.S. citizenship, that child immediately becomes entitled to Medicaid coverage and a full range of other welfare benefits. Further, granting the child citizenship makes it less likely that the guest worker’s parents will actually leave the U.S. and thereby increases taxpayer costs. To the extent permitted by the Fourteenth Amendment to the Constitution, the law establishing the guest worker programs should clearly stipulate that children born to guest workers would be treated in the same manner as children of diplomats—that is,

they would be citizens of their parents’ country of origin rather than citizens of the United States.

- 5. Reduce the number of legal permanent residence visas based on kinship and increase the number of visas allocated to high-skilled workers.**⁶³ Under current law, the visa lottery and visa preferences for adult brothers, sisters, and parents tend to bring a high proportion of low-skill immigrants into the U.S. While low-skill immigrants create a fiscal burden for U.S. taxpayers, high-skill immigrants tend to pay more in taxes than they receive in benefits.

The legal immigration system should be altered to greatly reduce the number of low-skill immigrants entering the country and increase the number of new entrants with high levels of education and skills that are in demand by U.S. firms. The visa lottery and all preferences for brothers, sisters, parents, and relatives other than spouses and minor children should be eliminated and replaced by new skill-based visas. Parents would be able to visit children in the U.S. as guests but not as legal permanent residents with access to welfare.

Conclusion

The United States offers enormous economic opportunities and societal benefits. Countless more people would immigrate to the U.S. if they had the opportunity. Given this context, the U.S. must be selective in its immigration policy. Policymakers must ensure that the interaction of welfare and other financial transfer programs with immigration does not expand the fiscally dependent population, thereby imposing large costs on American society.

Current immigration policies with respect to both lawful and unlawful immigration encourage the entry of a disproportionate number of poorly educated immigrants into the U.S. As these low-skill immigrants (both lawful and unlawful) take up residence, they impose a substantial tax burden on U.S. taxpayers. The benefits received by unlawful and low-skill immigrant households exceed taxes paid at each age level; at no point do these households pay more in taxes than they receive in benefits.

Current immigration practices, both lawful and unlawful, operate like a system of transnational welfare outreach, bringing millions of fiscally dependent individuals into the U.S. This policy needs to be

changed. U.S. immigration policy should encourage high-skill immigration and strictly limit low-skill immigration. In general, government policy should limit immigration to those who will be net fiscal contributors, avoiding those who will increase poverty and impose new costs on overburdened U.S. taxpayers. ■

Appendix A: General Methodology

This paper seeks to estimate the total cost of benefits and services received and the total value of taxes paid by all households, by non-immigrant households, by households headed by lawful immigrants, and in particular by households headed by unlawful immigrants. The fiscal analysis presented in this paper is based on three core methodological principles: comprehensiveness, fiscal accuracy, and transparency.

- **Comprehensiveness.** The analysis seeks to cover all government expenditures and all taxes and similar revenue sources for federal, state, and local government. Comprehensiveness helps to ensure balance in the analysis. If a study covered only a limited number of government spending programs or just a portion of taxes, the omissions might bias the conclusions.
- **Fiscal Accuracy.** A cardinal principle of the estimation procedure employed for each expenditure program or category in the analysis is that if the procedure is replicated for the whole U.S. population, the resulting estimated expenditure will equal actual expenditures on the program according to official budgetary documents. The same principle is applied to each tax and revenue category. Altogether, the estimating procedures used in this paper, if applied to the entire U.S. population, will yield figures for total government spending and revenues that match the real-life totals presented in budgetary sources.
- **Transparency.** Specific calculations were made for 34 separate tax and revenue categories and over 74 separate expenditure categories. Since conclusions can be influenced by the assumptions and procedures employed in any analysis, we have endeavored to make the mechanics of the analysis as transparent as possible to interested readers by describing the details of each calculation in Appendices D and E and Appendix Tables A8 and A9.

Accounting Framework

The accounting framework used in the present analysis is the same framework employed by the National Research Council (NRC) of the National Academy of Sciences in its study of the fiscal impact of immigration, *The New Americans*.¹⁴ Following the NRC framework, the present study:

- Excludes public goods costs such as defense and interest payments on government debt;
- Treats population-based or congestible services as fully private goods and assigns the cost of those services to immigrant households based either on estimated use or the immigrant share of population;¹⁵
- Includes the welfare and educational costs of immigrant and non-immigrant minor children and assigns those costs to the child's household;
- Assigns the welfare and educational costs of minor U.S.-born children of immigrant parents in the immigrant household; and
- Assigns the cost of means-tested and direct benefits according to the self-reported use of those benefits in the U.S. Census Bureau's Current Population Survey (CPS).

Clearly, any study that does not follow this framework may reach very different conclusions. For example, any study that excludes the welfare benefits and educational services received by the minor U.S.-born children of unlawful immigrant parents from the costs assigned to unlawful immigrant households will reach very different conclusions about the fiscal consequences of unlawful immigration.

An important principle in the analysis is that receipt of means-tested benefits and direct benefits was not imputed or assigned to households arbitrarily. Rather, the cost of benefits received was based on the

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household's self-report of benefits in the CPS.⁶⁶ For example, the cost of the food stamp benefits received is based on the food stamp benefits data provided by the household. If the household stated that it did not receive food stamps, then the value of food stamps within the household would be zero. The main exception to this rule was benefits from the Affordable Care Act (ACA), or Obamacare; since these benefits did not exist in 2010, they had to be imputed in future years.

Household-Based Analysis

This paper uses the 3.44 million households headed by unlawful immigrants, rather than the unlawful immigrant population as a whole, as the basis of its analysis. By using the household as the unit of analysis, Heritage follows the procedure employed by the National Research Council. Since many variables are not available at the individual level, analysis at the household level is methodologically simpler.

However, one problem with this choice is that 2.08 million unlawful immigrants do not reside in households headed by unlawful immigrants. These individuals, who reside mainly in homes headed by lawful immigrants, are therefore not included in the present fiscal analysis for the interim and full amnesty periods. While this exclusion almost certainly reduces the fiscal cost figures presented in this paper, including these individuals is beyond the scope of the current analysis. (On the other hand, the fiscal analysis of retirement years includes all current adult unlawful immigrants.)

There were some 1.1 million U.S.-born adult citizens and lawful immigrants residing in unlawful immigrant households in 2010, and they represent 8 percent of the persons in those households. These individuals were excluded from the analysis. They are not included in the demographic information on unlawful immigrant households; the benefits they receive and taxes they paid were not included in the fiscal analysis. Exclusion or inclusion of these individuals makes little difference in the fiscal balance of unlawful immigrant households.

Undercount of Unlawful Immigrant Households

The Department of Homeland Security (DHS) assumes that approximately one in 10 unlawful immigrants (1.15 million persons) do not appear in Census records. The Heritage Foundation analysis assumes that the fiscal balance and demography of this undercounted population is similar to the unlawful immigrant population appearing in the CPS.

To adjust for the undercounted population, the number of unlawful immigrant households in the analysis was increased from 3.44 million households (which appear in the CPS) to 3.79 million. Aggregate government benefits and taxes are assumed to increase in the same proportion as the number of households so that the average fiscal cost per unlawful immigrant household was unaffected.

Unless otherwise noted, aggregate fiscal figures for unlawful immigrant households appearing in this paper have been increased to include the undercounted unlawful immigrant households. It is quite possible that the number of uncounted unlawful immigrants residing in the U.S. exceeds 1.15 million.

Data Sources

Data on federal expenditures were taken from Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2013: Historical Tables*, Table 3.2.⁶⁷

Data on federal taxes and revenues were taken from Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Analytical Perspectives*, p. 220, Table 15.5.⁶⁸

State and local aggregate expenditures and revenue data were taken from the U.S. Census Bureau's "State and Local Government Finances Summary: 2010," Appendix, p. 6, Table A-1.⁶⁹

Additional information on state and local spending categories was taken from U.S. Census Bureau, *Federal, State, and Local Governments: 1992 Government Finance and Employment Classification Manual*.⁷⁰

Data on state and local pension funds are from U.S. Census Bureau, *2010 Annual Survey of Public Pensions: State & Local Data*, Table 1, "National Summary of State and Local Public-Employee Retirement System Finances, Fiscal Year 2010."

Data on the distribution of benefits and distribution of some taxes were taken from the U.S. Census Bureau's Current Population Survey of March 2011 (which covers 2010).⁷¹ Additional data on public school attendance were taken from the October 2010 CPS.⁷² Data on household expenditure were taken from the Bureau of Labor Statistics Consumer Expenditure Survey (CEX) for 2010.⁷³

Data on state spending on Medicaid are drawn from Centers for Medicare and Medicaid Services, Office of the Actuary, *2010 Actuarial Report on the Financial Outlook for Medicaid*.⁷⁴

Detailed information on means-tested spending was taken from Congressional Research Service, "Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY 2002-FY 2004."⁷⁵ This report provides important information on state and local means-tested expenditures from states' and localities' own financial resources as distinct from expenditures funded by federal grants in aid.⁷⁶ FY 2010 data were taken from Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Appendix*. These data are summarized in Robert Rector's testimony before the Budget Committee of the United States House of Representatives on May 3, 2012, "Examining the Means-Tested Welfare State: 79 Programs and \$927 Billion in Annual Spending."⁷⁷

Data on Medicaid expenditures for different recipient categories were taken from the Medicaid Statistical Information System (MSIS) as published in Table I3.24, "Medicare & Medicaid Statistical Supplement," 2010 Edition.⁷⁸ Data on Medicaid expenditures in institutional long-term care facilities were taken from "Medicare & Medicaid Statistical Supplement," 2011 Edition.⁷⁹

Data on the education levels of elderly persons in institutional long-term care facilities were taken from the National Long Term-Care Survey (NLTC).⁸⁰ Data on the number of individuals residing in nursing homes in the average month and the number of Medicaid recipients in nursing homes were taken from the 2004 National Nursing Home Survey (NNHS).

Data on household financial assets based on the age and education level of the household were taken from the *2010 Survey of Consumer Finance*.⁸¹

Appendix B: Identifying Unlawful Immigrants in the CPS

The Department of Homeland Security estimates that there were 11.5 million foreign-born persons residing unlawfully in the U.S. in January 2011.⁶¹ These estimates are based on the fact that the number of foreign-born persons appearing in U.S. Census surveys is considerably greater than the number of foreign-born persons who are permitted to reside legally in the U.S., according to immigration records.

For example, in January 2011, some 31.95 million foreign-born persons (who entered the country after 1980) appeared in the annual Census survey, but the actual number of corresponding lawful foreign-born residents in that year (according to government administrative records) was only 21.6 million.⁶² DHS estimates that the difference—some 10.35 million foreign-born persons appearing in the Census American Community Survey (ACS)—is made up of unauthorized or unlawful residents. DHS further estimates that an additional 1.15 million unlawful immigrants resided in the U.S. but did not appear in the Census survey, for a total of 11.5 million unlawful residents.⁶³

DHS employs a “residual” method to determine the characteristics of the unlawful immigrant population. First, immigration records are used to determine the gender, age, country of origin, and time of entry of all foreign-born lawful residents. Foreign-born persons with these characteristics are subtracted from the total foreign-born population in Census records; the leftover or “residual” foreign-born population is assumed to be unlawful. This procedure enables DHS to estimate the age, gender, country of origin, date of entry, and current U.S. state of residence of the unlawful immigrant population in the U.S.

The current Heritage Foundation study uses the Department of Homeland Security reports on the characteristics of unlawful immigrants to identify in the Current Population Survey (CPS) of the U.S. Census a population of foreign-born persons who have a very high probability of being unlawful immigrants. (The CPS is used in place of the similar ACS because it has more detailed income and benefit information.)⁶⁴ The procedures used to select unlawful immigrants within the CPS included the following.

- The unlawful immigrant population identified in the CPS was matched as closely as possible to the age, gender, country of origin, date of entry, and state of residence of the unlawful immigrant population identified by DHS.
- Foreign-born persons who were current or former members of the armed forces of the U.S. or current employees of federal, state, and local governments were assumed to be lawful residents.
- Since it is unlawful for unlawful immigrants to receive government benefits such as Social Security, Supplemental Security Income, Medicare, and Medicaid, individuals reporting personal enrollment in these programs were assumed to be lawful.
- Immigrant heads of households residing in public or subsidized housing were assumed to be lawful, although other members in the household might be unlawful immigrants.
- Principles of consistency were applied within families; for example, children of lawful residents were assumed to be lawful.
- Since a U.S. citizen can obtain lawful resident status for a spouse, the foreign-born spouses of U.S. citizens were assumed to be lawful.
- Foreign-born persons in occupations that involve high levels of professional regulation and legal credentialing, such as doctors, pharmacists, lawyers, and nurse practitioners, were assumed to be lawful.
- Under immigration law, virtually all Cuban immigrants will be lawful; all Cuban immigrants in the CPS were therefore assumed to be lawful.

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- Unlawful immigrants were assumed to be slightly less likely to own a home and to have slightly lower incomes than lawful immigrants with matching characteristics.

The end result of these procedures was to produce an estimated unlawful immigrant population that matched the Department of Homeland Security figures as closely as possible across a range of variables. A comparison of Heritage Foundation and DHS figures is provided in Appendix Table A1.

Appendix C: Calculating Aggregate Federal, State, and Local Spending

Aggregate federal expenditures at the subfunction level were taken from *Budget of the United States Government, Fiscal Year 2013: Historical Tables*. These data are presented in Appendix Table 2. State and local aggregate expenditures were based on data from the U.S. Census Bureau survey of government.

Two modifications were necessary to yield an estimate of the overall combined spending for federal, state, and local government. First, some \$608 billion in state and local spending is financed by grants-in-aid from the federal government. Since these funds are counted as federal expenditures, recording them again as state and local expenditure would constitute a double count. Consequently, federal grants-in-aid were deducted from the appropriate categories of state and local spending.

A second modification involves the treatment of market-like user fees and charges at the state and local levels. These transactions involve direct payment of a fee in exchange for a government service; for example, payment of an entry fee at a park. User fees are described in the federal budget in the following manner:

In addition to collecting taxes...the Federal Government collects income from the public from market-oriented activities and the financing of regulatory expenses. These collections are classified as user charges, and they include the sale of postage stamps and electricity, charges for admittance to national parks, premiums for deposit insurance, and proceeds from the sale of assets, such as rents and royalties for the right to extract oil from the Outer Continental Shelf.⁶⁵

In the federal budget, user fees are not counted as revenue, and the government services financed by user fees are not included in the count of government expenditures. As the Office of Management and Budget states:

[User charges] are subtracted from gross outlays rather than added to taxes on the receipts side of the budget. The purpose of this treatment is to produce budget totals for receipts, outlays, and budget authority in terms of the amount of resources allocated governmentally, through collective political choice, rather than through the market.⁶⁶

In contrast, Census tabulations of state and local government finances include user fees as revenue and also include the cost of the service provided for the fee as an expenditure.⁶⁷ The most prominent user fees treated in this manner by the Census are household payments to public utilities for water, power, and sanitation services.

But market-like user fee payments of this type do not involve a transfer of resources from one group to another or from one household to another. In addition, government user fee transactions do not alter the net fiscal deficit or surplus of any household (defined as the cost of total government benefits and services received minus total taxes and revenues paid) because each dollar in services received will be matched by one dollar of fees paid. Finally, determining who has paid a user fee and received the corresponding service is very difficult.

For these reasons, this paper has applied the federal accounting principle of excluding most user fees from revenue tallies, as well as excluding the services funded by the fees from the count of expenditures, to state and local government finances. This means that user charges and fees were removed from both the revenue and expenditure tallies for state and local government. As noted, the inclusion or exclusion of these user fees has no effect on the fiscal deficit figures for unlawful immigrant households or any other group presented in this paper.

Appendix Tables A3, A4, and A5 show the deductions of federal grant-in-aid and user fee expenditures that yielded the state and local expenditure totals used in this analysis.

Appendix D: Estimating the Allocation of Government Benefits and Taxes

This appendix describes the way specific benefits and taxes were allocated among households.

Estimating Government Benefits

In most cases, the dollar cost of direct and means-tested benefits received by unlawful immigrant households and other households was estimated by the dollar cost of benefits received as reported in the Census Bureau's Current Population Survey.

Underreporting of Benefits. One problem with this approach is that the CPS underreports receipt of most government benefits. This means that the aggregate dollar cost of benefits for a particular program as reported in the CPS is generally less than the actual program expenditures according to government budgetary data.

To be accurate, any fiscal analysis must adjust for the underreporting of benefits. This has been done in prior studies; for example, the National Research Council's study of the fiscal costs of immigration, *The New Americans*, made a similar adjustment for such underreporting.⁸⁵

The current analysis adjusts for underreporting in the CPS with a simple mathematical procedure that increases overall spending on any given program to equal actual aggregate spending levels and increases the household benefits reported in the CPS for each category of households in an equal proportion. For example, the equation for lawful immigrant households would be:

E_{ix} = total expenditures for program x reported in the CPS;

E_{lx} = expenditures for program x for lawful immigrant households reported in the CPS;

E_{bx} = total expenditures for program x according to independent budgetary sources; and

H_l = number of lawful immigrant households in the CPS.

The share of expenditures received by lawful immigrant households as reported in the CPS would equal E_{lx}/E_{ix} ; the actual expenditures allocated to lawful immigrant households would be estimated to equal (E_{lx}/E_{ix}) times E_{bx} ; and the average benefit per household from the program received by lawful immigrant households would equal (E_{lx}/E_{ix}) times (E_{bx}/H_l) .

For example, if the CPS reported that lawful immigrant households received 10 percent of food stamp benefits and the total expenditures on food stamps according to budgetary data were \$20 billion, lawful immigrant households would be estimated to receive \$2 billion in food stamp benefits. If there were 4 million lawful immigrant households, the average food stamp benefit per lawful household would equal \$2 billion divided by 4 million households, or \$500.

The key assumption behind this underreporting adjustment procedure is that non-immigrant, lawful immigrant, and unlawful immigrant households underreport receipt of welfare and other government benefits at roughly the same rate. For example, if receipt of food stamps is underreported by 15 percent in the CPS for the overall population, the adjustment procedure assumes that each of the subgroups of non-immigrant, lawful immigrant, and unlawful immigrant households in the CPS would underreport food stamp receipt by 15 percent. The average level of food stamp benefits among each group of households as reported in the CPS is then adjusted upward by this ratio to compensate for the underreporting.⁸⁶

This is a conservative assumption with respect to unlawful immigrant households, since those households might have a higher tendency to underreport benefits, particularly if the benefit was obtained unlawfully. However, since there is no evidence to suggest that unlawful immigrant households underreport government benefits to the Census at a rate different from that of the general population, this procedure appears to be valid as an estimating technique.

Education Expenditures. The average cost of public education services was calculated in a somewhat different manner since the CPS reports whether an individual is enrolled in a public school but does not report the cost of education services provided.⁸⁷ Consequently, data from the Census survey of governments were used to calculate the average cost of public primary and secondary education per pupil in each state.⁸⁸

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Pupil attendance data were obtained from the October 2010 CPS. The total governmental cost of primary and secondary schooling for each household was then estimated by multiplying the number of enrolled pupils in the household by the average cost per pupil in the state where the household resides. This procedure yielded estimates of total public primary and secondary education costs for non-immigrant and immigrant households in each demographic group in the CPS and for the whole CPS population.

Average costs of public post-secondary education per pupil were developed in the same manner. To determine the aggregate public cost of public post-secondary education, all tuition payments were deducted from the state and local expenditure totals. Figures on college attendance were taken from the March 2011 CPS.

Medicare Expenditures. There is often confusion concerning the calculation of the cost of Medicare benefits by the Census. The Census makes no effort to determine the costs of medical treatments given to a particular person. Instead, it calculates the average cost of Medicare benefits per recipient and assigns that cost to each person in the CPS who reports Medicare enrollment.

The current analysis allocated Medicare spending among households according to the share of Medicare spending assigned to the household in the CPS. The analysis adjusted for underreporting of Medicare with the same procedures used for other direct benefits.

Medicaid Expenditures. As with Medicare, the Census makes no effort to record the costs of specific medical treatments given to a particular person under the Medicaid program. Instead, it calculates the average cost of Medicaid benefits per person for a particular demographic/beneficiary group. For example, per capita Medicaid costs for children are very different from those for the elderly. The Census assigns the appropriate per capita Medicaid costs to each individual who reports coverage in the CPS according to the individual's beneficiary class: for example, elderly, children, non-elderly able-bodied adults, and disabled adults.⁹²

In the analysis, Medicaid spending was divided into three categories: Medicaid benefits for persons in the general population, Medicaid spending on elderly and non-elderly persons in nursing homes and other long-term care facilities, and disproportionate share hospital (DSH) payments.

- **Medicaid Benefits Among Persons in the General Population.** Data from the Medicaid Statistical Information System (MSIS) were used to determine aggregate Medicaid expenditures among the general non-institutionalized population for the following recipient categories: the elderly; non-elderly disabled adults; non-disabled, non-elderly adults; and youth under 18. The aggregate expenditures for each recipient category were then allocated among households according to each household's reported share of the relevant benefits in the CPS.

- **Medicaid Benefits Among Elderly Persons in Nursing Homes and Other Long-term Care Facilities.**⁹³ MSIS data and other data sources were used to determine the aggregate Medicaid spending going to elderly persons in nursing homes.⁹⁴ These Medicaid institutional expenditures were then allocated among eight major demographic groups: non-immigrant households headed by individuals without a high school diploma, non-immigrant households headed by high school graduates, non-immigrant households headed by persons with some college, non-immigrant households headed by college graduates, immigrant households headed by individuals without a high school diploma, immigrant households headed by high school graduates, immigrant households headed by persons with some college, and immigrant households headed by college graduates.

The share of Medicaid spending on the elderly in institutions was assumed to equal the share of Medicaid spending on the elderly in the non-institutional population for each of the eight groups. The analysis assumed there were no elderly unlawful immigrants receiving Medicaid in nursing homes.

- **Medicaid Benefits Among Non-elderly Disabled Adults in Nursing Homes and Other Long-term Care Facilities.** MSIS data were used to determine aggregate Medicaid spending on non-elderly disabled persons in nursing homes and other long-term care institutions. This spending was then allocated among the eight major demographic groups using the same procedures outlined in the preceding section. (The

same process was then applied to non-disabled non-elderly adults and persons under age 18, although there are relatively few such persons in long-term care.) Critically, the analysis assumed there were no unlawful immigrants of any type receiving Medicaid in nursing homes.

- **Medicaid Disproportionate Share Hospital (DSH) Spending.** Allocation of this spending is discussed in Appendix E.

Other Means-Tested Aid. Altogether, the federal government operates over 80 different means-tested aid programs. The CPS contains data on household utilization of 11 of the largest programs, which cover 93 percent of overall means-tested spending, but provides no data on the smaller programs.

Allocation of benefits from the remaining means-tested programs was estimated in the following manner. First, the share of reported total spending for the 11 means-tested programs covered by the CPS that goes to unlawful immigrant households was determined. Second, these households were assumed to receive a share of the means-tested benefits from the remaining unreported programs equal to their share of all expenditures on the reported means-tested programs in the CPS.

Affordable Care Act/Obamacare. The analysis estimated the benefits that would be provided from the Affordable Care Act during the full implementation phase of amnesty. Since the ACA subsidies are not currently available, these prospective benefits had to be calculated and imputed to households that lack medical insurance. The ACA will provide premium subsidies and cost-sharing subsidies through health care exchanges to households with incomes between 138 percent and 400 percent of poverty. Households with incomes between 138 percent of poverty and 100 percent of poverty may either participate in the exchanges or receive Medicaid.

The analysis used the formulas in the law to calculate premium and cost-sharing subsidies for each uninsured household. The Heritage analysis was designed to match cost estimates provided by the Congressional Budget Office (CBO) for 2017.⁹⁵ The CBO predicts that 33 million persons will receive either health exchange subsidies or expanded Medicaid coverage under the Affordable Care Act in 2017. All of these would be lawful residents. The Heritage Foundation analysis also estimates that 33 million lawful residents would receive ACA benefits in 2017. About 40 percent of total U.S. recipients of ACA benefits would participate in expanded Medicaid, and 60 percent would receive exchange subsidies.⁹⁶

In addition, if amnesty were enacted, an additional 5.3 million unlawful immigrants would enroll in Obamacare; of these, 4.3 million would reside in unlawful immigrant households. Altogether, 5.4 million individuals residing in former unlawful immigrant households would receive benefits from ACA during the full amnesty period; 1.1 million of these would be U.S.-born children of unlawful immigrant parents.⁹⁷

According to the Heritage Foundation model of the ACA, premium and cost-sharing subsidies per enrollee would be \$5,695 in 2016. The CBO estimate is \$5,570 per enrollee in 2017. The cost of new enrollees in Medicaid was set at the average Medicaid cost per beneficiary for each eligibility group in 2010. Former unlawful immigrants were assumed to have Medicaid expenses per beneficiary at 85 percent of normal costs.

Criminal Justice Expenditures. Expenditures for police, corrections, and the courts can be allocated in two ways. First, they can be allocated according to the number of persons protected from criminal activity. The elderly, for example, commit very little crime but require police services to protect themselves from the criminal activity of others. In general, the cost of police protection will expand in proportion to increases in the number of persons protected. Viewed in that light, the cost of criminal justice could be allocated evenly on a per capita or per household basis.

Alternatively, the costs of police protection could be allocated among groups according to their comparative threat of criminal activity. This seems reasonable because groups that have high levels of criminal activity cause other members of the community to demand higher levels of expenditure to protect themselves. Viewed in this light, criminal justice costs could be allocated among groups according to the relative number of criminal offenses committed. The current analysis has followed the former approach; criminal justice costs were apportioned on a per capita basis.

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Some might object to this procedure because they believe unlawful immigrants have low rates of criminal activity. The question then arises whether unlawful immigrants have abnormally high or low rates of criminal activity.

Information on this point is available from the State Criminal Alien Assistance Program (SCAAP), which provides federal reimbursement to state and local governments for the costs of incarcerating unlawful aliens in state and local jails. While unlawful immigrants are less than 4 percent of the U.S. population, SCAAP data show that 5 percent of inmates in state prisons and 6 percent of inmates in local jails are unlawful immigrants.⁹⁸ State and local governments rarely, if ever, incarcerate immigrants merely for violation of U.S. immigration law; instead, unlawful immigrants are incarcerated for standard criminal offenses such as assault, robbery, burglary, homicide, and drug crimes.⁹⁹

The SCAAP data indicate that unlawful aliens may commit disproportionately higher levels of crime in the U.S. The present analysis, by conservatively estimating the criminal justice costs of unlawful immigrant households to be proportionate to their share of the population in the U.S., probably underestimates the actual criminal justice costs of unlawful immigration.

Population-Based Services. Wherever possible, the analysis allocated the cost of population-based services among households in proportion to their estimated utilization of those services, which was calculated from their share of expenditures for the service in the CPS.¹⁰⁰ For example, use of highways and roads was allocated among households in proportion to their share of gasoline expenditures reported in the CEX. Airport, public transport, water, and electric services were allocated in proportion to expenditures on those items in the CEX; in these cases, the subsidized portion of the service was assumed to be proportionate to the fees paid for the service.

The procedures used to combine CEX and CPS data are discussed under sales taxes, below. When an estimate of proportionate utilization was not possible, the cost of population-based services was generally allocated on a uniform per capita basis.

General Government/Administrative Support Functions at the Federal Level. This category consists of administrative services in support of other government functions. It includes tax and revenue collection, budgeting, central administration, and legislative functions. The analysis followed the National Research Council's framework in treating these costs as private, population-based services that should be assigned to households.¹⁰¹

Allocation of the costs of general government services, such as tax collection, presents difficulties since no one appears to benefit directly from those services. Most taxpayers would regard IRS collection activities as a burden, not a benefit. However, while government administrative functions per se do not benefit the public, they do provide a necessary foundation that makes all other government benefit and service programs possible. A household that receives food stamp benefits, for example, could not receive those benefits unless the IRS had collected the tax revenue to fund the program in the first place.

Since the purpose of the administrative support functions is to sustain other government programs, the costs of administrative services were allocated according to the share of overall federal direct benefits, means-tested benefits, education, and population-based services received by a household.

By contrast, administrative costs in support of pure public goods were not assigned to households. In FY 2010, some 27 percent of total federal spending was allocated to pure public good functions. Therefore, the analysis assumed that 27 percent of federal general government and administrative support spending supported pure public good functions. These costs were excluded from the fiscal analysis. A further 5 percent of administrative costs were assumed to be fixed costs that would not expand or contract in response to changes in the population served; these costs were not assigned to households.

General Government/Administrative Support Functions at the State and Local Levels. These functions include tax and revenue collection, budgeting, central administration, trust fund and lottery administration, and legislative functions. Like federal administrative costs, these costs were allocated according to the share of overall state and local direct benefits, means-tested benefits, education, and population-based services received by a household. Five percent of overall administrative costs were assumed to be fixed; these costs, along with support functions for public goods services, were not allocated to households.

Financial Obligations Relating to Past Government Activities. Year by year, throughout most of the post-World War II period, U.S. taxpayers have not paid for the full cost of benefits and services provided by government. A portion of annual costs is passed on to future years through borrowing and through the retirement costs of former government employees. Current interest payments on government debt are therefore fixed by past government borrowing; current government employee retirement costs are based on past hiring.

An immigrant's entry into the U.S. does not cause these payments to increase. For that reason, they have been excluded from the fiscal analysis presented in this paper. This is consistent with methods employed by the National Research Council in *The New Americans*.¹⁰⁵

Pure Public Goods. Government pure public goods include expenditures on defense, veterans, international affairs, and scientific research and part of spending on the environment, as well as debt obligations relating to past public good spending. An immigrant's entry into the U.S. does not increase these costs or diminish the utility of public goods spending for other taxpayers. Therefore, these costs have been excluded from the fiscal analysis in this paper. This is consistent with methods employed by the National Research Council in *The New Americans*.¹⁰⁶

Estimating the Distribution of Taxes

The distribution of federal and state income taxes was calculated from CPS data. The Census imputes income tax payments into the CPS based on a household's income and demographic characteristics and the appropriate federal and state tax rules. However, since income is underreported in the CPS, imputed taxes will also be too low. Thus, the imputed tax payments in the CPS were adjusted to equal the aggregate income tax revenues reported in government budgetary documents. Federal revenue totals were taken from *Budget of the United States Government, Fiscal Year 2011: Analytical Perspectives*. State and local tax and revenue data were taken from the U.S. Census survey of governments.

The procedures for adjusting for the underreporting of income taxes were the same as those used to adjust for underreporting of expenditures. For example, for lawful immigrant households' federal income tax payments, let:

T_i = total income tax reported in the CPS;

T_l = total income tax for lawful immigrant households reported in the CPS;

T_b = total income tax according to independent budgetary sources; and

H_l = number of lawful immigrant households in the CPS.

The share of taxes paid by lawful immigrant households as reported in the CPS would equal T_l/T_i ; the actual expenditures allocated to lawful immigrant households would be estimated to equal (T_l/T_i) times T_b and the average paid per lawful immigrant household would equal (T_l/T_i) times (T_b/H_l) .

State income taxes were adjusted for underreporting according to the same formula.

FICA Taxes. Employees were assumed to pay both the "employee" and "employer" share of FICA taxes. Allocation of FICA taxes was estimated based on the distribution reported in the CPS, adjusted for underreporting in the manner described above. Fees for unemployment insurance and workers' compensation were assumed to be borne fully by the worker and were allocated according to the distribution of earnings in the CPS. FICA taxes were adjusted to equal the actual tax totals from budgetary sources with the same methods employed for income taxes.

Corporate Profits Tax. The incidence of federal and state corporate profits tax was assumed to fall 50 percent on workers and 50 percent on owners of capital. The workers' share was allocated according to the distribution of earnings in the CPS; the owners' share was allocated among households according to each household's estimated share of financial assets.

Sales and Excise Taxes. These taxes are assumed to be paid entirely by consumers. The share paid by each household was assumed to be proportionate to its share of the consumption of goods and services.

In order to estimate consumption, the analysis combined CPS income data with consumption data from the Consumer Expenditure Survey in the following manner. First, for each of the four main demographic groups in the analysis (based on the education level of the head of household), the share of income allocated to total consumption was calculated within the CEX data base. The share of income allocated to specific items

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such as tobacco and gasoline was then calculated. These specific consumption-to-income ratios were then applied to the CPS income data for each group to determine the group's share of consumption of a specific item.

This same procedure was then applied to each of the household subcategories presented in the paper. Each group's share of consumption of an item was assumed to equal its share of the sales or excise tax on the item. For example, lawful immigrant households headed by persons without a high school diploma had 1 percent of total alcohol consumption and were therefore assumed to pay 1 percent of the excise taxes on alcohol. Although specific calculations were performed for 11 different sales and excise taxes, in most cases, a group's estimated share of tax paid closely matched its estimated share of overall consumer expenditures.

Property Taxes. The Tax Foundation calculates that in 2010, 56 percent of property tax was paid for commercial property and 44 percent for residential property.¹⁰⁴ The Heritage Foundation analysis assumes that the property tax on commercial property was split equally between owners and consumers. The owners' share of tax was allocated among households according to the households' estimated share of financial assets. The tax paid by consumers was allocated among households in proportion to their share of total consumer expenditures. (See sales tax, above.)

The analysis further assumes that 35 percent of total property taxes fell on owner-occupied residences and 9 percent on rented residences.¹⁰⁵ The tax on owner-occupied residences was allocated among households according to the share of property tax payments reported in the CPS. The property tax on rented homes or apartments was assumed to be split evenly between owners and renters. The renter share was allocated among households according to their share of rental payments reported in the CEX. The owner share was allocated among households according to their estimated share of financial assets.

Federal Highway Trust Fund Taxes. This tax was assumed to fall half on the private owners of motor vehicles and half on businesses.¹⁰⁶ The business share was further assumed to fall half on consumers and half on owners. Thus, overall, the tax was assumed to fall 50 percent on private motor vehicle operators, 25 percent on consumers, and 25 percent on owners of businesses.

The portion of the tax paid by private motor vehicle operators was allocated among households in proportion to the household's share of gasoline consumption as estimated from the CEX. The consumer portion of the tax was allocated among households according to the household's estimated share of total consumption based on the CEX. (See sales tax, above.) The portion of the tax paid by owners was allocated among households according to their estimated share of financial assets.

State Lottery Receipts. An important source of government revenue paid by households headed by persons without a high school diploma is the purchase of state lottery tickets. A major study of the sale of state lottery tickets to different socioeconomic groups shows that per capita spending on state lottery tickets by adults without a high school diploma was twice that of other adults.¹⁰⁷ In the present analysis, lottery spending per adult in households headed by persons without a high school diploma was assumed to be double the purchase rate of adults in the general population.

Earnings on Investments Held in Employee Retirement Trust Funds. These state and local revenues represent the property income received by government trust funds as owners of capital. These earnings are not taxes and cannot be allocated among households.

State and Local Interest Earnings and Earnings from the Sale of Property. These revenues represent the property income received by government as owner of capital and other property. These earnings are not taxes and cannot be allocated among households.

Appendix E: Modified Estimating Procedures for Unlawful Immigrant Households

Some of the estimating procedures described above were modified for unlawful immigrant households. First, all adult U.S. citizens and adult lawful immigrants who resided within unlawful immigrant households were removed from the analysis of those households; benefits and taxes were reduced accordingly.

The earnings and property income of these excluded individuals was deducted from household income, resulting in an automatic matching reduction in all income and property-related taxes. The total income of the excluded individuals was deducted from household total income. This change reduced the estimated consumer expenditures in the household and thereby reduced all relevant sales and consumption taxes as well as government benefit estimates linked to consumption. Direct, means-tested benefits and Obamacare benefits received by these individuals were excluded from the analysis. Public housing and food stamp subsidies were reduced pro rata in affected households. The excluded individuals were removed from the count of persons in unlawful immigrant households, thereby modifying any calculation based on shares of population.

With respect to labor-related taxes, the analysis assumed that 45 percent of unlawful immigrant earnings was paid "off the books." The CPS imputes federal income taxes, state income taxes, and FICA taxes based on reported earnings, but these taxes are obviously not paid on "off the books" employment. Therefore, the analysis reduced the levels of income and FICA tax reported in the CPS by 45 percent for unlawful immigrant households under the current-law scenarios. Unemployment insurance fees and workers' compensation fees were reduced by the same amount.

Unlawful immigrant households were assumed to use motor vehicles, roads, and highways less than lawful households with the same income level. Motor vehicle license fees for unlawful immigrant households were therefore cut to 33 percent of normal values; gasoline and highway taxes for personal auto use were reduced to 50 percent of normal levels. Unlawful immigrants were assumed not to use airports; airport fees paid were therefore set at zero.

Government benefit levels were also modified for unlawful immigrant households. The CPS imputes refundable payments of the Earned Income Tax Credit and Additional Child Tax Credit as a percentage of family income. Since unlawful immigrants cannot receive these benefits, these benefits were set at zero under current law.

Unlawful immigrant households were assumed to use roads, highways, parks, libraries, and general health services less than comparable lawful immigrant and non-immigrant families. To adjust for this, the analysis reduced the unlawful immigrant use of roads and highways to 50 percent of normal rates; recreation, and libraries to 75 percent of normal rates; and general health care to 15 percent of normal rates.

Unlawful immigrants can receive health care funded through Medicaid disproportionate share hospital (DSH) payments and community health center programs. Determining spending on unlawful immigrants through these programs is difficult. According to a key study in *Health Affairs*, adult unlawful immigrants (aged 18-64) nationwide were estimated to have received about \$1.1 billion in publicly funded medical care in 2000.¹⁰⁸ Since these individuals cannot enroll in programs such as Medicaid and Medicare, most of this care would have occurred through DSH and community clinics. Adjusting the \$1.1 billion spending figure to 2010 levels would result in roughly \$2 billion in expenditure. Additional public funds would have been spent on unlawful immigrant elderly and children.

Following the estimates in the *Health Affairs* study, the Heritage Foundation analysis assumes that expenditures on unlawful immigrants through DSH payments and community health centers was around \$3 billion in 2010, or roughly 15 percent of total spending in these programs. The share of remaining spending was allocated to other groups in proportion to their general receipt of means-tested welfare.

There is evidence that immigrants enrolled in the Medicaid and Children's Health Insurance (CHIP) program have lower costs per beneficiary than non-immigrants. A study by the Cato Institute reports that the costs per beneficiary of immigrant adults in Medicaid is 25 percent lower than the cost for non-immigrant adults. The same study shows that the cost per beneficiary for immigrant children in Medicaid is more than

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50 percent lower than the cost for non-immigrant children.¹⁰⁹ On the other hand, medical costs for the foreign-born elderly do not appear to be noticeably lower than the costs for the U.S.-born elderly.¹¹⁰

The Medicaid costs imputed into the CPS by the Census do not vary by immigration status. The present analysis has therefore reduced the CPS imputed Medicaid costs for immigrant children in the Medicaid and CHIP programs by 50 percent in the "current law" analysis. CHIP costs were reduced by the same amount. The differences between immigrants and non-immigrants with respect to medical services seem to be a result of differences in access and social attitudes toward medical use. These differences are likely to diminish after amnesty; therefore, immigrant children were assumed to use 25 percent less medical service per beneficiary during the interim period and 20 percent less during the full amnesty period when compared to non-immigrants.

Unlawful immigrant adults would not receive Medicaid benefits under current law or during the interim period. In the full amnesty period, the analysis assumes that the immigrant/non-immigrant difference would have diminished slightly; during the full amnesty period, non-disabled adults who were formerly unlawful immigrants are assumed to receive normal Medicaid benefits that are 15 percent lower than those received by similar non-immigrants during the full amnesty period.

**Changes in Algorithms for Calculation of Benefits
and Taxes During the Interim Period**

The following changes were made to calculate the benefits received and taxes paid by former unlawful immigrant households during the interim amnesty period. (Benefits and taxes not listed remained the same as under current law.)

Government Benefits and Services

- Social Security disability and survivor benefits per household were raised from zero to 33 percent of the level of lawful immigrant households with comparable education levels.
- Medicare benefits for Old-Age, Survivor, and Disability Insurance (OASDI) recipients were raised from zero to 33 percent of the level of lawful immigrant households with comparable education levels.
- Unemployment insurance benefits were raised to the level of lawful immigrant households with comparable education levels and then reduced by 66 percent to reach non-recessionary levels.
- Workers' compensation benefits were raised to the level of lawful immigrant households with comparable education levels.
- The value of Medicaid benefits for children was raised to 75 percent of the normal values imputed in the CPS. It was assumed that the difference between expenditures for immigrant and non-immigrant children would diminish over time.
- Former unlawful immigrant households were assumed to use roads and highways, airports, parks, libraries, disaster relief, and general (non-means-tested) health care services at the normal rate for similar households in the general population.
- A post-recession adjustment reduced unemployment insurance by 66 percent and food stamp benefits by 25 percent. These reductions were incorporated into all post-amnesty benefit figures.
- Another post-reduction adjustment reduced total means-tested benefits by 5 percent; the effects of this adjustment appear separately in tables in the text.

Revenues

- The percentage of former unlawful immigrant workers who were assumed to work on the books was raised from 55 percent to 95 percent; federal personal income tax, state personal income tax, FICA taxes, unemployment insurance fees, and workers' compensation fees were increased proportionately.
- The worker's share of federal and state corporate income tax was increased in direct proportion to the increase in on-the-books employment.
- Former unlawful immigrant households were assumed to use roads and highways at the same rate as comparable households with the same incomes in the general population; highway trust fund gas taxes, state gas taxes, and motor vehicle license fees were increased proportionately. Former unlawful immigrant households were assumed to use airports at the same rate as comparable households with the same incomes in the general population; airport fees were increased proportionately.
- Former unlawful immigrant workers were assumed to receive a 5 percent increase in earnings as a result of amnesty; total taxes paid per household were therefore increased by 5 percent.
- It is possible that the recession in 2010 reduced incomes and tax revenues in unlawful immigrant households by 5 percent. A post-recession adjustment was applied raising the total taxes paid by unlawful immigrant households by 5 percent in future years; this adjustment appears separately in the text tables.

Changes in Algorithms for Calculation of Benefits and Taxes During the Full Amnesty Period

The following changes were made to calculate the benefits received and taxes paid by former unlawful immigrant households during the full amnesty period. (Benefits and taxes not listed remained the same as under current law.)

Government Benefits and Services

- Social Security disability and survivor benefits per household were raised to the level of lawful immigrant households with comparable education levels.
- Medicare benefits for OASDI recipients were raised to the level of lawful immigrant households with comparable education levels.
- Unemployment Insurance benefits were raised to the level of lawful immigrant households with comparable education levels.
- Workers' compensation benefits were raised to the level of lawful immigrant households with comparable education levels.
- Temporary Assistance for Needy Families benefits were raised to the level of lawful immigrant households with comparable education levels and adjusted for differences in the number of children per household.
- Supplemental Security Income benefits were raised to the level of lawful immigrant households with comparable education levels and adjusted for differences in the number of persons per household.
- Food stamp benefits were raised to the level of lawful immigrant households with comparable education levels, adjusted for differences in the number of persons per household.

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- Refundable Earned Income Tax Credits and Additional Child Tax Credits were set at the levels imputed by the Census in the CPS.
- The value of Medicaid benefits for children was set at 75 percent of the normal values imputed in the CPS.
- Disproportionate share hospital expenditures were reduced by 33 percent.
- Former unlawful immigrant households were assumed to use roads and highways, airports, parks, libraries, disaster relief, and general (non-means-tested) health care services at the normal rate for similar households in the general population.
- A post-recession adjustment reduced unemployment insurance by 66 percent and food stamp benefits by 25 percent. These reductions were incorporated into all post-amnesty benefit figures.
- Another post-reduction adjustment reduced total means-tested benefits by 5 percent; the effects of this adjustment appear separately in tables in the text.

Revenues

The percentage of former unlawful immigrant workers who were assumed to work on the books was raised from 55 percent to 95 percent; federal personal income tax, state personal income tax, FICA taxes, unemployment insurance fees, and workers' compensation fees were increased proportionately.

The worker's share of federal and state corporate income tax was increased in direct proportion to the increase in on-the-books employment.

Former unlawful immigrant households were assumed to use roads and highways at the same rate as comparable households with the same incomes in the general population; highway trust fund gas taxes, state gas taxes, and motor vehicle license fees were increased proportionately.

Former unlawful immigrant households were assumed to use airports at the same rate as comparable households with the same incomes in the general population; airport fees were increased proportionately.

Former unlawful immigrant workers were assumed to receive a 5 percent increase in earnings as a result of amnesty; total taxes paid per household were therefore increased by 5 percent.

It is possible that the recession in 2010 reduced incomes and tax revenues in unlawful immigrant households by 5 percent. A post-recession adjustment was applied raising the total taxes paid by unlawful immigrant households by 5 percent in future years; this adjustment appears separately in the text tables.

Estimating the Aggregate Lifetime Fiscal Deficit for Unlawful Immigrant Households After Amnesty

The estimate of the lifetime fiscal cost of unlawful immigrant households was based on the following assumptions. The estimates assume that amnesty is enacted in 2013.

- The number of former unlawful immigrant households was assumed to decline year by year after amnesty according to standard mortality tables.
- Five percent of the households were assumed to emigrate. The emigration was assumed to be spread evenly over the first 30 years after amnesty.
- For the first 13 years after amnesty, the annual cumulative deficit would equal the deficit per household for the interim period with post-recession adjustments (as shown in Table 8 in the text) times the remaining number of households.

- Starting in the 14th year after amnesty, the annual cumulative deficit was assumed to equal the deficit per household during the full amnesty period with post-recession adjustments (shown in Table 8 in the text) times the remaining number of households.
- Thirty-three years after amnesty, the median-aged householder (among the former unlawful immigrant households) would reach retirement age (age 67). Starting in that year, all unlawful immigrants were assumed to begin receiving retirement benefits. Obviously, half of the householders would reach age 67 before this year and half would reach it later. Using individual ages rather than the median age to determine retirement would be more precise but would affect the overall figures only slightly.
- The retirement phase of amnesty begins in 2046. In the retirement phase, fiscal costs are based on individuals, not households. The costs are based on the total number of adult unlawful immigrants in 2010 (10.1 million), not just those residing in households with unlawful immigrant heads in 2010. Five percent of these unlawful immigrants are assumed to emigrate before retirement, and the number is further reduced by natural mortality rates. Some 8.8 million are assumed to be alive and in the U.S. in 2046. The annual cumulative deficit is assumed to equal the per-person deficit for former unlawful immigrants over 65 (shown in text table 10) times the surviving number of individuals. In subsequent years, the number of surviving individuals is reduced by standard mortality rates, and the cumulative deficit is reduced accordingly.
- Amnesty recipients are assumed to bring some 1.5 million parents to the U.S. as legal permanent residents, resulting in a net added cost of \$260 billion. These costs are added to the lifetime total figure.
- The lifetime fiscal cost figure is in 2010 dollars.

Appendix F: Other Methodological Issues

Use of 2010 as the Base Year

The fiscal analysis in this paper uses data from 2010, which was a recession year. In a recession year, tax payments by unlawful immigrant households might have been lower, and government benefits might have been higher, than normal. This would artificially increase the average household fiscal deficit and bias the estimates of future deficits upward.

The analysis presented in Tables 7, 8, 10, 11, and 12 in the text has already adjusted for this by reducing the estimated future use of unemployment insurance and food stamps after amnesty to compensate for the higher levels of receipt during the recession in 2010. Beyond this, the fact that 2010 was a recession year has a limited impact on the analysis. While the recession reduced incomes and tax revenues in the economy as a whole, the impact on the average unlawful immigrant household was limited. It is true that gross income in the economy dropped during the recession, but most of that decline was in interest and property income. Overall, wages fell by only 2.3 percent between their peak in 2008 and 2010.

Unlawful immigrants have very little property income, and thus little income loss. In fact, CPS data indicate that the average income of the average unlawful immigrant household did not decline during the recession. Tax payments per household for unlawful immigrant households in 2010 were therefore not artificially low. When unlawful immigrants cannot find employment, they may simply return to their country of origin. This removes them from the survey data and would contribute to the stability of unlawful immigrant household income during an economic downturn.

What about welfare benefits? Welfare benefits received by lawful immigrant households in 2010 were used to estimate future benefits for amnesty recipients. If the 2010 benefits were artificially high, this would bias the estimates of future deficits upward. Many people believe the welfare system is like a roller coaster: Benefits go up during a recession and fall when the recession ends. While food stamp rolls expand and contract to a degree in response to economic trends, most other welfare programs are largely unaffected by business cycles.

Chart 9 in the text shows the means-tested welfare spending for cash, food, and housing between 1965 and 2011. The figures cover the whole population and are adjusted for inflation. Covering several business cycles, the chart reveals no roller-coaster patterns. Benefits may rise during a recession, but they do not fall when the recession ends.

The analysis does include further post-recession adjustments to compensate for the possibility that tax revenue from unlawful immigrants was depressed in 2010 and means-tested benefits were artificially high. The analysis increases future tax revenues for unlawful immigrant households by 5 percent above the 2010 levels. It also reduces future estimated means-tested benefits by 5 percent. These adjustments are presented separately in Tables 7, 8, 10, and 12 in the text. They are also incorporated into Table 11.

Aging of the Population Prior to Retirement

The average unlawful immigrant will spend 20 years in the full amnesty stage before retiring. During that period, the composition of the household's benefits and taxes may change, but the average household deficit likely will vary little. The number of children in the household is likely to rise and then fall. Wages will rise somewhat, but medical costs and subsidies will rise as well. The number of individuals receiving disability benefits will increase significantly. Overall, the average household deficit is comparatively unchanging for households with heads between 35 and 55.

The analysis assumes that unlawful immigrant households, as a group, will have an average deficit of around \$28,000 (in constant dollars) throughout the full amnesty period. This is a simplifying assumption but not an unreasonable one. The unlawful immigrant population already contains adults of various ages. The age composition of unlawful immigrant household heads and the general lack of variation in household fiscal deficit through middle age mean that the average deficit will not vary a great deal before retirement.

However, there are two issues with respect to aging that require special consideration. The first is added child births. An additional 3 million to 4 million children will be born to present unlawful immigrants over

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the next two decades. At first glance, these children would seem to create an extra cost that should be calculated separately. In reality, these additional children are unlikely to raise the average fiscal deficit among the unlawful immigrant households. As new children are born, older children will mature and leave the households. Thus, the number of children within the unlawful immigrant households as a whole is likely to be fairly stable for many years.

The second issue is wage growth. The basic analysis in this paper included a 5 percent boost in wages due to the direct impact of legalization. However, many unlawful immigrants can be expected to have additional wage growth over time and therefore to pay more taxes. This wage growth could take two forms: structural and maturational.

Structural wage growth occurs between generations: for example, if college graduates in one generation earned more than similar workers in the prior generation. Regrettably, there has been no structural wage growth among workers with a high school degree or less for 40 years. In constant dollars, these earnings either have remained constant or have fallen.¹¹ Therefore, this will not be an important factor in raising the wages of amnesty recipients.

Maturational wage growth occurs as a single worker gets older. Most workers at age 55 are more skilled than they were at 25 and thus receive a higher wage; tax payments will increase proportionately. Historical data show that workers with a high school degree or less may experience, on average, a 15 percent to 30 percent boost in constant-dollar wages after three decades of work.¹² This wage growth will produce higher tax payments. Thus, on the surface, one might expect to see household deficit fall as amnesty recipients get older.

But the situation is more complex than this. The unlawful immigrant population in 2010 already contained workers at various ages, so any increase in the group average wage would be less than the 15 percent to 30 percent mentioned above. Moreover, the fiscal balance of each household is determined not by wages alone but by the ratio of wages (and taxes) to government benefits. Older workers will tend to earn more when employed, but they also are more likely to become ill and may leave the labor force and receive disability benefits. Obamacare for older workers will be very expensive.

The analysis in this paper already incorporates most of any anticipated maturation wage increases because it already includes the wages of lawful and unlawful immigrant workers at various ages. More important, it examines the fiscal deficits of households of different ages. The average fiscal deficit for lower-skill households tends to rise until ages 40–45, then fall slightly, and then rise again in retirement. This rise-fall-rise pattern means that as a low-skill population ages, the average household deficit is unlikely to change much, even though wages may rise slightly.

Appendix G: Pure Public Goods, Private Consumption Goods, and Population-Based Services

Fiscal distribution analysis seeks to determine the government benefits received by a particular group compared to taxes paid. A necessary first step in this process is to distinguish government programs that provide "pure public goods" as opposed to "private goods." These two types of expenditures have very different fiscal implications.

Economist Paul Samuelson is credited with being the first to develop the theory of public goods. In his seminal 1954 paper "The Pure Theory of Public Expenditure,"¹¹⁹ Samuelson defined a pure public good (or what he called a "collective consumption good") as a good "which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtractions from any other individual's consumption of that good." By contrast, a "private consumption good" is a good that "can be parceled out among different individuals." Its use by one person precludes or diminishes its use by another.

A classic example of a pure public good would be a lighthouse: The fact that any particular ship perceives the warning beacon does not diminish the usefulness of the lighthouse to other ships. A typical example of a private consumption good is a hamburger: When one person eats it, it cannot be eaten by others.

Formally, all pure public goods will meet two criteria:¹²⁰

- **Non-Rivalrous Consumption.** Everyone in a given community can use the good; its use by one person will not diminish its utility to others.
- **Zero-Cost Extension to Additional Users.** Once a pure public good has been produced, it requires no extra cost for additional individuals to benefit from the good. Expansion of the number of beneficiaries does not reduce its utility to any initial user and does not add new costs of production. As Nobel prize-winning economist James Buchanan explains, with a pure public good, "Additional consumers may be added at zero marginal cost."¹²¹

The second criterion is a direct corollary of the first. If consumption of a good is truly non-rivalrous, then adding extra new consumers will not reduce utility or add costs for the initial consumers.

The distinction between collective and private consumption goods can be illustrated by considering the difference between a recipe for pie and an actual piece of pie. A recipe for pie is a public consumption good in the sense that it can be shared with others without reducing its usefulness to the original possessor; moreover, the recipe can be disseminated to others with little or no added cost. By contrast, an actual slice of pie is a private consumption good: Its consumption by one person bars its consumption by another. Efforts to expand the number of individuals utilizing the pie slice will either reduce the satisfaction of each user (as each gets a smaller portion of the initial pie) or entail new costs (to produce more pie).

Examples of Governmental Pure Public Goods

Pure public goods are relatively rare. One prime example of a governmental public good is medical research. If research funded by the National Institutes of Health produces a cure for cancer, all Americans will benefit from this discovery. The benefit received by one person is not reduced by the benefit received by others; moreover, the value of the discovery to each individual would remain the same even if the U.S. population doubled.

Another notable example of a pure public good is defense expenditure. The utility of an Army division or an aircraft carrier lies in its effectiveness in combating foreign threats to America. In most respects, one person's benefit from defense strength is not reduced because others also benefit. The military effectiveness of an Army division or an aircraft carrier is not reduced just because the size of the civilian population being defended increases.

Finally, individuals may receive psychic satisfaction from the preservation of wildlife or wilderness areas. This psychic satisfaction is not reduced because others receive the same benefit and is not directly affected by changes in the population. By contrast, enjoyment of a national park may be reduced if population increases

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lead to crowding. In consequence, general activities to preserve species may be considered a public good, while provision of parks is a private good.

Pure Public Goods Compared to Population-Based Goods

Many government services that are dubbed public goods are not true public goods. Economists Thomas MaCurdy, Thomas Nechyba, and Jay Bhattacharya state that “relatively few of the goods produced by [the] government sector are pure public goods, in the sense that the cost of providing the same level of the good is invariant to the size of the population.”¹⁶ In other words, many government services referred to conventionally as “public goods” need to be increased at added expense to the taxpayer as the population increases, thereby violating the criterion of zero-cost extension to additional users.

For example, police protection is often incorrectly referred to as a “public good.” True, police do provide a diffuse service that benefits nearly all members of a community, but the benefit that each individual receives from a police officer is reduced by the claims that other citizens may make on the police officer’s time. Someone living in a town of 500 protected by a single police officer gets far more protection from that police officer than would another individual protected by the same single police officer in a town of 10,000.

The National Research Council explains that government services that generally need to be increased as the population increases are not real public goods. It refers to these services as “congestible” goods: If such a program remains fixed in size as the number of users increases, it may become “congested,” and the quality of service will consequently be reduced. An obvious example would be highways. Other examples of “congestible” goods are sewers, parks, fire departments, police, courts, and mail service.¹⁷ These types of programs are categorized as “population-based” services in the paper.

In contrast to population-based services, governmental pure public goods have odd fiscal properties. The fact that a low-income person who pays little or nothing in taxes receives benefit from government defense or medical research programs does not impose added costs or reduce the utility of those programs to other taxpayers. Therefore, it is inaccurate to say that the non-taxpayers’ use of these programs imposes a burden on other taxpayers. On the other hand, non-taxpayers or individuals who pay little in taxes are “free riders” on public goods in the sense that they benefit from a good for which they have not paid.

The entry of unlawful or low-skill immigrants into the U.S. does not increase the costs or reduce the utility of public goods for other taxpayers; therefore, public goods spending is not included in the net fiscal deficit calculations for unlawful immigrant households presented in this paper. By contrast, the entry of unlawful immigrants does increase costs and reduce the utility of “congestible” or population-based services for other taxpayers; therefore, those expenditures have been included in the net fiscal deficit calculations for low-skill immigrant households presented in this paper.

Appendix Tables

APPENDIX TABLE A-1

Characteristics of the Unlawful Immigrant Population: Department of Homeland Security and Heritage Foundation Estimates

	U.S. Department of Homeland Security	The Heritage Foundation
Number of Persons		
Total	11.5 million	11.5 million
Appearing in Census Records	10.35 million	10.34 million
Not in Census	1.15 million	1.15 million
Year of Arrival		
2000-2011	42.7%	44.6%
1990-1999	40.7%	37.8%
Pre-1990	16.7%	17.6%
Age		
Under 18	12.0%	11.1%
18 to 24	14.0%	13.0%
25 to 34	32.0%	35.1%
35 to 44	27.0%	28.7%
45 and older	15.0%	12.2%
Sex		
Male	53.0%	54.1%
Female	47.0%	45.9%
Region of Origin		
North and Central America	77.4%	76.8%
Mexico	59.1%	59.7%
Asia	11.3%	11.0%
South America	7.0%	6.9%
Europe	2.6%	2.4%
Other	1.7%	3.0%

Sources: Michael Hoeller, Nancy Rytina, and Bryan Bak, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011," March 2012, U.S. Department of Homeland Security, Office of Immigration Statistics Policy Directorate, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_no_2011.pdf (accessed April 4, 2013); and Heritage Foundation calculations using data from the U.S. Census Bureau, 2010 Current Population Survey, <http://www.census.gov/cps/> (accessed April 3, 2013).

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**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
AND AMNESTY TO THE U.S. TAXPAYER**

APPENDIX TABLE A-2

Federal Outlays: Fiscal Year 2010 (Page 1 of 4)

FUNCTION AND SUBFUNCTION	MILLIONS OF DOLLARS	PROGRAM TYPE
050 National Defense		
051 Department of Defense-Military		
Military Personnel	155,690	Public good
Operation and Maintenance	275,988	Public good
Procurement	133,603	Public good
Research, Development, Test, and Evaluation	76,990	Public good
Military Construction	21,169	Public good
Family Housing	3,173	Public good
Other	90	Public good
051 Subtotal, Department of Defense-Military	666,703	Public good
053 Atomic energy defense activities	19,315	Public good
054 Defense-related activities	7,568	Public good
Total, National Defense	693,586	Public good
150 International Affairs		
151 International development and humanitarian assistance	19,014	Public good
152 International security assistance	11,363	Public good
153 Conduct of foreign affairs	13,557	Public good
154 Foreign information and exchange activities	1,485	Public good
155 International financial programs	-224	Public good
Total, International Affairs	45,195	Public good
250 General Science, Space, and Technology		
251 General science and basic research	11,728	Public good
252 Space flight, research, and supporting activities	18,370	Public good
Total, General Science, Space, and Technology	30,098	Public good
270 Energy		
271 Energy supply	5,796	
272 Energy conservation	4,997	
274 Emergency energy preparedness	199	
276 Energy information, policy, and regulation	623	
Total, Energy	11,613	Population-based services
300 Natural Resources and Environment		
301 Water resources	11,656	Public good
302 Conservation and land management	10,783	Public good
303 Recreational resources	3,911	Population-based services
304 Pollution control and abatement	10,842	Population-based services
306 Other natural resources	6,470	Public good
Total, Natural Resources and Environment	43,662	

APPENDIX TABLE A-2

Federal Outlays: Fiscal Year 2010 (Page 2 of 4)

FUNCTION AND SUBFUNCTION	MILLIONS OF DOLLARS	PROGRAM TYPE
300 Natural Resources and Environment		
301 Water resources	11,656	Public good
302 Conservation and land management	10,783	Public good
303 Recreational resources	3,911	Population-based services
304 Pollution control and abatement	10,842	Population-based services
306 Other natural resources	6,470	Public good
Total, Natural Resources and Environment	43,662	
350 Agriculture		
351 Farm income stabilization	16,605	Direct benefit
352 Agricultural research and services	4,751	Public good
Total, Agriculture	21,356	
370 Commerce and Housing Credit		
371 Mortgage credit	35,804	Direct benefit
372 Postal service	-682	Population-based services
373 Deposit insurance	-32,033	Direct benefit
376 Other advancement of commerce (TARP repayments)	-85,367	Excluded
Total, Commerce and Housing Credit	-82,298	
400 Transportation		
401 Ground transportation	60,784	Population-based services
402 Air transportation	21,431	Population-based services
403 Water transportation	9,351	Population-based services
407 Other transportation	406	Population-based services
Total, Transportation	91,972	
450 Community and Regional Development		
451 Community development	9,901	Means-tested
452 Area and regional development	3,249	Population-based services
453 Disaster relief and insurance	10,654	Population-based services
Total, Community and Regional Development	23,804	
500 Education, Training, Employment, and Social Services		
501 Elementary, secondary, and vocational education	73,261	Educational benefits
502 Higher education	20,023	Educational benefits
503 Research and general education aids	3,631	Public good
504 Training and employment	9,854	Means-tested
505 Other labor services	1,765	Population-based services
506 Social services	19,176	Means-tested
Total, Education, Training, Employment, and Social Services	127,710	

**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
AND AMNESTY TO THE U.S. TAXPAYER**

APPENDIX TABLE A-2

Federal Outlays: Fiscal Year 2010 (Page 3 of 4)

FUNCTION AND SUBFUNCTION	MILLIONS OF DOLLARS	PROGRAM TYPE
550 Health		
551 Health care services	330,710	
551 Health care services, means-tested	0	Means-tested
551 Health care services, other	330,710	Population-based services
552 Health research and training	34,200	Public good
554 Consumer and occupational health and safety	4,144	Population-based services
Total, Health	369,054	
570 Medicare		
571 Medicare	451,636	Direct benefit
600 Income Security		
601 General retirement and disability insurance (excluding social security)	6,564	Direct benefit
602 Federal employee retirement and disability	119,867	Financial obligations due to past government activity*
602 Federal employee retirement and disability due to past public good functions		
602 Federal employee retirement and disability, all other		
603 Unemployment compensation (counted as state expenditure)	160,145	Direct benefit
604 Housing assistance	58,651	Means-tested
605 Food and nutrition assistance	95,110	Means-tested
609 Other income security (Supplemental Security Income, Refundable Earned Income Credit, Temporary Assistance to Needy Families, Low Income Energy Assistance, Foster Care, Child Care and Child Development Block Grant)	181,873	Means-tested
Total, Income Security	622,210	
650 Social Security		
651 Social security	706,737	Direct benefit
700 Veterans Benefits and Services		
701 Income security for veterans	49,163	Public good
702 Veterans education, training, and rehabilitation	8,089	Public good
703 Hospital and medical care for veterans	45,714	Public good
704 Veterans housing	540	Public good
705 Other veterans benefits and services	4,878	Public good
Total, Veterans Benefits and Services	108,384	Public good
750 Administration of Justice		
751 Federal law enforcement activities	28,715	Population-based services
752 Federal litigative and judicial activities	13,073	Population-based services
753 Federal correctional activities	7,748	Population-based services
754 Criminal justice assistance	4,849	Population-based services
Total, Administration of Justice	54,385	Population-based services

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APPENDIX TABLE A-2

Federal Outlays: Fiscal Year 2010 (Page 4 of 4)

FUNCTION AND SUBFUNCTION	MILLIONS OF DOLLARS	PROGRAM TYPE
800 General Government		
801 Legislative functions	4,089	Population-based services
802 Executive direction and management	528	Population-based services
803 Central fiscal operations	11,906	Population-based services
804 General property and records management	1,194	Population-based services
805 Central personnel management	338	Population-based services
806 General purpose fiscal assistance	5,082	Population-based services
808 Other general government	1,598	Population-based services
809 Deductions for offsetting receipts	-1,704	Population-based services
Total, General Government	23,031	Population-based services
900 Net Interest		
901 Interest on Treasury debt securities (gross)	413,934	Financial obligations due to past government activity
902 Interest received by on-budget trust funds	-67,268	Financial obligations due to past government activity
903 Interest received by off-budget trust funds	-118,502	Financial obligations due to past government activity
908 Other interest	-29,539	Financial obligations due to past government activity
909 Other investment income	-2,431	Financial obligations due to past government activity
Total, Net Interest	196,194	Financial obligations due to past government activity*
TOTAL OUTLAYS MINUS OFFSETTING RECEIPTS, UNEMPLOYMENT INSURANCE, AND TARP REPAYMENTS (UNDER CODE 376)	3,463,571	

* Roughly 30 percent of net interest and public employee retirement are assumed to result from past public goods functions and are assigned to public goods in the analysis.

Note: In the analysis, some \$8.9 billion in administrative costs in function 800 are assigned to public goods.

Source: Data on federal expenditures were taken from Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2013: Historical Tables*, Table 3.2, <http://www.whitehouse.gov/omb/budget/Historicals> (accessed April 5, 2013).

**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
AND AMNESTY TO THE U.S. TAXPAYER**

APPENDIX TABLE A-3

**Removing Federal Grants-in-Aid from State
and Local Expenditures, 2010 (Page 1 of 2)**

	State and Local Expenditures (millions)	Expenditure Subtotals (millions)	Federal Grants-in- Aid to States (millions)	State and Local Expenditures Less Federal Grants (millions)
Income maintenance, health care, and social services	696,217			301,347
Means-tested aid	563,671			
Medicaid and SCHIP		418,159	281,189	136,970
Other means-tested medical grants		8,894	6,236	2,658
Other means-tested spending		136,618	104,702	31,916
Non means-tested spending (mainly medical)	132,545		2,743	129,802
Housing and community development	53,492		46,099	7,393
Transportation (without transit)	186,007			
Highways		155,870	43,998	111,872
Air transportation (airports)		23,129	3,882	19,247
Parking facilities		1,680		1,680
Sea and inland port facilities		5,329	128	5,201
Total education and training	871,989			
Higher education		242,730	475	242,255
Elementary and secondary		574,029	51,763	522,266
Other education		43,206	21,120	22,086
Librarians		12,024		12,024
Total resources and environment	145,053			
Natural resources		29,106	12,555	16,551
Parks and recreation		40,284	181	40,103
Sewerage		51,896		51,896
Solid waste management		23,766		23,766
Total justice and public safety	254,090		5,086	249,004
Total Veterans	794		836	-42
Total general government	83,820		5,218	78,602
Protective inspection and regulation	14,282			14,282
Unallocated expenditures (less training)	126,650		9,206	117,444
Interest on general debt	105,721			105,721
Total direct expenditures	2,538,114			1,641,350

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APPENDIX TABLE A-3

**Removing Federal Grants-in-Aid from State
and Local Expenditures, 2010 (Page 2 of 2)**

	State and Local Expenditures (millions)	Federal Grants-in- Aid to States (millions)	State and Local Expenditures Less Federal Grants (millions)
Insurance trust expenditures			
Unemployment compensation	135,367		135,367
Employee retirement	205,088		205,088
Workers' compensation	12,508		12,508
Other insurance trust	6,831		6,831
Total direct and trust fund expenditures	2,897,908		2,001,144
Utility expenditures			
Water supply	60,999		60,999
Electric power	76,759		76,759
Gas supply	8,338		8,338
Transit	60,089	12,973	47,116
Liquor store expenditures	6,415		6,415
Total expenditures	3,110,507	608,390	2,502,117

Sources: U.S. Census Bureau, "State and Local Government Finances, Summary, 2010," September 2012, Appendix Table A-1, p. 6, http://www2.census.gov/govs/estimates/summary_report.pdf (accessed April 5, 2013); Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Analytical Perspectives*, p. 294, Table 18-1, <http://www.gpo.gov/fdsys/pkg/BUDGET-2012-PER/pdf/BUDGET-2012-PER.pdf> (accessed April 5, 2013).

THE FISCAL COST OF UNLAWFUL IMMIGRANTS AND AMNESTY TO THE U.S. TAXPAYER

APPENDIX TABLE A-4

Removing User Fees and Charges from State and Local Expenditures, 2010 (Page 1 of 2)

ALL FIGURES IN MILLIONS OF DOLLARS

Spending Category: State and Local Expenditures and Net Federal Grants-in-Aid	Expenditure Total	Expenditure Sub-total	Type of User Fees and Charges	Amount	Spending Category: State and Local Expenditures, Net Federal Grants-in-Aid, and Net User Fees and Charges	Total
Income maintenance, health care, and social services					Income maintenance, health care, and social services	
Means-tested aid	17,544				Means-tested aid	17,544
Medicaid and SCHIP		136,970			Medicaid and SCHIP	136,970
Other means-tested medical grants		2,658			Other means-tested medical grants	2,658
Other means-tested spending		3,096			Other means-tested spending	3,096
Non-means-tested spending (mainly medical)	129,802		Hospital fees	110,598	Non-means-tested spending (mainly medical)	19,204
Housing and community development	7,393		Housing and community development	6,000	Housing and community development	1,393
Transportation (without transit)			Transportation (without transit)		Transportation (without transit)	
Highways	111,872		Highways	12,115	Highways	99,757
Air transportation (airports)	19,247		Air transportation (airports)	17,987	Air transportation (airports)	1,260
Parking facilities	1,680		Parking facilities	3,736	Parking facilities	-1,556
Sea and inland port facilities	5,201		Sea and inland port facilities	3,875	Sea and inland port facilities	1,325
Total education and training	242,255		Higher education	106,065	Total education and training	136,190
Higher education			Higher education		Higher education	
Elementary and secondary	522,266		Elementary and secondary	6,608	Elementary and secondary	515,658
Other education	22,686		Other education	9,179	Other education	12,908
Libraries	12,014		Libraries		Libraries	12,014
Total resources and environment	16,557		Natural resources	4,513	Total resources and environment	12,008
Natural resources			Natural resources		Natural resources	
Parks and recreation	40,003		Parks and recreation	9,404	Parks and recreation	30,700
Sewerage	51,896		Sewerage	43,430	Sewerage	8,466
Solid waste management	23,366		Solid waste management	15,716	Solid waste management	8,050

* From Appendix Table A.2.

APPENDIX TABLE A-4
Removing User Fees and Charges from State and Local Expenditures, 2010 (Page 2 of 2)
ALL FIGURES IN MILLIONS OF DOLLARS

Spending Category: State and Local Expenditures and Net Federal Grants-in-Aid*	Expenditure Total	Type of User Fees and Charges	Amount	Spending Category: State and Local Expenditures, Net Federal Grants-in-Aid, and Net User Fees and Charges	Total
Total justice and public safety	249,004	Total justice and public safety		Total justice and public safety	249,004
Total Veterans	-42	Total Veterans		Total Veterans	-42
Total general government	78,602	Total general government		Total general government	78,602
Protective inspection and regulation	14,282	Protective inspection and regulation		Protective inspection and regulation	14,282
Unallocated expenditures (less training)	117,444	Other charges	60,824	Unallocated expenditures (less training)	56,620
Interest on general debt	105,721	Interest on general debt		Interest on general debt	105,721
Total direct expenditures	1,641,350			Total direct expenditures	1,342,368
Insurance trust expenditures		Insurance trust expenditures		Insurance trust expenditures	
Unemployment compensation	135,367	Unemployment compensation		Unemployment compensation	135,367
Employee retirement	205,088	Employee retirement		Employee retirement	205,088
Workers' compensation	12,508	Workers' compensation		Workers' compensation	12,508
Other insurance trust	6,831	Other insurance trust		Other insurance trust	6,831
Total direct and trust fund expenditures	2,001,144				
Utility expenditures		Utility fees		Utility expenditures	
Water supply	60,999	Water supply	48,881	Water supply	12,117
Electric power	76,759	Electric power	75,160	Electric power	1,599
Gas supply	8,338	Gas supply	8,660	Gas supply	-322
Transit	47,116	Transit	13,006	Transit	34,110
Liquor store expenditures	6,415	Liquor store fees	7,789	Liquor store expenditures	-1,374
Total expenditures	2,502,117	Total user fees and charges	543,076	Total expenditures	1,959,041

* From Appendix Table A-2

Sources: U.S. Census Bureau, "State and Local Government Finances, Summary, 2010," September 2012, Appendix Table A-1, p. 6, http://www2.census.gov/govs/est/tables/summary_report.pdf (accessed April 5, 2013)

**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
AND AMNESTY TO THE U.S. TAXPAYER**

APPENDIX TABLE A-5

State and Local Expenditures Less Federal Grants and User Fees, 2010 (Page 1 of 2)

Budget Function	Expenditures (in millions)	Type of Program
Income maintenance, health care, and social services	190,749	
Means-tested	171,544	Means-tested benefits
Medicaid and SCHIP	136,970	
Other means-tested medical grants	2,658	
Other means-tested spending	31,916	
Non means-tested spending (mainly medical)	19,204	Population-based services
Housing and community development	1,363	Means-tested benefits
Transportation without transit		
Highways	99,757	Population-based services
Air transportation (airports)	1,260	Population-based services
Parking facilities	-1,556	Population-based services
Sea and inland port facilities	1,325	Population-based services
Education		
Higher education	136,189	Education benefits
Elementary and secondary	515,658	Education benefits
Other education	12,908	Education benefits
Libraries	12,024	Population-based services
Resources and environment		
Natural resources	12,038	Public good
Parks and recreation	30,700	Population-based services
Sewerage	8,466	Population-based services
Solid waste management	8,050	Population-based services
Total justice and public safety	249,004	Population-based services
Total Veterans	-42	Public good
Total general government	78,602	Population-based services
Protective inspection and regulation	14,282	Population-based services
Unallocated expenditures	56,620	Population-based services
Interest on general debt	105,721	Costs due to past services
Total direct expenditures	1,342,368	
Insurance trust expenditures		
Unemployment compensation	135,367	Direct benefits
Employee retirement	205,088	Costs due to past services
Workers' compensation	12,508	Direct benefits
Other insurance trust	6,831	Population-based services
Utility expenditures		
Water supply	12,117	Population-based services
Electric power	1,599	Population-based services
Gas supply	-322	Population-based services
Transit	34,110	Population-based services
Liquor store expenditures	-1,374	Population-based services
Total expenditures	1,939,041	

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APPENDIX TABLE A-5

State and Local Expenditures Less Federal Grants and User Fees, 2010 (Page 2 of 2)

Budget Function	Expenditures (in millions)
Reallocations	
Fixed administrative costs assigned to public goods	7,860
General administrative costs assigned to public goods	472
Costs due to past services assigned to public goods	1,865
Summary: Subtotals by spending type	
Means-tested benefits	172,908
Direct benefits	147,875
Education benefits	664,755
Population-based expenditures	622,368
Interest and other costs due to past government services and benefits	308,943
Pure public good expenditures	22,193
Total expenditures	1,939,041

Source: See Appendix Tables A-3 and A-4.

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**THE FISCAL COST OF UNLAWFUL IMMIGRANTS
AND AMNESTY TO THE U.S. TAXPAYER**

APPENDIX TABLE A-6

Federal Government Taxes and Revenues, FY 2010

Federal Revenue Receipts	Aggregate Revenue (in millions of dollars)	Revenue Subtotals (in millions of dollars)
Individual income taxes	898,549	
Corporate income taxes	191,437	
Federal Insurance Contributions Act (FICA)	811,755	
Old-age and survivors insurance		539,996
Disability insurance		91,691
Hospital insurance		180,068
Other retirement receipts	8,236	
Railroad retirement		2,285
Railroad social security equivalent account		1,854
Federal employees and other employee retirement receipts		4,062
Non-federal employees retirement		35
Unemployment insurance—federal receipts	6,542	
Excise taxes	66,929	
Alcohol excise tax		9,229
Tobacco excise tax		17,180
Telephone excise tax		993
Transportation fuels excise tax		-11,030
Other taxes		1,904
Trust fund excise taxes		
Highway		34,992
Airport		10,612
Other		3,049
Estate and gift tax	18,885	
Customs duties and fees	25,298	
Other miscellaneous receipts	20,969	
Miscellaneous: Fees for permits and regulatory and judicial services		11,861
Miscellaneous: Fines, penalties, and forfeitures		8,110
Other miscellaneous receipts		430
Defense cooperation		568
Earnings from the Federal Reserve	73,845	
Total federal receipts	2,122,445	

Note: Figures exclude \$38.2 billion in unemployment insurance receipts from state governments and \$75.8 billion in earnings from the Federal Reserve system.

Source: Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Analytical Perspectives*, p. 294, Table 18-1, <http://www.gpo.gov/idsys/pkg/BUDGET-2012-PER/pdf/BUDGET-2012-PER.pdf> (accessed April 5, 2013).

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APPENDIX TABLE A-7

State and Local Taxes and Revenue, 2010

State and Local Revenue from Own Sources	Aggregate Revenue (in millions of dollars)	Revenue Subtotals (in millions of dollars)
Specific taxes		
Property	441,661	
General sales	284,910	
Selective sales	146,266	
Motor fuel		37,880
Alcoholic beverage		6,028
Tobacco products		17,268
Public utilities		28,291
Other selective sales		56,800
Individual income	260,338	
Corporate income	42,860	
Motor vehicle license	22,498	
Other taxes	71,116	
Miscellaneous general revenue		
Interest earnings	199,094	60,734
Special assessments		7,314
Sale of property		2,948
Net lottery receipts		17,753
Other general revenue		110,345
Insurance trust revenue		
Unemployment compensation	99,164	75,191
Workers' compensation		16,592
Other insurance trust revenue		7,381
Employee retirement trust revenue*		
Employee contributions	416,666	39,107
Earnings on investments		346,108
Other		31,451
Total state and local revenue	1,984,572	

* Excludes intra-government transfers to retirement trust funds.

Note: Excludes \$563 billion in user fees and \$624 billion in federal grants to state and local governments.

Source: U.S. Census Bureau, "State and Local Government Finances, Summary: 2010," September 2012, Appendix Table A-1, p. 6, http://www2.census.gov/ovs/estimate/summary_report.pdf (accessed April 5, 2013).

THE FISCAL COST OF UNLAWFUL IMMIGRANTS AND AMNESTY TO THE U.S. TAXPAYER

APPENDIX TABLE A-4
Government Benefits and Services Received by Unlawful Immigrant Households Under Current Law, 2010 (Page 1 of 6)

	Allocation Algorithms for Government Expenditures	Aggregate Federal State and Local Government Spending (millions)	Unlawful Immigrant Household's Share of Aggregate Expenditures	Expenditures per Unlawful Immigrant Household (dollars)
DIRECT BENEFITS				
Social Security Benefits				
Social Security Old Age Benefits	Total spending times unlawful immigrant household share of program expenditures in the CPS	706,737		\$0
Social Security Disability Benefits	Total spending times unlawful immigrant household share of program expenditures in the CPS	\$51,871	0.0%	\$0
Social Security Survivor Benefits	Total spending times unlawful immigrant household share of program expenditures in the CPS	126,423	0.0%	\$0
Medicare benefits				
Medicare benefits: General	Total spending times unlawful immigrant household share of program expenditures in the CPS	451,636.0	0.0%	\$0
Medicare benefits: Disability	Total spending times unlawful immigrant household share of program expenditures in the CPS	370,025	0.0%	\$0
Medicare benefits: Survivors	Total spending times unlawful immigrant household share of program expenditures in the CPS	59,345	0.0%	\$0
Other Cash Transfers and Benefits				
Unemployment compensation	Total spending times unlawful immigrant household share of program expenditures in the CPS	135,367	0.1%	\$37
Workers' compensation	Total spending times unlawful immigrant household share of program expenditures in the CPS	32,508	0.1%	\$4
Other federal retirement (Railroad and Black Lung Disability) (601)	Total spending times unlawful immigrant household share of program expenditures in the CPS	6,564	0.0%	\$0
Agricultural subsidies	Total spending times unlawful immigrant household share of program expenditures in the CPS	16,605	0.0%	\$0
Mortgage credit and deposit insurance	Total spending times unlawful immigrant household share of interest income in the CPS	3,771	0.3%	\$3
Direct Benefits Total		1,333,188		\$44
EDUCATION BENEFITS				
Higher education	See text	156,212	1.7%	\$761
Elementary and secondary Training and other Education	See text	588,919	7.4%	\$12,703
	Total spending times unlawful immigrant household share of non-elderly adults in the CPS	42,908	4.3%	\$162
Education Benefits Total		758,039		\$13,627

APPENDIX TABLE A-8
Government Benefits and Services Received by Unlawful Immigrant Households Under Current Law, 2010 (Page 2 of 6)

Allocation Algorithms for Government Expenditures	Aggregate Federal State and Local Government Spending (millions)	Unlawful Immigrant Household's Share of Aggregate Expenditures	Unlawful Immigrant Household's Share of Expenditures per Unlawful Immigrant Household (dollars)
MEANS-TESTED BENEFITS			
Public aid	32,764	2.0%	\$192
Social Security Supplemental Security Income (SSI)	55,426	0.0%	\$0
Earned Income Tax Credit	54,712	0.0%	\$0
Additional Child Refundable Tax Credit	22,659	0.0%	\$0
Make Work Pay Refundable Tax Credit	13,694	0.0%	\$0
Food stamps	76,836	4.3%	\$941
School lunch and breakfast	12,828	10.7%	\$399
SCHIP	11,357	11.3%	\$373
Women, Infants, and Children (WIC)	6,469	13.2%	\$247
Housing (604)	59,924	0.0%	\$0
Energy	6,203	0.0%	\$0
Indian Health	3,694	0.1%	\$1
Community health centers	3,574	15.0%	\$156
Total spending times unlawful immigrant household share of program expenditures in the CFS			
Total spending times unlawful immigrant household share of program expenditures in the CFS			
Unlawful immigrant households do not receive benefits			
Unlawful immigrant households do not receive benefits			
Unlawful immigrant households do not receive benefits			
Total spending times unlawful immigrant household share of program expenditures in the CFS			
Total spending times unlawful immigrant household share of program expenditures in the CFS			
Total spending times unlawful immigrant household share of program expenditures in the CFS			
Total spending times unlawful immigrant household share of program expenditures in the CFS			
Total spending times group share of overall means-tested welfare spending in the CFS, unlawful immigrant households assumed to receive 15 percent of total expenditures			
Medicaid			
Medicaid: Eligible in general population*	28,345.8	0%	\$0
Medicaid: Disabled adults in the general population*	139,346.4	0%	\$0
Medicaid: Non-elderly able-bodied adults in the general population*	55,910.5	0%	\$0
Medicaid: Children in the general population	79,116.9	5.2%	\$1,190
Total spending times group share of program expenditures in the CFS, per-recipient expenditures for immigrant children are at 50 percent of normal level			
Medicaid: Elderly in nursing facilities	48,746.8	0.0%	\$0
Medicaid: Non-elderly disabled adults in nursing facilities	17,748.8	0.0%	\$0
Medicaid: Non-elderly, non-disabled adults in nursing facilities	348.3	0.0%	\$0
Medicaid: Children in nursing facilities	88.3	0.0%	\$0

THE FISCAL COST OF UNLAWFUL IMMIGRANTS AND AMNESTY TO THE U.S. TAXPAYER

APPENDIX TABLE A-4
Government Benefits and Services Received by Unlawful Immigrant Households Under Current Law, 2010 (Page 3 of 6)

Allocation Algorithms for Government Expenditures	Aggregate Federal State and Local Government Spending (millions)	Unlawful Immigrant Household's Share of Aggregate Expenditures	Expenditures per Unlawful Immigrant Household (dollars)
MEANS-TESTED BENEFITS (CONTINUED)			
Medicaid (continued)			
Medicaid: Elderly in ICF MR (mentally retarded)	1,411.0	0.0%	\$0
Medicaid: Non-elderly disabled adults in ICF MR (mentally retarded)	17,502.9	0.0%	\$0
Medicaid: Non-elderly non-disabled adults in ICF MR (mentally retarded)	11.8	0.0%	\$0
Medicaid: Children in ICF MR (mentally retarded)	111.3	0.0%	\$0
Medicaid: Disproportionate Share Hospital Payments	17,581.0	15.0%	\$766
Medicaid Total	406,271		\$1,955
Other means-tested aid (social services, child care, community development, health care)	68,487	2.0%	\$389
Means-Tested Benefit Total	834,898		\$4,497
POPULATION-BASED AND GOVERNMENT SUPPORT SERVICES			
Transportation			
Highways, roads, and parking facilities	180,541	1.0%	\$476
Air transportation (airports)	22,691	0.0%	\$0
Sea and inland port facilities	10,676	1.7%	\$54
Other federal ground transportation	406	4.2%	\$5
Transit subsidies	34,110	1.3%	\$131
Parking facilities and other	-1,556	1.0%	-\$5
Transportation Subtotal	226,869		\$662

APPENDIX TABLE A-4
Government Benefits and Services Received by Unlawful Immigrant Households Under Current Law, 2010 (Page 4 of 6)

		Aggregate Federal State and Local Government Spending (millions)	Unlawful Immigrant Household's Share of Aggregate Expenditures	Expenditures per Unlawful Immigrant Household (dollars)
Allocation Algorithms for Government Expenditures				
POPULATION-BASED AND GOVERNMENT SUPPORT SERVICES (CONTINUED)				
Justice, police, and public safety		260,754	4.2%	\$3,143
Fire protection		42,635	4.2%	\$514
Resources, Recreation, and Environment				
Parks and recreation		34,611	3.1%	\$313
Sewerage		8,466	4.2%	\$102
Solid waste management		8,050	4.2%	\$97
Public Utility Spending: Expenditures Exceeding User Charges				
Water supply		12,117	2.0%	\$72
Electric power		1,599	2.2%	\$10
Gas supply		-322	2.0%	-\$2
Pollution control and abatement		10,842	1.7%	\$54
Energy		11,613	4.2%	\$140
Resources, Recreation, and Environment: Subtotal		86,976		\$787
Other Health-Related				
General health (general health care, mental health, substance abuse, public health)		62,489	0.6%	\$113
Consumer and occupational health		4,144	4.2%	\$50
Protective inspection and rehabilitation		4,282	4.2%	\$172
Other Health-Related: Subtotal		80,916		\$335

THE FISCAL COST OF UNLAWFUL IMMIGRANTS AND AMNESTY TO THE U.S. TAXPAYER

APPENDIX TABLE A-8
Government Benefits and Services Received by Unlawful Immigrant Households Under Current Law, 2010 (Page 5 of 6)

	Allocation Algorithms for Government Expenditures	Aggregate Federal State and Local Government Spending (millions)	Unlawful Immigrant Households' Share of Aggregate Expenditures	Expenditures per Unlawful Immigrant Household (dollars)
POPULATION-BASED AND GOVERNMENT SUPPORT SERVICES (CONTINUED)				
Miscellaneous				
Other labor services	Total spending times the unlawful immigrant household share of the total population in the CPS	1,765	4.2%	\$21
	Not allocated	0		
Postal Service (372)	Total spending times the unlawful immigrant household share of the total population in the CPS	-482	4.2%	-\$8
Arts and regional development	Total spending times the unlawful immigrant household share of the total population in the CPS	3,249	4.2%	\$39
Disaster relief	Total spending times group share of the total population in the CPS; unlawful immigrants are assumed to receive no benefits	10,654	0.0%	\$0
Libraries	Total spending times group share of the total population in the CPS; unlawful immigrants are assumed to use services at 75 percent of rate of other households with the same socio-economic status	12,024	3.1%	\$109
Leisure time operation	Total spending times unlawful immigrant household share of alcohol consumption in the CEX	-1,374	1.5%	-\$6
Miscellaneous Subtotal				
		25,635		\$155
General Government Administrative Support				
General government		101,633		
General government activities in support of public good functions	Not allocated	7,151		
General government fixed costs	Not allocated	10,163		
General government less activities in support of public good functions and fixed costs	Total spending times unlawful immigrant household share of total direct, means-tested, and education benefits and other population-based benefits	84,319	2.2%	\$547
Unallocated expenditures	Total spending times unlawful immigrant household share of total direct, means-tested, and education benefits and other population-based benefits	56,620	2.2%	\$367
Other insurance trust	Total spending times unlawful immigrant household share of total direct, means-tested, and education benefits and other population-based benefits	6,831	2.2%	\$44
General Government Net Support for Public Goods and Fixed Costs Subtotal				
		147,770		\$958
Population-Based and Government Support Total				
		871,554		\$6,553

APPENDIX TABLE A-8
Government Benefits and Services Received by Unlawful Immigrant Households Under Current Law, 2010 (Page 6 of 6)

	Allocation Algorithms for Government Expenditures	Aggregate Federal State and Local Government Spending (millions)	Unlawful Immigrant Household's Share of Aggregate Expenditures	Expenditures per Unlawful Immigrant Household (dollars)
FINANCIAL OBLIGATIONS ASSOCIATED WITH PAST ACTIVITIES				
Interest payments on government debt	Not allocated	301,915		
Retirement benefits for former government employees	Not allocated	324,955		
Financial obligations associated with past services and benefits total	Not allocated	626,869		
Net Financial Obligations: Past Financial Obligations Minus Past Public Goods Total				
PURE PUBLIC GOODS EXPENDITURES				
National defense and related costs	Not allocated	695,566		
Veterans	Not allocated	108,342		
Health research	Not allocated	34,200		
Sciences and scientific research	Not allocated	30,098		
International affairs	Not allocated	45,195		
Natural resources and environment	Not allocated	40,917		
Agricultural research	Not allocated	4,751		
Educational research	Not allocated	3,831		
General government services in support of good functions	Not allocated	7,151		
Financial obligations for past public good functions	Not allocated	93,523		
General government fixed administrative costs		10,163		
Pure Public Goods Expenditures Total		1,071,586		
Total Expenditures		5,402,613		
Total Expenditures Less Pure Public Good Expenditures and Expenditures Relating to Financial Obligations for Past Services		3,797,680		\$24,721

* Mainly represent benefits received by lawful residents living within unlawful immigrant households. Unlawful immigrants residing outside lawful immigrant households also receive benefits that are not included in the expenditure totals for unlawful immigrant households presented in this paper.
Source: Heritage Foundation analysis based on data sets described in the Methodology section.

THE FISCAL COST OF UNLAWFUL IMMIGRANTS AND AMNESTY TO THE U.S. TAXPAYER

CPS—Current Population Survey
 CEX—Consumer Expenditure Survey
 SCT—Survey of Consumer Finances

APPENDIX TABLE A-9 Taxes and Revenues Paid per Unlawful Immigrant Household, 2010 (Page 1 of 5)

		FEDERAL TAXES AND REVENUES		
Taxes and Revenues	Algorithms	Aggregate Tax or Revenue (millions of dollars)	Unlawful Immigrant Household Share of Taxes and Revenue Paid	Total Taxes and Revenues Paid per Unlawful Immigrant Household (dollars)
Federal Individual Income Tax	Total tax times unlawful immigrant household share of tax payments in the CPS; unlawful immigrants assumed to work 55 percent on the books and 45 percent off	\$898,549	0.5%	\$1,312
FICA Taxes	Total tax times unlawful immigrant household share of tax payments in the CPS; unlawful immigrants assumed to work 55 percent on the books and 45 percent off	\$811,755	1.3%	\$2,957
Federal Corporate Income Tax	Incidence assumed to fall 50 percent on workers and 50 percent on owners	\$191,437		
Federal Corporate Income Tax on Workers	50 percent of total tax times unlawful immigrant household share of earned income in the CPS; unlawful immigrant households assumed to work 55 percent on the books and 45 percent off	\$95,718.50	1.1%	\$296
Federal Corporate Income Tax on Owners	50 percent of total tax times the group share of financial assets in the Survey of Consumer Finance	\$95,718.50	0.4%	\$111
Unemployment Insurance; Federal Receipts	Total tax times the unlawful immigrant household share of earnings in the CPS; unlawful immigrants assumed to work 55 percent on the books and 45 percent off	\$6,542	1.1%	\$20
Highway Trust Fund	Incidence assumed to fall half on private owners of motor vehicles, one quarter on owners of business, and one quarter on general consumers	\$34,992		
Highway Trust Fund; Taxes on Private Vehicle Drivers	One half of total tax times the unlawful immigrant household share of gasoline expenditures in the CEX; unlawful immigrant households assumed to consume gasoline at 50 percent of the normal rate for other households of the same socioeconomic status	\$17,496.0	1.0%	\$52
Highway Trust Fund; Taxes on Business Owners	One quarter of total tax times the group share of financial assets in the Survey of Consumer Finance	\$8,748.00	0.4%	\$10
Highway Trust Fund on Consumers	One quarter of total tax times the unlawful immigrant household share of total consumer expenditures calculated from the CEX	\$8,748.00	1.7%	\$44
Airport and Airway Taxes	Total tax times the group share of expenditures on air travel in the CEX; unlawful households assumed to have little or no air travel	\$10,612	0.0%	\$0
Federal Excise Taxes: Alcohol	Total tax times the unlawful immigrant household share of alcohol expenditure calculated from the CEX	\$9,229	1.5%	\$40
Federal Excise Taxes: Tobacco	Total tax times the unlawful immigrant household share of tobacco expenditure calculated from the CEX	\$17,180	2.7%	\$141

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CPS—Current Population Survey
CEX—Consumer Expenditure Survey
SCF—Survey of Consumer Finances

APPENDIX TABLE A-9
Taxes and Revenues Paid per Unlawful Immigrant Household, 2010 (Page 2 of 5)

FEDERAL TAXES AND REVENUES (CONTINUED)

Taxes and Revenues	Algorithms	Aggregate Tax or Revenue (millions of dollars)	Unlawful Immigrant Household Share of Taxes and Revenue Paid	Total Taxes and Revenues Paid per Unlawful Immigrant Household (dollars)
Federal Excise Taxes:				
Telephone	Total tax times the unlawful immigrant household share of telephone expenditures calculated from the CEX	\$993	2.0%	\$6
Federal Excise Taxes: Transportation Fuels	Total tax times the unlawful immigrant household share of fuel expenditures calculated from the CEX	-\$11,030	2.0%	-\$65
Federal Excise Taxes: All Other	Total tax times the unlawful immigrant household share of total consumer expenditures calculated from the CEX	\$4,953	1.7%	\$25
Federal Retirement Receipts				
Railroad and Other Retirement Receipts	Total receipts times the unlawful immigrant share of railroad earnings in CPS	\$4,139	0.0%	\$0
Federal Employees Retirement Employee Share	Total receipts times the unlawful immigrant household share of federal employee earnings in CPS	\$4,097	0.0%	\$0
Federal Gift and Estate Tax	Total tax times group share of financial assets in the SCF; unlawful immigrants assumed to pay little or no tax	\$18,885	0.0%	\$0
Customs, Duties, and Fees	Total tax times the unlawful immigrant household share of total consumer expenditures in the CEX	\$25,298	1.7%	\$128
Other Miscellaneous Federal Receipts				
Miscellaneous: Fees for Permits and Regulatory and Judicial Services	Total tax times the unlawful immigrant share or total income in the CPS	\$11,861	1.6%	\$56
Miscellaneous: Fines, Penalties and Forfeitures	Total tax times the unlawful immigrant share or total income in the CPS	\$8,110	1.6%	\$39
Other Miscellaneous Federal Receipts	Total tax times the unlawful immigrant share or total income in the CPS	\$998	1.6%	\$5
Earnings Federal Reserve	Total receipts times unlawful immigrant household share of interest income in CPS	73,845	0.3%	\$56
Total Federal Total Taxes and Revenues		\$2,122,445		\$5,233

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THE FISCAL COST OF UNLAWFUL IMMIGRANTS AND AMNESTY TO THE U.S. TAXPAYER

CPS—Current Population Survey
 CEX—Consumer Expenditure Survey
 SCF—Survey of Consumer Finances

**APPENDIX TABLE A-9
 Taxes and Revenues Paid per Unlawful Immigrant Household, 2010 (Page 3 of 5)**

Taxes and Revenues		Algorithms	Aggregate Tax or Revenue (millions of dollars)	Unlawful Immigrant Household Share of Taxes and Revenue Paid	Total Taxes and Revenues Paid per Unlawful Immigrant Household (dollars)
State and Local Individual Income Taxes		Total tax times the unlawful immigrant household share of tax payments in the CPS; unlawful immigrants assumed to work 55 percent on the books and 45 percent off	\$260,338	0.7%	\$510
State and Local Corporate Income Tax		Incidence assumed to fall 50 percent on workers and 50 percent on owners	\$42,860		
State and Local Corporate Income Tax on Workers		50 percent of total tax times the unlawful immigrant household share of reported earned income in CPS; unlawful immigrant households assumed to work 55 percent on the books and 45 percent off	\$21,430.03	1.1%	\$66
State and Local Corporate Income Tax on Owners		50 percent of total tax times the group share of financial assets in the SCF	\$21,430.03	0.4%	\$25
Property Taxes		Incidence falls 56 percent on commercial business and 44 percent on owner occupied and rental residences. The business portion is further assumed to fall half on consumers and half on owners	\$441,661		
Property Taxes on Owner Occupied Residences		Property tax on owner occupied housing: 35 percent of total property tax times the unlawful immigrant household share of property tax payments in the CPS	\$154,581	0.8%	\$360
Property Taxes on Rented Homes and Apartments, Owner Share		Owner share of property tax on rented dwellings: 4.5 percent of total property tax times the unlawful immigrant household share of rental income in the CPS	\$19,875	0.2%	\$9
Property Taxes on Rented Homes and Apartments, Renter Share		Renter share of property tax on rented dwellings: 4.5 percent of total property tax times the unlawful immigrant household share of rent payments calculated from the CEX	\$19,875	2.3%	\$139
Property Taxes on Business Owners		Owner share of property tax on commercial property: 28 percent of total property tax times the group share of financial assets in the Survey of Consumer Finances	\$123,665	0.4%	\$144
Property Taxes on Consumers		Consumer share of property tax on commercial property: 28 percent of total tax times the unlawful immigrant household share of total consumer expenditures calculated from the CEX	\$123,665	1.7%	\$627
General Sales Taxes		Total tax times the unlawful immigrant household share of total non-exempt consumer expenditures based on the CEX	\$284,910	1.6%	\$1,351

CPS—Current Population Survey
CEX—Consumer Expenditure Survey
SCF—Survey of Consumer Finances

APPENDIX TABLE A-9
Taxes and Revenues Paid per Unlawful Immigrant Household, 2010 (Page 4 of 5)

STATE AND LOCAL TAXES AND REVENUES (CONTINUED)

Taxes and Revenues	Algorithms	Aggregate Tax or Revenue (millions of dollars)	Unlawful Immigrant Household Share of Taxes and Revenue Paid	Total Taxes and Revenues Paid per Unlawful Immigrant Household (dollars)
Motor Fuel Tax	Incidence assumed to fall half on private owners of motor vehicles, one quarter on owners of business, and one quarter on general consumers.	\$37,880		
Motor Fuel Tax on Drivers of Personal Vehicles	One half of total tax times the group share of gasoline expenditures in the CEX; unlawful immigrant households assumed to consume gasoline at 50 percent of the normal rate for other households of the same socioeconomic status.	\$18,939.88	1.0%	\$56
Motor Fuel Tax on Consumers	One quarter of total tax times the unlawful immigrant household share of total consumer expenditures calculated from the CEX.	\$9,469.94	1.7%	\$48
Motor Fuel Tax on Business Owners	One quarter of total tax times the group share of financial assets in the SCF.	\$9,469.94	0.4%	\$11
Tobacco Tax	Total tax times the unlawful immigrant household share of tobacco expenditures calculated from the CEX.	\$17,268	2.7%	\$141
Alcohol Tax	Total tax times the unlawful immigrant household share of alcohol expenditures calculated from the CEX.	\$6,028	1.5%	\$26
Other Selective Sales Tax	Total tax times the unlawful immigrant household share of total consumer expenditures calculated from the CEX.	\$56,800	1.7%	\$288
Motor Vehicle Licenses	Total tax times the group share of auto license fees paid in the CEX; unlawful immigrant households assumed to pay license fees at 33 percent the rate of other households in the same socioeconomic status.	\$22,498	0.5%	\$32
Public Utilities Tax	Total tax times the unlawful immigrant household share of utility expenditures calculated from the CEX.	\$28,291	2.1%	\$175
Other General Taxes State and Local (Mainly Estate, Stock Transaction and Severance Taxes)	Total tax times the group share of financial assets in the Survey of Consumer Finance.	\$71,116	0.4%	\$83
Insurance Trust Revenue				
Unemployment Compensation	Incidence falls 100 percent on workers; total tax times the unlawful immigrant household share of reported earnings in the CPS; unlawful immigrants assumed to work 55 percent on the books and 45 percent off.	\$75,191	1.1%	\$233
Workers' Compensation	Incidence falls 100 percent on workers; total tax times unlawful immigrant household share of reported earnings in the CPS; unlawful immigrants assumed to work 55 percent on the books and 45 percent off.	\$16,992	1.1%	\$51
Other Insurance Trust Revenue	Not allocated	\$7,381		

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CPS—Current Population Survey
CEX—Consumer Expenditure Survey
SCF—Survey of Consumer Finances

**APPENDIX TABLE A.9
Taxes and Revenues Paid per Unlawful Immigrant Household, 2010 (Page 5 of 5)**

STATE AND LOCAL TRUST FUND RECEIPTS

Trust Fund Receipts	Algorithms	Aggregate Tax or Revenue (millions of dollars)	Unlawful Immigrant Household Share of Taxes and Revenue Paid	Total Taxes and Revenues Paid per Unlawful Immigrant Household (dollars)
Employee Retirement Trust Revenue				
Employee Contributions	Total contribution times the unlawful immigrant household group share of earnings of state and local employees in the CPS	\$39,107	0.0%	\$0
Earnings on Investments	Not applicable	\$346,108		
Other	Not applicable	\$31,451		
State and Local Other General Revenue				
Interest Earnings	Not applicable	\$60,734		
Sale of Property	Not applicable	\$2,948		
Special Assessments	Not applicable	\$7,314		
Other General Revenue (1999)	Total tax times the unlawful immigrant share of total income in the CPS and total financial assets from the SCF	\$110,345	1.6%	\$524
Lottery Receipts	Expenditures allocated evenly per household except households headed by persons without a high school degree will have doubled the normal expenditures	\$17,753	3.9%	\$201
Total State and Local Taxes and Revenues		\$1,984,573		\$5,101
Total Federal, State, and Local Taxes and Revenues		\$4,107,018		\$10,394

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Source: Heritage's Foundation analysis based on datasets provided in the methodology section

Endnotes

1. Michael Hooper, Nancy Rytina, and Bryan Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011," U.S. Department of Homeland Security, Office of Immigration Statistics, *Population Estimates*, March 2012, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_iii_pe_2011.pdf (accessed April 18, 2013). The population of unlawful immigrants was relatively stable in this period; DHS estimates that the number of such immigrants in 2010 was 11.6 million.
2. *Ibid.* Table 2 and its accompanying text state that in January 2011, the foreign-born population in the U.S. that entered after 1980 was 33.6 million. Of these, 1.65 million were not reported in the Census American Community Survey, leaving 31.95 million foreign-born persons appearing in the survey. The 31.95 million foreign-born persons in the ACS survey minus the 21.6 legal foreign born in the survey left 10.35 million unlawful foreign-born persons in the ACS survey.
3. Table 2 shows that there were an estimated 11.5 million unlawful immigrants in the U.S. in January 2011. Of these, 1,150,000 were an undercount, meaning that they did not appear in the Census American Community Survey; the remaining 10.35 million unlawful immigrants were recorded in the ACS.
4. The primary analysis in this paper uses the March 2011 Current Population Survey. The data in this survey cover the prior 12 months; thus, they mainly represent conditions in 2010. Throughout the report, the March 2011 CPS data are referred to as 2010 data.
5. For a comparison of the DHS and Heritage estimates of the unlawful immigrant populations, see Appendix Table 1. Because of slight differences in the CPS and ACS and because both are weighted surveys, it was impossible to match DHS data exactly on every characteristic.
6. Jeffrey S. Passel and D'Vera Cohn, "Unauthorized Immigrant Population: Unauthorized Immigrant Population: National and State Trends, 2010," Pew Research Hispanic Center, February 1, 2011, <http://www.pewhispanic.org/2011/02/01/iii-births-and-children/> (accessed April 18, 2013).
7. Some 11 million adult U.S. citizens and adult lawful immigrants resided in households headed by unlawful immigrants in 2010. These individuals have been excluded from the figures in Table 2. The benefits they received and taxes they paid were excluded from the analysis in this paper; inclusion or exclusion of these individuals has very little impact on the fiscal balance of unlawful immigrant households.
8. Compared to other households, unlawful immigrant households are more likely to be clustered households. They are more likely to contain unrelated individuals and sub-families in addition to the primary family within the household.
9. George J. Borjas, *Heaven's Door: Immigration Policy and the American Economy* (Princeton, N.J.: Princeton University Press, 1999), p. 27.
10. *Ibid.*, p. 8.
11. See Appendix Tables A2, A3, A4, and A5.
12. This figure includes persons in nursing homes. See Appendix A.
13. In measuring the distribution of benefits and services, this paper will count the value of each benefit and service as equal to the cost borne by the taxpayer to deliver it. The cost of any benefit to the taxpayer does not necessarily equal the subjective value the beneficiary may place on the benefit. For example, if the food stamp program provides a family with \$400 per month in food stamp benefits, the family itself may value the food stamps at more or less than \$400. Similarly, if a child receives public education costing \$10,000 per pupil per year, the child's family may subjectively value those education services as worth more or less than \$10,000. While the question of recipient valuation of government benefits is an interesting one, this paper is concerned with the basic question of the distribution of benefits valued according to their costs to taxpayers.
14. This figure includes property income earned by the government, such as sale of assets or interest earned on assets.
15. For example, the Census Bureau assigns Medicare costs in this manner in the Current Population Survey.
16. Congressional Research Service, "Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002-FY2004," *CRS Report for Congress*, March 27, 2006.
17. This spending figure excludes means-tested veterans programs and most means-tested education programs. See Robert Rector, "Examining the Means-Tested Welfare State: 79 Programs and \$92.7 Billion in Annual Spending," testimony before the Committee on the Budget, U.S. House of Representatives, May 3, 2012, <http://www.heritage.org/research/testimony/2012/05/examining-the-means-tested-welfare-state> (accessed April 8, 2013).
18. National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academies Press, 1997), p. 303.
19. Of this total, an estimated \$67 billion represents the costs of financial obligations resulting from past public goods expenditures. These costs are entered in the public goods category in Table 1.
20. National Research Council, *The New Americans*, pp. 302, 303.
21. Paul A. Samuelson, "The Pure Theory of Public Expenditure," *Review of Economics and Statistics*, Vol. 36, No. 4 (November 1954), pp. 387-389.
22. National Research Council, *The New Americans*, pp. 302, 303.
23. Chapter 6 of *The New Americans* provides a single-year analysis of the fiscal costs of immigration that employs much of the same methodology used in the present Heritage Foundation analysis.

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24. For example, in its analysis of immigration costs in California, the National Research Council study asserts that public services provided at the state level in California "include Medi-Cal health care coverage and AFDC and SSI income transfers, state aid for K-12 education, state support for higher education, state police, corrections, and recreation and state assistance to local governments. Services provided by local governments include local spending on K-12 education, community colleges, public and fire protection, transportation, libraries, public health, public works, general low-income assistance, and general government administration." The study "assumes each of these services is a private good requiring a proportional increase in spending to protect services for native residents." National Research Council, *The New Americans*, p. 278. Accordingly, the study assigns the cost of these services to immigrant households either according to their direct use of the benefit (based, like the Heritage study, on reported receipt in CPS data) or according to their share in the population.
25. The exception to this principle is that Census imputes certain values into the CPS data based on the family's reported income; these include the Earned Income Tax Credit, the Additional Child Tax Credit, federal and state income tax payments, FICA taxes, and school lunch subsidies. Census also imputes the value of Medicare and Medicaid benefits to households that report enrollment in those programs.
26. The Consumer Expenditure Survey provided information on consumption of specific items relative to income for different age and education groups. These consumption-to-income ratios were applied to the CPS income data to estimate consumption levels for various families. For additional information, see Appendix D.
27. No unlawful immigrant adults would be enrolled in government medical programs such as Medicaid and Medicare.
28. 2010 was also a recession year; in a non-recession year, the average household would probably not have a fiscal deficit.
29. In this paper, the term "non-immigrant household" refers to households of persons born legally in the U.S. The term does not refer to foreigners with temporary or "non-immigrant" visas.
30. This figure includes state spending on Medicaid but excludes expanded Medicaid and other benefits generated by the Affordable Care Act. See U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Analytical Perspectives*, Table 321, "Policy Budget Authority and Outlays by Function, Category, and Program (in Millions of Dollars)," http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/32_1.pdf (accessed May 2, 2013).
31. Heritage analysis based on data from Catalina Amuedo-Doranles, Cynthia Barsak, and Steven Raphael, "Gender Differences in the Labor Market: Impact of RCAs Amnesty Provisions," *American Economic Review*, Vol. 97, No. 2 (May 2007), pp. 412-416.
32. The levels of unemployment and food stamp benefits in 2010 were high because of the recession. The per-household unemployment insurance benefit levels have been adjusted downward by 66 percent in the interim and full amnesty phases to match anticipated non-recessionary benefits.
33. The analysis assumes that, on average, the benefits would be one-third that amount during the interim period.
34. Figures include post-recession adjustments.
35. See Appendix D for details.
36. All figures are in 2010 dollars and include all post-recession adjustments.
37. If this figure seems implausibly high, recall that in 2010, the annual fiscal deficit for lawful immigrant households headed by persons without a high school degree (shown in Table 6) was \$50,200 and that ObamaCare will increase benefits for each low-income household by around \$6,300 per household.
38. The figures include all post-recession adjustments.
39. The aggregate figures are based on a count of 3.74 million unlawful immigrant households. This figure includes the unlawful immigrant households that appear in the Current Population Survey plus an additional 1.15 million unlawful immigrants that DHS assumes exist but that do not appear in Census records. The unrecorded households are assumed to have the same fiscal characteristics as the unlawful immigrant households appearing in the CPS.
40. All figures include post-recession adjustments. The estimated costs for ObamaCare premium and cost-sharing subsidies are set at 2016 levels.
41. Individuals would not receive both Social Security and Supplemental Security Income (SSI). The SSI costs within the average represent individuals who did not fulfill the requirements for Social Security benefits.
42. This figure includes all post-recession adjustments.
43. This number could be expected to rise given future medical advances.
44. Costs would be considerably higher if amnesty recipients could bring parents into the country sooner and if parents on temporary visas were eligible for ObamaCare.
45. The analysis assumes that 5 percent of amnesty recipients would emigrate before retirement. The figures include all post-recession adjustments.
46. The figures do not include any costs generated by the children of amnesty recipients after age 18.
47. The National Educational Longitudinal Study of 1988 (NELS88) is a nationally representative sample of 8th graders who were first surveyed in 1988 and followed up in 1990, 1992, 1994, and 2000. The data provide information on students' educational outcomes as well as their parents' educational attainment levels. They are the most recent data available on intergenerational educational mobility in the U.S. The data used in the analysis in Table 12 are based on the youths' educational attainment at age 26. See U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, "National Education Longitudinal Study of 1988 (NELS88)," website, <http://nces.ed.gov/surveys/nels88/> (accessed May 2, 2013).

48. This assumes that public policies are unchanged. There is no great increase in tax rates on low-skill workers, and there is no dramatic cut in government benefits to that group.
49. The median unlawful immigrant worker earns \$24,790 per year. FICA taxes on that salary would come to \$3,770. However, if 45 percent of unlawful immigrants work off the books, the average payment per worker would be 55 percent of \$3,770, or \$2,070.
50. All figures are in 2013 dollars. The Medicare figure is from U.S. Department of Health and Human Services, *Options for Medicare and Medicaid Services, Center for Strategic Planning*, "Medicare & Medicaid Research Review, 2011 Statistical Supplement," Table 3.5, <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare/MedicareStatSupp/2011.html> (accessed April 19, 2013). The Social Security benefit figure was calculated from Social Security Administration, "Benefit Calculators," <http://www.ssa.gov/cgi-bin/benefit6.asp> (accessed April 19, 2013).
51. An alternative analysis might examine just the Social Security portion of the taxes and benefits. The Social Security portion of FICA taxes is 12.4 percent of wages; 35 years of contributions at the median unlawful immigrant wage would equal \$108,000, and 18 years of benefits at \$14,652 per year would yield \$264,000—more than two dollars of benefits for each dollar paid. The analysis would be slightly different if the tax payments were saved and invested and then paid in retirement, but that will not occur.
52. It might be argued that, while welfare and medical benefits may increase faster than inflation, the wages of former unlawful immigrants will also increase and the two effects will offset each other. This is highly improbable. Adjusted for inflation, the wages of low-skill workers have fallen over the past 50 years, but government welfare and medical spending per capita has soared. This pattern is unlikely to reverse in the future. (For an additional discussion of wage growth, see Appendix F.)
53. Even if the extra uncoupled immigrants do not currently have families and children in the U.S., they would tend to form families over time, thereby increasing fiscal costs.
54. Steven A. Camarota, "Amnesty Under Haged-Mathieu: An Estimate of How Many Will Legalize If S. 2611 Becomes Law," Center for Immigration Studies Background, June 2006, p. 3, Table 1.
55. In 2010, 2 percent of profits, rental, and interest income equaled around \$48 billion. Assuming a 40 percent aggregate tax rate on this income, total taxes would equal around \$19 billion. Subtracting the worker's share of corporate profits tax, which is already included in the basic calculations in this paper, would yield around \$8.5 billion in indirect tax revenue.
56. George J. Borjas, "The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market," *Quarterly Journal of Economics*, Vol. 118, No. 4 (November 2003), pp. 1335-1374.
57. National Research Council, *The New Americans*, p. 151.
58. See, for example, George J. Borjas, Jeffrey Grogger, and Gordon H. Hanson, "Immigration and the Economic Status of Black Men," *Economica*, Vol. 77, No. 306 (April 2010), pp. 255-282; Hannes Johannsson, Stephen Walker, and Steven Shulman, "Immigration and the Labor Force Participation of Low-Skill Native Workers," in Salomon W. Patacchini, ed., *Worker Well-Being and Public Policy* (New York: Emerald Group Publishing Limited, 2003), pp. 291-308; and Christopher L. Smith, "The Impact of Low-Skilled Immigration on the Youth Labor Market," *Journal of Labor Economics*, Vol. 30, No. 1 (January 2012), pp. 55-89.
59. Judith K. Hellerstein, Melissa McInerney, and David Nourmark, "Spatial Mismatch, Immigrant Networks, and Hispanic Employment in the United States," *Annals of Economics and Statistics*, No. 99/100 (July/December 2010), pp. 141-167; Fredrik Andersson, Simon Burges, and Julia Lane, "Do as the Neighbors Do: The Impact of Social Networks on Immigrant Employment," Institute for the Study of Labor Discussion Paper No. 4423, September 2009, <http://ftp.iza.org/664423.pdf> (accessed April 15, 2013).
60. If amnesty is enacted and unlawful immigrants have a 5 percent increase in wages as discussed earlier, the result would be an increase in GDP of 0.1 percent with most of the increase going to the former unlawful immigrants themselves.
61. Edwin Meese III and Matthew Spalding, "The Principles of Immigration," Heritage Foundation Background Paper No. 1807, October 19, 2004. See also Edwin Meese III and Matthew Spalding, "Where We Stand: Essential Requirements for Immigration Reform," Heritage Foundation Background Paper No. 2034, May 10, 2007; and Robert Rector, "Amnesty and Continued Low-Skill Immigration Will Substantially Raise Welfare Costs and Poverty," Heritage Foundation Background Paper No. 1936, May 16, 2006, p. 13.
62. A temporary guest worker program must be limited in scope and limited in duration. It must not be a pathway to legal permanent residence and citizenship. Guest workers should not bring their families to the U.S., since the inclusion of families would greatly increase costs to U.S. taxpayers and, to the extent permitted by the Fourteenth Amendment to the Constitution, the policy of birthright citizenship should not apply to children born to guest workers temporarily in the U.S. Participants should not be entitled to U.S. welfare and should not become eligible for future Social Security and Medicare benefits; employers should be required to cover medical costs of workers while they are in the U.S.; Edwin Meese III and Matthew Spalding, "Permanent Principles and Temporary Workers," Heritage Foundation Background Paper No. 1911, March 1, 2006.
63. Rector, "Amnesty and Continued Low-Skill Immigration Will Substantially Raise Welfare Costs and Poverty"; Rector, Rector, "Importing Poverty: Immigration and Poverty in the United States," Heritage Foundation Special Report No. 9, October 25, 2006, p. 29.
64. Chapter 6 of *The New Americans* provides a single-year analysis of the fiscal costs of immigration that employs much of the same methodology used in the present Heritage Foundation analysis.

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65. For example, in its analysis of immigration costs in California, the National Research Council asserts, "Public services provided at the state level to California households include Medi-Cal health care coverage and AFDC and SSI income transfers, state aid for K-12 education, state support for higher education, state police, corrections, and justice, public works, government administration, transportation, environment and recreation, and state assistance to local governments. Services provided by local governments include local spending on K-12 education, community colleges, police and fire protection, transportation, libraries, public health, public works, general low-income assistance, and general government administration." The study "assumes [that] each of these services is a private good requiring a proportional increase in spending to protect services for native residents." National Research Council, *The New Americans*, p. 278. Accordingly, the study assigns the cost of these services to immigrant households either according to their direct use of the benefit (based, like the Heritage study, on reported receipt in CPS data) or according to their share in the population.
66. The exception to this principle is that the Census imputes certain values into the CPS data based on the family's reported income; these include the Earned Income Tax Credit, the Additional Child Tax Credit, federal and state income tax payments, FICA taxes, and school lunch subsidies. The Census also imputes the value of Medicare and Medicaid benefits to households that report enrollment in those programs.
67. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2013: Historical Tables*, <http://www.whitehouse.gov/omb/budget/Historicals> (accessed April 5, 2013).
68. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Analytical Perspectives*, p. 220, Table 15.5, <http://www.gpo.gov/idsys/pkg/BUDGET-2012-PER/pdf/BUDGET-2012-PER.pdf> (accessed April 5, 2013).
69. Jeffrey L. Barnett and Phillip M. Vidal, "State and Local Government Finances Summary: 2010," U.S. Census Bureau, September 2012, Appendix, p. 6, Table A-1, http://www2.census.gov/govs/estimate/summary_report.pdf (accessed April 5, 2013).
70. U.S. Census Bureau, *Federal, State, and Local Governments: 1992 Government Finance and Employment Classification Manual*, <http://ftp2.census.gov/govs/class/classfull.pdf> (accessed April 24, 2013).
71. The analysis used an electronic version of the March 2011 CPS data from the National Bureau of Economic Research. See National Bureau of Economic Research, "NBER CPS Supplements," www.nber.org/data/cps.html (accessed April 23, 2013).
72. The analysis used an electronic version of the October 2010 CPS data from the National Bureau of Economic Research. See *ibid*.
73. U.S. Department of Labor, Bureau of Labor Statistics, *Consumer Expenditure Survey 2010*, http://www.bls.gov/cex/pumd_2010.htm (accessed April 8, 2013).
74. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Office of the Actuary, *2010 Actuarial Report on the Financial Outlook for Medicaid*, December 2010, <http://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2010.pdf> (accessed April 24, 2013).
75. Congressional Research Service, "Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY 2002-FY 2004."
76. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Appendix*, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/appendix.pdf> (accessed April 8, 2013). See also Reclor, "Examining the Means-Tested Welfare State: 79 Programs and \$927 Billion in Annual Spending."
77. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, "Medicare & Medicaid Statistical Supplement," *Medicaid Tables 14.1-14.27, 2010 Edition*, <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareMedicaidStatSupp/2010.html> (accessed April 5, 2013). This survey covers 2003.
78. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, "Medicare & Medicaid Statistical Supplement," *2011 Edition*, <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareMedicaidStatSupp/2011.html> (accessed April 23, 2013).
79. Duke University and National Institutes of Health, National Institute on Aging, National Long-Term Care Survey, 1999 Public Use Data Files, National Long-Term Care Study (NLTC5), 1999 public use data set, <http://www.icpsr.umich.edu/icpsrweb/NACDA/studies/09681> (accessed April 5, 2013). Produced and distributed by the Duke University Center for Demographic Studies with funding from the National Institute on Aging under Grant No. U01-AG007198. The NLTC5 is a nationally representative sample of individuals aged 65 years and older in long-term care facilities.
80. Board of Governors of the Federal Reserve System, *2010 Survey of Consumer Finances*, http://www.federalreserve.gov/econresdata/scf/scf_2010.htm (accessed April 8, 2013).
81. Hofer, Rytina, and Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011." The population of unlawful immigrants was relatively stable in this period. DHS estimates that the number of such immigrants in 2010 was 11.6 million.
82. *Ibid.* Table 2 and its accompanying text state that the foreign-born population in the U.S. in January 2011 was 33.6 million. Of these, 1.65 million were not reported in the Census American Community Survey, leaving 31.95 million foreign-born persons who arrived after 1980 appearing in the survey. The estimated number of legal foreign-born residents was determined to be 22.1 million, of which 21.6 million appeared in the survey and 0.5 million were assumed to be outside the survey. The 31.95 million foreign-born persons in the ACS survey minus the 21.6 legal foreign-born persons in the survey left 10.35 million unlawful foreign-born persons in the ACS survey.

83. Table 2 shows that there were an estimated 11.5 million unlawful immigrants in the U.S. in January 2011. Of these, 1,150,000 were an undercount, meaning that they did not appear in the Census American Community Survey. The remaining 10.35 million unlawful immigrants were recorded in the ACS.
84. The primary analysis in this paper uses the March 2011 Current Population Survey. The data in this survey cover the prior 12 months; thus, they mainly represent conditions in 2010. Throughout the report, the March 2011 CPS data are referred to as 2010 data.
85. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2006: Analytical Perspectives*, p. 301.
86. *Ibid.*
87. U.S. Census Bureau, *Federal State and Local Governments: 1992 Government Finance and Employment Classification Manual*, sections 3.31 and 7.24.
88. National Research Council, *The New Americans*, p. 308.
89. If the CPS underreports benefits by 15 percent, the underreporting would be corrected by multiplying the CPS total by the inverse of 100 percent minus 15 percent (the inverse of 85 percent).
90. Data on attendance in public primary and secondary schools were taken from the October 2010 CPS.
91. U.S. Census Bureau, Governments Division, *Public Education Finances: 2010*, issued June 2012, <http://www2.census.gov/govs/school/10133pub.pdf> (accessed April 23, 2013). Costs included both current expenditures and capital outlays.
92. Medicaid benefits in the CPS vary by state and beneficiary class.
93. The Current Population Survey reports some 118.75 million households in the U.S. in 2010, however, individuals in nursing homes are not included in the CPS. In the average month, there are some 1.49 million persons in nursing homes. The present analysis treats each single person in a nursing home or other long-term care facility as a separate household; each nursing home resident was then regarded as the head of his own household and was categorized among other households by his educational attainment. The 1.49 million persons in nursing homes were added to the CPS count of households to produce a total count of 120.2 million households used in the analysis.
94. Additional information on Medicaid spending is available from the authors on request.
95. "CBO's February 2013 Estimate of the Effects of the Affordable Care Act on Health Insurance Coverage," <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43900.ACInsuranceCoverageEffects.pdf> (accessed April 23, 2013).
96. This roughly matches CBO numbers.
97. CBO assumes there will be 56 million uninsured persons in 2017. Roughly 7 million would be ineligible for ACA benefits because they are unlawful immigrants. Another 8 million to 9 million would be ineligible for ACA because they had income over 400 percent of the federal poverty line. Thus, the number of uninsured persons who would be eligible for ACA benefits would be around 40.5 million. CBO says the number of ACA beneficiaries receiving exchange subsidies or expanded Medicaid in 2017 would be 35 million. The ratio of ACA beneficiaries to uninsured persons eligible for ACA would be roughly 86 percent.
98. U.S. Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, GAO-11-187, March 2011, p. 11; <http://www.gao.gov/assets/320/316959.pdf> (accessed April 23, 2013).
99. *Ibid.*, pp. 29-33.
100. Like the National Research Council study, *The New Americans*, the present study used average cost rather than marginal cost to assign costs to expanded population-based services. In congested urban areas where many unlawful immigrants live, the marginal cost of adding to public services such as roads may be greater than the average cost.
101. National Research Council, *The New Americans*, p. 272.
102. *Ibid.*, p. 304.
103. *Ibid.*
104. Joseph Henchman, "State and Local Property Taxes Target Commercial and Industrial Property," Tax Foundation *Fiscal Fact* No. 342, November 21, 2012, <http://taxfoundation.org/sites/taxfoundation.org/files/docs/11342.pdf> (accessed April 23, 2013).
105. The Bureau of Economic Analysis reports that tenant-occupied residential property comprised 21 percent of the value of all residential property. Therefore, 21 percent of the property tax on residences was assumed to fall on those properties. See U.S. Department of Labor, Bureau of Economic Analysis, "Fixed Assets Accounts Tables," Table 5.1, <http://www.bea.gov/Tables/Tables.cfm?ReqID=10&step=1#reqid=10&step=3&isuri=161003=28> (accessed April 23, 2013).
106. The estimate that half of this tax was paid by business was provided by the Tax Foundation.
107. Charles T. Clotfelter, Philip J. Cook, Julie A. Edell, and Marian Moore, "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission," Duke University, April 23, 1999.
108. Dana P. Goldman, James P. Smith, and Neeraj Sood, "Immigrants and the Cost of Medical Care," *Health Affairs*, Vol. 25, No. 6 (November 2006), pp. 1700-1711, <http://content.healthaffairs.org/content/25/6/1700.full> (accessed April 23, 2013).
109. Leighton Ku and Brian Bruen, "The Use of Public Assistance Benefits by Citizens and Non-citizen Immigrants in the United States," Cato Institute Working Paper, February 19, 2013, <http://www.cato.org/publications/working-paper/use-public-assistance-benefits-citizens-non-citizen-immigrants-united> (accessed April 23, 2013).

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110. Sarital Mohanty, Steffie Wollhandler, David U. Himmelstein, Susmita Pat, Olveen Carrasquillo, and David Bor. "Health Care Expenditures of Immigrants in the United States: A Nationally Representative Analysis," *American Journal of Public Health*, Vol. 95, No. 8 (August 2005), pp. 1431-1438, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449377/> (accessed April 23, 2013).
111. U.S. Census Bureau, Historical Income Tables: People, Table P-24, <http://www.census.gov/hhes/www/income/data/historical/people/> (accessed April 23, 2013).
112. *Ibid.*, Table P-32, <http://www.census.gov/hhes/www/income/data/historical/people/> (accessed April 23, 2013).
113. Samuelson, "The Pure Theory of Public Expenditure," pp. 387-389.
114. A third criterion is nonexclusion from benefit; it is difficult to deny members of a community an automatic benefit from the good. This aspect of public goods is not critical to the fiscal allocation issues addressed in this paper.
115. James M. Buchanan, *The Demand and Supply of Public Goods*, Vol. 5, *Collected Works of James Buchanan* (Indianapolis: Liberty Fund, Library of Economics and Liberty, 1968) p. 5.4.3, www.econlib.org/library/Buchanan/buchCv5.html (accessed April 23, 2013).
116. Thomas MaCurdy, Thomas Nechyba, and Jay Bhattacharya. "An Economic Framework for Assessing the Fiscal Impacts of Immigration," in James P. Smith and Barry Edmonson, eds., *The Immigration Debate: Studies on the Economic, Demographic, and Fiscal Effects of Immigration* (Washington: National Academies Press, 1998), p. 16.
117. National Research Council, *The New Americans*, p. 303.



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Mr. KING. Thank you, Mr. Chairman.

Then I wanted to ask the question of Mr. Amador, the bill prohibits an employer from checking current employees unless they check all current employees. So let me suggest that if you had a national restaurant burger chain, and you had—in one or more of

the locations you had reasonable suspicion that a high percentage or even any of your workforce was working unlawfully, under this E-Verify bill, how would you go about doing your due diligence as a citizen to verify those employees if you had that administrative burden of all the employees in the Nation, as Ms. Blitstein has said?

Mr. AMADOR. Well, let us—I will say a little bit of history, and I know Ms. Blitstein—Blitstein reported on that a little bit.

When the Federal Government, when the Obama administration continued the policy of the Bush administration requiring Federal contractors to reverify the entire workforce, the U.S. Chamber of Commerce filed a lawsuit. They have since lost that lawsuit, but it was accounted that it cost millions of dollars to reverify people that had already gone through the current system and there was no suspicion of any of them being undocumented.

The same is still true for the entire workforce. It is very expensive to go back and reverify, particularly in our industry where you have such a high turnover rate, to bring everybody in and make sure that you didn't miss anybody, even the owner, because if you did that, then you open yourself for liability.

Mr. KING. Would you prefer to have the option that as an employer at a location could just simply run one or more of the employees who he verified that were current employees?

Mr. AMADOR. We have always supported a voluntary reverification with good cause. That doesn't mean that we want to waive other nondiscrimination and antidiscrimination laws, but at the same time, you know, if you have good cause, if you have reason to believe that the—

Mr. KING. And I can get into that discrimination piece, because the computer doesn't know the difference. But I would go to Ms. Wood in the time that I have left, because one of my other concerns, and I have a couple—one of my other concerns is that we have an executive branch that refuses to enforce immigration law, and so it is hard for me—although I like a lot that is in this bill, it is hard for me to get to the point where I can except that with a promise of enforcement of immigration law, we would actually get enforcement, since I have been watching this since 1986 and am disappointed with every Administration, including Ronald Reagan, on this issue. How could we expect the law to actually be enforced unless the President wants it to happen and believes in it?

Ms. WOOD. Well, I think it is tough, and as I noted in my written testimony, I mean, it has been a challenge, you know, how can we do this more effectively? That doesn't mean, I think, that we give up, and I think this bill and more and more employers going on E-Verify is a good start.

I would note just with the idea of verifying kind of one employee at a time, I do think we have to be careful and build in some civil rights and civil liberty kind of protection, because you could have a well-intentioned HR manager that would just decide that only employees that don't speak English well, those would be the one I would—would want to run through for existing employees.

So I think we have to be careful if you allow people just to run an individual employee through without a reasonable amount of

suspicion or a particular investigation that would lead them to that.

Mr. KING. Thank you, Ms. Wood.

And I would note, Mr. Chairman, that you have already made the decision to hire, that would be when the discrimination would take place.

And I yield back.

Mr. GOWDY. I thank the gentleman from Iowa.

The Chair would now recognize the gentleman from Florida Mr. Garcia.

Mr. GARCIA. Thank you, Mr. Chairman.

Ms. Wood, you worked in the previous Administration, and back then, if I remember correctly, you favored comprehensive immigration reform.

Ms. WOOD. That is right, and I still do, yes.

Mr. GARCIA. Good.

I just want to get back to a statement that was just made. You would assume that since we are deporting about half a million people a year, that this Administration is enforcing immigration law.

Ms. WOOD. I think that no Administration, the Bush administration included, has been effective in truly reducing the magnet of unlawful employment. I think we have all tried, we tried in different ways, and we haven't succeeded. And so I think it makes sense to look at how can we improve our overall system. One of those ways is by making E-Verify mandatory and looking at that. I certainly think that the continuation of the Secure Communities program has been a very positive thing, and there has been other positive things in the Obama administration as well.

Mr. GARCIA. Thank you. Just glad to know—I am glad that you agree that we are enforcing immigration law. It is an important aspect to this.

I want to ask you, following up, you would—you would agree with me that sort of continuation of an immigration system that is broken under the current confines makes absolutely no sense, right, that you are probably trying to do the impossible?

Ms. WOOD. I think our system is broken, has been broken, and we need to do something to fix and address. I think we have a responsibility to do that, even though it is tough, and even though the answers, frankly, may not be perfect. But I do think this bill on the E-Verify piece, I will say, is, in my view, better than the proposal in the Gang of 8 relating to employment verification, so I hope that something more similar to this could be considered at an appropriate time.

Mr. GARCIA. I would imagine that because you believe in comprehensive immigration reform, you see this as a part of a broader—broader component. This is but a component of an overall immigration overhaul, and that what we need to do is fix it all at once and get it done, correct?

Ms. WOOD. We need to fix it, but if this is all we can do, I would say let us start with this. So I am—you know, I certainly think we need to fix it, but—but just like DACA, it may be that there are portions of reform that make sense in different chunks, and that the American people are—and Congress would be able to do that in kind of sizeable pieces, and I am not opposed to that. If we can

do it in one overall bargain, you know, kind of all the better, but we have got to make sure we get every piece of it right. Got to make sure we get interior enforcement right, border enforcement right, future demand right, and that is very difficult, particularly in a bill that is almost 900 pages.

Mr. GARCIA. You do realize, though, the complexity when we have Members of this Committee who find the ability of doing immigration at all or making the assertion, almost ludicrous assertion, that Americans are willing do all these jobs when we found that that has not been the case across the board probably for the last two decades, correct?

Ms. WOOD. These are incredibly tough issues, and I think the fact that Congress is focusing on them so much now makes a lot of sense. And so I just hope that there is political courage on both sides of the aisle to seek for a reasonable situation that is not perfect, doesn't satisfy everyone's equities, but moves the ball forward, because the current situation we are in, I think, is not tenable and not sustainable in the way we would like for the American public.

Mr. GARCIA. Okay. I wanted to—thank you.

I wanted to ask Mr. Mondri a few—a question.

So, you know, implementing these requirements to the agriculture industry, last time it came up, there was sort of an outcry because it could basically shut down the agricultural industry, and, in fact, there were consequences when we had enforced certain provisions in certain parts of the country. So is—is the E-Verify that we are proposing here workable for your industry, and would you—

Mr. MONDI. E-Verify is important as part of—there are a couple other components. I know after this hearing we are going to be discussing a workforce—a guestworker bill.

Mr. GARCIA. Uh-huh.

Mr. MONDI. And now for specific comment, certainly that panel can address those, but there is also the legalization factor where if you have people who develop skills over time that have been here working hard, which we know in agriculture in particular, since that is your question, there is a lot of them, without some—you can't pick up three-quarters of the workforce, throw them out, and just bring in—replace that with new people that have no experience and maybe even ability.

So, I think that E-Verify is going to absolutely be a part of advancing agriculture, but I think it is going to be imperative that there is a guestworker program, and that there is some legalization program as well.

Mr. GARCIA. Or broader comprehensive immigration.

Mr. MONDI. And all those things together are contingent on each other, so they need to be together.

Mr. GARCIA. Thank you. Thank you very much.

Mr. Chairman, I yield back the balance of my time.

Mr. GOWDY. I thank the gentleman from Florida.

The Chair will now recognize the gentleman from North Carolina, the former U.S. attorney Mr. Holding.

Mr. HOLDING. Thank you, Mr. Chairman.

Ms. Blitstein, welcome. I understand you are a constituent of mine, so it is a delight to have you in the Committee today, and so I will ask you a few questions.

In the years that NC State has been using the E-Verify system, have you had situations in which E-Verify has helped identify places in which documents presented by an individual for the I-9 process were not, in fact, valid even though they looked valid on their face, as current law requires?

Ms. BLITSTEIN. In our experience we had, that I can think of, about two situations that I can think of with clarity where the system did catch that they were fake documents. One of—they are both green cards or permanent resident cards. One of them was actually very good, and it took me a little while, after I got the result, to figure out where some of the fraudulent aspects had come in. And then there was one that was not quite as good, but the system captured that right away, and then we terminated that employment.

Mr. HOLDING. And did you follow up with law enforcement at all on the fraudulent documents?

Ms. BLITSTEIN. We did not. And because through the E-Verify system, now at least the Department of Homeland Security was aware that those individuals were using fake documents, and so we ended our employment, which is our obligation, and then that is when we ended the matter.

Mr. HOLDING. And do you have any idea whether the Department of Homeland Security followed up on, you know, occurrence of fake documents being used with individuals?

Ms. BLITSTEIN. On those two instances, I am not aware, and Homeland Security did not reach out to my office at all about those two individuals.

Mr. HOLDING. The—this is to the whole panel. You know, as a situation like that arises, and, you know, you catch an instance of false documents, have any of you ever gone beyond what is required and reached out to law enforcement to ask them to follow up on, hey, we have someone here using false documents?

Ms. WOOD. I work with some companies that under the IMAGE program have a protocol where they can relate certain things to ICE and so have done that on certain occasions. But it is not where they have an individual employee that is a problem, but where they are seeing kind of a current pattern or something else, like the fraud is shifting of individuals trying to get through the system, and they report that.

Mr. HOLDING. All right. The—again to you, Ms. Blitstein. How many resources are wasted when an employer is required to actually hire an employee before the employer can check the work eligibility of that employee and subsequently finds out that the new employee is not work authorized?

Ms. BLITSTEIN. Because of the industry that I am in, higher education, I would say that we are unique from some in that we have not found a large instance where we did subsequently have any issues with documentation. So it is not something that has occurred and wasted a lot of our time, but certainly, like my colleagues can say, I do understand when you get the tentative non-confirmation, and that process can take a while to get resolved,

that there are resources that potentially could be effective, or you are training someone and then they have to leave. But at least at NC State we have not really had that as a situation.

Mr. HOLDING. All right.

Ms. WOOD. And, in fact, if I could just add.

Mr. HOLDING. Sure.

Ms. WOOD. Particularly what we see in the proposed Senate bill, the idea that after a nonconfirmation an individual can then go to an ALJ, I mean, there is so much uncertainty for an employer, and I think that is very problematic, and you are going to have employees who are not authorized who are going to try to game the system and stay and work as long as possible. So I think that it is stretching out the amount of time before the employer has a final decision could be a really kind of problematic thing in terms of business operation, money wasted on training for people who ultimately aren't authorized, et cetera.

Mr. AMADOR. And I would like to add.

Mr. HOLDING. Yes, sir.

Mr. AMADOR. In our industry, I guess, is the opposite. Because of the demographics of our industry, and we are very proud of our diversities at all levels, from managers to cooks to dishwashers, you know, we are very proud of that, but we get a disproportionate amount of these nonconfirmations than vis—vis other industries. The number one cost is the cost of training. You know, you are training this individual for a job that he may not have the following day, and at the same time you cannot hire somebody else to do the job. So that is the number one reason.

So, one thing that is very important that we have been asking for for years, from both Democrats and Republicans, is something that is on this bill: being able to conditionally hire somebody that—saying, well, if everything checks—you know, right now you can look at background checks, you can look at all of these other checks except employment authorization. Under this bill, you can make employment conditional on a final confirmation, and that that is very important because you do not waste all that time and money, you know, training somebody that might not end up working for you after all.

Mr. HOLDING. Thank you very much.

Mr. Chairman, I yield back.

Mr. GOWDY. I thank the gentleman from North Carolina.

The Chair would now yield to the gentlelady from California for a question.

Ms. LOFGREN. Just one quick question, Ms. Wood. You, I think, said that it would be a concern that unauthorized workers would game the system to string it out. Do you have any—are there any studies, or, I mean, any evidence to support that statement, because I—at least in what we have seen, people who are here unauthorized, the last thing they want to do is come to the attention of anybody. I mean, they are hightailing it down the street if they get caught. What data do you have to support that?

Ms. WOOD. Certainly there are companies that I have worked with where that has occurred. And so I think that the attitude is changing a little bit, and part of that may be people, you know, are hoping that there is going to reform in the system, and so that if

they can just work a little bit longer, 2 or 3 weeks, while they are employing for a job down the street, they would do that.

I would say several years ago we didn't see that. I think there was more willingness even—unfortunately, even people who are authorized, but may be new immigrants, if there is a TNC that came back, sometimes they would leave the job when they shouldn't have. But now we are actually seeing people who are contesting even final nonconfirmation.

Ms. LOFGREN. If you could provide us some examples of that, I would appreciate it. I remember my former counsel on the Subcommittee when I chaired who was an American citizen and—you know, an Immigration counsel, who was given a tentative nonconfirmation.

Ms. WOOD. Right.

Ms. LOFGREN. And it took her—I mean, she is an immigration lawyer. I was Chair of the Immigration Subcommittee. It took her—

Ms. WOOD. That might be the problem.

Ms. LOFGREN. It took her almost a month and a half to sort it out, and, I mean—and if there is no process, you just get fired, and if you don't get notified—

Ms. WOOD. Right.

Ms. LOFGREN [continuing]. Then you can never fix it.

Ms. WOOD. Well, you certainly should have the process, and I think the current process generally works. I will tell you that right now we have had some people that have gotten a final nonconfirmation, but are authorized, and what they have able to do, and we have helped them, go to USCIS and get that resolved. So I do think it is important that on an individual basis there are ways that if the government kind of doing it and they go and address that. What I am concerned about is institutionalizing the idea of having an ALJ and other layers there—

Ms. LOFGREN. I am not necessarily talking about the Senate bill so much as the need for Americans to not be treated unfairly.

Ms. WOOD. Oh, yeah, and I think the current TNC process, I think, works generally very well.

Ms. LOFGREN. I am going to stop, because I want to thank the Chairman for letting me ask that question, and I don't want to abuse his good courtesy.

Mr. GOWDY. Yes, ma'am. Thank you. I thank the gentlelady from California.

The Chair will now recognize himself for 5 minutes, and I would begin by asking unanimous consent to enter into the record the following: letters of support for H.R. 1772 from the National Restaurant Association, Associated Builders and Contractors, Essential Worker Immigrant Coalition, National Retail Federation, Darden Restaurants, and a statement of support for this bill from ImmigrationWorks USA. Without objection, so entered.

[The information referred to follows:]



April 26, 2013

To Members of the House Judiciary Committee:

I write on behalf of the National Restaurant Association in support of the reintroduced Legal Workforce Act, H.R. 1772. This legislation represents an excellent balance of the many competing interests and needs to become an integral part of any sensible immigration reform package.

The National Restaurant Association is the leading business association for the restaurant and food service industry. Our industry is the nation's second-largest private-sector employer comprised of 980,000 restaurant and foodservice outlets employing 13.1 million people—about ten percent of the U.S. workforce. Despite its size, small businesses dominate the industry; even larger chains are often collections of smaller franchised businesses.

Many of our members are early adopters of E-Verify. Together, we agree in the need for certainty with regard to the responsibilities employers have under employment verification laws. These requirements should apply to everyone, but must be identical regardless of the state or locality where the restaurant is located.

The Association would like to, once again, highlight two concerns with the implementation of the Legal Workforce Act:

- 1) We continue to welcome the provision that allows the Secretary of Homeland Security the ability to extend each deadline by six months. However, even more important, the program needs adequate resources, both with regard to funding and staffing, if it is to increase from less than 300,000 enrolled employers to over six million in two years. The Association's current users have integrated E-Verify into their hiring practices and disruption because the system is overwhelmed would interrupt their operations in a critical manner, and.
- 2) The Association continues to support the inclusion of a strictly voluntary reverification provision. However, triggering a reverification requirement for the entire workforce because one employee is reverified, as currently drafted, would discourage any reverification because of the cost and time required to conduct such an undertaking. Furthermore, it creates potential liability for a well-meaning employer trying to make sure that his workforce is legally authorize to work, if he reverifies workers with good reason, but still fails to reverify "all individuals so employed."

We remain committed to support and defend the Legal Workforce Act's language.

Sincerely,

A handwritten signature in black ink, appearing to read "Angelo I. Amador".

Angelo I. Amador, Esq.
Vice President
Labor and Workforce Policy

Enhancing the quality of life for all we serve

Restaurant.org | @WeRRestaurants
2055 L Street NW, Washington, DC 20036 | (202) 331-5900 | (800) 424-5156



April 30, 2013

The Honorable Bob Goodlatte
Chairman, House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

On behalf of Associated Builders and Contractors (ABC), a national association of 72 chapters representing nearly 22,000 members from more than 19,000 construction and industry-related firms, I am writing in support of your recently introduced *Legal Workforce Act* (H.R. 1772). This bill seeks to establish a new mandatory employment verification system by modifying the current E-Verify program.

We believe this legislation represents a first step towards a reliable and efficient system that works for both employers and employees. We particularly appreciate the inclusion of the following in the aforementioned bill:

- A strong safe harbor provision to protect employers from prosecution or penalties when they act in good faith while using E-Verify.
- Federal preemption language that will better allow employers to conduct business across state lines without being in constant conflict with state or local laws that mandate verification for employment eligibility purposes.
- A two year phase-in for employers with less than 20 employees. This gradual phase-in provides many of our members, who have limited resources, a reasonable time-frame to comply with the online E-Verify system.
- The toll-free telephonic option for those unable to access the system electronically.

ABC continues to support a workable, reliable, efficient and easy-to-use employment verification system that meets regulators' needs without unduly burdening commerce and hampering economic growth. Again, we appreciate your leadership on H.R. 1772 and look forward to working with you on immigration reform.

Sincerely,

Geoffrey Burr
Vice President, Federal Affairs

EWIC

Essential Worker Immigration Coalition

*EWIC Statement
May 7, 2013*

H.R. 1772 - Legal Workforce Act - Congressman Lamar Smith and House Judiciary Chairman, Bob Goodlatte Introduce a Bill to Improve the E-Verify System

We write to thank you for the work done on H.R. 1772, The Legal Workforce Act introduced by Congressman Lamar Smith and House Judiciary Chairman, Bob Goodlatte on April 26, 2013, and we support your continued efforts toward immigration reform. This is a bill that, if passed, would mandate an improved E-Verify program on all employers and for all new hires. We want to encourage you in the process, to recognize the positive provisions, and to express our concerns on certain provisions that we cannot support.

EWIC is a coalition of businesses, trade associations, and other organizations from across the industry spectrum that supports reform of U.S. immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity. We want to underscore the need for establishing a workable, reliable and efficient worksite enforcement employment eligibility system. A new E-Verify mandate would impact every business in the United States as well as every employee. It is imperative that this new system function properly and be administered in the proper environment.

Some of the most important goals for EWIC that are included in H.R. 1772 are:

- Clarification that federal jurisdiction preempts state and local laws. (Business needs one standard to comply with and eliminating the morass of state and local employment verification laws);
- Safe harbors for employers that use E-Verify in good faith (although we recommend that "good faith" be further clarified);
- Fully electronic version will be available to employers. The fully electronic version will provide reminders to employers when temporary work authorization is expiring, and will provide printable and searchable records for employers;
- Adequate funding with resources available to implement the program with more than six million employers;
- Not burdensome to employers from either a cost or an administrative perspective;
- A reasonable number of reliable documents to reduce fraud;

- A reasonable definition of "critical infrastructure" employers;
- A "knowing" intent standard for liability for both employers and contractors that have subcontractor relationships (although we have concerns about the lower knowledge standard for the criminal penalties);
- A reasonable system response times;
- An option for employers to begin the verification process once an offer has been officially made;
- Provisions to make the system workable for our nation's small businesses, including toll-free telephonic access to the system and a phase-in to the program based on business size, ensuring that larger employers enter the system first, followed by a gradual inclusion of smaller businesses;
- Accountability for errors when employers and/or employees are given inaccurate information; and
- Recognition that automatic debarment of employers from federal government contracts is not an authority that should be given to DHS and must be handled through current law under the Federal Acquisition Regulations ("FAR").

We would like to see improvements in this legislation that include:

- One of the big problems with E-Verify, is that it doesn't thoroughly prevent identity theft. More thought should be given to methods that employers could use to undertake additional verification to mitigate identity theft issues, such as Self-Check;
- Language should be included in INA Section 274A and Section 274B to protect employers from liability for using additional verification methods as long as they are used across the board. This should be an additional safe harbor for purposes of employment eligibility verification and for claims of unlawful immigration-related employment practices;
- We do not support the new criminal penalties proposed by the legislation. If additional criminal penalties are necessary beyond those in current law, then there should be clarification that the new penalties do not apply in "willful blindness" situations absent a showing of actual knowledge on the part of the alleged perpetrator, and should only allow prosecutors to pursue vicarious corporate liability for the actions of employees if the company lacked an adequate immigration compliance program; and
- There should be an investigative and enforcement system that takes into consideration concerns of small business and is fair, with penalties commensurate to the offense including provisions to protect first-time good faith offenders caught in the web of ever-changing federal law.

Congress still needs to fix our immigration system to recognize the ongoing need of the American economy for workers when not enough American workers are available, and to separate those who wish to harm our nation from those who wish to help build it. The current system does not work for anyone, and Congress needs to address the issue in a coherent manner that serves both our national security and economic interests. EWIC is currently reviewing and commenting on Title III of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act and that bill's Title dealing with Employment Eligibility Verification. We believe that H.R. 1772 is a better starting point than S. 744, and takes very significant steps to achieving the goals important to EWIC for an improved E-Verify system. We are prepared to continue to work with all involved to establish a functional, reliable and efficient system.

EWIC is a broad-based coalition of national businesses and trade associations from across the industry spectrum concerned with both semi-skilled and unskilled ("essential worker") labor. EWIC supports policies that facilitate the employment of essential workers by U.S. companies that are unable to find American workers.



May 14, 2013

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte:

On behalf of the National Retail Federation (NRF), I am writing you today to thank you for the work put forth on H.R. 1772, The Legal Workforce Act. H.R. 1772, if passed, would mandate an improved E-Verify program for all employers. This bill, introduced in April 2013, is an important component of immigration reform and we appreciate the effort put forth by you and Congressman Lamar Smith in seeking to address this aspect of immigration reform.

As the world's largest retail trade association and the voice of retail worldwide, NRF's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the United States and more than 45 countries abroad. In the U.S., NRF represents an industry that includes more than 3.6 million establishments and which directly and indirectly accounts for 42 million jobs – one in four U.S. jobs. The total U.S. GDP impact of retail is \$2.5 trillion annually, and retail is a daily barometer for the health of the nation's economy.

NRF is a strong advocate of comprehensive immigration reform, which should include a balanced verification program as well as improvements to our visa program that would allow for more legal pathways to be established for those seeking work in this country as the economy improves. Any reform should also include provisions that encourage international business and leisure travel to the United States which would not only enhance national security but also strengthen the U.S. economy.

H.R. 1772 makes great strides in working to meet many of the needs of the employer community in regard to the verification aspect of immigration reform, including: clarification on federal jurisdiction preemption; a "knowing" intent standard for liability; and an option to begin the verification process once an offer has been officially made. NRF looks forward to working with the Committee to find further ways to improve the legislation as the bill moves forward.

NRF appreciates the effort that has been put forth on the legislation and hopes a reasonable approach to employment verification can be sustained as the debate continues.

Sincerely,

cc: House Judiciary Committee Members

David French
Senior Vice President
Government Relations

Liberty Place
325 7th Street NW, Suite 1100
Washington, DC 20004
800.NRF.HOW2 (800.673.4692)
202.783.7971 fax 202.737.2849
www.nrf.com



Red Lobster • Olive Garden • LongHorn Steakhouse • Bahama Breeze • Seasons 52 • The Capital Grille • Eddie V's • Yard House

May 16, 2013

The Honorable Bob Goodlatte
 Chairman, House Judiciary Committee
 2138 Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Goodlatte:

On behalf of Darden Restaurants, Inc., I am writing to convey our support for H.R. 1772, the Legal Workforce Act, introduced by you and Rep. Lamar Smith (R-TX).

Darden owns and operates some of America's favorite restaurants including Red Lobster, Olive Garden, LongHorn Steakhouse, The Capital Grille, Bahama Breeze, Eddie V's, Yard House, and Seasons 52. We employ over 200,000 individuals in more than 2,000 locations, with a presence that spans all 50 states.

At Darden we have a strong values-based culture and embrace diversity and inclusion as a business imperative. Immigrant workers are an important and valued part of our workforce, and we believe everyone has a right to, and should be, treated fairly. Darden supports ongoing efforts in both the House and Senate to craft comprehensive immigration reform legislation. As the legislative process moves forward, we understand this legislation will continue to evolve. We want to be an active partner during these discussions to develop immigration policy that allows us to grow and create jobs for thousands of people.

One of our top priorities is to establish a reliable and uncomplicated E-Verify system for employers. In our view, legislation to mandate E-Verify should address the following principles:

- Employers should be treated equitably -- all should be required to participate, and companies should be given adequate phase-in time.
- A federal E-Verify mandate should preempt all state, local and municipal laws.
- Safeguards should be in place for employers who use E-Verify in good faith. Employers should not be held liable for fraudulent employees or errors in the federal database, and they should not be penalized for their first offenses or for clerical errors if they act in good faith.
- E-Verify obligations should apply to new hires only.
- The duplicative I-9 process should be eliminated for all employers.
- Acceptable documents should be limited to social security cards, driver's licenses or passports (any country), or green cards.

We believe H.R. 1772 accomplishes these goals. We stand ready to work with you, members of your committee, and members of the House and Senate in support of comprehensive immigration reform legislation that includes an E-Verify mandate that aligns with the framework provided by H.R. 1772.

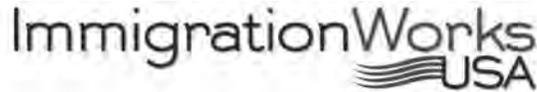
Should you have any questions or need any additional information, don't hesitate to contact me at (202) 280-2423, or ckunde@arden.com. We look forward to working with you on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Chip Kunde". The signature is written in a cursive, flowing style.

Chip Kunde
Vice President, Government Relations

cc: Members of the House Judiciary Committee



STATEMENT
May 2, 2013

CONTACT Steven Weiss
(202) 480-2076 or sweiss@immigrationworksusa.org

HOUSE E-VERIFY BILL

WASHINGTON - Last week, House Judiciary Committee chairman Bob Goodlatte (R-VA) joined Rep. Lamar Smith (R-TX) in introducing the Legal Workforce Act, requiring that all U.S. employers use the federal E-Verify system to validate the work authorization of new employees. ImmigrationWorks USA president Tamar Jacoby made the following statement.

ImmigrationWorks USA commends Chairman Goodlatte and Rep. Smith on the introduction of the Legal Workforce Act, mandating that all employers enroll in E-Verify.

No one has more of a stake than employers in restoring the rule of law in the workplace. The overwhelming majority want to be on the right side of the law – it's their obligation as citizens, and it makes good business sense.

The Legal Workforce Act gives employers the tools they need to verify the work authorization of new employees. It endeavors to shield those who use the system in good faith from civil and criminal liability. It replaces an unworkable patchwork of state laws with a single national policy. And it levels the playing field for law-abiding business owners, protecting them from unscrupulous competitors.

Effective worksite enforcement is a critical pillar of any immigration reform, and the thoughtful provisions of the Legal Workforce Act can point the way for lawmakers in both chambers working to craft a broader overhaul.

While we would like to see stronger measures to prevent identity theft, including provisions that make use of self-verification, ImmigrationWorks looks forward to working with Chairman Goodlatte to improve the Legal Workforce Act as it moves forward through the legislative process.

We also look forward to working with him and others in Congress to pass immigration reform that restores the rule of law, provides a path to legal status for unauthorized immigrants and fixes the legal immigration system so it works for the future, providing the legal labor force many employers need to keep their businesses running and contributing to the economy.

ImmigrationWorks USA president Tamar Jacoby can be reached for comment at 202 480-2076.

ImmigrationWorks USA is a national federation of employers working to advance better immigration law. The network links major corporations, national trade associations and 25 state-based coalitions of small to medium-sized business owners concerned that the broken immigration system is holding back the nation's economic growth. Their shared aim: legislation that brings America's annual legal intake of foreign workers more realistically into line with the country's labor needs.

Mr. GOWDY. Ms. Wood, do you agree the safe harbor provisions in this bill are balanced inasmuch as they seek to protect employers who use the system in good faith, but also allow the government the flexibility to enforce the laws against employers who do not use the system in good faith?

Ms. WOOD. You know, I do think that the safe harbor provisions attempt to do that. I think one thing that is important is you want

to make sure employers have the ability if someone comes in on day one with an obviously fraudulent document, and you are going through the I-9 process, that you can kind of end it right there without them having to move through, you know, a longer E-Verify system or something else.

But, yes, I do think the safe harbor—and I think it is important for employers to have a good safe harbor that works.

Mr. GOWDY. You have referenced consultation and work you have done with employers in the past. Can you speak to their initial apprehension or skepticism with using this system and whether or not actually using it has mollified those skepticisms at all?

Ms. WOOD. It really has. For the employers that I have worked with in the landscaping, construction, and in the restaurant industry, often the first reaction is this will never work for our workforce, it is absolutely going to destroy our ability. And, you know, oftentimes some of these companies weren't coming to E-Verify voluntarily. Some of these companies were encouraged to do so by, you know, difficulties in interacting with ICE and things. But once they are on the system, you know, they feel a lot of help from the system, they feel a lot of surety from the system, particularly with the photo matching and other tools that E-Verify has.

You know, I will say that sometimes their turnover is higher than they are used to, even in high-turnover industries, for a period of time, but I think as employers are on it, they get used to it, and I think the workforce knows that it is coming and looking for jobs there that, you know, X company is an E-Verify employer, and so that there is almost a self-selecting of the workforce up to some degree.

Mr. GOWDY. Thank you.

Mr. Amador, what are your thoughts on allowing an employer to acquire a prospective employee—to require a prospective employee to use and be confirmed through the E-Verify self-check option prior to hire? Do you think it is a good idea, and, if so, why?

Mr. AMADOR. No. I think it is a terrible idea. I have had an E-Verify check. I know Tracy Hung had issues. But I didn't pass the self-check, so maybe that is why I opposed it.

No, it is a two-step process. It is not—when people say you got to do a self-check, it is not just doing E-Verify. You have got to pass through a process that is not based on any government database; it is based on credit report. And my credit report has my name misspelled four different ways, and that was the options that it gave me to choose from, and I chose “none of the above” because I knew my name was misspelled. In that case—and counsel told me to bring my passport just in case they asked for another check.

But—so once that happened, it doesn't let you go forward. You are never able to do E-Verify. The way I fixed it is I was able to pick up the phone and call Alan Mayorcas, who runs a great agency, and he assigned somebody with me, and it took them 3 months to explain to me what was it that went wrong.

So asking somebody to do a self-check is completely different than asking somebody to do an E-Verify check, and if they are young and don't have enough credit history, if their credit report is full of errors, or if you do not remember who had your first mortgage at what bank that was sold three times, you might never get

through E-Verify. So for that reason I don't think it should be required.

It is something to encourage people to do so they have that peace of mind when they go and apply for a job that, you know, they are not going to encounter any problems, but it shouldn't be required, because, again, if it is not based on the government database, the security provisions that it has in place are based on credit reports and is not, in my view, accurate enough, from personal experience.

Mr. GOWDY. Thank you.

Mr. Mondri, I don't have a question, but I do want you to know that I—some of my better friends back in Spartanburg, South Carolina, are in the landscaping and nursery business. When they allow me into Sunday school, I sit beside one of the largest landscapers and nursery owners.

I have never served in the statehouse in South Carolina. I think E-Verify is mandatory in South Carolina. And so I appreciate the work that your constituents, if you will, do. And they are some of the better people that I know in my hometown, and they are wonderful employers, and they make a huge contribution to our community.

So, with that, and for each of you, this concludes our hearing, and I want to thank you on behalf of everyone on both sides, and especially our Chairman, Mr. Goodlatte, and my Ranking Member, Ms. Lofgren, for your very informative testimony and asking good questions, your collegiality toward one another and with the Committee.

Without objection, all Members will have 5 legislative days to submit additional questions, written questions, for the witnesses or additional materials for the record.

This hearing is adjourned. We are going to take a brief recess and then proceed to a hearing on H.R. 1773, which is the Agricultural Guestworker Act.

With that, this hearing is adjourned, and thank you all for your testimony.

[Whereupon, at 11:58 a.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary

Thank you Chairman Gowdy. And thank you Mr. Smith for your work on this legislation.

The future of immigration reform hinges on assuring the American people that our immigration laws will be enforced. In the past, Americans were promised tougher enforcement in exchange for the legalization of those unlawfully in the U.S. Succeeding Administrations never kept these promises and today we are left with a broken immigration system.

One way to make sure we discourage illegal immigration in the future is to prevent unlawful immigrants from getting jobs in the U.S. Requiring the use of E-Verify by all employers across the country will help do just that. The web-based program is a reliable and fast way for employers to electronically check the work eligibility of newly hired employees.

H.R. 1772, the “Legal Workforce Act,” builds on E-Verify’s success and helps ensure the strong enforcement that was promised to the American people many years ago.

The Legal Workforce Act doesn’t simply leave enforcement up to the federal government.

In fact, it actually empowers states to help enforce the law, ensuring that we don’t continue the enforcement mistakes of the past where a President can ‘turn-off’ federal enforcement efforts unilaterally.

Over 450,000 employers are currently signed up to use E-Verify. It is easy for employers to use and is effective. In fact as USICS testified in front of this Subcommittee this past February, E-verify’s accuracy rate for confirmation of work eligibility is 99.7 percent.

But the system is not perfect. For instance, in cases of identity theft, when an individual submits stolen identity documents and information, E-Verify may confirm the work eligibility of that individual.

This happens because E-Verify uses a Social Security Number (SSN) or alien identification number and certain other corresponding identifying information such as the name and date of birth of an individual, to determine if the SSN or alien identification number associated with that corresponding information is work eligible. Thus if an individual uses a stolen SSN and the real name corresponding with that SSN, a false positive result could occur.

The Legal Workforce Act addresses identity theft in several ways. First, it requires notification to employees who submit for E-Verify a SSN that shows a pattern of unusual multiple use. So the rightful owner of the SSN will know that their SSN may have been compromised.

And once they confirm this, DHS and SSA must “lock” that SSN so no one else can use it for employment eligibility purposes.

The bill also creates a program through which parents or legal guardians can “lock” the SSNs of their minor children for work eligibility purposes. This is to combat the rise in the number of thefts of children’s identities.

But there are other changes that should also be made. For instance, in order to help prevent identity theft, USCIS created and utilizes the photo-match tool in which photos from greencards, work authorization documents and passports can be seen during the use of E-verify in order to help ensure that the person submitting the identity document is in fact the person who owns that document. But I recently learned that USCIS materials regarding the use of E-Verify specifically state that “A photo displayed in E-Verify should be compared with the photo in the document that the employee has presented and not with the face of the employee.”

What good is the photo match tool to prevent identity theft if the employer is prohibited from matching the photos to the person submitting the identity document? This policy is ludicrous and we will look to address it as this legislation moves forward.

The bill also phases-in E-Verify use in six month increments beginning with the largest U.S. businesses, raises penalties for employers who don't use E-Verify according to the requirements, allows employers to use E-Verify prior to the date they hire an employee and provides meaningful safe harbors for employers who use the system in good faith.

H.R. 1772 balances the needs of the American people regarding immigration enforcement with the needs of the business community regarding a fair and workable electronic employment verification system.

While I want to continue working with the business community and other stakeholders to address any additional concerns with the bill, I am pleased to be an original cosponsor and look forward to the testimony of the witnesses today.

Thank you Mr. Chairman and I yield back the balance of my time.



CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

May 22, 2013

The Honorable Lamar Smith
U.S. House of Representatives
Washington, DC 20515

Dear Representative Smith:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, supports H.R. 1772, the "Legal Workforce Act," which would address a critical component of comprehensive reform by creating a workable employment verification (E-Verify) system.

Thank you for your leadership on the E-Verify issue. Important for our members, provisions in H.R. 1772 would preempt state and local laws mandating either the use of E-Verify or the establishment or continuation of state or local employment verification schemes. These provisions would provide the clarity and consistency employers seek that is absent today. This bill would also mirror the existing Federal Acquisition Regulation (FAR) rules for federal contractors using E-Verify on the current workforce, would create a clear safe harbor for good faith employers, and would establish an integrated I-9 and E-Verify system available both electronically and via telephone.

The Chamber recognizes that H.R. 1772 balances many competing interests, and looks forward to continue working with you to discuss and overcome any roadblocks that may arise as this bill is considered by Congress.

However, fixing America's broken immigration system will require more than a workable employment verification program; it requires reforming the construct of the existing legal immigration system, including workable guest worker programs, strengthening border security while promoting travel and tourism, and establishing a process where undocumented immigrants can earn a legal status.

The Chamber looks forward to working with you and Congress to pass legislation needed to reform our immigration system.

Sincerely,



R. Bruce Josten

cc: Members of the House Committee on the Judiciary



**Written Statement for Hearing Record on H.R. 1772, Legal Workforce Act
by the Food Manufacturers' Immigration Coalition
House Committee on the Judiciary
May 23, 2013**

Thank you for this opportunity to submit a statement for the hearing record on H.R. 1772, the Legal Workforce Act, which would mandate use of E-Verify by all employers over a six to 24-month period. Secure employment verification is a critical aspect of meaningful immigration reform, and we thank the Committee and the bill's sponsors for addressing the issue.

The Food Manufacturers Immigration Coalition is a broad coalition of the leading meat and poultry processing companies and a variety of trade associations including: the North American Meat Association, the American Meat Institute, the National Chicken Council, the National Turkey Federation, and the National Pork Producers Council.

We are in agreement with the testimony of the American Meat Institute on the legislation.

We also commend the committee for obtaining the May 22, 2013 testimony of former ICE Director Julie Myers Wood on S. 744, the Senate Gang of Eight legislation, and draw your attention to her statement regarding identity theft:

In high-risk industries where there are significant number of individuals who repeatedly try to circumvent the E-Verify system, however, employers face a very real risk that ICE and federal prosecutors will be reluctant to conclude that a company relied in "good faith" on E-Verify confirmations if a number of identity thieves circumvented the employer's E-Verify program. For this reason, many employers do not rely on E-Verify alone, but also use manual and automated tools to try to prevent identity theft. These tools are essential given the current deficiencies in the E-Verify system. Unfortunately, S. 744 appears to prohibit or limit these current anti-identity theft programs, while still making employers subject to significant penalties.

This predicament applies to employers under current law, and we urge the Committee to give this problem careful consideration and allow employers to use additional anti-identity theft tools -- unlike the Senate legislation.

We look forward to working with the Committee as it considers this important legislation in the weeks to come.





**Statement for the Record
Hearing on H.R. 1772, the Legal Workforce Act of 2013**

**Subcommittee on Immigration and Border Security
Committee on the Judiciary
U.S. House of Representatives**

Thursday, May 16, 2013

The American Meat Institute (AMI) is the nation's oldest and largest meat and poultry trade association. Founded in 1906, AMI represents America's meat and poultry packers and processors and their suppliers. Our member companies process 95 percent of red meat and 70 percent of turkey in the U.S. Headquartered in Washington, D.C., AMI monitors legislation, regulations and media activity that impacts the meat and poultry industry. In addition, AMI conducts scientific research through its Foundation, a 501(c)(3) organization, designed to identify technologies and practices that enable meat and poultry companies to produce safer and more nutritious meat and poultry products.

The U.S. meat and poultry industry generates more than \$832 billion annually in our nation's economy, representing six percent of gross domestic product (GDP) and employs more than 500,000 workers. The industry strongly supports efforts to achieve a practical and functional worksite electronic employment verification system and necessary tools to secure our nation's borders.

As the 113th Congress explores various legislative reforms to the nation's immigration system, the American Meat Institute continues to be a strong advocate for the E-Verify program and supports its mandatory application across all economic sectors, while improvements to ensure legal work status job applicants and workers remains a priority.

AMI is encouraged by the reintroduction of H.R. 1772, the Legal Workforce Act, in the 113th Congress by Congressman Smith and Chairman Goodlatte. This legislation seeks to improve the current electronic employment verification system and is a critical first step in providing a practical and functional worksite electronic employment verification system that is vital to achieving a stable, legal workforce as congress explores comprehensive immigration reform. We would like to continue to work with the Committee to further address challenges with keeping the Social Security Administration and Department of Homeland Security's data

up-to-date within the system and further address concerns regarding identity theft via the anti-identity theft program earlier than the introduced legislation envisions.

AMI's Members Have a Demonstrated History of Voluntary Use of E-Verify and Its Predecessor Basic Pilot Program

AMI's members have been in the forefront of the efforts to bring integrity to the employment authorization verification process enacted by Congress in the Immigration Reform and Control Act (IRCA) in 1986. After it became apparent the paper-based employment authorization process was woefully inadequate to screen out fraudulent employment documents, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, which established the Basic Pilot telephonic and electronic employment verification program. The program was voluntary and was intended to screen out fraudulent social security numbers and alien work authorization documents provided by job applicants to employers at the time of hire, but its effectiveness was limited and vulnerable to identity theft.

In the mid-1990s, AMI members in the Midwest faced disruptions of their meat packing operations when they were audited by the Immigration and Naturalization Service (INS) and informed that many of their experienced workers, who were vital to their operations, had provided fraudulent documents. These employers, in compliance with the paper-based employment verification procedures enforced by INS, were unable to screen out those who provided invalid work authorization documents. AMI members have been cited by INS for violating the immigration laws, were required to terminate the employment of large numbers of workers in whom they had invested substantial training costs, and as a result suffered millions of dollars in economic losses due to worker shortages and lost productivity.

Given these enforcement efforts, many AMI members increased their efforts to scrutinize employment authorization documents. Ironically, in doing so, some faced discrimination charges filed by the Department of Justice's Office of Special Counsel under the unfair immigration-related employment practice provisions of IRCA for being too vigilant in seeking to employ only legally authorized workers. Needless to say, AMI members were and continue to be frustrated by the vise in which they find themselves as they try to comply with IRCA's inherently contradictory provisions. Employers are required to walk an impossible legal tightrope due to the law's failure to provide "bright lines" for compliance.

AMI and its members took the initiative to address this problem by successfully urging Congress in 1999 to extend the scope of the Basic Pilot program beyond the original five pilot states to include Nebraska, where many AMI members are located. This enabled a number of meat packing companies to enter into agreements with INS to participate in the Basic Pilot program. AMI has been pleased to continue to work with Congress and the U.S. House Committee on the Judiciary to reauthorize the Basic Pilot program and support existing efforts as the initial program developed into the current E-Verify program available nationwide and administered by the Department of Homeland Security.

The Current E-Verify Is Only Partially Effective. It Does Not Effectively Address the Problem of Identity Theft Involving Social Security Card Information Stolen from Others.

The experiences of AMI members participating in the Basic Pilot and E-Verify programs have been mixed. The electronic verification mechanisms of the E-Verify program have screened out a number of unauthorized workers at the point of hire, and the mere fact that a company is participating in the program deters many individuals from even applying for work. The program, nonetheless, is only partially effective. It does not solve the problem of identity theft, through which individuals who have stolen the name and social security or alien document numbers from their rightful owners who are authorized to work use the stolen information to gain employment. The system determines only that the information on the documentation relates to one person—it does not determine whether the person presenting the documentation is that actual person.

In addition, there are delays by the Department of Homeland Security (DHS) in updating its databases to include the most recent change in the status of aliens. These delays can result in an employer receiving false information regarding whether an individual is or is not authorized to work. “Real time” updating of alien status information is critical to the effective functioning of the E-Verify program. It is costly and administratively burdensome for employers to hire and train an individual whom they believe is authorized to work, only to be informed later that a mistake had been made and the employer would need to terminate the individual’s employment.

Moreover, the E-Verify program does not have the ability to determine, through its access to the Social Security Administration’s (SSA) database, when an individual’s name and social security number (SSN) are being reported by several employers at the same time, especially when the employers are not located in close proximity to each other. Such information should be more effectively acquired and used to target individuals seeking employment who are engaged in identity fraud.

Unfortunately, the problem of identity theft is widespread and, notwithstanding the extensive use of the E-Verify program by meat and poultry processing companies, it has resulted in the continued disruption of AMI member companies.¹ There have been a number of highly publicized raids of well-known meat packing companies, including AMI member companies, that are participating in the E-Verify program and that have worked closely with DHS in attempting to comply with the law. DHS apparently targeted these companies upon receipt of information that a number of workers had engaged in identity theft. The raids of these companies have been devastating, resulting in significant disruptions of their operations and millions of dollars in losses. The use of the E-Verify program by law-abiding companies that went the extra mile to seek a legal workforce has not served them well.

¹ In past testimony before this Subcommittee, Richard Stana, Director of Homeland Security and Justice, Government Accountability Office, testified that the prevalence of identity fraud is increasing, “a development that may affect employers’ ability to reliably verify employment eligibility in a mandatory EEV program. The large number and variety of acceptable work authorization documents... along with inherent vulnerabilities to counterfeiting of some of these documents may complicate efforts to address identity fraud.” “Hearing on Employment Eligibility Verification System,” Subcommittee on Social Security, House Committee on Ways and

E-Verify and Identity Fraud Challenges

Beyond the improvements already in H.R. 1772, the U.S. meat and poultry industry supports additional modifications and a phased-in mandate of E-Verify. First, employers are given tools to determine employee work eligibility. To combat true-identity theft, the Legal Workforce Act requires SSA and DHS to inform employers if an employee's name and SSN are legitimate – and to block numbers if an SSN is being used in unusual multiple places of employment by persons who may have stolen the identity of others. The Act also gives workers the ability to suspend or limit the use of their SSN if they suspect they have been victims of identity theft. Finally, the Act blocks SSNs of aliens who are subject to an order of removal from the United States, have voluntarily departed, or have an expired work authorization. These are all important tools that will help employers to hire workers who are properly authorized to work in the U.S., but these tools alone may not be sufficient to deter increasingly sophisticated attempts at identity theft that remain available in the United States.

The Legal Workforce Act also authorizes DHS to create a voluntary pilot program for Biometric Employment Eligibility Verification. AMI previously proposed a similar program to combat identity theft and fraud, and appreciates its continued inclusion in the Legal Workforce Act. While we are encouraged by the improvements made to the E-verify program in this legislation to prevent identity theft and fraud, we encourage the Committee to continue to explore additional methods employers could use to undertake additional verification to mitigate identity theft issues, such as Self-Check.

Employers are not document authenticity experts, nor should they be. Therefore, they must also be given the tools to determine the authenticity of documents provided to them to determine work eligibility of their workers. The number of documents that are currently allowed for submission to determine work eligibility can lead to confusion and document fraud. The Legal Workforce Act reduces the number of documents that can be used to establish legal status, and gives DHS authority to bar types of identification frequently used in a fraudulent manner. These provisions will help employers achieve compliance with verification rules without exposure to document fraud problems.

Second, AMI supports safeguards for employers attempting, in good faith, to verify the legal status of their workforce. We would ask the Committee to make further improvements to ensure that the "good faith" standard is reasonable and achievable and given full faith and credit for efforts by the Federal or state governments. To protect employers and encourage participation in the system, the legislation should more firmly establish that employers participating in good faith are not liable to the Federal or state governments for hiring decisions taken with respect to information provided by the system. This will eliminate the fear of discrimination suits for employers attempting in good faith to maintain a legal workforce.

AMI's member companies have been leaders in the use and promotion of E-Verify and believe those engaging in illegal hiring practices should be prosecuted to the full extent of the law, however we do not support the new criminal penalties proposed by the legislation. If additional criminal penalties are necessary beyond those in current law, then there should be clarification that the new penalties do not apply in "willful blindness" situations absent a

showing of actual knowledge on the part of the alleged perpetrator, and should only allow prosecutors to pursue vicarious corporate liability for the actions of workers if the company lacked an adequate immigration compliance program.

Third, the Legal Workforce Act mandates E-Verify for all employers, phasing in universal participation. Mandatory participation is an important, key way to ensure a stable, legal workforce throughout the United States. A thoughtful phase-in period will give DHS and SSA sufficient time to better implement and administer the program. We encourage the Committee to work with businesses who have already invested in the program with E-Verify trained workers who have been using E-Verify and other DHS programs, like the U.S. Immigration and Customs Enforcement's Mutual Agreement between Government and Employers program (IMAGE), so the businesses are not burdened with repetitive training requirements as the E-Verify program expands to include those not previously using the program. While the Legal Workforce Act includes a phase-in period, a longer period of time with Congressionally-mandated benchmarks would help ensure the improved system is well designed and includes the capacity to accurately check new applicants screened under the system.

Finally, we strongly support preemption of state and local laws as it is critical that employers have the establishment of a single clear-cut standard of compliance. As many AMI members operate across state lines, the costs and difficulty of complying with multiple and differing state and local "E-Verify type laws" has been a frustrating and growing problem for AMI's members. While the preemption provisions of the Legal Workforce Act takes important steps in that direction, the provisions still allow states to impose licensing penalties for violations of this act. We prefer the original preemption language included in the 112th version of the Legal Workforce Act with clear federal preemption and are concerned with states' ability to enforce the Legal Workforce Act.

AMI appreciates the opportunity to submit for the record testimony on AMI's views on this subject, and looks forward to continuing to work with the Chairman and the Committee to further refine the electronic employment eligibility verification legislation like the Legal Workforce Act, and with Congress as the legislative process for this badly needed comprehensive immigration reform moves forward. We are encouraged by the action of this Congress on the issue of immigration reform. Thank you again for your time and this opportunity to share our thoughts.





National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5342
F 202 266 8400

www.nahb.org

Government Affairs

James W. Tobin III
Senior Vice President & Chief Lobbyist

May 2, 2013

The Honorable Lamar Smith
U.S. House of Representatives
Washington, DC 20515

Dear Representative Smith:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to share our support for H.R. 1772, the *Legal Workforce Act*. We commend you for introducing this legislation, which strikes a balance between a mandatory, nationwide E-Verify program and the employer community's role in addressing illegal immigration.

NAHB supports the goal of many in Congress to enact comprehensive immigration reform. A stable, just, and efficient immigration system will provide the certainty needed to grow our economy and increase competitiveness.

As members of the employer community, NAHB recognizes the important role employers play in ensuring the nation has a legal workforce. H.R. 1772 creates a fair, efficient, and workable employment verification system that gives employers clarity with regard to their duties and obligations. It pre-empts the current patchwork of state laws, providing employers with a straightforward rulebook for compliance. Perhaps most importantly, H.R. 1772 honors the direct employer-employee relationship and the current "knowing" liability standard.

We also appreciate that the legislation includes a robust safe harbor and provisions to make the system workable for our nation's small businesses, which are the engine of the American economy. H.R. 1772 provides small employers with important tools: toll-free telephonic access to the system; the opportunity for employers to begin the verification process as soon as possible; and a phase-in to the program based on business size, ensuring that larger employers enter the system first, followed by a gradual inclusion of smaller businesses.

NAHB stands ready to work with the House Judiciary Committee to enact comprehensive immigration reform, which should include H.R. 1772. We strongly urge members of the House Judiciary Committee to support H.R. 1772 and oppose any amendments that would undermine its workability for employers.

Thank you again for your leadership on this important component of comprehensive immigration reform.

Sincerely,

James W. Tobin III

cc: Members of the House Judiciary Committee

113TH CONGRESS
1ST SESSION

H. R. 1772

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. SMITH of Texas (for himself, Mr. GOODLATTE, Mr. CALVERT, Mr. GOWDY, Mr. WESTMORELAND, Mr. STIVERS, Mr. LANCE, Mr. KING of New York, Mr. DEFazio, Mr. SENSENBRENNER, Mr. FRANKS of Arizona, Mr. POE of Texas, Mr. SCHWEIKERT, Mr. ROYCE, Mrs. BLACKBURN, Mr. FORBES, Mr. CHAFFETZ, Mr. BURGESS, Mr. LABRADOR, Mr. FARENTHOLD, Mr. HOLDING, Mr. BISHOP of Utah, and Mr. ISSA) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Legal Workforce Act”.

1 **SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
2 **ESS.**

3 (a) IN GENERAL.—Section 274A(b) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended
5 to read as follows:

6 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
7 PROCESS.—

8 “(1) NEW HIRES, RECRUITMENT, AND REFER-
9 RAL.—The requirements referred to in paragraphs
10 (1)(B) and (3) of subsection (a) are, in the case of
11 a person or other entity hiring, recruiting, or refer-
12 ring an individual for employment in the United
13 States, the following:

14 “(A) ATTESTATION AFTER EXAMINATION
15 OF DOCUMENTATION.—

16 “(i) ATTESTATION.—During the
17 verification period (as defined in subpara-
18 graph (E)), the person or entity shall at-
19 test, under penalty of perjury and on a
20 form, including electronic and telephonic
21 formats, designated or established by the
22 Secretary by regulation not later than 6
23 months after the date of the enactment of
24 the Legal Workforce Act, that it has
25 verified that the individual is not an unau-
26 thorized alien by—

1 “(I) obtaining from the indi-
2 vidual the individual’s social security
3 account number and recording the
4 number on the form (if the individual
5 claims to have been issued such a
6 number), and, if the individual does
7 not attest to United States nationality
8 under subparagraph (B), obtaining
9 such identification or authorization
10 number established by the Depart-
11 ment of Homeland Security for the
12 alien as the Secretary of Homeland
13 Security may specify, and recording
14 such number on the form; and

15 “(II) examining—

16 “(aa) a document relating to
17 the individual presenting it de-
18 scribed in clause (ii); or

19 “(bb) a document relating to
20 the individual presenting it de-
21 scribed in clause (iii) and a docu-
22 ment relating to the individual
23 presenting it described in clause
24 (iv).

1 “(ii) DOCUMENTS EVIDENCING EM-
2 PLOYMENT AUTHORIZATION AND ESTAB-
3 LISHING IDENTITY.—A document de-
4 scribed in this subparagraph is an individ-
5 ual’s—

6 “(I) unexpired United States
7 passport or passport card;

8 “(II) unexpired permanent resi-
9 dent card that contains a photograph;

10 “(III) unexpired employment au-
11 thorization card that contains a pho-
12 tograph;

13 “(IV) in the case of a non-
14 immigrant alien authorized to work
15 for a specific employer incident to sta-
16 tus, a foreign passport with Form I-
17 94 or Form I-94A, or other docu-
18 mentation as designated by the Sec-
19 retary specifying the alien’s non-
20 immigrant status as long as the pe-
21 riod of status has not yet expired and
22 the proposed employment is not in
23 conflict with any restrictions or limita-
24 tions identified in the documentation;

1 “(V) passport from the Fed-
2 erated States of Micronesia (FSM) or
3 the Republic of the Marshall Islands
4 (RMI) with Form I-94 or Form I-
5 94A, or other documentation as des-
6 ignated by the Secretary, indicating
7 nonimmigrant admission under the
8 Compact of Free Association Between
9 the United States and the FSM or
10 RMI; or

11 “(VI) other document designated
12 by the Secretary of Homeland Secu-
13 rity, if the document—

14 “(aa) contains a photograph
15 of the individual and biometric
16 identification data from the indi-
17 vidual and such other personal
18 identifying information relating
19 to the individual as the Secretary
20 of Homeland Security finds, by
21 regulation, sufficient for purposes
22 of this clause;

23 “(bb) is evidence of author-
24 ization of employment in the
25 United States; and

1 “(cc) contains security fea-
2 tures to make it resistant to tam-
3 pering, counterfeiting, and fraud-
4 ulent use.

5 “(iii) DOCUMENTS EVIDENCING EM-
6 PLOYMENT AUTHORIZATION.—A document
7 described in this subparagraph is an indi-
8 vidual’s social security account number
9 card (other than such a card which speci-
10 fies on the face that the issuance of the
11 card does not authorize employment in the
12 United States).

13 “(iv) DOCUMENTS ESTABLISHING
14 IDENTITY OF INDIVIDUAL.—A document
15 described in this subparagraph is—

16 “(I) an individual’s unexpired
17 State issued driver’s license or identi-
18 fication card if it contains a photo-
19 graph and information such as name,
20 date of birth, gender, height, eye
21 color, and address;

22 “(II) an individual’s unexpired
23 U.S. military identification card;

24 “(III) an individual’s unexpired
25 Native American tribal identification

1 document issued by a tribal entity rec-
2 ognized by the Bureau of Indian Af-
3 fairs; or

4 “(IV) in the case of an individual
5 under 18 years of age, a parent or
6 legal guardian’s attestation under
7 penalty of law as to the identity and
8 age of the individual.

9 “(v) AUTHORITY TO PROHIBIT USE OF
10 CERTAIN DOCUMENTS.—If the Secretary of
11 Homeland Security finds, by regulation,
12 that any document described in clause (i),
13 (ii), or (iii) as establishing employment au-
14 thorization or identity does not reliably es-
15 tablish such authorization or identity or is
16 being used fraudulently to an unacceptable
17 degree, the Secretary may prohibit or place
18 conditions on its use for purposes of this
19 paragraph.

20 “(vi) SIGNATURE.—Such attestation
21 may be manifested by either a hand-writ-
22 ten or electronic signature.

23 “(B) INDIVIDUAL ATTESTATION OF EM-
24 PLOYMENT AUTHORIZATION.—During the
25 verification period (as defined in subparagraph

1 (E)), the individual shall attest, under penalty
2 of perjury on the form designated or established
3 for purposes of subparagraph (A), that the indi-
4 vidual is a citizen or national of the United
5 States, an alien lawfully admitted for perma-
6 nent residence, or an alien who is authorized
7 under this Act or by the Secretary of Homeland
8 Security to be hired, recruited, or referred for
9 such employment. Such attestation may be
10 manifested by either a hand-written or elec-
11 tronic signature. The individual shall also pro-
12 vide that individual's social security account
13 number (if the individual claims to have been
14 issued such a number), and, if the individual
15 does not attest to United States nationality
16 under this subparagraph, such identification or
17 authorization number established by the De-
18 partment of Homeland Security for the alien as
19 the Secretary may specify.

20 “(C) RETENTION OF VERIFICATION FORM
21 AND VERIFICATION.—

22 “(i) IN GENERAL.—After completion
23 of such form in accordance with subpara-
24 graphs (A) and (B), the person or entity
25 shall—

1 “(I) retain a paper, microfiche,
2 microfilm, or electronic version of the
3 form and make it available for inspec-
4 tion by officers of the Department of
5 Homeland Security, the Special Coun-
6 sel for Immigration-Related Unfair
7 Employment Practices, or the Depart-
8 ment of Labor during a period begin-
9 ning on the date of the recruiting or
10 referral of the individual, or, in the
11 case of the hiring of an individual, the
12 date on which the verification is com-
13 pleted, and ending—

14 “(aa) in the case of the re-
15 recruiting or referral of an indi-
16 vidual, 3 years after the date of
17 the recruiting or referral; and

18 “(bb) in the case of the hir-
19 ing of an individual, the later of
20 3 years after the date the
21 verification is completed or one
22 year after the date the individ-
23 ual’s employment is terminated;
24 and

1 “(II) during the verification pe-
2 riod (as defined in subparagraph (E)),
3 make an inquiry, as provided in sub-
4 section (d), using the verification sys-
5 tem to seek verification of the identity
6 and employment eligibility of an indi-
7 vidual.

8 “(ii) CONFIRMATION.—

9 “(I) CONFIRMATION RE-
10 CEIVED.—If the person or other entity
11 receives an appropriate confirmation
12 of an individual’s identity and work
13 eligibility under the verification sys-
14 tem within the time period specified,
15 the person or entity shall record on
16 the form an appropriate code that is
17 provided under the system and that
18 indicates a final confirmation of such
19 identity and work eligibility of the in-
20 dividual.

21 “(II) TENTATIVE NONCONFIRMA-
22 TION RECEIVED.—If the person or
23 other entity receives a tentative non-
24 confirmation of an individual’s iden-
25 tity or work eligibility under the

1 verification system within the time pe-
2 riod specified, the person or entity
3 shall so inform the individual for
4 whom the verification is sought. If the
5 individual does not contest the non-
6 confirmation within the time period
7 specified, the nonconfirmation shall be
8 considered final. The person or entity
9 shall then record on the form an ap-
10 propriate code which has been pro-
11 vided under the system to indicate a
12 final nonconfirmation. If the indi-
13 vidual does contest the nonconfirma-
14 tion, the individual shall utilize the
15 process for secondary verification pro-
16 vided under subsection (d). The non-
17 confirmation will remain tentative
18 until a final confirmation or noncon-
19 firmation is provided by the
20 verification system within the time pe-
21 riod specified. In no case shall an em-
22 ployer terminate employment of an in-
23 dividual because of a failure of the in-
24 dividual to have identity and work eli-
25 gibility confirmed under this section

1 until a nonconfirmation becomes final.
2 Nothing in this clause shall apply to a
3 termination of employment for any
4 reason other than because of such a
5 failure. In no case shall an employer
6 rescind the offer of employment to an
7 individual because of a failure of the
8 individual to have identity and work
9 eligibility confirmed under this sub-
10 section until a nonconfirmation be-
11 comes final. Nothing in this subclause
12 shall apply to a rescission of the offer
13 of employment for any reason other
14 than because of such a failure.

15 “(III) FINAL CONFIRMATION OR
16 NONCONFIRMATION RECEIVED.—If a
17 final confirmation or nonconfirmation
18 is provided by the verification system
19 regarding an individual, the person or
20 entity shall record on the form an ap-
21 propriate code that is provided under
22 the system and that indicates a con-
23 firmation or nonconfirmation of iden-
24 tity and work eligibility of the indi-
25 vidual.

1 “(IV) EXTENSION OF TIME.—If
2 the person or other entity in good
3 faith attempts to make an inquiry
4 during the time period specified and
5 the verification system has registered
6 that not all inquiries were received
7 during such time, the person or entity
8 may make an inquiry in the first sub-
9 sequent working day in which the
10 verification system registers that it
11 has received all inquiries. If the
12 verification system cannot receive in-
13 quiries at all times during a day, the
14 person or entity merely has to assert
15 that the entity attempted to make the
16 inquiry on that day for the previous
17 sentence to apply to such an inquiry,
18 and does not have to provide any ad-
19 ditional proof concerning such inquiry.

20 “(V) CONSEQUENCES OF NON-
21 CONFIRMATION.—

22 “(aa) TERMINATION OR NO-
23 TIFICATION OF CONTINUED EM-
24 PLOYMENT.—If the person or
25 other entity has received a final

14

1 nonconfirmation regarding an in-
2 dividual, the person or entity
3 may terminate employment of the
4 individual (or decline to recruit
5 or refer the individual). If the
6 person or entity does not termi-
7 nate employment of the indi-
8 vidual or proceeds to recruit or
9 refer the individual, the person or
10 entity shall notify the Secretary
11 of Homeland Security of such
12 fact through the verification sys-
13 tem or in such other manner as
14 the Secretary may specify.

15 “(bb) FAILURE TO NO-
16 TIFY.—If the person or entity
17 fails to provide notice with re-
18 spect to an individual as required
19 under item (aa), the failure is
20 deemed to constitute a violation
21 of subsection (a)(1)(A) with re-
22 spect to that individual.

23 “(VI) CONTINUED EMPLOYMENT
24 AFTER FINAL NONCONFIRMATION.—If
25 the person or other entity continues to

1 employ (or to recruit or refer) an indi-
2 vidual after receiving final noncon-
3 firmation, a rebuttable presumption is
4 created that the person or entity has
5 violated subsection (a)(1)(A).

6 “(D) EFFECTIVE DATES OF NEW PROCE-
7 DURES.—

8 “(i) HIRING.—Except as provided in
9 clause (iii), the provisions of this para-
10 graph shall apply to a person or other enti-
11 ty hiring an individual for employment in
12 the United States as follows:

13 “(I) With respect to employers
14 having 10,000 or more employees in
15 the United States on the date of the
16 enactment of the Legal Workforce
17 Act, on the date that is 6 months
18 after the date of the enactment of
19 such Act.

20 “(II) With respect to employers
21 having 500 or more employees in the
22 United States, but less than 10,000
23 employees in the United States, on
24 the date of the enactment of the
25 Legal Workforce Act, on the date that

1 is 12 months after the date of the en-
2 actment of such Act.

3 “(III) With respect to employers
4 having 20 or more employees in the
5 United States, but less than 500 em-
6 ployees in the United States, on the
7 date of the enactment of the Legal
8 Workforce Act, on the date that is 18
9 months after the date of the enact-
10 ment of such Act.

11 “(IV) With respect to employers
12 having 1 or more employees in the
13 United States, but less than 20 em-
14 ployees in the United States, on the
15 date of the enactment of the Legal
16 Workforce Act, on the date that is 24
17 months after the date of the enact-
18 ment of such Act.

19 “(ii) RECRUITING AND REFERRING.—
20 Except as provided in clause (iii), the pro-
21 visions of this paragraph shall apply to a
22 person or other entity recruiting or refer-
23 ring an individual for employment in the
24 United States on the date that is 12

1 months after the date of the enactment of
2 the Legal Workforce Act.

3 “(iii) AGRICULTURAL LABOR OR SERV-
4 ICES.—With respect to an employee per-
5 forming agricultural labor or services, this
6 paragraph shall not apply with respect to
7 the verification of the employee until the
8 date that is 24 months after the date of
9 the enactment of the Legal Workforce Act.
10 For purposes of the preceding sentence,
11 the term ‘agricultural labor or services’ has
12 the meaning given such term by the Sec-
13 retary of Agriculture in regulations and in-
14 cludes agricultural labor as defined in sec-
15 tion 3121(g) of the Internal Revenue Code
16 of 1986, agriculture as defined in section
17 3(f) of the Fair Labor Standards Act of
18 1938 (29 U.S.C. 203(f)), the handling,
19 planting, drying, packing, packaging, proc-
20 essing, freezing, or grading prior to deliv-
21 ery for storage of any agricultural or horti-
22 cultural commodity in its unmanufactured
23 state, all activities required for the prepa-
24 ration, processing or manufacturing of a
25 product of agriculture (as such term is de-

1 defined in such section 3(f)) for further dis-
2 tribution, and activities similar to all the
3 foregoing as they relate to fish or shellfish
4 in aquaculture facilities. An employee de-
5 scribed in this clause shall not be counted
6 for purposes of clause (i).

7 “(iv) TRANSITION RULE.—Subject to
8 paragraph (4), the following shall apply to
9 a person or other entity hiring, recruiting,
10 or referring an individual for employment
11 in the United States until the effective
12 date or dates applicable under clauses (i)
13 through (iii):

14 “(I) This subsection, as in effect
15 before the enactment of the Legal
16 Workforce Act.

17 “(II) Subtitle A of title IV of the
18 Illegal Immigration Reform and Im-
19 migrant Responsibility Act of 1996 (8
20 U.S.C. 1324a note), as in effect be-
21 fore the effective date in section 7(e)
22 of the Legal Workforce Act.

23 “(III) Any other provision of
24 Federal law requiring the person or
25 entity to participate in the E-Verify

1 Program described in section 403(a)
2 of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996
4 (8 U.S.C. 1324a note), as in effect be-
5 fore the effective date in section 7(e)
6 of the Legal Workforce Act, including
7 Executive Order 13465 (8 U.S.C.
8 1324a note; relating to Government
9 procurement).

10 “(E) VERIFICATION PERIOD DEFINED.—

11 “(i) IN GENERAL.—For purposes of
12 this paragraph:

13 “(I) In the case of recruitment or
14 referral, the term ‘verification period’
15 means the period ending on the date
16 recruiting or referring commences.

17 “(II) In the case of hiring, the
18 term ‘verification period’ means the
19 period beginning on the date on which
20 an offer of employment is extended
21 and ending on the date that is 3 busi-
22 ness days after the date of hire, ex-
23 cept as provided in clause (iii). The
24 offer of employment may be condi-
25 tioned in accordance with clause (ii).

1 “(ii) JOB OFFER MAY BE CONDI-
2 TIONAL.—A person or other entity may
3 offer a prospective employee an employ-
4 ment position that is conditioned on final
5 verification of the identity and employment
6 eligibility of the employee using the proce-
7 dures established under this paragraph.

8 “(iii) SPECIAL RULE.—Notwith-
9 standing clause (i)(II), in the case of an
10 alien who is authorized for employment
11 and who provides evidence from the Social
12 Security Administration that the alien has
13 applied for a social security account num-
14 ber, the verification period ends three busi-
15 ness days after the alien receives the social
16 security account number.

17 “(2) REVERIFICATION FOR INDIVIDUALS WITH
18 LIMITED WORK AUTHORIZATION.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), a person or entity shall
21 make an inquiry, as provided in subsection (d),
22 using the verification system to seek
23 reverification of the identity and employment
24 eligibility of all individuals with a limited period
25 of work authorization employed by the person

1 or entity during the 3 business days before the
2 date on which the employee's work authoriza-
3 tion expires as follows:

4 “(i) With respect to employers having
5 10,000 or more employees in the United
6 States on the date of the enactment of the
7 Legal Workforce Act, beginning on the
8 date that is 6 months after the date of the
9 enactment of such Act.

10 “(ii) With respect to employers having
11 500 or more employees in the United
12 States, but less than 10,000 employees in
13 the United States, on the date of the en-
14 actment of the Legal Workforce Act, be-
15 ginning on the date that is 12 months
16 after the date of the enactment of such
17 Act.

18 “(iii) With respect to employers hav-
19 ing 20 or more employees in the United
20 States, but less than 500 employees in the
21 United States, on the date of the enact-
22 ment of the Legal Workforce Act, begin-
23 ning on the date that is 18 months after
24 the date of the enactment of such Act.

1 “(iv) With respect to employers hav-
2 ing 1 or more employees in the United
3 States, but less than 20 employees in the
4 United States, on the date of the enact-
5 ment of the Legal Workforce Act, begin-
6 ning on the date that is 24 months after
7 the date of the enactment of such Act.

8 “(B) AGRICULTURAL LABOR OR SERV-
9 ICES.—With respect to an employee performing
10 agricultural labor or services, or an employee
11 recruited or referred by a farm labor contractor
12 (as defined in section 3 of the Migrant and Sea-
13 sonal Agricultural Worker Protection Act (29
14 U.S.C. 1801)), subparagraph (A) shall not
15 apply with respect to the reverification of the
16 employee until the date that is 24 months after
17 the date of the enactment of the Legal Work-
18 force Act. For purposes of the preceding sen-
19 tence, the term ‘agricultural labor or services’
20 has the meaning given such term by the Sec-
21 retary of Agriculture in regulations and in-
22 cludes agricultural labor as defined in section
23 3121(g) of the Internal Revenue Code of 1986,
24 agriculture as defined in section 3(f) of the
25 Fair Labor Standards Act of 1938 (29 U.S.C.

1 203(f)), the handling, planting, drying, packing,
2 packaging, processing, freezing, or grading
3 prior to delivery for storage of any agricultural
4 or horticultural commodity in its unmanufactured
5 state, all activities required for the preparation,
6 processing, or manufacturing of a product of agriculture
7 (as such term is defined in such section 3(f)) for further
8 distribution, and activities similar to all the foregoing
9 as they relate to fish or shellfish in aquaculture facilities.
10 An employee described in this subparagraph shall not
11 be counted for purposes of subparagraph (A).
12

13
14 “(C) REVERIFICATION.—Paragraph
15 (1)(C)(ii) shall apply to reverifications pursuant
16 to this paragraph on the same basis as it applies
17 to verifications pursuant to paragraph (1),
18 except that employers shall—

19 “(i) use a form designated or established by the
20 Secretary by regulation for purposes of this paragraph;
21 and

22 “(ii) retain a paper, microfiche, microfilm, or
23 electronic version of the form and make it available
24 for inspection by officers of the Department of
25 Homeland Security,

1 the Special Counsel for Immigration-Related Unfair Employment Practices, or the
2 Department of Labor during the period beginning on the date the reverification commences and ending on the date that is the
3 later of 3 years after the date of such
4 reverification or 1 year after the date the
5 individual's employment is terminated.
6
7

8
9 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

10 “(A) ON A MANDATORY BASIS FOR CERTAIN EMPLOYEES.—

11
12 “(i) IN GENERAL.—Not later than the
13 date that is 6 months after the date of the
14 enactment of the Legal Workforce Act, an
15 employer shall make an inquiry, as provided in subsection (d), using the
16 verification system to seek verification of
17 the identity and employment eligibility of
18 any individual described in clause (ii) employed by the employer whose employment
19 eligibility has not been verified under the
20 E-Verify Program described in section
21 403(a) of the Illegal Immigration Reform
22 and Immigrant Responsibility Act of 1996
23 (8 U.S.C. 1324a note).
24
25

1 “(ii) INDIVIDUALS DESCRIBED.—An
2 individual described in this clause is any of
3 the following:

4 “(I) An employee of any unit of
5 a Federal, State, or local government.

6 “(II) An employee who requires a
7 Federal security clearance working in
8 a Federal, State or local government
9 building, a military base, a nuclear
10 energy site, a weapons site, or an air-
11 port or other facility that requires
12 workers to carry a Transportation
13 Worker Identification Credential
14 (TWIC).

15 “(III) An employee assigned to
16 perform work in the United States
17 under a Federal contract, except that
18 this subclause—

19 “(aa) is not applicable to in-
20 dividuals who have a clearance
21 under Homeland Security Presi-
22 dential Directive 12 (HSPD 12
23 clearance), are administrative or
24 overhead personnel, or are work-
25 ing solely on contracts that pro-

1 vide Commercial Off The Shelf
2 goods or services as set forth by
3 the Federal Acquisition Regu-
4 latory Council, unless they are
5 subject to verification under sub-
6 clause (II); and

7 “(bb) only applies to con-
8 tracts over the simple acquisition
9 threshold as defined in section
10 2.101 of title 48, Code of Federal
11 Regulations.

12 “(B) ON A MANDATORY BASIS FOR MUL-
13 TIPLE USERS OF SAME SOCIAL SECURITY AC-
14 COUNT NUMBER.—In the case of an employer
15 who is required by this subsection to use the
16 verification system described in subsection (d),
17 or has elected voluntarily to use such system,
18 the employer shall make inquiries to the system
19 in accordance with the following:

20 “(i) The Commissioner of Social Secu-
21 rity shall notify annually employees (at the
22 employee address listed on the Wage and
23 Tax Statement) who submit a social secu-
24 rity account number to which more than
25 one employer reports income and for which

1 there is a pattern of unusual multiple use.
2 The notification letter shall identify the
3 number of employers to which income is
4 being reported as well as sufficient infor-
5 mation notifying the employee of the pro-
6 cess to contact the Social Security Adminis-
7 tration Fraud Hotline if the employee be-
8 lieves the employee's identity may have
9 been stolen. The notice shall not share in-
10 formation protected as private, in order to
11 avoid any recipient of the notice from
12 being in the position to further commit or
13 begin committing identity theft.

14 “(ii) If the person to whom the social
15 security account number was issued by the
16 Social Security Administration has been
17 identified and confirmed by the Commis-
18 sioner, and indicates that the social secu-
19 rity account number was used without
20 their knowledge, the Secretary and the
21 Commissioner shall lock the social security
22 account number for employment eligibility
23 verification purposes and shall notify the
24 employers of the individuals who wrong-
25 fully submitted the social security account

1 number that the employee may not be
2 work eligible.

3 “(iii) Each employer receiving such
4 notification of an incorrect social security
5 account number under clause (ii) shall use
6 the verification system described in sub-
7 section (d) to check the work eligibility sta-
8 tus of the applicable employee within 10
9 business days of receipt of the notification.

10 “(C) ON A VOLUNTARY BASIS.—Subject to
11 paragraph (2), and subparagraphs (A) through
12 (C) of this paragraph, beginning on the date
13 that is 30 days after the date of the enactment
14 of the Legal Workforce Act, an employer may
15 make an inquiry, as provided in subsection (d),
16 using the verification system to seek verification
17 of the identity and employment eligibility of any
18 individual employed by the employer. If an em-
19 ployer chooses voluntarily to seek verification of
20 any individual employed by the employer, the
21 employer shall seek verification of all individ-
22 uals so employed. An employer’s decision about
23 whether or not voluntarily to seek verification
24 of its current workforce under this subpara-
25 graph may not be considered by any govern-

1 ment agency in any proceeding, investigation,
2 or review provided for in this Act.

3 “(D) VERIFICATION.—Paragraph
4 (1)(C)(ii) shall apply to verifications pursuant
5 to this paragraph on the same basis as it ap-
6 plies to verifications pursuant to paragraph (1),
7 except that employers shall—

8 “(i) use a form designated or estab-
9 lished by the Secretary by regulation for
10 purposes of this paragraph; and

11 “(ii) retain a paper, microfiche, micro-
12 film, or electronic version of the form and
13 make it available for inspection by officers
14 of the Department of Homeland Security,
15 the Special Counsel for Immigration-Rel-
16 ated Unfair Employment Practices, or the
17 Department of Labor during the period be-
18 ginning on the date the verification com-
19 mences and ending on the date that is the
20 later of 3 years after the date of such
21 verification or 1 year after the date the in-
22 dividual’s employment is terminated.

23 “(4) EARLY COMPLIANCE.—

24 “(A) FORMER E-VERIFY REQUIRED USERS,
25 INCLUDING FEDERAL CONTRACTORS.—Notwith-

1 standing the deadlines in paragraphs (1) and
2 (2), beginning on the date of the enactment of
3 the Legal Workforce Act, the Secretary is au-
4 thorized to commence requiring employers re-
5 quired to participate in the E-Verify Program
6 described in section 403(a) of the Illegal Immi-
7 gration Reform and Immigrant Responsibility
8 Act of 1996 (8 U.S.C. 1324a note), including
9 employers required to participate in such pro-
10 gram by reason of Federal acquisition laws
11 (and regulations promulgated under those laws,
12 including the Federal Acquisition Regulation),
13 to commence compliance with the requirements
14 of this subsection (and any additional require-
15 ments of such Federal acquisition laws and reg-
16 ulation) in lieu of any requirement to partici-
17 pate in the E-Verify Program.

18 “(B) FORMER E-VERIFY VOLUNTARY
19 USERS AND OTHERS DESIRING EARLY COMPLI-
20 ANCE.—Notwithstanding the deadlines in para-
21 graphs (1) and (2), beginning on the date of
22 the enactment of the Legal Workforce Act, the
23 Secretary shall provide for the voluntary com-
24 pliance with the requirements of this subsection
25 by employers voluntarily electing to participate

1 in the E-Verify Program described in section
2 403(a) of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996 (8 U.S.C.
4 1324a note) before such date, as well as by
5 other employers seeking voluntary early compli-
6 ance.

7 “(5) COPYING OF DOCUMENTATION PER-
8 MITTED.—Notwithstanding any other provision of
9 law, the person or entity may copy a document pre-
10 sented by an individual pursuant to this subsection
11 and may retain the copy, but only (except as other-
12 wise permitted under law) for the purpose of com-
13 plying with the requirements of this subsection.

14 “(6) LIMITATION ON USE OF FORMS.—A form
15 designated or established by the Secretary of Home-
16 land Security under this subsection and any infor-
17 mation contained in or appended to such form, may
18 not be used for purposes other than for enforcement
19 of this Act and any other provision of Federal crimi-
20 nal law.

21 “(7) GOOD FAITH COMPLIANCE.—

22 “(A) IN GENERAL.—Except as otherwise
23 provided in this subsection, a person or entity
24 is considered to have complied with a require-
25 ment of this subsection notwithstanding a tech-

1 nical or procedural failure to meet such require-
2 ment if there was a good faith attempt to com-
3 ply with the requirement.

4 “(B) EXCEPTION IF FAILURE TO CORRECT
5 AFTER NOTICE.—Subparagraph (A) shall not
6 apply if—

7 “(i) the failure is not de minimus;

8 “(ii) the Secretary of Homeland Secu-
9 rity has explained to the person or entity
10 the basis for the failure and why it is not
11 de minimus;

12 “(iii) the person or entity has been
13 provided a period of not less than 30 cal-
14 endar days (beginning after the date of the
15 explanation) within which to correct the
16 failure; and

17 “(iv) the person or entity has not cor-
18 rected the failure voluntarily within such
19 period.

20 “(C) EXCEPTION FOR PATTERN OR PRAC-
21 TICE VIOLATORS.—Subparagraph (A) shall not
22 apply to a person or entity that has or is engag-
23 ing in a pattern or practice of violations of sub-
24 section (a)(1)(A) or (a)(2).

1 “(8) SINGLE EXTENSION OF DEADLINES UPON
2 CERTIFICATION.—In a case in which the Secretary
3 of Homeland Security has certified to the Congress
4 that the employment eligibility verification system
5 required under subsection (d) will not be fully oper-
6 ational by the date that is 6 months after the date
7 of the enactment of the Legal Workforce Act, each
8 deadline established under this section for an em-
9 ployer to make an inquiry using such system shall
10 be extended by 6 months. No other extension of such
11 a deadline shall be made.”.

12 (b) DATE OF HIRE.—Section 274A(h) of the Immi-
13 gration and Nationality Act (8 U.S.C. 1324a(h)) is
14 amended by adding at the end the following:

15 “(4) DEFINITION OF DATE OF HIRE.—As used
16 in this section, the term ‘date of hire’ means the
17 date of actual commencement of employment for
18 wages or other remuneration, unless otherwise speci-
19 fied.”.

20 **SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.**

21 Section 274A(d) of the Immigration and Nationality
22 Act (8 U.S.C. 1324a(d)) is amended to read as follows:

23 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
24 TEM.—

1 “(1) IN GENERAL.—Patterned on the employ-
2 ment eligibility confirmation system established
3 under section 404 of the Illegal Immigration Reform
4 and Immigrant Responsibility Act of 1996 (8 U.S.C.
5 1324a note), the Secretary of Homeland Security
6 shall establish and administer a verification system
7 through which the Secretary (or a designee of the
8 Secretary, which may be a nongovernmental enti-
9 ty)—

10 “(A) responds to inquiries made by per-
11 sons at any time through a toll-free telephone
12 line and other toll-free electronic media con-
13 cerning an individual’s identity and whether the
14 individual is authorized to be employed; and

15 “(B) maintains records of the inquiries
16 that were made, of verifications provided (or
17 not provided), and of the codes provided to in-
18 quirers as evidence of their compliance with
19 their obligations under this section.

20 “(2) INITIAL RESPONSE.—The verification sys-
21 tem shall provide confirmation or a tentative non-
22 confirmation of an individual’s identity and employ-
23 ment eligibility within 3 working days of the initial
24 inquiry. If providing confirmation or tentative non-
25 confirmation, the verification system shall provide an

1 appropriate code indicating such confirmation or
2 such nonconfirmation.

3 “(3) SECONDARY CONFIRMATION PROCESS IN
4 CASE OF TENTATIVE NONCONFIRMATION.—In cases
5 of tentative nonconfirmation, the Secretary shall
6 specify, in consultation with the Commissioner of
7 Social Security, an available secondary verification
8 process to confirm the validity of information pro-
9 vided and to provide a final confirmation or noncon-
10 firmation not later than 10 working days after the
11 date on which the notice of the tentative noncon-
12 firmation is received by the employee. The Secretary,
13 in consultation with the Commissioner, may extend
14 this deadline once on a case-by-case basis for a pe-
15 riod of 10 working days, and if the time is extended,
16 shall document such extension within the verification
17 system. The Secretary, in consultation with the
18 Commissioner, shall notify the employee and em-
19 ployer of such extension. The Secretary, in consulta-
20 tion with the Commissioner, shall create a standard
21 process of such extension and notification and shall
22 make a description of such process available to the
23 public. When final confirmation or nonconfirmation
24 is provided, the verification system shall provide an

1 appropriate code indicating such confirmation or
2 nonconfirmation.

3 “(4) DESIGN AND OPERATION OF SYSTEM.—

4 The verification system shall be designed and oper-
5 ated—

6 “(A) to maximize its reliability and ease of
7 use by persons and other entities consistent
8 with insulating and protecting the privacy and
9 security of the underlying information;

10 “(B) to respond to all inquiries made by
11 such persons and entities on whether individ-
12 uals are authorized to be employed and to reg-
13 ister all times when such inquiries are not re-
14 ceived;

15 “(C) with appropriate administrative, tech-
16 nical, and physical safeguards to prevent unau-
17 thorized disclosure of personal information;

18 “(D) to have reasonable safeguards against
19 the system’s resulting in unlawful discrimina-
20 tory practices based on national origin or citi-
21 zenship status, including—

22 “(i) the selective or unauthorized use
23 of the system to verify eligibility; or

24 “(ii) the exclusion of certain individ-
25 uals from consideration for employment as

1 a result of a perceived likelihood that addi-
2 tional verification will be required, beyond
3 what is required for most job applicants;

4 “(E) to maximize the prevention of iden-
5 tity theft use in the system; and

6 “(F) to limit the subjects of verification to
7 the following individuals:

8 “(i) Individuals hired, referred, or re-
9 cruited, in accordance with paragraph (1)
10 or (4) of subsection (b).

11 “(ii) Employees and prospective em-
12 ployees, in accordance with paragraph (1),
13 (2), (3), or (4) of subsection (b).

14 “(iii) Individuals seeking to confirm
15 their own employment eligibility on a vol-
16 untary basis.

17 “(5) RESPONSIBILITIES OF COMMISSIONER OF
18 SOCIAL SECURITY.—As part of the verification sys-
19 tem, the Commissioner of Social Security, in con-
20 sultation with the Secretary of Homeland Security
21 (and any designee of the Secretary selected to estab-
22 lish and administer the verification system), shall es-
23 tablish a reliable, secure method, which, within the
24 time periods specified under paragraphs (2) and (3),
25 compares the name and social security account num-

1 ber provided in an inquiry against such information
2 maintained by the Commissioner in order to validate
3 (or not validate) the information provided regarding
4 an individual whose identity and employment eligi-
5 bility must be confirmed, the correspondence of the
6 name and number, and whether the individual has
7 presented a social security account number that is
8 not valid for employment. The Commissioner shall
9 not disclose or release social security information
10 (other than such confirmation or nonconfirmation)
11 under the verification system except as provided for
12 in this section or section 205(c)(2)(I) of the Social
13 Security Act.

14 “(6) RESPONSIBILITIES OF SECRETARY OF
15 HOMELAND SECURITY.—As part of the verification
16 system, the Secretary of Homeland Security (in con-
17 sultation with any designee of the Secretary selected
18 to establish and administer the verification system),
19 shall establish a reliable, secure method, which, with-
20 in the time periods specified under paragraphs (2)
21 and (3), compares the name and alien identification
22 or authorization number (or any other information
23 as determined relevant by the Secretary) which are
24 provided in an inquiry against such information
25 maintained or accessed by the Secretary in order to

1 validate (or not validate) the information provided,
2 the correspondence of the name and number, wheth-
3 er the alien is authorized to be employed in the
4 United States, or to the extent that the Secretary
5 determines to be feasible and appropriate, whether
6 the records available to the Secretary verify the
7 identity or status of a national of the United States.

8 “(7) UPDATING INFORMATION.—The Commis-
9 sioner of Social Security and the Secretary of Home-
10 land Security shall update their information in a
11 manner that promotes the maximum accuracy and
12 shall provide a process for the prompt correction of
13 erroneous information, including instances in which
14 it is brought to their attention in the secondary
15 verification process described in paragraph (3).

16 “(8) LIMITATION ON USE OF THE
17 VERIFICATION SYSTEM AND ANY RELATED SYS-
18 TEMS.—

19 “(A) NO NATIONAL IDENTIFICATION
20 CARD.—Nothing in this section shall be con-
21 strued to authorize, directly or indirectly, the
22 issuance or use of national identification cards
23 or the establishment of a national identification
24 card.

1 “(B) CRITICAL INFRASTRUCTURE.—The
2 Secretary may authorize or direct any person or
3 entity responsible for granting access to, pro-
4 tecting, securing, operating, administering, or
5 regulating part of the critical infrastructure (as
6 defined in section 1016(e) of the Critical Infra-
7 structure Protection Act of 2001 (42 U.S.C.
8 5195e(c))) to use the verification system to the
9 extent the Secretary determines that such use
10 will assist in the protection of the critical infra-
11 structure.

12 “(9) REMEDIES.—If an individual alleges that
13 the individual would not have been dismissed from
14 a job but for an error of the verification mechanism,
15 the individual may seek compensation only through
16 the mechanism of the Federal Tort Claims Act, and
17 injunctive relief to correct such error. No class ac-
18 tion may be brought under this paragraph.”.

19 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**
20 **EMPLOYMENT.**

21 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
22 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-
23 MENT.—Section 274A(a) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1324a(a)) is amended—

25 (1) in paragraph (1)(A), by striking “for a fee”;

1 (2) in paragraph (1), by amending subpara-
2 graph (B) to read as follows:

3 “(B) to hire, continue to employ, or to re-
4 cruit or refer for employment in the United
5 States an individual without complying with the
6 requirements of subsection (b).”; and

7 (3) in paragraph (2), by striking “after hiring
8 an alien for employment in accordance with para-
9 graph (1),” and inserting “after complying with
10 paragraph (1),”.

11 (b) DEFINITION.—Section 274A(h) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
13 by section 2(b) of this Act, is further amended by adding
14 at the end the following:

15 “(5) DEFINITION OF RECRUIT OR REFER.—As
16 used in this section, the term ‘refer’ means the act
17 of sending or directing a person who is in the United
18 States or transmitting documentation or information
19 to another, directly or indirectly, with the intent of
20 obtaining employment in the United States for such
21 person. Only persons or entities referring for remun-
22 eration (whether on a retainer or contingency
23 basis) are included in the definition, except that
24 union hiring halls that refer union members or non-
25 union individuals who pay union membership dues

1 are included in the definition whether or not they re-
2 ceive remuneration, as are labor service entities or
3 labor service agencies, whether public, private, for-
4 profit, or nonprofit, that refer, dispatch, or other-
5 wise facilitate the hiring of laborers for any period
6 of time by a third party. As used in this section, the
7 term ‘recruit’ means the act of soliciting a person
8 who is in the United States, directly or indirectly,
9 and referring the person to another with the intent
10 of obtaining employment for that person. Only per-
11 sons or entities referring for remuneration (whether
12 on a retainer or contingency basis) are included in
13 the definition, except that union hiring halls that
14 refer union members or nonunion individuals who
15 pay union membership dues are included in this defi-
16 nition whether or not they receive remuneration, as
17 are labor service entities or labor service agencies,
18 whether public, private, for-profit, or nonprofit that
19 recruit, dispatch, or otherwise facilitate the hiring of
20 laborers for any period of time by a third party.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date that is 1 year
23 after the date of the enactment of this Act, except that
24 the amendments made by subsection (a) shall take effect
25 6 months after the date of the enactment of this Act inso-

1 far as such amendments relate to continuation of employ-
2 ment.

3 **SEC. 5. GOOD FAITH DEFENSE.**

4 Section 274A(a)(3) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as
6 follows:

7 “(3) GOOD FAITH DEFENSE.—

8 “(A) DEFENSE.—An employer (or person
9 or entity that hires, employs, recruits, or refers
10 (as defined in subsection (h)(5)), or is otherwise
11 obligated to comply with this section) who es-
12 tablishes that it has complied in good faith with
13 the requirements of subsection (b)—

14 “(i) shall not be liable to a job appli-
15 cant, an employee, the Federal Govern-
16 ment, or a State or local government,
17 under Federal, State, or local criminal or
18 civil law for any employment-related action
19 taken with respect to a job applicant or
20 employee in good-faith reliance on informa-
21 tion provided through the system estab-
22 lished under subsection (d); and

23 “(ii) has established compliance with
24 its obligations under subparagraphs (A)
25 and (B) of paragraph (1) and subsection

1 (b) absent a showing by the Secretary of
2 Homeland Security, by clear and con-
3 vincing evidence, that the employer had
4 knowledge that an employee is an unau-
5 thorized alien.

6 “(B) FAILURE TO SEEK AND OBTAIN
7 VERIFICATION.—Subject to the effective dates
8 and other deadlines applicable under subsection
9 (b), in the case of a person or entity in the
10 United States that hires, or continues to em-
11 ploy, an individual, or recruits or refers an indi-
12 vidual for employment, the following require-
13 ments apply:

14 “(i) FAILURE TO SEEK
15 VERIFICATION.—

16 “(I) IN GENERAL.—If the person
17 or entity has not made an inquiry,
18 under the mechanism established
19 under subsection (d) and in accord-
20 ance with the timeframes established
21 under subsection (b), seeking
22 verification of the identity and work
23 eligibility of the individual, the de-
24 fense under subparagraph (A) shall
25 not be considered to apply with re-

1 spect to any employment, except as
2 provided in subclause (II).

3 “(II) SPECIAL RULE FOR FAIL-
4 URE OF VERIFICATION MECHANISM.—
5 If such a person or entity in good
6 faith attempts to make an inquiry in
7 order to qualify for the defense under
8 subparagraph (A) and the verification
9 mechanism has registered that not all
10 inquiries were responded to during the
11 relevant time, the person or entity can
12 make an inquiry until the end of the
13 first subsequent working day in which
14 the verification mechanism registers
15 no nonresponses and qualify for such
16 defense.

17 “(ii) FAILURE TO OBTAIN
18 VERIFICATION.—If the person or entity
19 has made the inquiry described in clause
20 (i)(I) but has not received an appropriate
21 verification of such identity and work eligi-
22 bility under such mechanism within the
23 time period specified under subsection
24 (d)(2) after the time the verification in-
25 quiry was received, the defense under sub-

1 paragraph (A) shall not be considered to
2 apply with respect to any employment after
3 the end of such time period.”.

4 **SEC. 6. PREEMPTION AND STATES' RIGHTS.**

5 Section 274A(h)(2) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as
7 follows:

8 “(2) PREEMPTION.—

9 “(A) SINGLE, NATIONAL POLICY.—The
10 provisions of this section preempt any State or
11 local law, ordinance, policy, or rule, including
12 any criminal or civil fine or penalty structure,
13 insofar as they may now or hereafter relate to
14 the hiring, continued employment, or status
15 verification for employment eligibility purposes,
16 of unauthorized aliens.

17 “(B) STATE ENFORCEMENT OF FEDERAL
18 LAW.—

19 “(i) BUSINESS LICENSING.—A State,
20 locality, municipality, or political subdivi-
21 sion may exercise its authority over busi-
22 ness licensing and similar laws as a pen-
23 alty for failure to use the verification sys-
24 tem described in subsection (d) to verify

1 employment eligibility when and as re-
2 quired under subsection (b).

3 “(ii) GENERAL RULES.—A State, at
4 its own cost, may enforce the provisions of
5 this section, but only insofar as such State
6 follows the Federal regulations imple-
7 menting this section, applies the Federal
8 penalty structure set out in this section,
9 and complies with all Federal rules and
10 guidance concerning implementation of this
11 section. Such State may collect any fines
12 assessed under this section. An employer
13 may not be subject to enforcement, includ-
14 ing audit and investigation, by both a Fed-
15 eral agency and a State for the same viola-
16 tion under this section. Whichever entity,
17 the Federal agency or the State, is first to
18 initiate the enforcement action, has the
19 right of first refusal to proceed with the
20 enforcement action. The Secretary must
21 provide copies of all guidance, training,
22 and field instructions provided to Federal
23 officials implementing the provisions of
24 this section to each State.”.

1 **SEC. 7. REPEAL.**

2 (a) **IN GENERAL.**—Subtitle A of title IV of the Illegal
3 Immigration Reform and Immigrant Responsibility Act of
4 1996 (8 U.S.C. 1324a note) is repealed.

5 (b) **REFERENCES.**—Any reference in any Federal
6 law, Executive order, rule, regulation, or delegation of au-
7 thority, or any document of, or pertaining to, the Depart-
8 ment of Homeland Security, Department of Justice, or the
9 Social Security Administration, to the employment eligi-
10 bility confirmation system established under section 404
11 of the Illegal Immigration Reform and Immigrant Respon-
12 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
13 refer to the employment eligibility confirmation system es-
14 tablished under section 274A(d) of the Immigration and
15 Nationality Act, as amended by section 3 of this Act.

16 (c) **EFFECTIVE DATE.**—This section shall take effect
17 on the date that is 36 months after the date of the enact-
18 ment of this Act.

19 **SEC. 8. PENALTIES.**

20 Section 274A of the Immigration and Nationality Act
21 (8 U.S.C. 1324a) is amended—

22 (1) in subsection (e)(1)—

23 (A) by striking “Attorney General” each
24 place such term appears and inserting “Sec-
25 retary of Homeland Security”; and

1 (B) in subparagraph (D), by striking
2 “Service” and inserting “Department of Home-
3 land Security”;

4 (2) in subsection (e)(4)—

5 (A) in subparagraph (A), in the matter be-
6 fore clause (i), by inserting “, subject to para-
7 graph (10),” after “in an amount”;

8 (B) in subparagraph (A)(i), by striking
9 “not less than \$250 and not more than
10 \$2,000” and inserting “not less than \$2,500
11 and not more than \$5,000”;

12 (C) in subparagraph (A)(ii), by striking
13 “not less than \$2,000 and not more than
14 \$5,000” and inserting “not less than \$5,000
15 and not more than \$10,000”;

16 (D) in subparagraph (A)(iii), by striking
17 “not less than \$3,000 and not more than
18 \$10,000” and inserting “not less than \$10,000
19 and not more than \$25,000”; and

20 (E) by amending subparagraph (B) to read
21 as follows:

22 “(B) may require the person or entity to
23 take such other remedial action as is appro-
24 priate.”;

25 (3) in subsection (e)(5)—

1 (A) in the paragraph heading, strike “PA-
2 PERWORK”;

3 (B) by inserting “, subject to paragraphs
4 (10) through (12),” after “in an amount”;

5 (C) by striking “\$100” and inserting
6 “\$1,000”;

7 (D) by striking “\$1,000” and inserting
8 “\$25,000”; and

9 (E) by adding at the end the following:
10 “Failure by a person or entity to utilize the em-
11 ployment eligibility verification system as re-
12 quired by law, or providing information to the
13 system that the person or entity knows or rea-
14 sonably believes to be false, shall be treated as
15 a violation of subsection (a)(1)(A).”;

16 (4) by adding at the end of subsection (e) the
17 following:

18 “(10) EXEMPTION FROM PENALTY FOR GOOD
19 FAITH VIOLATION.—In the case of imposition of a
20 civil penalty under paragraph (4)(A) with respect to
21 a violation of subsection (a)(1)(A) or (a)(2) for hir-
22 ing or continuation of employment or recruitment or
23 referral by person or entity and in the case of impo-
24 sition of a civil penalty under paragraph (5) for a
25 violation of subsection (a)(1)(B) for hiring or re-

1 recruitment or referral by a person or entity, the pen-
2 alty otherwise imposed may be waived or reduced if
3 the violator establishes that the violator acted in
4 good faith.

5 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR
6 CERTAIN VIOLATIONS.—

7 “(A) IN GENERAL.—If a person or entity
8 is determined by the Secretary of Homeland Se-
9 curity to be a repeat violator of paragraph
10 (1)(A) or (2) of subsection (a), or is convicted
11 of a crime under this section, such person or
12 entity may be considered for debarment from
13 the receipt of Federal contracts, grants, or co-
14 operative agreements in accordance with the de-
15 barment standards and pursuant to the debar-
16 ment procedures set forth in the Federal Acqui-
17 sition Regulation.

18 “(B) DOES NOT HAVE CONTRACT, GRANT,
19 AGREEMENT.—If the Secretary of Homeland
20 Security or the Attorney General wishes to have
21 a person or entity considered for debarment in
22 accordance with this paragraph, and such an
23 person or entity does not hold a Federal con-
24 tract, grant or cooperative agreement, the Sec-
25 retary or Attorney General shall refer the mat-

1 ter to the Administrator of General Services to
2 determine whether to list the person or entity
3 on the List of Parties Excluded from Federal
4 Procurement, and if so, for what duration and
5 under what scope.

6 “(C) HAS CONTRACT, GRANT, AGREE-
7 MENT.—If the Secretary of Homeland Security
8 or the Attorney General wishes to have a per-
9 son or entity considered for debarment in ac-
10 cordance with this paragraph, and such person
11 or entity holds a Federal contract, grant or co-
12 operative agreement, the Secretary or Attorney
13 General shall advise all agencies or departments
14 holding a contract, grant, or cooperative agree-
15 ment with the person or entity of the Govern-
16 ment’s interest in having the person or entity
17 considered for debarment, and after soliciting
18 and considering the views of all such agencies
19 and departments, the Secretary or Attorney
20 General may refer the matter to any appro-
21 priate lead agency to determine whether to list
22 the person or entity on the List of Parties Ex-
23 cluded from Federal Procurement, and if so, for
24 what duration and under what scope.

1 “(D) REVIEW.—Any decision to debar a
2 person or entity in accordance with this para-
3 graph shall be reviewable pursuant to part 9.4
4 of the Federal Acquisition Regulation.

5 “(12) OFFICE FOR STATE AND LOCAL GOVERN-
6 MENT COMPLAINTS.—The Secretary of Homeland
7 Security shall establish an office—

8 “(A) to which State and local government
9 agencies may submit information indicating po-
10 tential violations of subsection (a), (b), or
11 (g)(1) that were generated in the normal course
12 of law enforcement or the normal course of
13 other official activities in the State or locality;

14 “(B) that is required to indicate to the
15 complaining State or local agency within 5 busi-
16 ness days of the filing of such a complaint by
17 identifying whether the Secretary will further
18 investigate the information provided;

19 “(C) that is required to investigate those
20 complaints filed by State or local government
21 agencies that, on their face, have a substantial
22 probability of validity;

23 “(D) that is required to notify the com-
24 plaining State or local agency of the results of
25 any such investigation conducted; and

1 “(E) that is required to report to the Con-
2 gress annually the number of complaints re-
3 ceived under this paragraph, the States and lo-
4 calities that filed such complaints, and the reso-
5 lution of the complaints investigated by the Sec-
6 retary.”; and

7 (5) by amending paragraph (1) of subsection (f)
8 to read as follows:

9 “(1) CRIMINAL PENALTY.—Any person or enti-
10 ty which engages in a pattern or practice of viola-
11 tions of subsection (a)(1) or (2) shall be fined not
12 more than \$15,000 for each unauthorized alien with
13 respect to which such a violation occurs, imprisoned
14 for not less than one year and not more than 10
15 years, or both, notwithstanding the provisions of any
16 other Federal law relating to fine levels.”.

17 **SEC. 9. FRAUD AND MISUSE OF DOCUMENTS.**

18 Section 1546(b) of title 18, United States Code, is
19 amended—

20 (1) in paragraph (1), by striking “identification
21 document,” and inserting “identification document
22 or document meant to establish work authorization
23 (including the documents described in section
24 274A(b) of the Immigration and Nationality Act),”;
25 and

1 (2) in paragraph (2), by striking “identification
2 document” and inserting “identification document or
3 document meant to establish work authorization (in-
4 cluding the documents described in section 274A(b)
5 of the Immigration and Nationality Act),”.

6 **SEC. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
7 **TION PROGRAMS.**

8 (a) **FUNDING UNDER AGREEMENT.**—Effective for
9 fiscal years beginning on or after October 1, 2013, the
10 Commissioner of Social Security and the Secretary of
11 Homeland Security shall enter into and maintain an
12 agreement which shall—

13 (1) provide funds to the Commissioner for the
14 full costs of the responsibilities of the Commissioner
15 under section 274A(d) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1324a(d)), as amended by
17 section 3 of this Act, including (but not limited
18 to)—

19 (A) acquiring, installing, and maintaining
20 technological equipment and systems necessary
21 for the fulfillment of the responsibilities of the
22 Commissioner under such section 274A(d), but
23 only that portion of such costs that are attrib-
24 utable exclusively to such responsibilities; and

1 (B) responding to individuals who contest
2 a tentative nonconfirmation provided by the em-
3 ployment eligibility verification system estab-
4 lished under such section;

5 (2) provide such funds annually in advance of
6 the applicable quarter based on estimating method-
7 ology agreed to by the Commissioner and the Sec-
8 retary (except in such instances where the delayed
9 enactment of an annual appropriation may preclude
10 such quarterly payments); and

11 (3) require an annual accounting and reconcili-
12 ation of the actual costs incurred and the funds pro-
13 vided under the agreement, which shall be reviewed
14 by the Inspectors General of the Social Security Ad-
15 ministration and the Department of Homeland Secu-
16 rity.

17 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
18 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
19 which the agreement required under subsection (a) for any
20 fiscal year beginning on or after October 1, 2013, has not
21 been reached as of October 1 of such fiscal year, the latest
22 agreement between the Commissioner and the Secretary
23 of Homeland Security providing for funding to cover the
24 costs of the responsibilities of the Commissioner under
25 section 274A(d) of the Immigration and Nationality Act

1 (8 U.S.C. 1324a(d)) shall be deemed in effect on an inter-
2 rim basis for such fiscal year until such time as an
3 agreement required under subsection (a) is subsequently
4 reached, except that the terms of such interim agreement
5 shall be modified by the Director of the Office of Manage-
6 ment and Budget to adjust for inflation and any increase
7 or decrease in the volume of requests under the employ-
8 ment eligibility verification system. In any case in which
9 an interim agreement applies for any fiscal year under this
10 subsection, the Commissioner and the Secretary shall, not
11 later than October 1 of such fiscal year, notify the Com-
12 mittee on Ways and Means, the Committee on the Judici-
13 ary, and the Committee on Appropriations of the House
14 of Representatives and the Committee on Finance, the
15 Committee on the Judiciary, and the Committee on Ap-
16 propriations of the Senate of the failure to reach the
17 agreement required under subsection (a) for such fiscal
18 year. Until such time as the agreement required under
19 subsection (a) has been reached for such fiscal year, the
20 Commissioner and the Secretary shall, not later than the
21 end of each 90-day period after October 1 of such fiscal
22 year, notify such Committees of the status of negotiations
23 between the Commissioner and the Secretary in order to
24 reach such an agreement.

1 **SEC. 11. FRAUD PREVENTION.**

2 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
3 **NUMBERS.**—The Secretary of Homeland Security, in con-
4 sultation with the Commissioner of Social Security, shall
5 establish a program in which social security account num-
6 bers that have been identified to be subject to unusual
7 multiple use in the employment eligibility verification sys-
8 tem established under section 274A(d) of the Immigration
9 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
10 section 3 of this Act, or that are otherwise suspected or
11 determined to have been compromised by identity fraud
12 or other misuse, shall be blocked from use for such system
13 purposes unless the individual using such number is able
14 to establish, through secure and fair additional security
15 procedures, that the individual is the legitimate holder of
16 the number.

17 (b) **ALLOWING SUSPENSION OF USE OF CERTAIN SO-**
18 **CIAL SECURITY ACCOUNT NUMBERS.**—The Secretary of
19 Homeland Security, in consultation with the Commis-
20 sioner of Social Security, shall establish a program which
21 shall provide a reliable, secure method by which victims
22 of identity fraud and other individuals may suspend or
23 limit the use of their social security account number or
24 other identifying information for purposes of the employ-
25 ment eligibility verification system established under sec-
26 tion 274A(d) of the Immigration and Nationality Act (8

1 U.S.C. 1324a(d)), as amended by section 3 of this Act.
2 The Secretary may implement the program on a limited
3 pilot program basis before making it fully available to all
4 individuals.

5 (e) ALLOWING PARENTS TO PREVENT THEFT OF
6 THEIR CHILD'S IDENTITY.—The Secretary of Homeland
7 Security, in consultation with the Commissioner of Social
8 Security, shall establish a program which shall provide a
9 reliable, secure method by which parents or legal guard-
10 ians may suspend or limit the use of the social security
11 account number or other identifying information of a
12 minor under their care for the purposes of the employment
13 eligibility verification system established under 274A(d) of
14 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
15 as amended by section 3 of this Act. The Secretary may
16 implement the program on a limited pilot program basis
17 before making it fully available to all individuals.

18 **SEC. 12. IDENTITY AUTHENTICATION EMPLOYMENT ELI-**
19 **BILITY VERIFICATION PILOT PROGRAM.**

20 Not later than 48 months after the date of the enact-
21 ment of this Act, the Secretary of Homeland Security,
22 after consultation with the Commissioner of Social Secu-
23 rity and the Director of the National Institute of Stand-
24 ards and Technology, shall establish by regulation an
25 Identity Authentication Employment Eligibility

1 Verification pilot program (the “Authentication Pilot”).
2 The purpose of the Authentication Pilot shall be to provide
3 for identity authentication and employment eligibility
4 verification with respect to enrolled new employees which
5 shall be available to subject employers who elect to partici-
6 pate in the Authentication Pilot. Any subject employer
7 may cancel the employer’s participation in the Authentica-
8 tion Pilot after one year after electing to participate with-
9 out prejudice to future participation.

10 **SEC. 13. INSPECTOR GENERAL AUDITS.**

11 (a) IN GENERAL.—Not later than 1 year after the
12 date of the enactment of this Act, the Inspector General
13 of the Social Security Administration shall complete audits
14 of the following categories in order to uncover evidence
15 of individuals who are not authorized to work in the
16 United States:

17 (1) Workers who dispute wages reported on
18 their social security account number when they be-
19 lieve someone else has used such number and name
20 to report wages.

21 (2) Children’s social security account numbers
22 used for work purposes.

23 (3) Employers whose workers present signifi-
24 cant numbers of mismatched social security account
25 numbers or names for wage reporting.

1 (b) SUBMISSION.—The Inspector General of the So-
2 cial Security Administration shall submit the audits com-
3 pleted under subsection (a) to the Committee on Ways and
4 Means of the House of Representative and the Committee
5 on Finance of the Senate for review of the evidence of
6 individuals who are not authorized to work in the United
7 States. The Chairmen of those Committees shall then de-
8 termine information to be shared with the Secretary of
9 Homeland Security so that such Secretary can investigate
10 the unauthorized employment demonstrated by such evi-
11 dence.

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