

HEARING ON THE LEGAL WORKFORCE ACT

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

FEBRUARY 4, 2015

Serial No. 114-11

Printed for the use of the Committee on the Judiciary



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

U.S. GOVERNMENT PUBLISHING OFFICE

93-081 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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HEARING ON THE LEGAL WORKFORCE ACT

WEDNESDAY, FEBRUARY 4, 2015

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

The Subcommittee met, pursuant to call, at 10:04 a.m., in room 2141, Rayburn Office Building, the Honorable Trey Gowdy, (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Goodlatte, Labrador, Smith, King, Buck, Ratcliffe, Trott, Conyers, Jackson Lee, and Pierluisi.

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

Mr. GOWDY. Good morning. This is the Subcommittee on Immigration and Border Security. This is a hearing on H.R. 1772, the "Legal Workforce Act."

The Subcommittee will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to today's hearing on the Legal Workforce Act. I will introduce the witnesses.

And we thank you for your presence and your expertise. I will introduce you later, but for now, I will recognize the gentleman from the great State of Texas, Mr. Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman. I appreciate you yielding me time and giving me the opportunity to talk about this piece of legislation, which I introduced in the last Congress and hope to introduce in the next few days in this Congress.

Mr. Chairman, almost 20 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 who need these jobs.

The Legal Workforce Act turns off the jobs magnet that attracts so many illegal immigrants to the United States. The bill expands the E-Verify system and applies it to all U.S. employers.

Illegal workers cost Americans jobs or depress their wages, according to nearly all studies on the subject. For example, a Center for Immigration Studies report found that illegal immigration reduces the wages of American workers by approximately \$650 per worker. We need to do all we can to protect the jobs and wages of American workers.

The Legal Workforce Act also would open up millions of jobs for unemployed Americans by requiring 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 575,000 American employers voluntarily use E-Verify already, and an average of 1,400 new businesses sign up each week for E-Verify. One third of American jobs are now covered by E-Verify.

The program is free, quick, and easy to use. In fact, E-Verify will soon be available for use on smart phones. It will take about 1 minute per potential employee.

Individuals provide their Social Security number when they visit a doctor, open a bank account, or buy a home. It makes sense that other businesses should check the status of prospective employees to ensure that they have a legal workforce.

The Legal Workforce Act requires that U.S. employers use E-Verify to check the work eligibility of new hires in the U.S. The verification period is phased-in and depends on the size of the employer's business. Smaller businesses have up to 2 years to implement E-Verify.

The legislation 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 a patchwork of State E-Verify laws, but retains the ability of States and localities to condition business licenses on the use of E-Verify. It also 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 U.S. Citizenship and Immigration Services the ability to prevent identity theft. The bill allows individuals to lock their own Social Security number so that it cannot be used by others to verify work eligibility. The legislation also allows parents to lock the Social Security number of a minor child to prevent identity theft.

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.

A report by Westat in 2009 on error rates and the cost of E-Verify is clearly outdated. That study utilized old data and failed to consider the provisions aimed at preventing identity theft mentioned above and that are in the bill today.

In regard to cost, one study showed that three quarters of employers stated the cost of using E-Verify is zero.

Equally important, the American people support E-Verify. Last month, a Paragon Insights poll showed that 71 percent of voters "support Congress passing new legislation that strengthens the

rules making it illegal for businesses in the U.S. to hire illegal immigrants.”

In fact, E-Verify receives the most public support of any immigration reform provision.

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 helps ensure that employers from every State have the same standard when it comes to hiring employees.

This bill is a common-sense approach that will reduce illegal immigration and save jobs for American workers and legal workers. It deserves the support of everyone who wants to put the interests of U.S. workers first.

Thank you, Mr. Chairman, and I will yield back.

Mr. GOWDY. I thank the gentleman from Texas.

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

Mr. CONYERS. Thank you, Chairman Gowdy. This is a subject, that of today's hearing, that is very familiar to us because over the past 4 years, this same Subcommittee has held six hearings on E-Verify, the government's electronic employment verification system.

Each time that we have looked at it, each time we have considered the Legal Workforce Act, I have also said that E-Verify is an important tool. But I have also said, and the witnesses appearing before us have agreed, that E-Verify cannot be made mandatory for all employers without comprehensive reforms to our Nation's broken immigration system. That is a very important point, that E-Verify cannot be made mandatory for all employers without comprehensive reform to our Nation's immigration system.

For years, some have argued that to fix the broken system, we need only enforce the laws on the books, but we know that is not a real and viable solution. We cannot rely solely upon enforcement of our broken laws.

The truth is that enforcement without reform will actually hurt the American worker. But if we fix our broken immigration system, we can help American workers and grow our economy, or to put it another way, the Congressional Budget Office told us in December that enacting this bill into law would increase the deficit by \$30 billion over 10 years. But enacting the Senate-passed immigration reform bill, S. 744, would in fact reduce the budget deficit by \$158 billion over the first 10 years and by about \$680 billion over the next 10 years. I want to get into that in the hearing.

Whenever we talked about E-Verify, it is important that we think about how the world really works. I have heard people say that E-Verify will help American workers because every time an undocumented immigrant is denied a job, an unemployed American gets hired. It is a pretty simple idea, and I can see how it could be appealing. But the problem is that it is false.

Immigrants often fill gaps in our own workforce, where there are not enough Americans willing to do the work. Because 50 percent to 70 percent of the Nation's farmworkers are undocumented, mandatory E-Verify would be especially devastating to that industry. No one would pick the fruits and vegetables in the fields, and they would probably be left to rot. American farms would go under, and

jobs would be moved overseas, including the millions of upstream and downstream American jobs supported by agriculture.

Now when we first considered this bill in the 112th Congress, the Legal Workforce Act contained a simple solution for the agriculture industry. It created a special carve-out in the law to exempt farmers from the requirement to use E-Verify. And in the final days of the 113th Congress, this Committee reported to the floor this bill and an agricultural guestworker bill. But in part because the guestworker proposal did not have much support, neither bill went anywhere.

Finally, E-Verify could already be required for employers around the country. Had my conservative friends in the House taken up the bipartisan comprehensive immigration reform bill passed by the Senate way back in 2006, mandatory E-Verify would be the law today. And had House Republicans taken up S. 744, the bipartisan comprehensive immigration reform that passed the Senate with a supermajority in the last Congress, or H.R. 15, the bipartisan bill in the House, mandatory E-Verify, again, would be the law of the day.

So instead, our Republican leaders in the House chose not to act on either of these proposals. They withered on the vine and died, just as crops would go unpicked if this bill were to become law without broader changes to our immigration system.

So I look forward to the hearing, and I want to welcome all of the witnesses to today's hearing. I thank the Chairman and yield back any time remaining.

Mr. GOWDY. I thank the gentleman from Michigan.

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

Mr. GOODLATTE. I thank the gentleman from South Carolina for holding this hearing, and I thank the gentleman from Texas to my immediate right here for once again championing the Legal Workforce Act. It will play an integral role in the enforcement of U.S. immigration laws and the discontinuation of the jobs magnet responsible for so much illegal immigration.

Americans have long been promised tougher immigration enforcement in exchange for the legalization of those unlawfully in the U.S. But 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 quick way for employers to electronically check the work eligibility of newly hired employees.

The Legal Workforce Act, as reported out of this Committee last Congress, builds on E-Verify's success and helps ensure the strong enforcement that was promised to the American people many years ago. But the bill does not simply leave enforcement up to the Federal Government.

In fact, it actually empowers States to help enforce the law, ensuring that we do not continue the situation we have currently

where a President can turn off Federal enforcement efforts unilaterally.

Nearly 575,000 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 Subcommittee last Congress, E-Verify immediately confirms the work eligibility of persons eligible to work 99.7 percent of the time.

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 SSN 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 result could occur.

The Legal Workforce Act addresses identity theft in several ways.

First, it requires notification to employees who submit for E-Verify an SSN that shows a pattern of unusual multiple use. In this way, the rightful owner of the SSN will know that their SSN may have been compromised. And once they confirm this, DHS and the Social Security Administration 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 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.

The bill also phases in E-Verify use in 6-month increments beginning with the largest U.S. businesses, raises penalties for employers who do not 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.

The witness testimony and other support proffered today will show that the Legal Workforce Act 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 will continue to work with my colleagues and other stakeholders to address any additional concerns with the bill as we move it through the Committee.

I look forward to the witness testimony and welcome all of you here.

I yield back. Thank you, Mr. Chairman.

Mr. GOWDY. I thank the Chairman.

The Chair will recognize the gentlelady from the great State of Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman very much, and I acknowledge the indication that the Ranking Member of this Committee had to be called away today, and I thank you and her for

this hearing and offer this statement on behalf of the Subcommittee on Immigration and Border Security.

Let me be clear at the outset that E-Verify is an important tool for the future, but it needs to be made mandatory at the right time and in the right way. The bill that we marked up in the summer of 2013 had many good features to it, but it did not meet those two important requirements.

Let me also say that I do this and make this statement in the backdrop of the need for comprehensive immigration reform and would simply ask the question, wouldn't this be a better approach if we did have a comprehensive approach?

Let me state it plainly: E-Verify cannot be made mandatory for all employers until having first enacted comprehensive immigration reform, because E-Verify without that would have devastating though unintended consequences.

One possibility is that it would essentially drive 8 million undocumented workers out of the workforce, which would devastate many industries that depend upon on that workforce, especially in agriculture. And I would venture to say that it would be an uncertainty as to whether or not there would be enough buses to bus 8 million individuals back to their home country.

Another possibility is that it would drive those 8 million undocumented workers even further under the radar and off of the books, and that is what led CBO to find that enacting this bill into law would raise the deficit by \$30 billion over 10 years.

Mr. Chairman, if we are going to do E-Verify the right way, we agree with much of what is in the law, but there are deficiencies in this bill that we highlighted during the markup last Congress, and that we detail in our dissenting views: the lack of due process for workers who are harmed by erroneous nonconfirmations, provisions that will facilitate discrimination and inappropriate bars to proper judicial relief, and unnecessary and inappropriate ban on class action lawsuits, for instance.

E-Verify has the potential to be an important tool in the effort to address unauthorized employment, but if done in isolation as the Legal Workforce does, it would inflict tremendous harm on American workers, businesses, and the economy.

I am also concerned that requiring the use of E-Verify will cause many Texas workers to lose their jobs. The rush to implement a flawed E-Verify program across-the-board is guaranteed to hurt thousands of authorized U.S. workers like people in the 18th Congressional District, my district, who need good jobs but will be erroneously denied employment authorization by errors in the system. The system is heavily overburdened and can be, if it is not a sophisticated system.

The bill would also hit small businesses particularly hard, imposing significant burdens on very small firms that may not even have human resource departments, but would still have to use the new system, even those with only a single employee.

But I also think of small mom-and-pop restaurants, which would face that. And I notice that the National Restaurant Association is here, and I hope that they would consider that, as they represent their large restaurateurs, about the mom-and-pop restaurants.

E-Verify would actually exacerbate Texas unemployment, according to estimates based on government sources. If the entire U.S. workforce were required to have its employment eligibility verified through E-Verify, a conservative estimate is that between 1.2 million and 3.5 million U.S. citizens and authorized immigrants would either have to correct their records or lose their jobs. Extrapolating from these estimates approximately, 101,000 to 291,000 citizens and authorized immigrant workers in Texas would have to correct their records in order to avoid being fired.

In Texas, approximately 19.3 percent of the labor force is comprised of foreign-born workers. Foreign-born workers authorized for employment have encountered a disparate disproportionate E-Verify error rate 20 times greater than U.S.-born employees. If we were to use a rough estimate, this would affect up to 63,495 legal workers in Texas.

I would note that in yesterday's Rules Committee, a number of bills were considered relevant on this very issue.

Lastly, we consider how E-Verify would decimate the agriculture industry. We have heard a lot of that from Mr. Conyers. So I would simply say that, in joining on his point, I conclude by reiterating that we need a larger system to deal with E-Verify.

And I hope, as the witnesses present their testimony, they will, with good intentions, tell us if they believe in comprehensive immigration reform. That should be put on the table because I know there are several groups at that table who represented to me that they support comprehensive immigration reform.

With that, I yield back.

Mr. GOWDY. I thank the gentlelady.

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

Before I recognize our witnesses, I would ask unanimous consent to put in the record letters of support from the International Franchise Association, National Association of Homebuilders, and NumbersUSA.

[The information referred to follows:]



February 4, 2015

Dear Members of the Subcommittee on Immigration and Border Security:

On behalf of the International Franchise Association (IFA), I write in support of legislation creating a nationwide electronic employment verification system (E-Verify), which is the subject of today's hearing. Legislation creating such a system will strengthen our immigration system while simultaneously providing safety and certainty for our nation's job creators.

The IFA supported previous E-Verify legislation, entitled the Legal Workforce Act, which was sponsored by Rep. Lamar Smith (R-TX). With a reliable E-Verify system such as the one detailed in the Legal Workforce Act, local small business franchise owners will be confident they are only hiring those legally eligible to work in the United States. Because franchise business owners decide who to hire independent of their franchisor company, having an E-Verify system that is manageable and turn-key for small business owners is critically important to the ongoing, overall success of their businesses. In addition, it is important that the legislation recognizes that franchisee hiring decisions are made independently, and it should not require franchisors to verify the eligibility of the employees of the franchisee or hold the franchisor liable for those hiring decisions.

The International Franchise Association is the world's oldest and largest organization representing franchising worldwide. There are more than 780,000 franchise establishments nationwide that support nearly 8.9 million direct jobs, \$890 billion of economic output for the U.S. economy, and 3 percent of U.S. GDP. A national E-Verify program would create a reliable verification system and a much-needed safe harbor for employers, which will directly benefit small businesses and the American economy.

IFA continues to support legislation similar to the previously introduced Legal Workforce Act, which will help the locally-owned small business franchises to run their businesses more effectively and efficiently through a nationwide E-Verify system that is workable for small business owners.

Sincerely,

Robert Cresanti
Executive Vice President, Government Relations & Public Policy
International Franchise Association

1900 K Street, N.W., Suite 700 Washington, DC 20006 USA

Phone: +1 202/628-8000 Fax: +1 202/628-0812 www.franchise.org


National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 296 8400

www.nahb.org

Government Affairs

James W. Tobin III
Vice President & Chief Lobbyist

February 2, 2015

The Honorable Robert Goodlatte
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to express NAHB's appreciation to you and the House Judiciary Committee for continuing this important discussion on interior enforcement and E-Verify. NAHB supports the *Legal Workforce Act* and urges the House Judiciary Committee to favorably report the bill to the House of Representatives in the 114th Congress.

As members of the employer community, NAHB recognizes the important role employers play in ensuring the nation has a legal workforce. The *Legal Workforce Act* creates a fair, efficient, and workable employment verification system that gives employers clarity with regard to their duties and obligations. It preempts the current patchwork of state laws, providing employers with a straightforward rulebook for compliance. Perhaps most importantly, the *Legal Workforce Act* honors the direct employer-employee relationship and the current "knowing" liability standard.

NAHB also appreciates 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. The *Legal Workforce Act* 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 as it continues a step-by-step and deliberate approach to immigration reform, which should include the *Legal Workforce Act*. We strongly urge you to support the *Legal Workforce Act* in its current form and oppose any amendments that would undermine its workability for employers.

Thank you for considering our views.

Sincerely,

James W. Tobin III



1601 N Kent Street, Suite 1100 • Arlington, VA 22209 • Tel (703) 816-8820 • Fax (703) 816-8824

February 2, 2015

The Honorable Lamar Smith
2409 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Smith,

NumbersUSA -- the nation's largest grassroots organization for controlled immigration, with a network of more than 3 million U.S. citizen activists -- enthusiastically endorses the Legal Workforce Act as the most cost effective and efficient way to improve the lives of millions of economically struggling Americans.

The Legal Workforce Act would at last substantially fulfill the promise of the 1986 amnesty to deny U.S. jobs to foreign citizens who overstay their visitor visas or cross the border illegally. In so doing, historic experience suggests, millions more jobs would both be available and be improved for the American workers and legal immigrants already here who would be recruited and trained to fill them.

Most of the jobs opening for under-employed Americans would be in construction, manufacturing, hospitality and other service occupations in which millions of Americans already are seeking full-time employment.

Your legislation also serves the interests of enlightened community-minded business owners and officials who seek a level-playing field in which their own good wages and working conditions for employees can no longer be undercut by unscrupulous competitors who engage in illegal hiring practices.

In light of the proven reliability and the high customer satisfaction ratings of the E-Verify system, we particularly applaud the requirement in your bill that all businesses in the nation use the system for new hires within two years.

We also are pleased that the Legal Workforce Act ends the big weakness of the current E-Verify system that allows illegal workers who have stolen legitimate identities to get through the system and obtain a job.

Your bill is an "E-Verify PLUS" bill that handles that weakness with an essential multiple-workplace notification system that results in the removal of existing illegal workers who are using stolen identities.

It is especially because of the "PLUS" part of this bill that we assess it to be a powerful tool to reduce under-employment of the legal residents of this country. We hope to see the Social Security "no-match" program added to the bill during debate to add an extra layer of cost-effective enforcement.

The Legal Workforce Act also respects that states and localities have a role in helping enforce immigration laws. We are pleased that the bill allows states and localities to use a variety of enforcement tools, including the Federal employment authorization enforcement system and the revocation of business licenses.

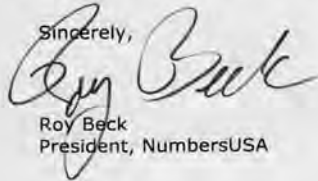
Illegal immigration is only one of several major factors that have contributed to decades of stagnant and declining wages for non-college-degree jobs and led to smaller and smaller percentages of working-age Americans who even have jobs. But illegal immigration is one factor that the federal government can easily control by taking away the chief incentive for foreign citizens to break our laws - the ability of U.S. employers to hire illegal foreign workers.

The people who would most benefit from your legislation are those in demographic groups who are having the most difficult time in this economy: Black and Hispanic Americans in general, and people of all ethnicities who are disabled or trying to rebuild their lives after incarceration, and Americans without college degrees, especially younger adults.

In short, the Legal Workforce Act reflects the high moral principles on economic justice and fairness advocated by the U.S. Commission on Immigration Reform chaired by the late Barbara Jordan. National governments owe their most vulnerable citizens protection from uncontrolled immigration.

Finally, serious observers of the problems on our borders recognize that the most important action that Congress could take to reduce the illegal traffic would be to eliminate illegal crossers' belief that they will be able to obtain employment. Thus, the Legal Workforce Act would likely be the most effective border bill ever passed.

Sincerely,



Roy Beck
President, NumbersUSA

Mr. GOWDY. With that, I welcome our distinguished panel. I will begin by asking you to please rise so I can administer an oath to you.

Do you swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Let the record reflect everyone answered in the affirmative.

I will introduce you en bloc, and then I will recognize you individually for your 5-minute opening statements. Despite the fact that we do not always honor them, the lights mean what they traditionally mean in life. Yellow means you have about a minute left, and red means if you would conclude whatever remarks you are in the middle of.

Randel K. Johnson is a senior vice president of the U.S. Chamber of Commerce for labor, immigration, and employment benefits. Before joining the Chamber, he served as counsel to the U.S. House of Representatives Committee on Education and the Workforce. He is a graduate of Denison University, the University of Maryland School of Law, and earned his masters of law and labor relations from Georgetown.

Ms. Jill Blitstein is here on behalf of the College and University Professional Association for Human Resources. She is currently the international employment manager at N.C. State University. In this position, she oversees the employment eligibility verification process and compliance procedures at N.C. State. Prior to joining N.C. State, she was senior associate with a Chicago law firm that I cannot pronounce most of the names for, but I am sure is very distinguished, from 1997 to 2007. Ms. Blitstein received her law degree from DePaul University College of Law in 1995.

Mr. Angelo Amador is senior vice president and regulatory counsel for 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 enjoying the NRA—not that NRA, the National Restaurant Association—he served as executive director in the labor immigration reform and benefits division of the U.S. Chamber of Commerce and as an adjunct professor of law at the George Mason University School of Law. He is a graduate of the Robert H. Smith School of Business at the University of Maryland. He obtained a master's of arts in international transactions from George Mason and a J.D. from George Mason, graduating with honors.

Lastly, Mr. Chuck Conner is president and chief executive officer of the National Council of Farm Cooperatives, a D.C.-based trade association representing the interests of U.S. agricultural cooperatives. He has more than 25 years of national and State government agriculture and trade association experience. Prior to joining the NCFC, he served as acting director and deputy director for the U.S. Department of Agriculture. He is a graduate of Purdue University with a bachelor's of science and a recipient of Purdue's Distinguished Alumni Award.

Welcome each and every one of you.

Mr. Johnson, we will recognize you for your opening statement.

TESTIMONY OF RANDEL K. JOHNSON, SENIOR VICE PRESIDENT, LABOR, IMMIGRATION AND EMPLOYEE BENEFITS, U.S. CHAMBER OF COMMERCE

Mr. JOHNSON. Thank you, Chairman Gowdy.

As Mr. Conyers suggested, we have been at this for some time. In the earlier days, when the Chamber has testified, I think at this same table, we in fact, as Mr. Smith knows, opposed mandatory E-Verify, of course, for a lot of good reasons back then. But the Chamber can change as times change. As the years went by, and more of our members engaged in the system voluntarily, and, frankly, while we were watching things on Capitol Hill and in the courts and in the States, we decided to re-evaluate our position.

We put together an extensive task force back in January 2011, almost 5 years ago now, comprised of a cross-section of our members. We drew that from our immigration policy subcommittee with input from our small business council and said, well, we need to take a look at E-Verify. What do we need to sort of buy into a mandate, if we can?

Obviously, at the Chamber, and I have been there now 16 years, I think there has been only one other time I have testified agreeing to a new mandate on our members. We take that very seriously and very carefully, for one reason, I love my job, and I am not going to agree to a mandate for the Chamber unless our members are behind me. And in this case, they were. That ranges from the larger businesses and the smaller businesses.

So I am pleased to say today that we do support a mandatory E-Verify system and the act that we worked together principally with Mr. Smith on.

Let me just kind of go through the sort of variations or the issues that we talked about. First of all, and I think this is important to note, it is, certainly, in my written testimony, but it was suggested by further speakers, there have been a lot of technical improvements on E-Verify over the years.

Every system, not every system, this system certainly has gotten better as the kinks have been worked out. There are errors, but there are less errors than before. It would be better if there were no errors but when you are down to an approximately 0.3 percent error rate, I think that is something to be bragged about. And we are never going to get down to a zero rate unless we start rolling this out to more people and continue to work out the costs.

With regard to costs, I know there are some, and Mr. Smith, he talked about this, there are a lot of misinformation out there. A lot of economists have looked at this. I can tell you our economists have looked at the studies out there that talk about something like 2.7 billion. Economists can come up with lots of studies. We all know that. The bottom line is that, for my members, we hear they can adapt to this system quite easily, and the costs are quite minimal. If anything, they are principally concerned about costs of reverification, if in fact the law went that direction, which, fortunately, it doesn't.

Third, preemption, Mr. Goodlatte touched on this, preemption of State laws. Look, we have mostly multinational companies, but we also have small businesses that work across State lines. We had to have in a bill that we could support a preemption of State law,

State and local laws. The language in the bill is a balance of various interests in this. Would we have rather had blanket preemptions such as under ERISA or the National Labor Relations Act? Sure. But we have to understand that compromises have to be made and that compromises are reflected in this act.

Fourth, we cannot support a blanket reverification of an existing workforce. One doesn't have to be a genius to think about the burdens and obligations that would accrue to, say, an IBM that had to reverify its 10,000 workers, et cetera. And in reality, because we have such high turnover in this day and age, essentially, the workforce often will recycle through anyway through a new E-Verify system.

Fifth, we also need to have sorts of safe harbors, which are reflected in the act. I do want to mention that the act does protect the contractor and subcontractor relationship. And, Chairman Gowdy, in a time when the National Labor Relations Board is revisiting the whole area of joint employer liability, we are pleased that the act in front of the Committee today isolates contract and subcontractor liability from each other.

Lastly, I want to close with saying that I think the 800-pound gorilla in the room here is what we do about agriculture industry. I know everyone on the dais is attuned to this. But surely, I think before an E-Verify bill goes to the floor, you all have to figure out what we do about the agriculture industry, whether it is a fix in the guestworker program or legalization, I am not smart enough to say. That, certainly, is in their world, but something has to be done in the area.

And with that, let me just say that we still remain committed to immigration reform in other areas, Mrs. Lee. And I am sure that will come up in the Q&A. The Legal Workforce Act is a key aspect, a key underpinning of other reforms. But, certainly, it is one important aspect of those reforms. Whether it proceeds to the floor jointly with other bills or separately, I am not here to say. But we are, certainly, committed to other parts of immigration reform.

Thank you.

[The prepared statement of Mr. Johnson follows:]



Statement of the U.S. Chamber of Commerce

ON: "THE LEGAL WORKFORCE ACT"

TO: HOUSE SUBCOMMITTEE ON IMMIGRATION AND BORDER
SECURITY OF THE COMMITTEE ON THE JUDICIARY

BY: RANDEL K. JOHNSON
SENIOR VICE PRESIDENT, LABOR, IMMIGRATION AND
EMPLOYEE BENEFITS

DATE: FEBRUARY 4, 2015

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

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Testimony before
House Subcommittee on Immigration and Border Security
United States House of Representatives Committee on the Judiciary
Wednesday, February 4, 2015

Hearing on
The Legal Workforce Act

Statement of
Randel K. Johnson
Senior Vice President for Labor, Immigration and Employee Benefits
U.S. Chamber of Commerce

Good afternoon, Chairman Gowdy, Ranking Member Lofgren, and distinguished members of the Subcommittee. Thank you for inviting the U.S. Chamber of Commerce to testify on the subject of E-Verify and the nation's employment verification system, a key component of immigration reform. My name is Randy Johnson, and I am the Chamber's Senior Vice President for Labor, Immigration, and Employee Benefits policy.

The Chamber has been asked to testify before House Subcommittees concerning the expansion of E-Verify on at least six prior occasions. During the period 2006 to 2009 we testified five times and on each occasion, the Chamber, while supporting broad reforms to our legal immigration system, expressed opposition to the mandatory expansion of E-Verify without extensive improvements to the workability and reliability of what we saw as a burdensome system. Today, however, as with our testimony in the last Congress, after extensive input from our members, the U.S. Chamber supports mandatory E-Verify and the Legal Workforce Act. The primary purpose of my testimony today is to further explain why and under what conditions.

A mandatory employment verification system must be feasible for employers of all sizes, in all industries, and across business models and geographies. The Legal Workforce Act creates a legal and administrative framework that meets these goals, recognizing the realities of the workplace.

WHY DOES THE CHAMBER SUPPORT E-VERIFY?

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region in the United States. There are currently about 5.7 million active business firms across the country.¹ Of these, about 1% employ more than 10,000 employees, and these employers account for more than 27% of the American workforce.² On the other hand, about 60% of all businesses in America employ less than five workers, accounting for just 5% of employed persons in our economy.³ In total, about 98% of all

¹ U.S. Economic Census.

² Id.

³ Id.

U.S. businesses employ less than 100 staff, comprising nearly 50% of the workforce.⁴ The Chamber takes seriously its responsibility to represent the interests of both large and small employers. The Chamber can only support an E-Verify mandate that addresses the concerns of both large and small employers.

The U.S. Chamber created an E-Verify Task Force in January 2011 to assess the Chamber's position on whether or how E-Verify should be expanded. What we learned from our members was that the E-Verify system is greatly improved and, while not perfect, could be workable with continued technical improvements accompanied by specific, important legislative changes.

A. In particular, we learned the following in our assessment of E-Verify with our members:

Preemption

The patchwork of state laws and policies that relate to employment verification and E-Verify is a hindrance to the business community, which always places a premium on the certainty of governing rules. This concern was not only from large multistate employers but also expressed by small employers in part because many small employers do business in more than one jurisdiction. In fact, the number one concern expressed by Chamber members regarding expansion of E-Verify was to ensure there was a uniform national policy. As part of the Task Force conversations in 2011, the Chamber reviewed state laws relating to employment verification and E-Verify and found at that time: 14 states mandated the use of E-Verify for private employers, 2 states made E-Verify optional, 21 states required E-Verify be used by state government contractors, 4 states imposed separate obligations on independent contractors, 13 states imposed sanctions relating to the employment verification obligation, and 11 states had business licensing sanctions.⁵

Reverification

Chamber members were adamant that any expansion of E-Verify could not require running E-Verify queries on each employer's current workforce – since each E-Verify query requires updated I-9 data from the employee. In addition to being burdensome, such “reverification” seems unnecessary since employers have already gone through a process required under law (Form I-9) to verify employment authorization, and such reverification presents particular burdens for federal contractors, who have already completed a process under the Federal Acquisition Regulation relating to some but not all current workers. Reverification of the 147 million Americans currently working would be a stumbling block to every employer in America, with the possible exception of those that rely on short term staffing arrangements.

Reverification of the current workforce will largely be unnecessary in any event because over time most workers will be verified in E-Verify at some point as new hires. There are approximately 60 million new hires annually in the U.S. economy and while that does not capture all workers, and many of the new hires annually are the same workers turning over to new jobs, there is a relatively small percentage of workers that ultimately won't be verified

⁴ Id.

⁵ For current and updated information about state action regarding E-Verify, the National Conference of State Legislators <http://www.ncsl.org/issues-research/immig/state-laws-related-to-immigration-and-immigrants.aspx> follows the issue closely.

through E-Verify after several years. In other words, the work authorization of a large majority of the workforce would be checked through E-Verify over a matter of time.

Safe Harbors

Much of the conversation of our members in assessing E-Verify related to the need for safe harbors. It was and remains very important to our members that businesses using subcontractors are not liable for their subcontractors, as under current law, unless the employer knew about the subcontractors' actions. Employers were also concerned about the creation of any new private rights of action, which our members strongly oppose. Some of our members reported that they have avoided E-Verify because they did not see any added protections against enforcement, even when the employer has policies and practices in place to avoid knowingly hiring an unauthorized alien. Many believed that it would also be ideal for there to be recognition of business disruption avoidance during the transition period to a new mandatory E-Verify system. All agreed that for employers using E-Verify, there should be a good faith standard to establish employment verification compliance, with the burden of proof shifting to the government. It was a top priority of our members to exempt any employer using E-Verify in good faith from liability, civil or criminal.

Integrating I-9 With E-Verify

Importantly, almost all Task Force members spoke about the value in eliminating the I-9 employment verification form as a separate requirement, and suggested that there be one, single employer obligation regarding employment eligibility verification.⁶ The key component of the I-9 process is the employer attestation that an employer representative has reviewed original identity and work authorization document(s); this is the attestation that should be integrated into E-Verify. Presently, employers who use E-Verify have to separately complete the I-9 form and then transfer data from the I-9 into E-Verify. Congress would have to amend the governing statute in order to integrate the I-9 into E-Verify. Significantly, in order to accommodate all sizes and types of employers, E-Verify would need to be provided in a fully electronic version, integrating the I-9, and also be available by phone for small employers who don't have separate human resources functions and for those employers making hires remotely. Ensuring the ability to run E-Verify queries after an offer and acceptance of employment but before the first day of work was also mentioned by Task Force members. Many Task Force members sought amplification on the timing of E-Verify queries, to ensure clarity that the entire employment verification process could be completed prior to the first day of work.

Phase-in

Our Task Force discussed various options for rolling out an expansion of E-Verify across the country, and the key area of agreement is that there should be a phased process over several years so that not all employers begin using the program at the same time. Critical infrastructure, carefully defined, should go first, and small businesses last.

Agriculture

Because of the exceptional combination of impact to and importance of food security concerns and our nation's food distribution system, it is of central importance that agriculture employers

⁶ Interestingly, this position mirrored a finding from the December 2010 Westat study on why employers do not use E-Verify, "The Practices and Opinions of Employers who do Not Participate in E-Verify," where 77% of respondents not using E-Verify said using E-Verify would be beneficial if the I-9 was eliminated.

including the dairy industry have meaningful access to a workable program to sponsor lawful workers before being subject to E-Verify.

B. The Chamber's ongoing assessment of E-Verify suggests that USCIS is continuing to make significant improvements to E-Verify:

E-Verify Errors

There have been many technological and process improvements to E-Verify in the last few years. The often-repeated 12 percent rate of E-Verify errors⁷ – relating to tentative non-confirmations issued to authorized workers – is a thing of the past. The current E-Verify error rate is .3 percent (.003 of E-Verify queries).⁸ Moreover, it can be expected that erroneous non-confirmations will continually be reduced if E-Verify were implemented in the coming years for new hires across the economy, as U.S. workers correct discrepancies in various queried databases and employers use a new system that integrates an electronic I-9 into E-Verify.⁹

It is cumbersome for both employers and employees when authorized workers have to take time to correct their records with government agencies. Continuing to improve accuracy with regard to authorized workers is thus a high priority for all. U.S. Citizenship and Immigration Services (hereafter USCIS) has been, and is, using technology to do just that – continue to improve accuracy. Most significantly, USCIS is taking steps to reduce name mismatches, including those for the most impacted demographic: naturalized Americans.¹⁰ Such name mismatches have been reduced by about 30 percent.¹¹

Costs

⁷ Intel famously experienced tentative non confirmation rates in excess of 12 percent, even though all these non confirmations were eventually cleared. See Intel's April 2008 comments as part of the FAR rulemaking to impose I-Verify on federal government contractors <http://www.weareoneamerica.org/sites/weareoneamerica.org/files/intel-ltr-re-e-verify.pdf>. This high rate of error is consistent with the December 2009 Westat study, which reported on data that was 18 months old, also highlighted the Intel example. It turned out that Intel had such a high rate of tentative non confirmations because I-Verify did not link to SEVIS (the Student and Exchange Visitor Information System) which is the easiest and fastest way to verify data for foreign students and exchange visitors, and Intel has an extensive training and internship program which includes foreign students and exchange visitors. Once E-Verify was linked with SEVIS, this problem virtually disappeared. "Findings of the E-Verify Program Evaluation," was based on a review of April to June 2008 data. http://www.uscis.gov/sites/default/files/USCIS/I-Verify/I-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.

⁸ July 2013 Westat report (dated July 2012 but publicly released 2013), "Evaluation of the Accuracy of E-Verify Findings" <http://1.usa.gov/11h66h3>. The .3 percent error rate is sometimes criticized and cited for cause for alarm but is considered by others an acceptable accuracy rate. In this regard, it should be emphasized that in the Senate Judiciary Committee mark up of S. 744 in May 2013, Democrats put forward several amendments identifying the need to add further protection for workers only where E-Verify reported tentative non confirmations for authorized workers in excess of 0.3 percent.

⁹ Use of an electronic I-9 would reduce errors (such as that integrated into I-Verify under the Legal Workforce Act). See, Westat report released July 2013 at p. 74.

¹⁰ While most tentative non confirmations are issued to unauthorized workers, the name mismatch issue has a distinct impact on naturalized U.S. citizens (who are obviously authorized workers), since they are particularly likely to have non-Anglicized names that can lead to inconsistent records in government databases. To begin to address this concern, USCIS linked the E-Verify query system to the Department of State's Passport Agency so that any American citizen with a passport can be verified even if there are name mismatches in other government records.

¹¹ Testimony of U.S. Citizenship and Immigration Services before the House Immigration Subcommittee, February 27, 2013 <http://judiciary.house.gov/files/hearings/113th/02272013/Correct%2002272013.pdf> at p.2.

Some have claimed that expanding E-Verify nationwide would cost in excess of \$2.7 billion, most of which would be costs borne by small businesses,¹² but at the U.S. Chamber our in-house regulatory impact economist has advised that economic commonsense suggests otherwise. The extrapolation of costs to all employers appears to be based solely on the cost information in the 2008 Westat data.¹³ This information is dated, however, and average costs would be expected to decline as the system improved and provided employers certainty, as a result of technical improvements to E-Verify coupled with other statutory improvements such as those provided in the Legal Workforce Act – like providing a safe harbor and a streamlined process (integrating I-9 with E-Verify). Significantly, the 2008 Westat study reveals that 76% of responding employers stated that the cost of using E-Verify was zero (\$0).¹⁴ Extrapolating to the full economy the costs that 24% of respondents identified has limited value, when the information from 76% of the respondents is not accounted for. Lastly, the \$2.7 billion estimate incorrectly applies data from the Bureau of Labor Statistics' Job Opening and Labor Turnover Survey (JOLTS) to calculate the expected annual number of new hires, leading to overstatement of costs. It has been variously estimated by economists that JOLTS amplifies hire numbers by at least 25% because it includes internal promotions and transfers between establishments that are part of the same employing business.

Notably, to the extent we have heard cost concerns from our members it has largely been related to opposition to a reverification obligation.

E-Verify Worker Protections

Some insist that a new bureaucracy needs to be established to provide workers with sufficient protection from losing their jobs “due to a government error.”¹⁵ However, such protections are already being established at the agency level. In September 2013, USCIS revised the notification process so that each employer must provide a new, clearer Further Action Notice (FAN) to employees providing an improved explanation so that employees understand that they must take action to correct their records if there is a tentative non confirmation. In July 2013, USCIS started providing FANs directly to workers who provide their email when completing the Form I-9. Moreover, USCIS now has a Monitoring and Compliance division within E-Verify that reviews if employers print out the FAN, and employers identified as not providing such notice are reported by USCIS to the Justice Department's Office of Special Counsel for investigation for possible unfair immigration-related employment practices. Thus, there are effective checks on employers to ensure they satisfy their obligations.

While USCIS continues to work to establish a formal review process regarding final non confirmations, it nevertheless continues to utilize an informal agency review process now. Any employee or employer may challenge a final non confirmation. No legal filing is required, and no deadline is imposed.¹⁶ USCIS will consider a request at any time, and there is no legal

¹² Bloomberg Government, Jason Arvelo, “Assessing E-Verify Costs for Employers and Taxpayers,” (January 2011 Brief) and “Free E-Verify Hits Small Business Hardest” (January 27, 2011 article).

¹³ The December 2009 Westat study evaluating E-Verify, “Findings of the E-Verify Program Evaluation,” was based on a review of April to June 2008 data. http://www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf

¹⁴ *Id.* at p. 184.

¹⁵ Incorrect tentative non confirmations issued to authorized workers are usually a result of a discrepancy in that individual's records in government databases that is not the fault or error of the government.

¹⁶ S. 744 imposed a 10 day deadline and required a filing before a judge, in a legal proceeding.

proceeding or formal filing required of the employee or requesting employer. The agency generally resolves these reviews and overturns the final non confirmation of authorized workers within 48 hours.

CONCLUSION

In the past, the U.S. Chamber has opposed the expansion of E-Verify. However, in light of improvements in E-Verify, its use by federal contractors, and the focus on a more reliable employment verification system as a necessity, as well as a logical prerequisite to further immigration reform, the U.S. Chamber reassessed its position. Consulting with our members as to whether or how E-Verify should be expanded, we have concluded that the time has come to establish a uniform policy regarding employment verification and the use of E-Verify.

In order for the use of an electronic verification system like E-Verify to be a national mandate as the way that employers comply with the employment authorization mandate initially established in 1986,¹⁷ the electronic verification system must be realistically usable by, and address the concerns of, both large and small employers. Operational issues that must be tackled include (i) developing identity verification and authentication methodologies and (ii) allowing remote hires that either occur in remote geographies or occur outside of an office setting, both of which are challenges that face employers of all sizes. Moreover, if we accept that there will be stiff penalties for an employer's failure to complete the electronic employment verification process, we insist that process (i) reflect one, single national policy – and uniform enforcement standards, (ii) establish strong safe harbors for compliant employers, (iii) provide an integrated, single employment verification system, and (iv) include no mandatory reverification requirement for current staff.

Thus, if Congress wants to mandate E-Verify in order to help turn off the jobs magnet for unauthorized workers, it is vital Congress make E-Verify work for employers. The Chamber conditions support of E-Verify expansion and the Legal Workforce Act upon making the system workable for the businesses obligated to verify employment authorization of hires. If the electronic employment verification system is mandated for universal use but is not eminently practicable, it will not serve our national interest and no reasonably anticipated amount of enforcement could ensure otherwise.

In sum, the U.S. Chamber supports the Legal Workforce Act because it creates a workable employment verification framework. We welcome the opportunity to continue to work with you on these issues, and consider targeted adjustments which might be necessary as well as other important aspects of immigration reform, as this legislation moves forward.

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

¹⁷ The Immigration Reform and Control Act (IRCA) signed into law November 6, 1986 required for the first time that all employers be required to complete an employment verification process (currently represented in completion of Form I-9) and be barred, as a separate obligation, from hiring or continuing to employ any worker knowing that the individual is not authorized to work. See 274A of the INA.

Mr. GOWDY. Thank you, Mr. Johnson.
Ms. Blitstein?

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

Ms. BLITSTEIN. Chairman Gowdy, honorable Members of the Subcommittee, thank you for the opportunity to appear before you today to express support for the Legal Workforce Act. I am the international employment manager at North Carolina State University. N.C. State is an active member of the College and University Professional Association for Human Resources.

CUPA-HR represents more than 1,900 educational institutions, 44 percent of which are public. And I am speaking to you today on behalf of CUPA-HR.

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 for the university system.

I have responsibility for N.C. State's I-9 and E-Verify processes. With more than 8,000 regular employees and almost 8,000 more students and temporary workers, including foreign nationals, our use of the I-9 and E-Verify process is constant.

I will speak to you today as someone who has experienced the favorable effects of this program, as well as someone who can offer a few informed suggestions as to its implementation.

CUPA-HR supports the majority of positions within the act as being positive both for employers and employees, including the reduction in the number of acceptable documents to prove identity and employment authorization. Many documents on the current list are confusing or rarely used, so streamlining them will add much needed clarity to the process, facilitating faster and easier compliance for everyone involved.

Additionally, CUPA-HR strongly supports the recognition of a good faith defense based on compliance with the processes of the act. As an example, N.C. State has relied on E-Verify final nonconfirmations to justify the termination of employment of some of our employees.

CUPA-HR especially supports the act's clear preemption of State and local law on unemployment verification. Having a single national verification process is extremely important not only from a national policy perspective but also from a practical standpoint for an employer with employees across the U.S.

As a collaborative research institution, N.C. State has employees in over 40 States. The current patchwork of policies and laws around the country make it incredibly difficult for employers like us to know and comply with each jurisdiction's rules regarding employment eligibility verification.

N.C. State never experienced the worst-case scenarios that circulated several years ago regarding fears of excessive final nonconfirmation results. And in the 8 years that we have used E-Verify, we have received almost instantaneous employment verification results for the majority of our employees. We believe the employment verification process works as intended.

That said, based on direct experience, we do have a few suggestions regarding the current act. It would require that within 6 months after enactment, all Federal, State and local government employers verify employment eligibility for any employees not already in the E-Verify system. Having verified the entire workforce at N.C. State University, I can tell you with confidence that that is not a realistic timeframe in which to achieve full compliance for large employers.

Based on an amended executive order in 2009, N.C. State was required to either verify employees constantly as they came and went on certain Federal contracts or to verify all employees. We quickly realized that our best option was to verify our entire workforce, meaning every active employee hired before January 1, 2007. We had to enter data from approximately 12,000 I-9 forms into E-Verify within 6 months to achieve compliance, and it took us 7 months to accomplish that goal.

The time and effort required was significant. And since then, we have invested in an electronic system to help manage our process.

CUPA-HR would encourage consideration of a 24-month phased rollout compliance timeframe, particularly for the largest public employers.

CUPA-HR would also like to recommend that the timeframe for verifying foreign national employees who have applied for a Social Security account number be extended beyond the proposed 3 days after the actual receipt of their new number. As an employer with approximately 1,000 foreign national workers and employees every year, it is impossible for N.C. State as the employer to know exactly when a new employee receives his or her new number. Consequently, we have no realistic way to know when this 3-day requirement to finish E-Verify would begin or end.

Lastly, CUPA-HR also suggests that the verification process, which is currently 3 business days after the hire date, be extended to at least 5 business days after the hire date. Any large employer can tell you that performing the required identity and employment authorization verification check within the 3 business days is incredibly labor-intensive. Despite best efforts, meeting this deadline is a constant source of frustration even for those employers most committed to compliance.

In closing, the Legal Workforce Act as a balanced approach to creating a more secure and flexible employment verification system. CUPA-HR respectfully encourages the Committee to consider the suggestions we have offered today, and we are grateful for your time and attention. And I personally thank you for this opportunity to testify.

[The prepared statement of Ms. Blitstein follows:]

TESTIMONY
OF
JILL G. BLITSTEIN
ON BEHALF OF
THE COLLEGE AND UNIVERSITY PROFESSIONAL
ASSOCIATION FOR HUMAN RESOURCES
FEBRUARY 4, 2015
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 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.

Our members are CUPA-HR. We are more than 18,000 human resources professionals and other campus leaders at over 1,900 member organizations, including 91 percent of all United States doctoral institutions, 77 percent of all master's institutions, 57 percent of all bachelor's institutions, and 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 eight years we've been managing this process, we have experienced less than 10 cases in which a new hire could not present valid documentation or be cleared through the E-Verify process. So, although it is a very labor-intensive process with an unknown deterrent effect, we believe it generally 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, are 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 government employers with 50,000 or 100,000 existing employees -- or, for my colleagues in other resource-strapped public 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 of 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.

CUPA-HR would also like to recommend that the timeframe for verifying foreign national employees who have applied for a social security account number be extended beyond the proposed three days after actual receipt of the new number by the employee. As an employer with approximately one thousand new foreign national student workers and employees every year, I can tell you that it is realistically impossible for us, as the employer, to know exactly when a new employee has received his or her social security account number from the Social Security Administration. Since that Administration does not notify us when it has issued a new number to one of our employees, and since we would not know how long it might take our employee to receive that new number in the mail, it would be practically impossible for us to know exactly when this three day requirement to finish the E-Verify process would begin. Even with our most fervent exhortations to the new employees to come see us immediately after receiving the new number, our real world past experience indicates that it will rarely, if ever, happen in the proposed new timeframe.

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 after 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 after 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. At NC State, our spring semester just started last month, and the number of foreign national student employment expiration dates that will pop up in our electronic I-9 and E-Verify system for the end of May will be in the hundreds, which is true at the end of every academic year. A requirement to reverify "during" the three days after the expiration date of employment authorization for our foreign national employees 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.

CUPA-HR would like to note that the biggest obstacle to full compliance with the employment eligibility verification process is the very short timeframe in which it must be accomplished. We suggest that the verification period defined in Section 2 of the Act, which is currently three days after the date of hire, be extended to at least five business days after the hire date. Any large employer, whether public or private, can tell you that performing the required identity and employment authorization verification check within the three days after the hire date is incredibly labor-intensive and difficult to do in the real world, especially if employees are located in dozens of states. Despite best efforts, and regardless of whether the employer has a centralized or decentralized employment verification process, meeting the "three day" compliance deadline is a constant pressure and never-ending challenge, even for those of us who are committed to compliance and who provide continual training and support to our employees responsible for this process across our institution.

Although we have provided some suggestions for possible modifications to the Act, overall CUPA-HR supports this bill and the many positive changes that it would make to the current employment verification process. As briefly mentioned above, we support the reduction in the number of documents acceptable to prove identity and employment authorization. Many documents on the current government list are confusing or rarely used, so streamlining the numbers and types of documents allowed will add some much needed clarity and brevity to this

process, facilitating a faster and hopefully easier completion for both the employee and the employer.

Additionally, we strongly support the recognition of good faith defense based on compliance with the processes dictated by this Act; and we especially support the Act's clear preemption of any state or local law, ordinance, policy or rule on employment verification. Having a single national process for verification is extremely important not only from a national policy perspective, but also from a logistical and practical standpoint for any employer that has employees located in more than one state.

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. Thank you, Ms. Blitstein.

Mr. Amador, I want to congratulate you on that beautiful tie you have on with the seal from the State of South Carolina. It did not go unnoticed. I will direct no questions toward you today, but you are recognized for 5 minutes.

TESTIMONY OF ANGELO I. AMADOR, ESQ., SENIOR VICE PRESIDENT & REGULATORY COUNSEL, NATIONAL RESTAURANT ASSOCIATION

Mr. AMADOR. I knew I wore it for good reason.

Good morning, Chairman Gowdy, Congressman Conyers, and distinguished Members of the Subcommittee. Special greetings to our Congressmen Pierluisi, who actually broke me into doing policy here in Washington, D.C. I am always glad to see you here.

Thank you for allowing me the opportunity to represent the National Restaurant Association. My name is Angelo Amador, and I am the senior vice president and regulatory counsel for the National Restaurant Association.

The National Restaurant Association believes that the Legal Workforce Act is a thoughtful, balanced approach to implementing a major change related to workplace hiring for employers. We appreciate the bill's sponsors and the Subcommittee's efforts to think through the real-world implementation a universal E-Verify mandate.

Put in context, the mandate once implemented will be the final hurdle that every U.S. employer must clear for each and every hiring decision made in the United States. In our industry, with naturally high turnover rates and one that is so reliant on a robust workforce, the details of how the system is implemented is incredibly important.

While I touch on a number of other areas in my written statement, I would like to address four key areas of concern in the implementation of a mandatory E-Verify program. Before I go into those four, I will reiterate as well that we oppose reverification of the entire workforce, which is one of the reasons, not the only reason, that we supported the King amendment during the last Congress, the last markup, that allows reverification of certain workers for good cause.

But the four that I want to talk about today, the first one is Federal preemption. We believe that designing an employment authorization verification system is, without question, a Federal law role. Action by 50 different States and numerous local governments in passing a patchwork quilt of employment verification laws creates an untenable system for employers and prospective employees.

Under the Legal Workforce Act, States and localities are preempted from legislating different requirements or imposing additional penalties. However, they may enforce the Federal law and also revoke a business license for failure to participate in the program.

As the Chamber stated, we also would prefer a blanket preemption, but we understand the need to reach a balance.

Second safe harbor, full and fair enforcement of an improved E-Verify system should protect employers that act in good faith. Piling on fines and other penalties for even small paperwork errors,

punishing the people who are trying to do the right thing, 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. We strongly support this provision and believe that no employer who is using the system in good faith should be held liable by the government for relying on information provided by the government's database that turns out to be incorrect.

Likewise, we also strongly believe that employers should not be held liable by an employee or worker they chose not to hire as a result of faulty information provided by the government's database. Now we are not saying they should not have recourse, but the recourse should not be on the employer.

Third, early verification, we support the provision in the bill that allows verification when an offer of employment is extended and making that offer conditioned on final verification of identity and employment eligibility of the employee. Employers should be given authority to check work authorization when an offer of employment is made. In those cases where a temporary nonconfirmation is issued, it allows the employee to start working with the government as soon as possible to fix any discrepancies before they show up for the first day of work. After all, you can do all of the other background checks beforehand, as well.

Finally, employment laws, there are already existing laws governing wage requirements, pensions, health benefits, the interaction between employers and unions, safety and health requirements, hiring and firing practices, and discrimination status.

Verifying employment authorization, not expansion of a Christmas tree wish list of employment protections, should be the sole emphasis of an E-Verify mandate. That is one of the reasons we did not support the employment verification title in the Senate bill, and in the Q&A, I will be happy to address that in more detail.

The association is very encouraged by the Legal Workforce Act's emphasis on keeping it simple, a workable national E-Verify system.

In summary, it would be easy to ignore the real concerns of the business community with a national E-Verify mandate simply passing a law requiring its use. It is harder to pass a responsible E-Verify mandate that accommodates different needs of the close to 8 million employers in the U.S.

In the National Restaurant Association's opinion, 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 the practical, real-world working conditions.

Thank you again for this opportunity to share my testimony.

[The prepared statement of Mr. Amador follows:]



Statement
On behalf of the
National Restaurant Association

ON: THE LEGAL WORKFORCE ACT

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

BY: ANGELO I. AMADOR, ESQ.
SENIOR VICE PRESIDENT & REGULATORY COUNSEL

DATE: FEBRUARY 4, 2015

**Statement on: “The Legal Workforce Act”
By: Angelo I. Amador, Esq.
On Behalf of the National Restaurant Association
House Judiciary Committee
Subcommittee on Immigration and Border Security
2141 Rayburn House Office Building
February 4, 2015**

Good Morning Chairman Gowdy, Ranking Member Lofgren, and distinguished members of the Subcommittee. My name is Angelo Amador and I am the Senior Vice President & Regulatory Counsel 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. My comments are based on the version of the Legal Workforce Act amended and reported out of the House Judiciary Committee in the 113th Congress (H.R. 1772).

Our Association is the leading business representative for the restaurant and food service industry. The industry is comprised of one million restaurant and foodservice outlets employing 14 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 several years, the National Restaurant Association has provided input on the best ways to improve the E-Verify program. We believe that the Legal Workforce Act is a thoughtful, balanced approach to implementing a major change related to workplace hiring for employers of all sizes. To be sure, we do not take this attempt at change lightly. Employers in our industry, as in others, do not usually respond with eager excitement about the prospect of a new federal mandate in the workplace. So, we are especially appreciative of the bill sponsors’, and this subcommittee’s, efforts to think through the real-world implementation of a universal E-verify mandate.

As you already know, many of our members and their suppliers have been early adopters of the voluntary E-Verify program—in fact, some franchisors have been requiring the use of E-Verify by their operations since as early as 2006. The National Restaurant Association is also a user of E-Verify. Our members that use the program, and my own Department 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.

In April 2013, the National Restaurant Association released the results of a survey of about 800 members on the use and implementation of the current E-Verify system. What we found was broad support for the program, with members generally experiencing few problems signing up in the system and appreciating the ability to quickly ensure that their employees are authorized to work. Still, there is room for improvements to the system that we believe are important for the successful implementation of a nationwide E-Verify mandate that encompasses all U.S. employers. I will discuss more details of this survey in a moment.

For businesses across the country, particularly small businesses who make up so much of our industry, it is imperative that any mandated E-Verify program be fair, efficient, workable, 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.

In context, the mandate—once implemented—will be the final hurdle that every employer must clear for each and every hiring decision made in the United States. For our members, in an industry with naturally high turnover rates, whose businesses are so reliant on their workforce—and their workforce's ability to provide guests with a pleasing experience—this system's day-to-day success is vital. This makes the structure and details of the system extremely important to our members.

To be clear, the Association believes that designing an employment authorization verification system is unequivocally a federal role. Actions by 50 different states and numerous local governments in passing a patchwork quilt of employment verification laws create an untenable system for employers and their prospective employees. Our members, be they large restaurant chains, or regional chains, or even small restaurants with a couple of locations on different sides of a state line, should not be asked to try to keep up with any number of differing—potentially conflicting—regulations, all covering the same workplace transaction.

E-VERIFY SURVEY RESULTS

Before I move into a discussion of some of the key considerations in a nationwide E-Verify mandate, I want to take a moment to provide some more detail on the survey we conducted, which includes first-hand accounts on why employers use or do not use the program. Respondents of our survey included restaurant owners and operators, non-restaurant foodservice operators and supply chain professionals.

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. We believe those numbers are higher now.

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.

FUTURE IMPLEMENTATION OF E-VERIFY

Below, I would like to outline some improvements that we believe the federal E-Verify program should include in order to gain broad support within our industry, and compare those potential improvements to the version of the Legal Workforce Act reported out of the Judiciary Committee during the last Congress.

There Should Be One Law of the Land

The current federal employment verification system is clearly in need of an overhaul. Most employers in our industry recognize that the I-9 system put in the place in 1986 is not adequate to meet the demands of employment verification in our more modernized time. In the current system, employers are boxed in by federal regulations that, on one side, require them to conduct the I-9 process on every person they hire and, on the other side, limit their ability to question the validity of authorization and identity documents used during that process.

The I-9 system's inability to truly recognize work authorization has led to frustration not only for employers, but also for American workers and state and local governments. Out of this frustration, and the frustration caused by the federal government's inability to move forward on the issue, many states and localities have responded 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. We strongly believe that it is unfair, and a recipe for confusion and conflict, to ask employers in any industry to attempt to comply with a number of differing regulations covering the same workplace transaction.

Under the Legal Workforce Act, as proposed, 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 and we believe this balance would be workable on the ground in our members' restaurants.

Special Considerations for Small Businesses Must Be Made

In our industry, we frequently find that smaller employers do not have consistent, universal access to high speed internet connections, that many restaurant owners from previous generations have little familiarity with online reporting systems, and are less likely to have in-house Human Resources or Legal staff. In fact, in our industry, management does not typically work at a desk or behind a computer all day. Looking beyond the smaller restaurant owners,

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.

I think for those inside the Beltway, where we see eight year olds in the Air and Space Museum with i-Phones, it is often hard to believe that a technology gap exists in our country. Or that all business owners are not automatically up to speed on HR and hiring regulations, but I can attest as someone who spends a great deal of time meeting with our members in many states, that not all U.S. employers are equally as savvy about high speed internet and online reporting systems, and detailed regulatory requirements.

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 already overregulated and piling on fines and other penalties for even small paperwork errors, punishing the people who are trying to do the right thing, 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.

We strongly support this provision and believe that no employer who is using the system in good faith should be held liable by the government, if they relied on information or approval provided by the government's database that turned out to be incorrect. Likewise, we also strongly believe that employers should not be held liable by an employee, or a worker they chose not to hire as a result of information provided by the government database that later was shown to be incorrect.

Under the Legal Workforce Act, as we understand it, employers would be given at least 30 days to rectify errors. 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. As you can imagine, employers believe that in the interest of fundamental fairness and fair competition, the government should treat employers equally in these regulatory areas. However, we also clearly recognize that small businesses may need more time to adapt. Thus, we are encouraged by the Legal Workforce Act's tiered approach for rolling out E-Verify, starting with employers who have 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 a million enrolled employers to over six million in just a few years. As I stated earlier, because this system is a last hurdle in finalizing every hiring decision in the United States, and due to our industry's naturally high turnover rate, having an E-Verify system that is overwhelmed trying to clear temporary nonconfirmations, or finalize decisions, could have a significant impact on our members' abilities to run their operations.

Verification of Potential Hires

We also believe that there is a good tool that employers should be allowed to use, which is currently unavailable under the E-Verify framework. Today, employers are not allowed to pre-verify a worker, prior to finalizing the 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.

This can create significant problems for our members as they go through the process of putting a new employee into training, and getting them integrated into the system, only to find out that they did not clear E-Verify. Employers should be allowed to check E-Verify at the same time they are doing background checks, checking references, and going through other pre-hire processes.

Employers should be given authority to check work authorization status as early as possible. In cases where a temporary nonconfirmation is issued, it will allow the employee to start working with the government as soon as possible 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 that the employer cannot suspend the employee or even limit the hours or the training for the employee. Someone must also 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. In an industry such as ours, the workforce is ultimately "reverified" in short order because the workers have moved around to different positions with different restaurants.

One of the Association's foremost concerns is ensuring 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. During the 113th Congress, we opposed the original language in H.R. 1772 that required reverification of the entire workforce, if even one individual was reverified for good cause. Instead, we support the language reported out of the Judiciary Committee that allows employers to reverify all individuals employed at the same geographic location or all individuals employed within the same job category, at the employer's discretion, for good cause. This new law should not create additional potential liability for a well-meaning employer trying to make sure that his workforce is legally authorized to work.

Role of Biometric Documents in E-Verify

One of the main flaws in the current E-Verify system is the uncomplicated and elementary 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 due to 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 allowing for work towards the development of a voluntary biometric program available to employers. In addition, with fewer acceptable work authorization documents, as is the case with H.R. 1772, the issue of identity theft is addressed, helping

employers be more confident that the documents being presented as part of the verification process are legitimate.

An E-Verify Check Needs to Have an End Date

The employer needs to be able to rely on the responses to inquiries made of 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.

Unfortunately, all too often mandatory E-Verify proposals create verification timelines that seemingly go on forever, forcing employers to wait—by some proposed timelines—potentially up to 6 months for the system to give them a final answer. And, during this time, employers cannot treat an employee in any way differently than a worker who is fully confirmed and on the payroll. This means that training, bonuses, work hours, and all other workplace considerations for a worker in “tentative status” must be the same as for other workers—even though you do not know if the worker is really, finally, approved.

Obviously, if a new worker is having a bureaucracy and paperwork issue that needs to get cleared up in the E-Verify system, they should have time to do so. However, for many employers, it would be extremely challenging to put a lot of resources and training into a worker for months, only to find out that their status was a final nonconfirmation.

Because of this timeline concern, 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. In no way do we defend knowing violators of the system. The current “knowing” legal liability standard, also found in the Legal Workforce Act, 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 and create a “gotcha” atmosphere that is likely to spend resources on going after employers who are trying to do the right thing, versus those who are intentionally evading and gaming the system.

We also strongly believe that 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.

In order for the E-Verify system to work nationwide, we believe that it needs to operate at least in part as a partner and tool for employers who are clearing their new employees through the system. Inflexible penalty structures that do not acknowledge good faith efforts by employers to utilize the system, and structures that make no effort to recognize the substantive difference between a high penalties levied on a small versus a large business would be counterproductive to this goal.

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. The 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. We strongly object to these costs being passed to the employers via fees on inquiries, or through other mechanisms.

In order for a nationwide and mandatory E-Verify system to truly work, it has to be efficient and accessible to all U.S. employers who are hiring. Charging fees for every inquiry in the system, and certainly the subsequent and inevitable increases in those fees, could be a contributing factor that encourages some employers to find ways around the system.

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 the official identity and authorization documents that were presented by each employee at hire in someone’s desk drawer increases the likelihood of identity theft. In this day and age, where identity theft is such a primary and important concern, we believe that requiring employers to keep copies of these documents has the potential to create more problems than solutions.

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 system 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 nationwide, mandatory 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 a Christmas tree wish list 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 governing 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, the labyrinth of 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, which often require an employer to accept onto the jobsite immediately any worker sent from the hiring hall. 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. Without this requirement, these venues become giant loopholes in the system that can perpetuate an illegal workforce.

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 permanently fixing our nation's broken immigration laws over the long haul, which needs to include legalization of a portion of the undocumented workforce and the development of a workable visa program for legal workers to enter the United States to work in the low-skilled sectors. Simply changing the E-Verify system will not be enough to fix an immigration system that has been collapsing for almost thirty years.

At the National Restaurant Association, we cannot 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.

Predictions about workforce and demographic shifts tell us that the United States 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. History also tells us that when no visa system exists to allow workers to enter legally, workers will come into the U.S. illegally. One of the key ways we can begin to address that issue is to develop a workable and reasonable visa system to accommodate those who want to enter the United States legally to work, and who have chosen to wait their turn outside of the U.S. to do so.

SUMMARY

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.

Mr. GOWDY. Thank you, Mr. Amador.
Mr. Conner?

**TESTIMONY OF CHARLES F. CONNER, PRESIDENT AND CEO,
NATIONAL COUNCIL OF FARMER COOPERATIVES**

Mr. CONNER. Chairman Gowdy, Congressman Conyers, and Members of the Subcommittee, thank you for the invitation to testify today. I am Chuck Conner, president and CEO of the National Council of Farmer Cooperatives. I am also here on behalf of the Agriculture Workforce Coalition. The AWC brings together nearly 70 organizations representing the diverse needs of farmers and agricultural employees and serves as the unified voice for agriculture on immigration issues.

While labor situation in agriculture has been a concern for many years, Mr. Chairman, it has now reached a breaking point. Today, large segments of American agriculture face a critical lack of workers.

Specific to the topic at hand today, mandatory E-Verify, without addressing agriculture's broader labor crisis, would be devastating. As an industry, we recognize the need for interior enforcement. It just cannot be decoupled from addressing agriculture's workforce concerns.

Despite the employer's best efforts, many if not most of the agriculture workforce does not have proper paperwork authority. Based on the study conducted by the American Farm Bureau Federation in 2014, an enforcement-only approach would cause American agriculture output to fall by \$30 billion to \$60 billion. It would decrease fruit production by 30 percent to 61 percent and vegetable production by 15 percent to 31 percent. The livestock sector would also see losses of up to 27 percent.

American dairy farmers in particular would be impacted by an enforcement-only approach. For dairy farmers, their harvest comes twice a day, every single day. The dairy industry with year-round needs cannot use the current H-2A program as currently interpreted. Dairy farmers are left without any legal channel to find workers, if U.S. workers are simply not available or not interested.

Mr. Chairman, American agriculture's biggest challenge in the future is to increase our food output in order to meet the dramatic rise in food needs for a growing planet. A large decrease in our food production in the U.S. would have significant humanitarian consequences in the future.

For agriculture, the ideal approach to solving the labor problem would be to provide a solution for the experienced workforce and a redesigned guestworker program. This then could be followed by a phased-in E-Verify program.

Mr. Chairman, I doubt anyone on this Subcommittee would question the integrity of America's law-abiding farmers and ranchers. The vast, vast majority of American farmers fully comply with the law. But the paper-based system created by Congress in 1986 is vulnerable to use of false documents. Employers, including farmers, are not experts at spotting false documents. So long as a solution is in place to ensure access to a legal and stable workforce, farmers would welcome a system that is simple, efficient, effective, and certain.

Bills in recent years would have phased-in E-Verify with agriculture generally being last in line. These bills recognize agriculture's demographic challenges and its need for foreign labor.

This is a bold thing for us to suggest, Mr. Chairman, but if this Congress were to pass reform legislation that truly addresses agriculture's workforce challenges, the industry could pursue a phase-in of E-Verify sooner rather than later.

But in closing, let me just be very clear. The agriculture industry would be forced to oppose any E-Verify legislation that does not address the agriculture workforce crisis. E-Verify legislation without provisions to address the unique labor needs of agriculture will drive more of our farmers out of business and move more of our food production abroad, where there is, indeed, abundant labor. I have never encountered anyone, a Member of Congress or in the general public, who believes that would be a positive outcome, Mr. Chairman.

Thank you for the opportunity to testify today.

[The prepared statement of Mr. Conner follows:]



STATEMENT OF
CHARLES F. CONNER
ON BEHALF OF THE
NATIONAL COUNCIL OF FARMER COOPERATIVES
AND THE
AGRICULTURE WORKFORCE COALITION
TO THE
SUBCOMMITTEE ON IMMIGRATION & BORDER SECURITY
COMMITTEE ON JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

Chairman Gowdy, Ranking Member Lofgren, and members of the Subcommittee, thank you for the invitation to testify on H.R. 1772, *the Legal Workforce Act*.

I am Chuck Conner, President and Chief Executive Officer of the National Council of Farmer Cooperatives (NCFC). NCFC represents the interests of America's farmer cooperatives. There are nearly 3,000 farmer cooperatives across the United States whose members include a majority of our nation's more than 2 million farmers.

I am also here on behalf of the Agriculture Workforce Coalition (AWC). The AWC brings together nearly 70 organizations representing the diverse needs of agricultural employers across the country. AWC serves as the unified voice of agriculture in the effort to ensure that America's farmers, ranchers and growers have access to a stable and secure workforce. The AWC came together out of the realization that, while America's farms and ranches are among the most productive in the world, they are struggling to find enough workers to pick crops or care for animals. The great success story that is American agriculture is threatened by this situation, and the AWC has been working to develop an equitable, market-based solution to the problem.

While the labor situation in agriculture has been a concern for many years, it has now reached a breaking point. Today, large segments of American agriculture face a critical lack of workers, a shortage that makes our farms and ranches less competitive and that threatens the abundant, safe and affordable food supply American consumers enjoy.

As the House begins considering legislation to mend our broken immigration system, the AWC is particularly concerned with the impact any enforcement legislation might have on the current agriculture workforce. While the AWC recognizes the need for interior enforcement, a mechanism such as mandatory E-verify would have a devastating impact on our industry in the absence of a legislative solution for agriculture's labor needs. Immigration enforcement without a program flexible enough to address the labor needs of fruit, vegetable, dairy and nursery farms, and ranches, will result in many U.S. farmers and their farm employees losing their livelihoods and an overall decrease in U.S. agricultural production.

The effect would go far beyond the farm gate. If there is no one available to pick the crops or milk the cows, industry sectors that operate upstream and downstream of farm production and harvest will be adversely impacted as well. Studies have shown that each of the nearly two million hired farm employees, who work in labor intensive agriculture, supports 2 to 3 fulltime American jobs in the food processing, transportation, farm equipment, marketing, retail and other sectors. Mandatory E-Verify without workable labor solutions for agriculture puts these American jobs, and the economies of communities across the country, in jeopardy.

Despite the employers' best efforts, many if not most, of the agricultural workforce is in the United States without proper work authority. Based on a farm labor study conducted by the American Farm Bureau Federation (AFBF) in 2014, the impact of an enforcement-only approach to immigration that causes agriculture to lose access to its workforce would result in agricultural output falling by \$30 to \$60 billion.

Additionally, the AFBF study found an enforcement-only approach would result in a 30-61 percent decrease in domestic fruit production and a 15-31 percent decrease in domestic vegetable production. The livestock sector would also suffer lost production by as much as 27 percent.

The dairy industry in particular would be impacted by an enforcement-only approach. The dairy industry is very labor intensive—cows must be milked twice a day, 365 days a year, including Thanksgiving, Christmas, Easter and the Fourth of July. For dairy farmers, their harvest comes twice a day, every day. An adequate and skilled workforce is a must to help ensure the well-being, health and productivity of the cows. And while many others in agriculture can attempt to utilize the current but dysfunctional H-2A temporary and seasonal guest worker program, those with dairy and livestock operations cannot utilize this or any other program because of their year-round, rather than seasonal, need. Thus they are left without any legal channel to find workers if US workers are simply not available or not interested.

The AFBF study found the ideal approach to resolving the labor problem in agriculture would be to pair enforcement with an adjustment of status for the experienced workforce and a

redesigned guest worker program. This is why the AWC has called for legislative reform which includes both an adjustment for current experienced, unauthorized agricultural workers and a new market-based visa program that provides both portability and contractual opportunities to provide access to a legal workforce into the future.

While many suggest Americans should fill these jobs, we know from long experience that these are jobs that Americans, even during and after the worst of the recent economic downturn, simply will not do. Agricultural employers continually place advertisements regarding employment opportunities on their farms. Offered wages are often well above federal and state minimum wages, and higher than starting wages in some other entry level economic sectors. Typically, these help wanted ads go unanswered. And if people do respond, they generally are disenchanted with the job after only a few days. Although many of these jobs offer wages competitive with non-agricultural occupations, they are physically demanding, conducted in all seasons and are often seasonal or transitory. Because of the lack of US workers, many farms have come to rely on a foreign workforce.

Let us be very clear: the vast majority of America's farmers fully comply with the law at the time of hire. But the paper-based system created by Congress in 1986 for verifying identity and work authorization is vulnerable to the use of false documents. Employers, including farmers, are not experts in spotting false documents. Farmers would welcome a system that is simple, efficient, effective, and certain, so long as it is paired with a solution to ensure access to a legal and stable workforce.

The ramifications of a national E-Verify mandate without solutions to ensure reliable access to labor are very clear. We have ample experience from states such as Alabama and Georgia where there is not an available domestic labor force for our industry. One Florida citrus harvester found his workforce dried up after mere discussion of an E-Verify mandate in Florida. After the State's employment service was unable to help him, he turned to his local sheriff, who offered him inmates on work-release. Sixteen inmates made themselves available, but only 8 actually showed up at the farm; 2 finished the first week; none returned for the second week.

These jobs are not for the unskilled; farm work requires experience, stamina and dedication. As our society has grown older, better educated, and more urban, our native-born seek other jobs outside the agricultural sector. A farmer cannot survive and compete without a skilled and dedicated workforce.

An enforcement-only or enforcement without reforming our broader immigration system approach will have a devastating impact on rural economies across America and even more concerning, such an approach would create a national food security problem.

For nearly 20 years our industry has sought reforms to ensure a legal and stable labor solution. Broad bills in recent years would have phased in E-Verify, with agriculture generally being the last industry required to comply. There is no other industry with greater workforce demographic challenges and foreign labor reliance than agriculture. This is a bold thing to suggest, but if this Congress were to pass reform legislation that truly addresses agriculture's workforce challenges, the industry could pursue a phase-in of E-Verify sooner rather than later. Like the old adage goes, "you don't want to put the cart before the horse." In this instance, agricultural labor reform is the horse, E-Verify is the cart, in order for success to follow, the horse and the cart must be in the proper sequence.

Furthermore, the AWC recommends a phase-in approach to E-verify for agriculture due to agriculture's unique hiring circumstances. A rushed approach could hurt agriculture even with a fix for our current and future workforce. Agriculture's unique hiring situations require a thoughtful evaluation of the application of technology. Hiring often occurs in remote rural areas with limited internet access. Job offers are often made field side in crews, not with an individual application process and access to web based programs. Our workforce needs have very pronounced seasonal peaks and there is often high turnover. Few farms have the luxury of dedicated human resources staff. Such factors justify allowing additional time for the necessary technological adjustments to be made before the industry is required to comply with E-verify.

For these reasons, the agricultural industry would be forced to oppose any E-Verify legislation that does not also address the agricultural workforce crisis. Agriculture needs access to a stable and legal workforce to continue to produce the most abundant and affordable food in the world. Without a workforce, our nation's domestic food supply and up to several million on-farm and farm-dependent jobs in communities across America are in jeopardy.

In closing, it is imperative that the Committee not pass any E-Verify legislation unless it is coupled with a program that will provide agriculture with a reliable, legal workforce. The continued production of labor-intensive agricultural crops and products in the U.S., ranging from dairy and livestock to fruit and vegetables and tree nuts, cannot be accomplished without vitally important labor provided by skilled and experienced farm workers. E-Verify legislation without provisions to address the unique labor needs of agriculture will drive more of our farmers out of business and move more of our food production abroad where there is abundant labor.

Thank you again for holding this hearing, and we look forward to working with the Subcommittee and other members to ensure that the labor needs of agriculture both now and in the future are addressed. I look forward to responding to your questions.

Mr. GOWDY. Thank you, Mr. Conner.

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

Mr. GOODLATTE. Thank you, Mr. Chairman.

Let me direct my first question to Mr. Johnson with the Chamber. You mentioned in your statement, and I wonder if you would elaborate, in recent years, several States and localities have enacted their own E-Verify requirements. What is the concern of the business community if more and more States continue to enact their own requirements as opposed to the Federal Government enacting a nationwide requirement?

Mr. JOHNSON. It is one of practicality and human resource compliance, which is, it is obviously easier to administer and instruct your H.R. people if you have one standard to tell them they need to comply with. And if that is the Federal standard, that is the one they need to be taught toward, as distinguished from multiple standards across State lines.

Is it possible? Sure. Lots of things are possible. But it is extremely difficult.

Further, Congressman, it is not just a question of the law on the books as they are written, because if you have State and localities enforcing those different laws, that enforcement itself has a different patina on it, which then your compliance people and your companies have to be trained on. So it is an extremely complex area, and we think it is simply one that is unworkable.

I do note that, of course, the preemption language in Mr. Smith's bill does allow for some State enforcement with regard to when an employer is not using the Federal E-Verify system, so the language in there seems to strike a balance.

Mr. GOODLATTE. Enforcement but not having a separate method by which you verify. In other words, they can participate in enforcement but not set up their own—

Mr. JOHNSON. Right. Exactly. They cannot set up their own mechanism.

Mr. GOODLATTE. Let me ask Mr. Amador, you mentioned in your testimony concerns about some of the requirements in the Senate bill. The employment eligibility verification process set out in the Legal Workforce Act, Mr. Smith's bill, and the last Congress' Senate immigration reform bill were quite different. What are some of the problems with the Senate bill's employment eligibility verification process?

Mr. AMADOR. I think the Senate version, by the time it was done with amendments, it became something other than an employment verification system. It ended up becoming more like a labor law, employment law, and it created new causes of action, and created an awkward incentive for undocumented workers to either file grievances against employers or to be able to stay, once they were in proceedings, by filing claims. Before they even decided whether there were bogus claims or not, they would get a visa.

There were a number of other things in the bill. It made it easier to fine, discrimination provisions and labor provisions. It became another labor law as opposed to an employment verification bill.

Mr. GOODLATTE. Ms. Blitstein, do you agree that the Legal Workforce Act adequately restricts the number of documents that can be

used to prove identity and work authorization in order to help prevent fraud while at the same time allowing enough documents, understanding that not every person has every document?

Ms. BLITSTEIN. I do believe that the Legal Workforce Act does an adequate job of restricting those documents. As I mentioned, a lot of them are—I have been doing this for almost 17 years and some of them I have never seen. There is kind of a small percentage of documents that are seen 90 percent of the time. So I think having more clarity, having a more brief list would be very, very helpful and would help streamline the process for the employer and employee.

Mr. GOODLATTE. Thank you.

Mr. Amador, Mr. Conner expressed some concerns regarding the safe harbor provision. Can you discuss the current safe harbor provision in the Legal Workforce Act and how, as drafted, it is workable?

Mr. AMADOR. I must say, I guess you can take any language, and I have gotten calls from people who think they can make it stronger. My view is that I haven't seen stronger safe harbors in immigration law than the one that is currently in the bill. So could it be changed? I mean, everything can be changed. But the way I read it, and the way I continue to read it, I haven't found anything that is stronger. We support it, so we don't want that amended as it is right now. Thank you.

Mr. GOODLATTE. Got it.

And, Mr. Conner, you support employment verification. You want to see a legal temporary worker program for agriculture that would meet the needs of not just seasonal production but also processing plants and dairies that are year-round. And we have provisions in this bill, unlike current law and unlike the Senate bill and unlike other provisions that address more of those concerns than any that I have seen before, in terms of what I anticipate will follow.

I don't disagree with you that we are going to have to have a better system to determine who is lawfully here in the country and who is lawfully eligible to accept employment. When we do, it is going to create a problem in agriculture, and we need to be prepared to address that, so I, certainly, look forward to working with you on that.

And with that, Mr. Chairman, I yield back.

Mr. GOWDY. I thank the gentleman from Virginia.

The Chair will now recognize the Ranking Member from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Gowdy.

I want to put forward a proposition to you and have everyone give me their view. I think E-Verify is perfectly okay, but bringing in an electronic employment verification system to agriculture presents some unusual problems, and that until we begin to deal with those first, as Congresswoman Sheila Jackson Lee pointed out, it is how we go about doing this.

So I am in the position of being for the measure, if we can take care of some of the problems. It is a cart before the horse type situation. E-Verify is the cart, and we can't get there first.

So do you agree with me that there are some big problems? We talk about the immigration system being broken, et cetera, but do

you see some difficulties in the agricultural sector that could be a negative, that would not make E-Verify successful?

What do you think, Mr. Johnson?

Mr. JOHNSON. Yes, it is a conundrum. There is no question about it.

Mr. CONYERS. Right.

Mr. JOHNSON. I think the agricultural community or field is the poster child of this problem. It exists in other industries, but they clearly would be the most adversely affected with E-Verify being signed into law by the President. There is a lot of space between the lip and the cup here, and nothing else either right behind it or preceding it.

The order of how things proceed in the House is something you all will have to figure out and the Rules Committee. I should note that, just for the record, that while we supported the Senate bill, we never said the House should take up the Senate bill, by the way. We always thought the House should do its own thing and figure out how to do it. As a former House staffer, I would never support a Senate bill and say the House should just take up a Senate bill.

Mr. CONYERS. Of course not.

Mr. JOHNSON. And I told the Senate staff over there they were crazy.

But these things are linked, but so far, we are in a period of gridlock and not moving on anything, except perhaps border security. But even that got pulled from the floor.

Mr. CONYERS. Right.

Let me go to attorney Blitstein and see if she shares the view that it is the order that we proceed in that is critical and that could determine, in agriculture, the ultimate success of E-Verify.

Ms. BLITSTEIN. Representative Conyers, I would have to say that CUPA-HR is not very familiar with the particular issues as related to the agricultural industry. So we would have to put that under more consideration before we would be able to offer an opinion on that.

Mr. CONYERS. All right.

And, Mr. Amador, attorney Amador, you raised some of this question yourself in your commentary and in your written statement. Do you see the problem that I am presenting, and is it a fair one?

Mr. AMADOR. On agriculture, our board, when they decided our position, we were clear that we did not want any exemptions for restaurants. We did not touch on the issue of agriculture, and we think Mr. Conner is in a better position to talk about his industry.

Mr. CONYERS. Right.

Chuck Conner, you can finish up your observations on this point.

Mr. CONNER. Let me make two points, if I could, Mr. Conyers. I think you are right. Our problem with E-Verify is kind of twofold. The first is more fundamental, and that is we know we have a workforce that constitutes, as you have noted, 50 percent to 70 percent of our hired workforce in agriculture that is not here with proper paperwork. So to go to an e-verification system, as I have noted in my testimony, you would be removing large chunks of our workforce in place that is responsible for providing the food and

feed for America today. I do not think anybody wants that consequence.

The second one is more specific to agriculture, and that is just in terms of how you go forward with E-Verify. We do have the unique needs.

Just an anecdotal point and that is my wife and I both have farms in Indiana. Not the most remote part of the world, by any means, but when we go out there, sir, iPhones don't work. I am sorry, but they don't. And there are a lot more remote agricultural regions in the country that are dependent on this.

There are just a lot of structural issues that may sound good sitting here. But when you get out there in the field and you have peaches to harvest and the storm is coming and you have 12 hours to get them down, there are some practical—

Mr. CONYERS. In the real world, problems arise.

And I thank you very much. I thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman.

The Chair will now recognize the gentleman from the great State of Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

I want to thank the Vice-Chairman of the Subcommittee, Mr. Labrador, for letting me precede him with questions. Although coming third when talking about a specific bill usually means that a lot of your questions have already been asked, and Mr. Goodlatte did a good job of that a few minutes ago. I have a couple left.

Mr. Johnson, let me address my first question to you. That is, I know you all have polled your members. How do you respond to the occasional charge that I think is unsubstantiated that E-Verify is costly or burdensome? Have you found that to be the case?

Mr. JOHNSON. Well, as I said, the study that is quoted by some we had our economists go through, and it is amazing, Mr. Smith, the analysis is in my written testimony about how the people who put that study together actually carved out from their conclusions the employers who reported zero costs and they just calculated in the employers who reported costs. There is also a weird way that they hired people moving, so the so-called JOLTS study where they included people as new hires who were really promotions and promotions within a company.

But look, the bottom line, Mr. Smith, is, we have a great policy committee at the Chamber. I have 200 people on my labor committee. I have 60 or 70 on my immigration policy subcommittee. They are from all levels of the economy and companies. Those are the people I go out and ask. They are out there where the rubber meets the road, and they are saying we can handle this.

Mr. SMITH. Okay. Thank you, Mr. Johnson.

Mr. Amador, I know you have lots of members. I meet them on a regular basis. I am really appreciative of their support.

I should say I thank you all for your support of this legislation, and for your constructive criticism, Mr. Conner, as well. You have made some good suggestions.

Mr. Amador, do you find that your members find E-Verify to be accurate, and to what extent? According to your survey, do they find E-Verify to be accurate? And why do they like it?

Mr. AMADOR. Yes. We conducted a survey in 2012. We were able to crank the numbers by 2013. We introduced it as part of a statement for the record, back in April 2013. The vast majority of the people that were using it, 80 percent, said they would recommend it to others.

The ones that did not recommend it, they said that the issues were initially getting into claiming, but once they were using it, it was fine. Across all of the demographics, they said, actually 80 percent, that they had 100 percent accuracy.

We allowed for comments in the survey. Again, it was about 800. The one comment that they said was that we would rather know earlier whether the person is tentative nonconfirm, because when they show up to work and they come tentatively nonconfirm, at least in our industry what happens is they do not show up the next day when confronted with, hey, you need to go and—

Mr. SMITH. You actually anticipated my next question, which is what is the advantage of knowing prior to someone actually being hired, and having that E-Verify conducted ahead of time?

Mr. AMADOR. I think it is twofold. There is an advantage to the employee that they would not have to take time off from work to go to the Social Security Administration, or wherever they need to go to fix this problem. And it is an advantage to the employer, because if there is any problem with the employee that he is not work-authorized, if they are going to disappear, you rather that they disappear before they already have a shift and they already started working.

Mr. SMITH. Right. Okay. Thank you, Mr. Amador.

Mr. CONNER. I understood you to say, and I just want to make sure this the case, because it will be helpful, that you would support E-Verify if it was used in conjunction with a new guestworker program. Is that generally correct?

Mr. CONNER. That is half of the story, Mr. Smith. In addition to obviously needing a viable guestworker program, which we currently do not have with H2-A, we need a solution for our existing trained workforce that has been estimated to be about 1.2 million to 1.4 million people who are already working full time on our farms and ranches.

So our solution is twofold, a guestworker program, a solution for existing workforce. And with that, we are willing to talk to you, still acknowledging agriculture has some unique interests, as I have identified, in an E-Verify program. But we would be willing to try to resolve those.

Mr. SMITH. As you are aware, in the last Congress, this Committee did pass and approve a very robust guestworker program. So I was trying to see, and it sounds like while you may not be able to commit until you see the details and the language, and I understand that, but generally speaking, if there was a new guestworker program, you would understand why we would need to have E-Verify apply to it.

Mr. CONNER. Well, again, I do not want to downplay the importance of a guestworker program. We appreciate your effort to try to make that program workable. It is very unworkable, provides less than 7 percent of our labor population in agriculture right now.

But for us, again, we have trained people, in some cases, employees on our farms and ranches who have been there for a very, very long time, years, if not over 10 years.

Mr. SMITH. I understand all that.

Mr. CONNER. We have to keep those.

Mr. SMITH. Right.

Mr. CONNER. And under the current E-Verify plan, we would lose those workers.

Mr. SMITH. I see. So you are concerned about the ones who are working now. If we could address that, then that would clear the way for you.

Mr. CONNER. Those two points, yes.

Mr. SMITH. Thank you very much, Mr. Conner.

Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Texas.

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

Ms. JACKSON LEE. Mr. Conner, I don't know if we can piecemeal repair some aspects of what you have spoken about, but we all know that the agriculture industry is tantamount to a major contributor to the economy. But it is also the breadbasket of the United States, of course, but around the world. So we are concerned and very interested in making sure that we take the right pathway.

As you well know, although you have been discussed over the years, agricultural workers, special carveouts in legislation, you were quite well responded to in a comprehensive approach when we were talking about comprehensive immigration reform. Do you remember that?

Mr. CONNER. Yes.

Ms. JACKSON LEE. And you remember that those efforts were made quite strongly on your behalf?

Mr. CONNER. Yes.

Ms. JACKSON LEE. So I want to just ask the question of where we are today. Yesterday, we held our first hearing for the House Judiciary Committee in the 114th Congress. It was interesting to me that out of all people in the world, the majority asked two people from the Center for Immigration Studies to testify.

Earlier this week, a policy analyst from the same Center for Immigration Studies wrote an opinion piece in The Hill that characterizes people who employ undocumented workers as lawbreaking employers who want their illegal labor to get work permits.

I ask unanimous consent to enter that article into the record.

Mr. GOWDY. Without objection.

[The information referred to follows:]

2/4/2015

Dems to decide what's more important, amnesty or funding DHS | The Hill



February 03, 2015, 07:30 am

Dems to decide what's more important, amnesty or funding DHS

By Jon Feare, contributor

The Senate Democrats and President Obama are very troubled by the decision they may soon have to make. They have two options: (1) Fully fund the Department of Homeland Security (DHS) by passing a House appropriations bill that prohibits Obama's lawless amnesty, or (2) Declare that amnesty for illegal aliens is more important than national security and block the DHS funding bill from becoming law.

This is a choice that they really do not want to make.

The Senate Democrats demanded a bill without the amnesty-defunding provisions in a letter to Senate Majority Leader Mitch McConnell (R-Ky.), arguing that an "appropriations bill is not the place for this debate." They assert that they will not vote for the bill and that even if they did, Obama would veto it anyhow. The Democrats also cite the attacks in France, Australia and Canada, the threat of the Islamic State in Iraq and Syria (ISIS), and "the proliferation of foreign fighters that return home radicalized," effectively arguing that if they're forced to pick between amnesty and funding DHS, they'll choose amnesty and risk American lives.

It's an odd argument for the Democrats to be making, and it shows their priorities. But it's also based on a lie designed to make Republicans who oppose amnesty look bad.

In reality, even if the DHS funding bill were linked by the Senate Democrats, so-called "essential" DHS offices would continue to operate. This includes the Border Patrol, the Secret Service, the Coast Guard, Immigration and Customs Enforcement and the Transportation Security Administration. Even much of U.S. Citizenship and Immigration Services — the agency running Obama's lawless amnesty — would remain open and continue to function until the fees they've collected and/or continue to collect run out.

Still, pro-amnesty Sen. Chuck Schumer (D-N.Y.) claimed that by sending this bill to the Senate, House Republicans "seem to dislike the idea of supporting homeland security." This, despite the fact that it is the Democratic Party threatening to block the funding bill. Schumer continued: "They dislike Dreamers more than they dislike ISIS."

Schumer is confused. If his party blocks the DHS funding bill, it will be clear that the Democrats feel helping illegal aliens is more important than protecting national security. It will be clear that keeping a lawless amnesty running is more important to Democrats than keeping DHS funded.

If the Senate Democrats truly feel this bill's failure would risk lives, perhaps they should pass it and send it to Obama's desk.

Bottom line, the Democrats now must decide whose side they're on: (1) illegal aliens who believe they are above the law, and lawbreaking employers who want their illegal labor to get work permits, or (2) American voters who want DHS funded, who overwhelmingly say Obama's amnesty "should be blocked," and who overwhelmingly oppose increases in immigration.

If the average American were better represented in Washington, these lawless immigration actions would be stopped. The problem is that the Democratic Party, President Obama and much of the Republican Party put the interests of illegal aliens and their employers ahead of the interests of the American people.

Feare is the legal policy analyst at the Center for Immigration Studies.

TAGS: Department of Homeland Security, DHS, Chuck Schumer, Immigration, Amnesty, Executive Order

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<http://thehill.com/blogs/pundits-blog/immigration/231406-dems-to-decide-whats-more-important-amnesty-or-funding-dhs>

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Ms. JACKSON LEE. Thank you.

To you, Mr. Conner, considering that a large majority of farmworkers are unauthorized to work, 50 percent to 70 percent, do you think that the more than 1 million farmers who you represent are lawbreakers? Is that a fair characterization of the situation they find themselves in? If you would just take this other and give me an answer, please.

One thing about that characterization is that it makes the employers seem greedy, purely self-interested. And as much work as we have done to improve the quality of life of ag workers, I take issue with that assessment.

Can you talk a little bit about the work that undocumented farmworkers do and how farmers think about their workers?

Mr. CONNER. Well, Congresswoman, thank you for the question. It is great question.

I will just tell you, I have spent my entire career, 36 years, working on agricultural policy in this town. I am just passionate about the fact that our farmers absolutely want a solution to this problem.

Are they lawbreakers? Absolutely not. They are collecting the proper paperwork from these workers. They are prohibited from questioning any information on the paperwork by law, with sharp penalties if they do. They are proceeding forward and following the intent of the law.

Now, again, we all acknowledge that paperwork is prone to be wrong, at times. That is not the fault of the farmer and the people doing the employing in this case.

Ms. JACKSON LEE. So clearly, you would need some major, if you will, accommodations for any law that would put more burdens on farmers.

Let me ask another question. You say that the farm jobs are not meant for the unskilled. That is my understanding, too. I have heard that farmworkers must have proper understanding of soil quality, fertilizers, irrigation, and cultivating techniques. For example, they need to know how to prune an apple tree without damaging it, or how to determine which berries are ripe enough to pick, or oranges, or how to pick a cucumber before it is too large to be marketable. That looks like a lot of skills that are needed.

Can you provide more information about the necessary skills that farmworkers must have? Is this a job that anyone can do? And then follow-up, is that why you support legislative reform that includes an eventual path to a green card for current experienced, unauthorized agricultural workers, which is, certainly, a concept of comprehensive immigration reform, Mr. Conner?

Mr. CONNER. Again, Congresswoman, thanks for the question. It is good. I will just say that, in our view, these workers are skilled workers. The work is very, very difficult, sometimes involving very, very long days, hot sun, working around animals. Working around animals is not something for the unskilled. You just do not pull somebody in and throw them amongst dairy animals and expect safety and proper care of the animals.

These are skilled workers. We pay them accordingly, as is demonstrated by wage rates for average workers that we can submit for the record, as well.

Ms. JACKSON LEE. I would appreciate if you would do that. Thank you for your answer.

I would like to ask Mr. Johnson, if I might, Mr. Johnson, first of all, I appreciate your accommodation in being interested in this legislation and offering suggestions. I do recall working very closely with the Chamber over a number of years on the idea of comprehensive immigration reform.

You testified that before being subject to E-Verify, agriculture employers must have access to a workable program to sponsor lawful workers. This bill contains no provisions pertaining to an agricultural visa program, nor does it provide an opportunity for current farmworkers to earn legal status. It does, however, require that all agricultural employers to use E-Verify within 24 months. If the Legal Workforce Act is not paired with an agricultural visa reform, and you have heard Mr. Conner, the kind of reform reflected in S. 744, H.R. 15, or the old ag job compromise, which I have been on this Committee long enough to know that plan, will the Chamber still be in a position to support it, given the crucialness of those provisions for our agricultural industry?

Mr. GOWDY. The gentlelady's time has expired.

Mr. Johnson, you may answer the question.

Mr. JOHNSON. I think there are several levels in the legislative process. If E-Verify went to the floor without an ag fix before that or at the same time, what would our position be? I am not sure. I think it is incredulous to think that would happen.

But, certainly, I would think, subject to further review at the Chamber, that before an E-Verify bill went to the President for signature, the ag issue would have to be solved. The Chamber would reevaluate its position at that time, if that was not going to occur.

Ms. JACKSON LEE. Thank you for noting the defect of the legislation and the importance of moving forward on comprehensive immigration reform.

Thank you all for your testimony.

I yield back, Mr. Chairman.

Mr. GOWDY. I thank the gentlelady from Texas.

The Chair will now recognize the gentleman from Idaho, the Vice-Chairman of the Subcommittee, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman.

Thank you, Mr. Conner, for being here today. As you know, I come from an agriculture State. I understand the need that we have. I do find it, just as a point of interest, that it seems like the Democrats on this panel have no problem with EPA regulations when it affects agriculture, have no problem with the Waters of the U.S. legislation when it affects agriculture. The only time they ever have a problem with regulation and agriculture is when we are trying to stop the hiring of illegal and undocumented workers.

I just want to put that out there for the record, because all the other stuff that is affecting your industry, they have absolutely no concern about it. In fact, they are pushing for that kind of legislation and that kind of regulation that has an ill and deleterious effect on your industry. But that is not what you are here to testify about.

Are you aware that we passed in the 113th Congress a bill out of this Committee that dealt with your needs in agriculture, that

dealt with hiring the people who are here undocumented right now? It added the dairy industry to the H-2 program, and it created a new system for agriculture to deal with their guestworker needs.

Mr. CONNER. Congressman, I am assuming you are referring to the guestworker legislation that was considered. As I noted with Mr. Smith's comments as well, we appreciate the effort to improve the current guestworker program, because it is in great need of improvement. It is not used by very many producers out there, particularly small producers. They do not have H.R. personnel. They do not have lawyers. They cannot afford them. They cannot navigate the current system. So we appreciate that work.

But it is not close to being the solution to the problem.

Mr. LABRADOR. I understand that you do not think it is close, but it was a beginning. It was a first step in trying to fix the problem we have with immigration system, especially with regard to agriculture.

Mr. CONNER. We appreciate the acknowledgment that the guestworker program is in need of improvement.

Mr. LABRADOR. Okay. And do you realize that not a single Democrat in this Committee voted for that bill?

Mr. CONNER. I was not aware that.

Mr. LABRADOR. Okay. So when I sit here and I listen to the pontification about how we are not willing to do anything with regard to immigration, I want the people to understand that the Democrats were not willing to work with us on a step-by-step approach.

This is not your industry, but are you aware that we actually passed in the 112th Congress the STEM visa bill that would have dealt a lot with the problems that we have with the high-tech immigration? Are you aware of that?

Mr. CONNER. Yes, I am aware, sir. Again, I add that we have to deal with this in its totality, that is guestworkers, that is our—

Mr. LABRADOR. So what you are here to testify is that unless we do the Senate bill, then it is unacceptable? Is that what you are saying?

Mr. CONNER. Well, one without the other really doesn't work for American agriculture. We do need a complete solution.

Mr. LABRADOR. I agree with you, agree with you a 100 percent that we need a complete solution.

Mr. Johnson, are you aware that we in the 112th and 113th Congress tried to pass immigration legislation that would have dealt with the high-tech immigration needs of the United States?

Mr. JOHNSON. Yes, out of this Committee, you did pass that.

Mr. LABRADOR. And actually, out of the 112th Congress, we passed it out of the House, and the Senate would not even take it up. And we were told that the President would not accept that legislation, because the President believed that it was either everything or nothing.

I think that is the frustration that I have. I agree with Mr. Conner that we have to fix entire immigration system. I agree that agriculture has some needs that are unique to the agricultural industry. But to sit here and pontificate about how we have not done anything about immigration is just plain false. It is absolutely false.

We have tried to do a step-by-step approach where we have tried to fix the immigration system, and we have been held hostage by the President and his party because they are unwilling to work on a step-by-step approach. All we are doing today, starting with the E-Verify legislation, is fix one of the problems that we have in the immigration system.

I think all of you have testified that it improves the current E-Verify system that I have had some problems with in the past, as a former immigration practitioner. But I think we need to understand that unless we work together, unless we realize that we have to do this in a step-by-step way, what we are doing is we are allowing the people on the other side of the aisle to hold this issue hostage.

We have not fixed this problem for 30 years, and we have not fixed it because it has been an all or nothing approach. In fact, the President of the United States, when he was a Senator, he promised the Bush administration that he would support comprehensive immigration reform. And guess what he did? He went to the Senate floor and he voted for poison pill amendments that killed the entire Bush immigration process.

We would have had this problem solved many, many years ago, if it were not for this President when he was a Senator. He promised the American people that the first thing he would do as President was to do comprehensive immigration reform, and neither he nor his party did anything to fix the problem.

So let us just start fixing the problem and let us move on with the solutions that Americans are craving.

Mr. GOWDY. I thank the gentleman from Idaho.

The Chair would now recognize the gentleman from Puerto Rico, the former attorney general, Mr. Pierluisi.

Mr. PIERLUISI. Thank you. Welcome, all. I am particularly pleased to see Angelo Amador here. You make me feel proud as a fellow Puerto Rican-American. That is great.

Mr. CONNER, I understand that the council didn't endorse the guestworker bill in the 113th Congress. Is that right?

Mr. CONNER. I am sorry, which bill, sir?

Mr. PIERLUISI. The guestworker bill that was just referred to by my colleague Mr. Labrador.

Mr. CONNER. That is correct, sir.

Mr. PIERLUISI. The council didn't endorse that bill?

Mr. CONNER. We did not endorse that bill because it really represents only part of the solution that is necessary out there, the big part of the solution being our existing workforce.

Mr. PIERLUISI. Do you know of any other group of growers or ag group that supported the bill?

Mr. CONNER. Not that I am aware of.

Mr. PIERLUISI. Thank you.

Mr. Amador, in your written statement, you say that you are committed to fixing the broken immigration system, which includes legalization of a portion of the undocumented workforce, and that simply changing the E-Verify system will not be enough to fix an immigration system that has been collapsing for almost 30 years.

I agree with you on that point, but can you explain why you think that changing the E-Verify system itself is not enough to fix

our immigration system? Why is it important that any fix to our immigration system include provisions that would allow undocumented people to earn legal status?

Mr. AMADOR. Well, I think one of the bigger issues for us is what happens moving forward. I know you have heard about the H-2A program, which is for agriculture. There is no such program available for low-skilled workers in our industry.

The last time I saw a workable solution for the guestworker program, Senator Kennedy was still alive and George W. Bush was President. We cannot wait that long. We have been waiting, and we have not seen it from Democrats or Republicans to give us a guestworker program to be able to move forward.

So what we have decided is, if there are good solutions to different pieces, we are going to support them. I mean, I didn't hear from any Democrat calling my office complaining about the fact that we supported deferred action for childhood arrivals. That is just one piece. And we said even then, "Well, that is just one piece. It only takes care of a very small population, children and all that. For those reasons, we support it." But E-Verify is another piece.

As more and more of my employers and restaurants are using it, they are complaining that, "Look, I started using it. I find somebody. I try to work with this good employee. At the end of the day, there is a final nonconfirmation. I have to let them go, just to see them go work across the street at another restaurant that is not using the program." That is just unfair competition.

The government is mandating it. We are opposing the way the President mandated E-Verify for Federal contractors. It does not have safe harbors. It does not have a number of things.

We are glad that several years ago, then-Chairman Lamar Smith sat with us and sat with others and said, what are the problems? So we shouldn't wait another 20 years to fix one portion of immigration just because no one seems to be in agreement on a guestworker program right now.

Mr. PIERLUISI. Thank you. In your testimony, you also argue that employers should be allowed to run potential hires through E-Verify and make the job offer conditioned on the final verification. Here is my concern about that. We already know some employers don't notify employees when they receive a TNC. Instead, they just terminate employment, and the employee never has the opportunity to contest the TNC and demonstrate authorization to work.

If people could be run through E-Verify before starting employment, isn't it likely that even more people would never be informed of a TNC, which could be defective or false? They would simply be told that the company no longer needs the employee for that job. Doing this for a person who hasn't even shown up for work seems much simpler than doing it for a person who has already joined your workforce. Couldn't this kind of prescreening of employees before the date of hire mean many more U.S. citizens and work-authorized noncitizens will lose job opportunities?

Mr. AMADOR. I think from a practical perspective, the feedback that we have gotten is you do all of the other background checks, even drug checks and all these other things you do before the person shows up to work. We are not saying that you prescreen before an offer is made. An offer has been made and you are being told,

we are now going to go do this number of things. We are going to check your references, we are going to a check E-Verify, whatever it is that you do.

Being able to do all the other things, and we are not saying it shouldn't be legal not to inform the worker. You should inform the worker, number one, that you are going to do an E-Verify check, and, number two, what comes back. The whole idea is to allow this employee to fix it before they show up to work.

Mr. PIERLUISI. Thank you so much.

Mr. GOWDY. I thank the gentleman from Puerto Rico.

The Chair would recognize the gentleman from Colorado, former district attorney, Mr. Buck.

Mr. BUCK. Thank you, Mr. Chair.

Ms. Blitstein, I have a quick question for you about the safe harbor provisions. During a May 22, 2013, hearing before this Committee, former ICE Assistant Secretary Julie Myers Wood commented that ICE operates under the assumption that the existence of a high number of employees who circumvent the system through identity theft contradicts a company's argument that it relied in good faith on its E-Verify confirmation. ICE's position deprives the employer of the E-Verify safe harbor under current law, and exposes the company to legal liability for failing to detect and deter identity theft, notwithstanding its good faith use of E-Verify.

I have heard these stories from many constituents in my district. I am wondering whether this bill fixes that, whether you are comfortable with the safe harbor provisions in this bill that will be introduced soon?

Ms. BLITSTEIN. We are comfortable with the safe harbor provisions. We do think it will further protect employers.

In my personal experience at N.C. State is that we have used the system to terminate some employees when we have gotten a final nonconfirmation. Fortunately, we never had those employees come back to us for any reason. But we were, certainly, relying on the fact that we were using the system as intended. We got that final nonconfirmation result and then relied on it to make our employment decision.

So we do very much feel that the provision in this particular bill will be more helpful to employers to go about the business of verifying their workforce, making sure they are not employing people without authorization, at a more comfortable level.

Mr. BUCK. Great. Thank you.

Mr. Johnson, I have a question for you. The President has undermined the immigration system with his executive orders, prosecutorial discretion, and his excuse of resource allocation. My question is, what prevents the President from ignoring this law as he has so many others?

Mr. JOHNSON. Well, that is an interesting question based on issues of standing and the natural fact that no matter how restrictively this body writes a law, there is always going to be some discretion written into anything you write.

Look, you have the power of the purse to rein in the President. Of course, the Speaker has filed a case against the President under Obamacare.

Congressman, I am not going to pretend really. At some point, you can say we don't trust the President, and do nothing, because you aren't going to be able to write a law that doesn't depend on some degree of the President exercising his discretion. But if you take the position, "We don't trust the President," well, the follow-on on that is, "Well, we may as well not do anything in this body."

Mr. BUCK. That is not what I am suggesting at all. I am suggesting there are pieces of this law that require executive action. There is a computer system that needs to be set up. There are various activities that need to be engaged in, in good faith. There are contracts that need to be let to the private sector to upgrade the system.

My question is, in what way do we know that the President is going to do these things?

Mr. JOHNSON. The only answer is you can't write those more restrictively probably than they are already written, because they are very detailed administrative functions. Really, the answer is strong oversight through this Committee. Of course, you are in the majority now.

Mr. BUCK. Would it help if we had timeframes and requirements that the Administration report back?

Mr. JOHNSON. Administrations, Republican and Democrat, and I have been in both, often miss deadlines. Occasionally, they meet them. But the real answer to that is your oversight and calling the officers up here from the Administrations and saying, "What the heck is going on? You are in charge of this law, and you are in charge of the government, why aren't you meeting these deadlines?"

And frankly, you have the blunt instrument of trying to cut their budget in some ways to send the signal to them, or use Committee report language, which we often did when I was up on the Hill, to send a signal to them to get their act together. But there is no real clean answer to that. Sorry.

Mr. BUCK. Okay.

I yield back.

Mr. GOWDY. The gentleman from Colorado, before we go to the gentleman from Texas, we are going to briefly go to the gentleman from Puerto Rico.

Mr. PIERLUISI. Mr. Chairman, if there is no objection, I would like to introduce in the record a statement from the American Immigration Lawyers Association, as well as a letter from the American Farm Bureau Federation.

Mr. GOWDY. Without objection.

[The information referred to follows:]

**FOR IMMEDIATE RELEASE:**

Wednesday, February 4, 2015

CONTACTS:

George Tzamaras

202-507-7649

gtzamaras@aila.org

Belle Woods

202-507-7675

bwoods@aila.org**America's Economy Needs Real Solutions, Not the Legal Workforce Act**

Washington, DC – Today, as the House Judiciary Committee's Immigration Subcommittee considers the "Legal Workforce Act," the American Immigration Lawyers Association (AILA) recommends that Congress reject this unworkable bill which would do more harm than good to our nation's economy. The Legal Workforce Act would impose new mandates on American companies and their newly hired workers without providing adequate protections for either businesses or workers.

"E-Verify has the potential to be an important tool in the effort to address unauthorized employment, but if done in isolation as the Legal Workforce Act does, it would inflict tremendous harm on American workers, businesses and the economy," said AILA President Leslie Holman. She continued, "We must consider the costs of requiring virtually all employers to use this type of program within just two years of enactment."

"The rush to implement E-Verify across the board is virtually guaranteed to hurt thousands of authorized U.S. workers – people who need good jobs but will be erroneously denied employment authorization by errors in the system. Looking at the 2012 E-Verify error rate, about 150,000 authorized workers could be affected, facing additional bureaucratic hurdles when getting a job if E-Verify were made mandatory."

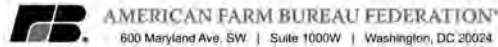
"The problems with the Legal Workforce Act don't end there. It would be expensive: increasing the federal budget deficit by \$30 billion and costing government and private employers over \$1.2 billion to implement. The bill would also hit small businesses particularly hard, imposing significant burdens on very small firms that may not even have human resource departments but would still have to use the new system, even those with only a single employee."

"This sort of system should only be implemented if Congress first does its job to address the status of unauthorized workers because until that happens, such a bill will greatly disrupt major sectors of our economy such as the agricultural industry. Unfortunately, on its own this measure represents yet another flawed enforcement-only effort. We must get employment verification right, but doing so requires implementing it in a way that works. The last thing the American people need is a new government mandate that ends up hurting authorized workers and the businesses ready to hire them," concluded Holman.

What is E-Verify? E-Verify is an existing federal web-based program through which U.S. business can attempt to verify the work authorization status of new hires. Use of E-Verify is voluntary except where state law requires businesses to use it as well as in certain sectors of government where its use is mandatory.

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The American Immigration Lawyers Association is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.



ph: 202.406.3600
 f: 202.406.3606
 www.fb.org

February 4, 2015

The Honorable Trey Gowdy
 Chairman
 House Subcommittee on Immigration and Border Security
 2138 Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Gowdy:

As the subcommittee hears testimony on the "Legal Workforce Act" and evaluates other enforcement approaches to immigration reform, American Farm Bureau Federation (AFBF) would like to draw the members' attention to a study AFBF commissioned last year that measured the effect on agriculture of a systematic disruption in the agricultural labor market resulting from a loss of unauthorized workers. An executive summary and full copy of the study are enclosed in this letter. We would like to request that they be entered into the record of the hearing.

Farmers and ranchers have long experienced difficulty in obtaining workers who are willing and able to work on farms and in fields. Jobs in agriculture are physically demanding, conducted in all seasons and are often transitory. To most U.S. residents seeking employment, these conditions are not attractive. Farmers and ranchers seek access to the legal and stable workforce needed to harvest our fruits and vegetables, milk our cows, and tend our livestock.

Considering the nature of the agricultural workforce, the study analyzes the impact of various immigration reform approaches on the entire sector – including fruits, vegetables, dairy, and livestock. Enforcement is a key component to any responsible reform; however, when not coupled with responsible agricultural labor reform the impact of enforcement-only on the sector is alarming. According to the best available analysis, agricultural output in a single year would fall by \$30 to \$60 billion if Congress were to enact a program that focused solely on enforcement and did not address agriculture's need for both a viable, short-term worker program along with the need to adjust the status of experienced workers. Conversely, the effects on the sector are significantly ameliorated should immigration reform pass that includes an appropriate adjustment in status for an experienced agricultural workforce, a redesigned guest sector specific worker program, in conjunction with increased enforcement.

The impact of an enforcement-only approach would be compounded for consumers because under such an approach, food prices could be expected to increase 5-6 percent, with domestic fruit production off by 30-61 percent and vegetable production down 15-31 percent. The livestock sector would also suffer lost production in the 13-27 percent range. Under the adjustment of status and improved guest worker program on the other hand, food prices are expected to be stable with only marginal effects on the fruit and vegetable sector.

The study is further evidence that the agriculture sector needs Congress to pass responsible immigration reform that provides an adjustment of status for experienced agricultural workers and a new, flexible guest worker program for long term stability. Without such a solution, AFBF would be forced to oppose mandatory E-verify.

Thank you for your consideration of this report and for considering its inclusion in the record of the subcommittee's hearing on this important topic.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Stallman', with a long horizontal flourish extending to the right.

Bob Stallman
President

cc: Members, House Committee on the Judiciary

Executive Summary:**Gauging the Farm Sector's Sensitivity to Immigration Reform via Changes in Labor Costs and Availability**

By: World Agricultural Economic and Environmental Services

Commissioned by the American Farm Bureau Federation

What Is the Issue?

U.S. agriculture is heavily dependent on undocumented workers. This makes immigration reform both critical for agriculture, but also leaves the sector particularly vulnerable depending on the nature and extent of the reform. The results of this study reveal that how the U.S. immigration system is reformed is just as important as whether or not the system is reformed from an agricultural sector perspective. This acute vulnerability is deeply rooted in the fundamentals of farm enterprise in the U.S.:

- Labor is farmers' third highest expense, accounting for 17% of production costs for the sector as a whole and up to 40-50% in labor-intensive subsectors such as fruit, vegetables, and horticulture.
- The sector's dependence on hired labor is also generally time-sensitive due to the role hired farm workers play in harvesting and marketing perishable products.
- Farm labor needs are geographically concentrated within smaller local areas where farmers' hired labor needs typically exceed the local legal work force even if legal workers were willing to do farm work.
- Given the limited skills required for farm work and the manual nature of the work, the majority of Americans apparently believe that they have "outgrown" farm work as reflected in their unwillingness to take farm jobs even temporarily despite being unemployed.
- The very limited potential for farmers to pass production cost increases—such as higher wages—along to consumers, particularly in labor-intensive subsectors such as fruits, vegetables, and horticulture where consumers are both price sensitive and lower-cost imported products are readily available.

What Did the Study Find?

The study compares changes in farm output, commodity prices, farm income, farm asset values, and food prices across four generic reform alternatives. The results of this analysis suggest that an option focused on enforcement-only would have the most significant disruptive impact on agriculture. It would lead to large enough losses in farm income by the end of a 5-year implementation and adaptation period to trigger large scale restructuring of the sector, higher food prices, and greater dependence on imported products. A reform package that includes both a redesigned guest worker program for agriculture combined with an earned adjustment of status for the current workforce is the least disruptive. This would insure that the hiring of foreign workers to fill worker shortages in the agricultural sector does not have an adverse impact on the jobs and wages of U.S. citizens and authorized aliens working in agriculture, while also avoiding the costly pitfalls of the current H2A program.

Impact Comparison									
Indicator	Alternative 1: Enforcement Only		Alternative 2: Enforcement with Adjustment of Status Without a Guest Worker Program		Alternative 3: Enforcement with Adjustment of Status and an Expanded H2A Guest Worker Program		Alternative 3a: Enforcement with Adjustment of Status and a Redesigned Guest Worker Program for		
	Share	Estimated Loss (2013)	Share	Estimated Loss (2013)	Share	Estimated Loss (2013)	Share	Estimated Loss (2013)	
Farm Asset Values	↓ 10-15%		↓ 5-10%		↓ 2-3%		↓ <2%		
Food Prices	↑ 5-6%		↑ 2-3%		↑ 1-2%		↑ --		
Net Farm Income	↓ 15-29%	\$5.1 - 9.8 B	↓ 7-14%	\$2.4 - 4.7 B	↓ 6%	\$2.0 B	↓ <2%	\$0.5 B	
Fruit Production	↓ 30-61%	\$7.6 - 15.4 B	↓ 13-28%	\$3.3 - 7.1 B	↓ 11-12%	\$2.8 - 3.0 B	↓ 2-3%	\$0.5 - 0.8 B	
Vegetable Production	↓ 15-31%	\$3.9 - 8.0 B	↓ 10-22%	\$2.6 - 5.7 B	↓ 8-9%	\$2.1 - 2.3 B	↓ 2-3%	\$0.5 - 0.8 B	
Grain Production	↓ 1-3%	\$1.3 - 3.8 B	↓ 1%	\$1.3 B	↓ <1%	\$0.6 B	↓ --	--	
Livestock Production	↓ 13-27%	\$16.4 - 34.1 B	↓ 3-5%	\$3.8 - 6.3 B	↓ 3%	\$3.8 B	↓ 1-2%	\$1.3 - 2.5 B	

Gauging the Farm Sector's Sensitivity to Immigration Reform via Changes in Labor Costs and Availability

Prepared by:
WAEES

Commissioned by:
American Farm Bureau Federation

Patrick O'Brien
John Kruse
Darlene Kruse

Website: www.waees-llc.com

February 2014

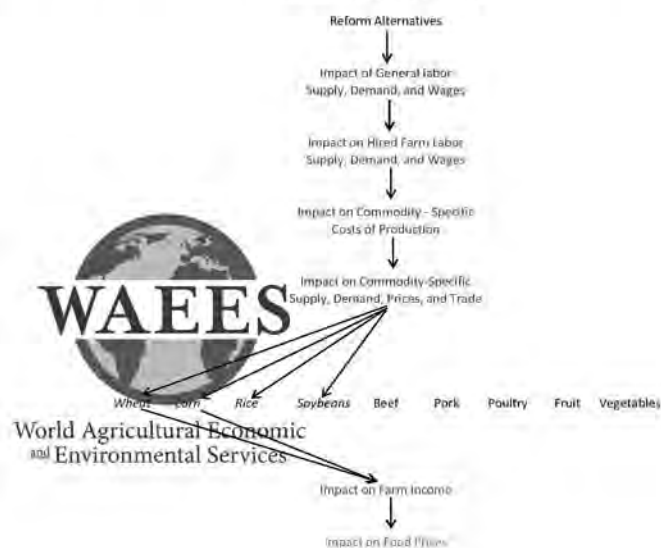
February 2014

Summary

The farm sector's heavy dependence on undocumented workers in its hired farm workforce makes agriculture particularly sensitive to the changes possible with immigration reform depending on the nature and extent of the reform. This report describes the extent of the farm sector's dependence on undocumented workers and the political, economic, and social forces that shaped this growing dependence since the last major reform effort in late 1980s as well as the possible consequences of reform during the 2013/14 Congressional legislative cycle.

The report draws on the current debate to identify three generic reform alternatives emphasizing: 1). enforcement only; 2). enforcement plus a pathway to legalization; and 3). enforcement plus a pathway to legalization and a guest worker program for sectors with special labor needs such as agriculture. The extensive survey information available on the sector's hired farm work force and use of undocumented workers are then used here to develop commodity-specific estimates of hired labor costs for each of the reform alternatives. WAEES's World Agricultural Modeling System is then used to translate these scenario-specific estimates of changes in farm labor costs into estimates of changes in farm output, commodity prices, farm income, farm asset values, and food prices using No-Reform Baseline Projections to 2020 as a reference point (See Graph 1.)

Graph 1: Report Schematic



The results of this analysis suggest that the enforcement-only option would have a significant disruptive impact on agriculture, leading to large enough losses in farm income by the end of a 5-year implementation and adaptation period to trigger a large scale restructuring of the sector, higher food prices, and greater dependence on imported products. This assumes a best-case reform path for this most disruptive alternative, with implementation of 2013/14 legislation assumed to stretch out over 2015-2017 followed by 2 added years of farm adaptation to arrive at a tentative post-reform equilibrium in 2020. Any faster implementation or shorter adoption period would exacerbate the sector's adjustment problems and worsen impacts on farm output, commodity prices, farm income, farm asset values, and food prices.

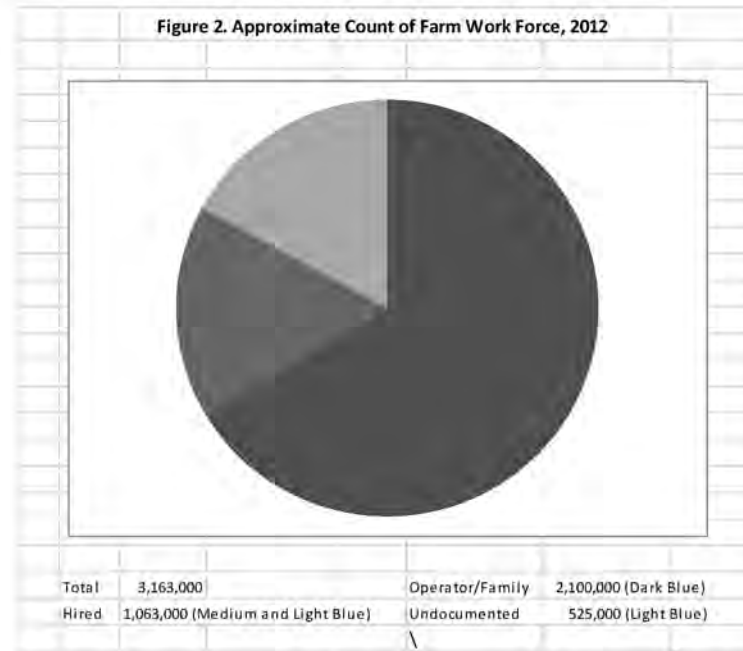
The second reform alternative—enforcement plus a pathway to legalization—is only slightly less disruptive because of agriculture's special role as a major entry point for new undocumented workers and undocumented workers' strong tendency to move out of agriculture to higher-preference jobs elsewhere in the economy as soon as possible. The impact of the third alternative—enforcement plus pathway to legalization plus guest worker program—depends on the design of the agricultural guest worker program.

In summary, this report concludes both that immigration reform is one of the most important challenges facing American agriculture and that the potential impact of reform on the workings of the agricultural sector can provide policy makers with a microcosmic view of the full range of economic, political, and social concerns at work nationally.

Introduction

The current reform debate in Congress is the latest, most concerted effort to "fix" a widely acknowledged to be a broken U.S. immigration system. The system includes federal legislation but also a myriad of other related federal, state, and local laws, administrative orders, and regulations. The extent to which the system is broken is reflected in:

- The large number of undocumented workers entering/reentering the U.S. with relative ease despite more and increasingly costly border protection measures and enforcement efforts to identify and deport "undocumented workers" found within the country. Estimates vary but point to roughly 11 million undocumented individuals in the country currently with an added 4.5 million citizen-children (See Appendix 1);
- The extent to which employers must rely on undocumented workers, who hold up to 5 percent of the jobs in the U.S. labor market, despite continued high unemployment rates for local workers; and
- The impact on rural and urban communities already struggling to accommodate unprecedented demographic changes and their social, political, and economic implications now face the challenge of integrating large numbers of undocumented workers and their families.



Efforts to fix the broken U.S. immigration system have been made and are ongoing at all levels of government as reflected in Appendix 2's catalogue of recent reform efforts. In just the last 3 years, there have been no less than 10 noteworthy national and state-level legislative attempts to address the problem in Washington, D.C. in the Senate and the House and in the Arizona, Georgia, Pennsylvania, Utah, Florida, Alabama, and Virginia legislatures.

What emerges from this myriad of reform efforts is the basic contrast between:

- Those calling for comprehensive reform that addresses the three critical elements of strengthening enforcement (i.e. stopping the flow of undocumented workers into the country at the border and identifying and deporting undocumented workers found within the country), establishing a path to legalization and potentially to citizenship for at least some of the 11 million undocumented workers already in the country, and providing for the guest worker needs of several sectors of the economy with special labor needs such as agriculture; and

- Those providing for a series of stand-alone initiatives that generally focus on enforcement only or at least enforcement first, with follow-up treatment of related issues later – at best when much of the push for immigration reform could be spent.

Agriculture's Interest in Immigration Reform

Pressures within Agriculture...

As Appendix 1 and 3 indicate, agriculture is arguably the sector of the U.S. economy most sensitive to how the debate between comprehensive, versus stand-alone approaches to reform, is resolved as well as the particulars of any compromise. As the Appendices indicate, agriculture's link to undocumented labor is deeply rooted in the fundamentals of farm enterprise in the U.S. In short, it is no accident that undocumented workers currently account for more than half of all hired farm workers. Why?

- First, labor is farmers' third highest expense, accounting for 17% of production costs for the sector as a whole and up to 40-50% in labor-intensive subsectors such as fruit, vegetables, and horticulture. Hence, farm businesses focus heavily on labor availability and wages in an effort to control costs and maximize profits;
- Second, the sector's dependence on hired labor is also generally time-sensitive due to the role hired farm workers play in harvesting and marketing perishable fruit, vegetable, and horticulture products. Over the last decade, hired farm workers have also grown in importance in other subsectors, including dairy, hogs, and poultry, where larger farms have less operator and family labor to draw on and have to rely on hired labor to operate what are also time-sensitive, year-round enterprises;
- Third, farm labor needs are also concentrated geographically in states such as California, Texas, Michigan, Washington, and North Carolina, but more importantly within smaller areas within these states. Farmers' hired labor needs in these smaller areas typically exceed the local legal work force even if legal workers were willing to do farm work. This pattern of "local" demand far exceeding the "local" supply of willing legal workers is spreading to more areas of the country and to more commodity subsectors. Hence, farm businesses typically have to look outside their immediate areas and the local labor supply in an effort to find farm workers;
- Fourth, given the limited skills required for farm work and the manual nature of the work, the majority of Americans apparently believe that they have "outgrown" farm work as reflected in their unwillingness to take farm jobs even temporarily despite being unemployed. A 2010 national survey conducted by the National Council of Agricultural Employers of H-2A employers showed that 68% of the 36,000 domestic workers state agencies referred to H-2A employers did not accept jobs offered to them. Only 5% of referred workers worked through the contract period. While the generally low wages to paid farmworkers are consistent with the low-skill nature

of the work, far more Americans are willing to accept even lower minimum wage jobs rather than work in agriculture. In this setting, the local legal labor pool is not only small but unwilling to work in agriculture; and

- Fifth, while mechanization has reduced the need for hired labor sharply over time, increased farm size has boosted the need for more hired farm workers even more. The trend toward a declining number of hired workers in effect for several decades is reversing, with the number of hired farm workers stabilizing and showing small increases over the last few years. Hence, operator demand for hired workers is not likely to continue to decline and ease farmers' concerns.

In this setting, many farm operators have turned to hiring undocumented workers in an effort to insure that they have adequate labor at critical times in their production cycles and to control costs given the abundant supply of undocumented workers available and their willingness to accept transitory, seasonal, or physically arduous work that pays introductory wages that are unattractive to the U.S.-born. Such hires have grown to account for a far larger share (50%) of the sector's hired work force than any other sector of the economy including construction and services. This means that more and more farm operators are taking the calculated risk of employing undocumented workers and counting on not being audited or being able to use loopholes such as the 90-day grace period for firing undocumented workers identified through the E-Verify system if they are audited.

Factors Outside Agriculture...

At least three factors beyond farmers' control have also contributed to farm employer decisions to hire undocumented workers including:

- The very limited potential for farmers to pass production cost increases—such as higher wages—along to consumers, particularly in labor-intensive subsectors such as fruits, vegetables, and horticulture where consumers are both price sensitive and lower-cost imported products are readily available. Despite multiple surveys showing U.S. consumers' willingness to pay more for what is at least perceived as safer American product, cost appears to ultimately shape consumer purchases. Hence, the theoretical option of pushing farm wages up enough to rekindle American workers' interest in working in agriculture is not viable since substantially higher labor costs without any offsetting increase in commodity prices and farm income would quickly put farmers out of business;
- The broken immigration system that effectively allows a large number of undocumented workers to enter/reenter the U.S. with relative ease despite more and increasingly costly border protection measures and enforcement efforts to identify and deport "undocumented workers" found within the country; and
- The potential for low-skilled workers in Mexico and Central America to make double their local minimum low-skilled wages at home by working in the U.S. This insures

that a large and reliable undocumented workforce is available for farmers to draw on, and

- The extent to which farmers' primary alternative to hiring undocumented workers—the H-2A program—is broken. Despite the growing risks involved in hiring undocumented workers, farmers' use of the H-2A program accounted for only 10% of their hires at the highest in 2013. Both farm employers' and worker advocates have voiced their strong dissatisfaction with the existing H-2A program. As discussed below, the H-2A program has become a costly administrative nightmare for many farmers. Farm employers cite the cumbersome nature of the program and the high wage and benefit costs that the program imposes. Worker advocates cite inadequate protection for workers, poor housing conditions, and employer failure to live up to worker payment provisions by making prompt and full payment of wages due.

One summary measure of the problems with the H-2A program is the fact that H-2A visas have only increased from 31,538 in 2002 to approximately 65,345 in 2012 - despite generally accepted estimates putting the number of undocumented workers employed in agriculture at 525,000 or more - and despite the notable increase in enforcement identified in Appendix 2's catalogue of recent federal, state and local reform activities.

The Devil is in the Details

These links between American agriculture and undocumented workers make it clear that immigration reform is critical for the sector. However, agriculture's special relationship with undocumented workers also makes *how* the immigration system is reformed as much or more important than whether or not the system is reformed.

Agriculture's Special Role in the Undocumented Labor Market

For a number of reasons, agriculture serves as the bottom rung on the undocumented labor ladder. Many undocumented workers start working in agriculture but move on from agriculture as quickly as possible—particularly if/when changes in their legal status gives them entry into the labor market outside agriculture. This love-hate relationship is reflected in the survey interviews identified in Appendix 3 and more anecdotal sources. A closer look at the composition of agriculture's undocumented work force provides insight into why, and the extent to which, this phenomenon is at work.

As the NAWS and Pew surveys indicate, the undocumented workers employed in agriculture are typically younger, less educated, less fluent in English, and have fewer job skills than the general undocumented population. They typically have little or no previous work experience. Turnover in agricultural employment is high, with roughly 15% of undocumented workers in agriculture describing themselves as newcomers to the sector—with less than 3 years in the U.S.— and with no plans to stay in the sector. This profile fits well with the minimal skills and manual nature of farm work, farmers' interest in keeping wages low to protect their

profits and competitiveness, and the willingness of this newcomer population to accept relatively low wages and physically demanding jobs to get started. Hence, agriculture has considerable appeal for undocumented workers as an entry point into the U.S. labor market.

However, undocumented workers also leave agriculture as soon as possible for many of the same reasons. Perhaps the most dramatic illustration of undocumented workers' preference to get into agriculture initially but to move out as soon as possible is the change in the farm labor force following The Immigration Reform and Control Act of 1986. The law legalized roughly 1 million undocumented workers, many working in agriculture. Had that labor force been willing to stay in agriculture where they started, the sector would have been able to meet its hired labor needs without reverting within a few years to the large-scale hiring of undocumented workers.

However, the majority of those legalized Seasonal Agricultural Workers (SAW) quickly moved on to employment elsewhere in the economy once their undocumented status had been resolved. Farm employers soon had to return to hiring a large number of undocumented workers as these SAW workers moved on to different careers. Appendix 1 indicates that the share of undocumented workers in the hired farm labor force dropped to 14% over 1989-91 immediately after reform but rose back to pre-1986 levels (37%) by 1992-94, rose to 47% by 1995-97, and rose to 50% by 1998-2000 as farm employers had to replace exiting undocumented workers legalized by the 1986 legislation with new undocumented workers.

Reform Alternatives

Agriculture's complex relationship with undocumented workers and the unique role agriculture plays in the undocumented labor market means that different reform mixes will have dramatically different impacts on the sector. Three general reform options are considered here, along with more detailed provisions for the guest worker program included in the modified third alternative.

Alternative 1: Enforcement Only/Enforcement First

Given the reform proposals advanced to date, there is little doubt that increased enforcement (defined as both strengthened border security and expanded enforcement of existing laws combined with more aggressive use of deportation) will be a major part of any reform package.

Assuming that these efforts are effective, employers in the general economy will lose up to 4.7% (6.7 million) of their current work force and farm employers will lose most, if not all, of their 525,000 undocumented work force (Appendix 1). Employers in both labor markets will also no longer be able to depend on wage differentials for low-skilled workers in Mexico and Central American to generate a continuing flow of undocumented workers moving into the U.S. Fewer undocumented workers will be able to cross the border and those who succeed in crossing the border are increasingly likely to be caught in local enforcement actions such as widening application of the federal E-Verify system. Given stronger penalties for hiring

undocumented workers, many farm employers will opt to hire fewer, or no undocumented workers, if only to minimize their business risk.

Should immigration reform stop here with no provision for a path to legalization for undocumented workers already in the country or for a guest worker program, agriculture faces the loss of 50% or more of the hired workforce as the supply of undocumented workers dries up and as legal hired farm workers consider more attractive, higher paying jobs that have become available as a result of undocumented worker displacement in the general labor market. For purposes of this analysis, it was assumed that such a draconian program would be implemented over a 3- period starting in 2015 simply because the immediate loss of this large a share of the general work force would cause economic chaos.

Hence, agriculture's efforts to replace its disproportionately large loss of hired workers would be complicated by similar efforts by employers in the general economy who have more attractive jobs to both pull legal labor out of the farm sector and hold on to their own legal work force. As a result, farm employers would face not just the problem of having to pay higher wages to hold existing workers and attract replacement workers, but also the problem of simply finding replacements.

Alternative I Specifics

The Alternative I scenario analyzed here assumes specifically that:

1. Reform is legislated during the 2013/14 Congressional legislative session and provides for a 3-year implementation period from 2015 to 2017. The farm sector impacts reported here are measured in 2020 based on the assumption that the bulk of the sector's adjustment to the change would have been made during, and immediately following, implementation—that is, within a 5-year time period. Hence, 2020 can be viewed as the tentative beginning of a post-reform equilibrium;
2. Reform focuses on an enforcement package including effective closure of the border combined with aggressive federal and state efforts to identify and deport undocumented workers already in the country. This enforcement package would also include mandated employer use of the E-Verify system for filling job vacancies and periodic checks on the legality of existing workers. Tougher penalties for employers hiring undocumented workers would reinforce this enforcement effort. The assumed goal is 100% border surveillance and 90% apprehension and deportation.

While no enforcement program is likely to be 100% effective, it is assumed here for simplicity's sake that by the end of the 5-year implementation and adjustment period that the number of undocumented workers in the country would fall toward zero and undocumented workers employed in the general economy would drop from the 6.7 million estimated to hold full and part time jobs in 2012 (4.7% of the U.S.'s total employment of 144 million) to a negligible count approaching zero in 2020. (See Appendix 1); and

3. Reform effectively eliminates employment of undocumented workers in the agricultural sector. This is due not only to the effectiveness of the new immigration program in reducing undocumented workers in the general work force but also due to agriculture's unique role in the labor ladder for undocumented workers. With fewer or no new undocumented workers entering the country, agriculture has no new supply of undocumented workers to draw on as the existing undocumented work force is identified and deported or moves to higher preference jobs in the general economy. Moreover, with improved border security likely to be an initial priority, even farm employers who decide to risk hiring undocumented workers will not have the flow of "newcomers" to draw on.

The estimates included in Appendix 1 put this undocumented component of the hired farm work force currently at 525,000 workers using the 50% measure generated from the NAWS data. This is a conservative estimate of the problem that would face agriculture since it does not provide for any loss of agriculture's documented workers relocating to increasingly attractive, preferred jobs outside agriculture.

Linking Alternative I Worker Losses to Farm Sector Operations

With these 6.7 million and 525,000 job impact numbers in hand, the issue becomes one of translating these disruptions in the labor market into wage impacts as employers in the general economy and the agricultural sector seek to replace lost workers at least initially by offering higher wages designed to attract replacement workers. The approach used here does so by:

1. Translating reductions in worker numbers into changes in wages in the general economy and changes in agricultural wages into changes in farm production costs. USDA's detailed ARMS survey information makes it possible to develop commodity-specific measures of resulting changes in farm production costs based on the share of labor costs in the total cost of producing each of the major commodities as reported in Appendix 1; and
2. Inputting changes in individual commodity production costs into the WAEES World Agricultural Modeling System (WAMS) described in Appendix 4 and using WAMS to track reform impacts through the 2020 end of the implementation/adjustment period. The results of this "With Reform" analysis is then compared with a baseline "Without Reform" Scenario to gauge impacts on farm sector output, commodity prices, imports, farm incomes, and food prices.

Using this approach means that much of the critical wage analysis has to take place initially outside the WAMS Framework since farm labor and wages are endogenized in the model and two sets of changes in the labor supply and wages have to be considered—the first being changes in labor supply and wages in the general economy and only then labor supply and wages in the agricultural sector.

Elasticity-Based Estimates of Labor Supply and Wage Linkages

In economic jargon, how significantly a change in worker numbers affects wages depends on the wage elasticity of labor supply. This elasticity is simply the ratio of the percent change in the number of people willing to work generated by a percent change in the wages offered for their services. Such elasticities are generally estimated empirically based on observations of changes in labor supply and wages over a representative historical period. These elasticities are normally reported as a negative since the relationship between labor and wages means that the signs are different—that is, a rise in labor leads to a fall in wages and a fall in labor leads to a rise in wages.

In an elastic labor supply setting (a ratio or “elasticity” greater than -1.0), a 1% change in labor supply generates *less* than a 1% change in labor availability. In such a setting, the 4.7% and 50% reductions in Alternative 1 in the general supply of labor and the supply of hired farm workers would generate *less* than a 4.7% and 50% increase in wages as employers raised wages enough to recruit replacement workers and set a new balance between the smaller labor supply and wages. In an inelastic labor supply situation (an elasticity of less than -1.0), the opposite holds. A 1% change in labor supply generates *more* than a 1% change in labor supply. Hence, in an inelastic labor supply setting, the 4.7% overall and 50% reduction in hired farm worker supply would require more than a 4.7% and 50% increase in wages to replace lost workers.

Since the Alternative 1 reform would affect both the general labor supply and the more specialized labor supply in agriculture, both elasticities have to be considered here, keeping in mind that the two elasticities could be different based on differences in the underlying characteristics of the two labor markets. Considerable research has been done on labor-wage elasticities in both the general economy and agricultural economy. A thorough discussion of the elasticities chosen for this study is included in Appendix 4.

Labor-Wage Elasticity in the General Economy

Considerable research reported on in Appendix 4 has been done on the critical measure of how wages and labor supplies interact—that is, how a change in labor supply affects wages or the price of labor. This measurement is critical for the purposes of this study since the primary impact of immigration reform would be to change the supply of labor available in both the general and the agricultural economies.

For the purposes of this study, two wage elasticities (a -0.5 to -1.0) were used to translate Alternative 1’s permanent 4.7% reduction in the general labor supply into an economy-wide wage impact. As Figure 1 indicates, using -0.5 and -1.0 elasticities suggest that Alternative 1’s 4.7% reduction in the general labor supply would generate a 4.7% to 9.4% increase in the general wage rate. This indicates that any adjustment in the wages of hired farm workers would take place in a general economy where immigration reform had already raised general wage rates 4.7 to 9.4% from a 2012 average of \$20.48 per hour reported in Appendix 1 to \$21.44-22.40 per hour.

A. General Economy

All U.S. Wage and Salaried Workers ('000)	142,653
Illegal Wage and Salaried Workers	6,700
Illegal Share	4.7%
Elasticities Used in Report	(.5) to (1.0)
Changes in Wages Associated with 4.7% Decrease in Workers assuming -.5 Elasticity	9.7%
Changes in Wages Associated with 4.7% Decrease Decrease in Workers assuming -1.0 Elasticity	4.7%

B. Agricultural Economy

All Hired Farm Workers ('000)	1,050
Illegal Hired Farm Workers ('000)	525
Illegal Share	50%
Elasticities Used in Report	(.4) to (.8)
Changes in Wages Associated with 50% Decrease in Workers assuming -.4 Elasticity	125%
Changes in Wages Associated with 50% Decrease in Workers assuming -.8 Elasticity	62.5%

C. Combined Impact of General Increase in Wages and Agricultural Sector Increase in Wages	70% to 14%
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Labor-Wage Elasticity in the Agricultural Economy

Given the far larger percentage change in the hired farm workforce likely with Alternative 1 (50% versus 4.7%) and the different characteristics of the sector's hired work force compared with the general workforce, it is important to consider whether the elasticities used for the general economy can be used in analyzing the agricultural sector. As already noted here, many of the particular characteristics of hired farm worker jobs tend to make the jobs distinctly lower-preference than jobs elsewhere in the general economy. In broad terms, this would tend to make the increases in wages necessary to attract replacement workers from outside agriculture into agriculture higher. This worker-preference concern would tend to offset the low-skill threshold for farm jobs and the sector's ability to absorb virtually any worker from elsewhere in the general economy that would otherwise make the sector's labor supply more elastic.

Based on these considerations, two elasticities were used here—a -4 and a -8—indicating that the hired farm worker market is somewhat less elastic than the general labor market. As Figure 1 indicates, these -4 and -8 elasticities suggest that the 50% change in the supply of hired farm workers would spark a 62.5-125% change in wages over and above the 4.7-9.4% rise in the general wage rate. The two impacts in combination would boost farm wages by 70% to 146% from the \$10.80 per hour reported for 2012 in Appendix 1 to \$18.36-26.57 per hour.

Alternative Approach to Estimating Hired Farm Worker Wage Impacts

This 70-146% increase in hired farm worker wages would likely spark a large-scale restructuring of the farm sector, especially for the third of the sector with the greatest dependence on hired labor. Given the uncertainty of applying historically based elasticities in so dramatically different a setting, an alternative approach based on looking at low-skilled labor availability and wages outside the farm sector can be used to test the elasticity-based 70%-146% results.

This alternative approach focuses on how much higher farm worker wages would have to be to attract replacement workers from other low-skilled job categories elsewhere in the general economy. Given the labor ladder described in Figure 2 based on the Current Population Survey (CPS) data, the most likely alternative for farm employers would be to focus on recruiting labor from the construction category with 4.4 million workers to ensure that they had a large enough recruitment pool to meet agriculture's needs. If this category is used as a benchmark, farmers would have to start the bidding for replacement workers at construction wages that have traditionally been one-third higher than farm wages.

This puts farm employers' starting bid for replacement workers at \$14.97 to \$15.69 per hour (2012's actual of \$14.30 times Alternative 1's 4.7-9.4% general increase in wages) compared with the pre-reform hired farm worker average of \$10.80 per hour reported by farm employers. It is important to remember that this new construction wage would be a minimum opening bid for replacement workers and that some added premium would likely be needed to convince construction workers to switch to lower preference farm jobs. Using the CGE model's -35

Figure 2. Comparison of Low-Skilled Job Occupations

Job Category	Number of Workers	Average Salary before Reform	Average Salary After Reform
Hired Farm Workers	1,050,000	\$10.80 per hour	
Maids and Housekeepers	1,423,276	\$9.32 per hour	\$9.75 to 10.22 per hour
Construction Workers	4,355,374	\$14.30 per hour	\$14.97 to \$15.69 per hour
Shift in Construction Workers Needed to Fill Loss in Hired Farm Workers ('000)		525,000	
Shift in Construction Workers Needed to Fill Loss in Hired Farm Workers (%)		12%	
Farm Wage Premium needed to attract Construction Workers assuming .35 Elasticity (%)		34%	
Farm Wage Premium needed to attract Construction Workers assuming .35 Elasticity (\$ per hour)		\$5.09 to \$5.33 per hour	
Implied Hired Farm Worker Wage		\$20.06 to \$21.02 per hour	
Increase in Hired Farm Worker Wage		86% to 95%	

estimate of the wage elasticity associated with changing occupations, convincing the 12% of the construction category needed to switch to farm work would require an additional 34% boost in farm wages to the \$20 to \$21 per hour range.

Hence, this alternative approach suggests hired farm worker wages would have to increase in line with the \$18.35 to \$26.57 range calculated using an elasticity approach and the analysis of farm sector impacts that follows uses the 70-146% increase in hired farm worker wages estimated above.

Alternative 1 Farm Impacts

Figure 3 shows the conversion of farm sector wage increases into estimates of labor cost increases and in turn total cost of production increases for the major commodity subsectors. As already noted in the text and in Appendix 5, the changes in farm sector performance indicators were generated using the WAEES Modeling System to compare a No-Reform Scenario's projections to 2020 with an Alternative 1 Reform Scenario's projections to 2020.

Alternative 1's higher costs of production due to added labor expenses generates:

- A 1% to 3% reduction in grain production due to lagging feed demand due to lower livestock production. This translates into a 3% to 6% drop in grain producer returns based on both lower production and higher costs;
- A 13% to 27% reduction in meat production linked to higher wages' double impact on the livestock sector. Alternative 1 impacts are significantly larger than the relatively small share of beef, pork, and poultry production expenses attributable to labor due to the secondary impact of higher labor costs on the slaughter and packaging industries. This leads to a setting where retail prices are higher and weaken demand, while farm prices and production are lower based on weakened returns. Given this combination of lower production, lower farm prices, and higher farm costs, returns in the livestock sector are down a third to two-fifths of their No-Reform levels; and
- A 15% to 31% and 30% to 61% drop in vegetable and fruit production, respectively, combined with an offsetting increase in imported products. With U.S. producers unable to pass most of their increased costs on to consumers, vegetable and fruit producers absorb most of the wage cost increases and face the loss of 30 to 40% of their net revenues due to lower production and higher costs.

For the sector as a whole, Alternative 1's reform results in:

- A drop in net farm income of 15% to 29% due to lower production, lower gross receipts, and higher expenses;
- A drop in farm asset values linked both to the drop in farm income and the realization that the down-turn in the farm economy is due to a permanent shift in labor supply. Hence, the drop in asset values would most likely be stronger than the 10% to 15% generated in the model solution; and

- A rise in food prices of 5% to 6% as consumers bear a small part of farmers' higher costs but face smaller supplies of products generally despite higher imports, with the change in supply largest for fruit and vegetables as well as meat and dairy products in particular.

This Alternative 1 outcome is the most severe for agriculture since the reform effort not only tightens labor supply in the general work force but eliminates half of the hired farm work force. Agriculture's initial losses are exacerbated by the cut-off of further undocumented immigration and the drying-up of the pool of workers generally drawn on by farm employers. Lastly, there is no guest worker program available to provide farm employers with any access to overseas workers even while differentials between wages in the U.S. and undocumented workers' host countries become even wider and undocumented worker interest grows even stronger.

Figure 3. Impact of Higher Wages on US Agricultural Sector Performance (%)

	Scenario 1 (Low)	Scenario 1 (High)	Scenario 2 (Low)	Scenario 2 (High)	Scenario 3 (Low)	Scenario 3 (High)	Scenario 3A (Low)	Scenario 3A (High)
A. Wage Rate Change	70% Higher	146% Higher	30% Higher	68% Higher	25% Higher	28% Higher	6% Higher	9% Higher
B. SubSector Impacts								
Grains								
Production	-1%	-3%	-1%	-1%	0%	-1%	0%	0%
Farm Price	-3%	-6%	-1%	-3%	-1%	-1%	0%	0%
Livestock								
Production	-5%	-8%	-1%	-5%	-3%	-3%	-1%	-1%
Farm Price	-13%	-27%	-6%	-13%	-5%	-5%	-1%	-2%
Vegetables								
Production	-23%	-47%	-10%	-22%	-8%	-9%	-2%	-3%
Farm Price	15%	31%	7%	15%	8%	7%	2%	3%
Fruit								
Production	-30%	-61%	-13%	-28%	-11%	-12%	-3%	-4%
Farm Price	20%	40%	8%	19%	8%	9%	3%	4%
Net Farm Income	-15%	-29%	-7%	-14%	-6%	-6%	-2%	-2%

Alternative II: Enforcement with a Path to Legalization without a Guest Worker Program

Alternative II Specifics

The second reform alternative considered here is a compromise between the comprehensive and stand-alone enforcement approach that identifies some path to legalization—if not citizenship—as part of an expanded enforcement effort. The Alternative II reform is assumed here to:

1. Be passed in the 2013/14 Congressional legislative session and to provide for a 3-year implementation and 5-year adjustment period through 2020. The farm sector impacts reported here are measured in 2020 based on the assumption that the bulk of the sector's adjustment to the change would have been made during and immediately following implementation;
2. Include the same enforcement reform package assumed under Alternative 1, but with the key distinction that undocumented workers opting to take the path to legalization/citizenship are legalized immediately, on at least a temporary basis. This means that the 11 million undocumented individuals—6.7 million of whom hold jobs—can stay in the U.S. but that any future flow of undocumented workers is cut off. Legalization would likely touch-off some movement of workers between job categories as undocumented workers took advantage of their new status to find more attractive jobs. The general economy, however, would face a smaller net loss in workers than under Alternative I as at least some of the legalized undocumented workers eventually returned home and tougher enforcement prevents new undocumented workers from replacing them; and
3. Eliminate most, if not all, of the currently undocumented workforce employed in agriculture. This is due to two factors—the first being the well-established pattern of undocumented workers leaving low-preference jobs in agriculture for higher paying jobs elsewhere in the general economy once their legal status is clarified. The combination of this movement of legalized undocumented workers out of agriculture with enforcement stopping the flow of new undocumented workers into the U.S. means that the agricultural sector would eventually lose all of its existing undocumented workers and have no new undocumented workers to replace them with. Hence, the sector's workforce would have to be completely legalized by the 2020 end date for the analysis reported on in this report.

The key distinction between Alternative I and Alternative II is the addition of a path to legalization. Presumably, virtually all undocumented workers would take the opportunity to legalize their status, if only to avoid enforcement impacts and to boost their ability to improve their economic standing through greater job security and mobility. In the longer term, however, Alternative II reform would reduce the overall count of newly legalized workers as some former undocumented workers opt to return home (where over a third reported leaving their families) and as enforcement stems the influx of new replacement undocumented workers.

For purposes of this analysis, it was assumed that this third of the existing undocumented workforce returned to home country by the end of the 5-year adjustment period assumed here. This means that the overall labor force would decline by 2.2 million or 1.5%—one-third of the decline under Alternative I. Using the same elasticity-driven approach as under Alternative I, this smaller loss in labor supply would result in a 1.5 to 3.0% rise in wages compared with 4.7% to 9.4% under Alternative I.

In this setting, agriculture's workforce would be legal but farm employers would still face the problem of worker preference for employment outside agriculture and the loss of undocumented workers choosing to return to their home countries. At issue is what proportion of newly legalized

undocumented workers currently in agriculture would stay. There is little hard information on which to base an empirical estimate other than the historical record following the 1986 legalization of undocumented farm workers as part of the Immigration Reform and Control Act. NAWS data suggests that after 5 years with a repeat of the SAW experience, at least half of undocumented workers—or 25% of the total hired farm work force—would have left agriculture.

Using the same elasticity-based approach as in Alternative I, this 25% reduction of the total hired farm work force would generate a 28% to 62% increase in farm wages which, when combined with the 1.5% to 3.0% increases in wages generally, would push up wages for hired farm workers by 30-69%—or from \$10.80 currently to \$14.04-18.25 per hour.

Alternative II Results

Using WAEES' WAMS system to translate these cost changes into production impacts, this broader reform would have less of a negative impact on agriculture than Alternative I described here. However, the adjustments would still be considerable in selected commodity subsectors. Figure 3 indicates that production, price, and income losses would be roughly half the magnitude likely under Alternative I. For example:

- Grain production would be roughly 1% lower due to a less pronounced lag in feed demand while lower production and higher costs would lower grain producers' net returns 2% to 4%;
- The reduction in meat production linked to higher farm wages and wages for workers in slaughter and packing facilities would be 3% to 5%, with the decrease in farm prices and increase in retail prices roughly half of the changes under Alternative I; and
- The drop in vegetable and fruit production would likely be 10% to 22% and 13% to 28%, respectively, with a comparable reduction in the income losses and import gains likely under Alternative I.

For the sector as a whole, Alternative II's reform would likely result in:

- A drop in net farm income of 7% to 14% due to less severe drops in production and gross receipts and less pronounced increases in expenses;
- A 5-10% drop in farm asset values; and
- A rise in food prices of 2% to 3% as consumers bear a small part of farmers' higher costs but face smaller supplies of products generally despite higher imports, with the change in supply largest for meat and dairy products and fruit and vegetables in particular.

Alternative III: Comprehensive Reform Including a Guest Worker Program for Agriculture

Alternative III Specifics

This third reform scenario is patterned after the comprehensive proposal debated in the Senate in early 2013. Alternative III is assumed here to:

1. Be passed in the 2013/2014 Congressional legislative session and provide for a 3-year implementation period from 2015 to 2018. The farm sector impacts reported here are measured in 2020 based on the assumption that the bulk of the sector's adjustment to the change would have been made during and immediately following implementation;
2. Include the same enforcement package assumed under Alternative I, with the key distinction that undocumented workers opting to take the path to legalization/citizenship are legalized immediately, on at least a temporary basis. This means that the 11 million undocumented individuals—6.7 million of whom hold jobs—can stay, but that any future flow of undocumented workers is cut off. Legalization would likely touch-off some movement of workers between job categories as undocumented workers took advantage of their new status to find more attractive jobs.

The general economy, however, would still face the smaller net loss in workers under Alternative II assuming that at least some of the legalized undocumented workers eventually returned home and assuming that the guest-worker provisions of Alternative III were limited to only those sectors that demonstrated a particular need for foreign workers rather than simply a generalized reduction in labor availability. As in the 1986 reform, very few sectors of the economy are assumed to be able to meet this requirement;

3. Eliminate most, if not all, of the currently undocumented but newly legalized workforce employed in the agricultural sector. This is due to two factors—the first being the well-established pattern for undocumented workers employed in agriculture to leave for higher paying jobs elsewhere in the general economy. Secondly, enforcement essentially stopping the inflow of new undocumented workers means that the agricultural sector would have to have a completely legalized workforce by the 2020 end date for the analysis reported in this report; and
4. Establish a specialized program for sectors of the economy with specialized labor needs that could not be met without foreign workers. Assuming that agriculture qualified, farm employers would be able to hire foreign workers based on an established labor need that could not be met from the local labor supply.

Alternative III assumes that the farm sector successfully makes a “special needs” case for a customized guest worker program as part of an immigration reform effort. This would be consistent with the case made for the H-2A program during the 1986 passage of the last immigration reform package as a Seasonal Agricultural Workers (SAW) program.

Assuming for the moment that a new guest worker program mirrored the existing H-2A program, agriculture would still face two sets of labor cost increases. The first of these relates to the 1.5% to 3.0% (\$0.30 to \$0.60 per hour) higher overall wages likely with the same contraction in the general labor supply likely under Alternative II. The second set of agriculture-specific costs relates to replacing undocumented workers with guest workers—that is, the added costs involved in applying special guest worker wage and benefit provisions to what would likely be the entire hired farm work force consisting of both guest workers and U.S. workers. This would be in keeping with a new guest worker program being modeled along the lines of the existing H-2A program that requires farm employers to provide U.S. workers employed on farms using guest workers with the same wage and benefit package.

The magnitude of this second set of cost increases is more difficult to estimate due to the multiple forces at work (i.e. AEWR wages and housing, meal, and transportation costs) and the lack of a comprehensive database to establish how many undocumented workers and U.S. workers are already receiving this package. Hence, a number of critical assumptions have to be made.

The largest of the higher labor costs facing farm employers under a guest worker program mirroring the existing H-2A program would relate to paying AEWR (Adverse Effect Wage Rate) wages to 525,000 workers compared to a high of 95,000 in 2013, as well as paying AEWR wages to the other half of the hired farm workforce who would now almost invariably be employed on a farm also employing guest workers.

The H-2A's mandatory AEWR wage is the minimum wage set by the Department of Labor to insure that the employment of authorized aliens does not adversely affect employment opportunities and wages for comparable U.S. workers. The AEWR is the highest of the Federal or State minimum wage, the prevailing hourly or piece rate, the agreed-upon collective bargaining rate, or the DOE's AEWR rate. For 2012, the AEWR's ranged from \$9.30 per hour (Arkansas) to \$12.26 per hour (Hawaii) and averaged \$10.40 for the United States. These AEWR quotes do not include the added benefits that farm employers are required to provide H-2A workers to pay for transportation, meals, and housing which can add another \$2 to \$4 per hour. This compares with a current Federal minimum wage of \$7.25 per hour.

Over the 2009-2012 period, the AEWR averaged above \$10 per hour or below the \$10.50-11.00 per hour labor costs that agricultural employers reported in the Farm Labor Survey and below the \$10.80 per hour cost of labor reported in the ARMS and Census of Agriculture. While this suggest at first glance that there would be no increases in wages with a 5-6 fold increase in H-2A type employment, farmers report labor costs rather than wages which means that the \$10.50-11 per hour includes wages and benefits. The NAWS survey results based on worker surveys indicate that workers are generally being paid wages less—on average 10% less—than the AEWR wage. Labor advocates claim that this \$1 per hour difference is a general indication of the lower wages paid to undocumented workers who make up half of the NAWS Survey and are paid well below the wages for U.S. citizens and H-2A workers.

If the wages of undocumented workers are indeed this far below the AEWR level, farm employers could expect to pay at least \$1 more per hour under a more tightly scrutinized H-2A replacement program used to hire 525,000 foreign workers rather than 2012's confirmed 65,345

workers. Based on NAWs results indicating that the vast majority of farm production takes place on enterprises that currently hire or would hire H-2A type employees, the AEWR wage would effectively become the minimum wage for all hired farm labor.

For simplicity's sake, it was assumed here that: a). farm employers would face \$1 per hour higher wages for guest workers with application of an AEWR-type wage to an expanded guest worker force of 525,000; but that b). wages for existing legal employees already above the AEWR minimum would not change. Given that roughly half of the hired farm labor force would be guest workers, farm employers would face a sector-wide increase in labor costs of about \$0.50 per hour for a hired work force equivalent of about 1,050,000 full time equivalents.

The current H-2A program that would presumably serve as a model for the new guest worker program involves several other labor expenses including housing, transportation, and meals for H-2A workers and non-H-2A workers employed on the same farm. The debate surrounding the AgJOBS proposal over 2010-2013 sheds some light on the magnitude of these additional expenses associated with a guest worker program. The proposal to cash-out employers' housing responsibilities with a payment of \$1 to \$2 per hour indicates the order of magnitude for housing costs. A \$1.50 cost per hour equivalent was assumed here.

The information on transportation and meals is even more anecdotal. Many employers report transportation costs of \$500 per worker for bringing an H-2A worker to the work site and returning him/her home. Assuming a 26-week average stay with 50 hours per week, this translates into a \$0.50 per hour cost over the typical H-2A workers' stay. Many employers also report daily meal expenses of \$5 which, spread across a 10 hour work day, translates into another \$0.50 per hour. This puts the total for these 3 categories at \$2.50 per hour.

How many farm employers would face this added \$2.50 per hour costs—both for expanded H-2A-type employees and the U.S. workforce working on farms with guest workers? With confirmed H-2A employment in 2012 accounting for 65,000, at least 6% of the work force should already be getting these added benefits—along with the legal workers working on farms employing H-2A workers. With the NAWs, Labor Survey, and ARMS data suggesting that H-2A employment is concentrated in roughly 25% of farms, as many as 75% of farm employers could face these added charges assuming that they shifted entirely out of hiring undocumented workers and hired only legal and H-2A-type workers. Assuming that all farm employers followed the new program guidelines, the added cost for these three items would be \$1.88 per hour (\$2.50 times .75) as an H-2A-type standard became the standard for all paid employees in the sector.

In this setting, hired farm worker costs would increase \$0.30-0.60 per hour due to reform-related adjustments of 1.5% to 3% in the general labor market, \$0.50 cents per hour due to the rise of all wages to an AEWR minimum, and \$1.88 as essentially all hired workers collected H-2A-type housing, transportation and meal benefits. The total increase would be \$2.68 to \$2.98 or 25% to 28% from the current \$10.80 per hour base reported in the ARMS survey. This \$2.68 to \$2.98 estimate does not include intangibles such as the draw added draw on a farm operator's time or often hidden administrative costs.

Alternative III Results

Using WAEES WAMS system, the impact of this broadest-gauge reform would have less of a negative impact on agriculture than Alternatives I or II. However, the adjustments would still be notable in selected commodity subsectors. For example:

- The impact on the grains sector would be less than 1% both in terms of the reduction in production and the drop in prices but 2% to 3% in terms of net returns due to the mix of weaker feed demand and higher labor costs;
- The livestock sector would face the same double impact as in Alternative I and II, with production off 3%, prices down 5% to 6% at the farm level, but up at the retail level, as consumer prices reflected higher slaughter and packaging costs; and
- Fruit and vegetable impacts would still be significant based on labor's higher share of their production costs. Fruit and vegetable production would drop 11% to 12% and 8% to 9%, respectively, in response to a cost-price squeeze even with prices up 8% to 9% and 6% to 7%, respectively.

For the sector as a whole, Alternative III's reform would likely result in:

- A drop in net farm income of 6%;
- A 2-3% drop in farm asset values; and
- A rise in food prices of 1% to 2% based on higher farm sector commodity prices.

Alternative III A: Redesigning an Agricultural Guest Worker Program

Modified Guest Worker Program

The three immigration reform alternatives considered here so far suggest that the agricultural sector faces significant adjustments with even the most favorable outcome—the comprehensive reform alternative including enforcement, a path to legalization, and an agricultural guest worker program modeled on the existing H-2A program.

This outcome reflects the extent to which the current H-2A program is broken. With both farm employers and worker advocates voicing their dissatisfaction with the existing H-2A program, an improved guest worker program included in a comprehensive immigration reform could look substantially different than the current H-2A program. Farm employers cite the cumbersome nature of the program and the high wage and benefit costs that the program imposes on employers for what are low-skilled jobs that Americans refuse to take. Worker advocates cite inadequate on-the-job health and sanitation protection for workers, poor housing conditions, and employer failure to live up to worker payment provisions by making prompt and full payment of wages due.

Regarding the cumbersome nature of the program, a farmer applying for an H-2A visa for a foreign worker typically has to begin the application process 2 to 3 months before the worker is needed. To win approval, the farmer must pay several fees and file separate applications to several different state agencies, the Department of Labor, and the U.S. Citizen and Immigration Service. The farmer must then arrange for the worker to get an interview with a State Department official at a consulate in the worker's home country and to be approved by the Customs and Border Protection Agency for entry into the U.S.

This paper-based process is further complicated by review delays. GAO's recent review of the application process found that over three-fifths of all applications were returned for changes or additional documentation. Hence, farmers can find themselves scrambling to find labor at their all-important harvest season and can find themselves without adequate labor even if their application has been approved if they change their production plans or if weather fluctuations change the timing on their labor needs. In addition, the AEWR can be more than a third above the local minimum wage.

Worker advocates also see the program as broken for several reasons including: the tying of a farm worker to a single employer, skewing the balance of power between employer and worker and minimizing the worker's ability to address employer abuses; the potential for recruiter abuse both in workers' home countries and in the U.S.; lax enforcement of worker benefit provisions such as the provision of adequate housing; and employer abuse in denying workers full and prompt payment for all hours worked at the AEWR wage.

An improved guest worker program could improve program operation from both an employer and a worker advocate perspective. Such a program could protect the essence of the program—that is, insuring that the hiring of foreign workers to fill worker shortages in the agricultural sector does not have any adverse impact on the jobs and wages of U.S. citizens and authorized aliens working in agriculture or elsewhere in the economy. Key elements of a more effective guest worker program could include:

1. Creation of a new agricultural visa program that gives employers and employees the flexibility to agree on the employment terms that work for them;
2. Stability via an agricultural visa that lasts at least three years and can be renewed;
3. A way for farm workers who are in the U.S. without documentation to apply for legal status as they continue working in agriculture;
4. Enforcement and verification to ensure that agricultural visa holders are here legally and, in fact, working on farms;
5. A requirement that visa holders return to their home countries when their visas expire, but allows employers to continue to recruit eligible workers;

6. An alternative to, and elimination of, the H-2A temporary and seasonal visa program, which simply has not met agriculture's needs;
7. A program that is available to all agricultural sectors, including dairy and livestock production; and
8. Streamlining program administration starting with the critical determination of whether or not there is a farm labor shortage to be filled with guest workers. Such a determination could be made earlier in the year to facilitate farm business planning.

The impact of an Alternative III reform with such a redesigned guest worker program would be substantially different. Using the guest worker program provisions included in the Senate's 2013 Bill, farm worker costs would increase by:

1. The general 1.5% to 3.0% (\$0.30 to \$0.60 per hour) increase in wages in the overall economy;
2. Half of the \$1 per hour increase in wages for guest workers who replace undocumented workers given the lower wages set in the Senate version compared with existing AEWR's. This puts the increase across the entire hired farm work force at \$0.25 per hour rather than the \$0.50 under Alternative III with a guest worker program based on the existing H-2A program;
3. A negligible change in the cost of guest worker benefits, although a significant change in who receives the benefits. Assuming for simplicity's sake that the benefits in question cost the same \$2.50 per hour as under the H-2A-type program, all 265,000 guest workers needed to replace agriculture's net loss of workers after legalization and the movement of workers out of agriculture to elsewhere in the economy would receive the payment. Of this 265,000, 65,000 were already receiving the payments in 2012 based on their H-2A status. Hence, employers would pay the added \$2.50 per hour to about 200,000 new guest workers. However, no payments would be made to non-H-2A workers working on farms with H-2A workers as required under the current program. Using the same assumption that 25% of non-H-2A workers are already receiving the payments, employers would no longer be paying up to 235,000 non-H-2A workers. Hence, while who got paid benefits would change dramatically, how much is paid in benefits would not; and
4. A fee charged farm employers to pay for the overall cost of running the program and payment of specific guest worker expenses such as transportation. This fee could be set at a percentage of guest worker wages paid at the time of employer application. Given that employers are already paying some of the expenses in question themselves (such as the cost of transporting guest workers from their homes to the work site), the net increase in employer cost could be as little as 1%--or \$0.10 per hour.

Summing up these changes in hired farm worker costs put the increase under Alternative III A at \$0.65 to \$0.95 per hour or 6% to 9%.

Alternative III A Results

Using the WAMS system, these cost changes have a much smaller impact on agriculture:

- As Figure 3 indicates, changes in the grain sector are negligible;
- Even with the combined impact of production and processing cost increases, livestock production is down 1% to 2%; and
- Fruit and vegetable production would drop 2% to 3% with prices up 2% to 4%.

For the sector as a whole, Alternative III A's reform would likely result in:

- A drop in net farm income of less than 2%; and
- Asset values would fall less than 2%.

In effect, Alternative III A's improvements in the guest worker program work, not only to provide farm employers with a legal option for meeting their labor needs, but also to keep hired farm worker wages in line with the minimum skill-levels required to do the jobs in question.

Conclusion

Few sectors of the economy have as much at stake in the immigration reform debate as agriculture. This relates not only to the extent to which agriculture has grown dependent on undocumented workers for half of the sector's hired workforce, but also to the labor supply and demand fundamentals underlying this growing dependence. Hired farm worker jobs are not only difficult to fill initially based on the demanding manual nature of the work and its seasonality but are also hard to keep filled given that even undocumented workers leave as soon as the opportunity to take less-demanding job arises elsewhere in the economy.

In an enforcement-only reform scenario, the sector faces the loss of over 525,000 workers and the prospect of having to attract replacements from higher-preference jobs generally paying higher wages in a labor market adjusting to the loss of possibly 4.7% of its own workers. The 70-146% increases in wages needed to fill this farm-sector void based on the historical labor supply and wage relationships would be high enough under an Alternative I enforcement-only reform setting to force a wholesale restructuring of the sector along with a sharp drop in output, a large drop in farm income and farm asset values, and the exit of large numbers of financially vulnerable operators. Even with a pronounced move toward more mechanization and a shift toward less labor-intensive commodities, the increase in wages needed to fill the remaining hired farm worker jobs would leave the sector smaller, with substantially lower incomes, and producing a smaller share of the higher-priced foods Americans consume.

The agricultural sector fares better under an Alternative II reform, combining enforcement with a path to legalization, but less so than the rest of the economy, as many newly legalized farm workers

move out of agriculture. In this setting, agriculture would have to attract possibly 265,000 replacement workers in a tightened labor market where farm employers were no longer able to draw on a steady stream of new undocumented workers, while continuing to face farm workers' general preference to take jobs outside of agriculture. The 30% to 68% increase in wages needed to meet this farm labor shortfall would be smaller than in Alternative 1 but would still be large enough to generate a restructuring of the sector, a reduction in output, higher commodity prices, lower farm incomes and asset values, and more dependence on imports by consumers faced with higher food bills.

How agriculture fares in a reform setting including enforcement, a pathway to legalization, and a guest worker program depends on the specifics of the guest worker program. Simply extending the H-2A program would leave the sector facing smaller but still disruptive 25% to 28% increases in wages as an H-2A-type package of wages and benefits became the standard for the sector. This reflects the extent to which the current H-2A program is broken. With a guest worker program modeled after the W-3 and W-4 provisions of the Senate's 2013 Bill, the sector would face 6% to 9% increases in labor costs that could be absorbed without major displacement, particularly over time as the trend toward mechanization continued.

In this setting, how the U.S. immigration system is reformed is as important as whether or not the system is reformed from an agricultural sector perspective.

Appendix 1. Undocumented workers and Their Role in U.S. Agriculture

A. Labor Profile (Data from 2007-2012 Census of Agriculture, Farm Labor Survey, National Agricultural Workers, Current Population Survey, Quarterly Census of Employment and Wages, California Unemployment Statistics, and PEW Hispanic Center based on frequency of data collection)

- **General Population**
 - 313 million US Population in 2012 (CPS)
 - 244 million (78%) US Eligible Work Force based on demographics (CPS and BLS)
 - 143 million Total Full and Part Time Employment (CPS and BLS)
 - 13 million (8.3%) Unemployed and Discouraged Workers (CPS and BLS)
 - 89 million (28.5%) Out of the Eligible Workforce
 - \$20.48 Median Wage for 2012 for All Wage and Salary Workers in the U.S. (CPS)
 - 11.2 million Undocumented workers (Unauthorized Individuals) in the U.S. (PEW)
 - 4.5 million "Citizen" Children (PEW)
 - 15.7 million Expanded Undocumented Population (PEW)
 - 12.2 million Estimate of Expanded Undocumented Population in the Eligible Workforce (78%)
 - 6.7 million Undocumented workers Full and Part Time Employment (calculated)
 - 1.0 million Expanded Undocumented Population Unemployed or Discouraged
 - 4.5 million Expanded Undocumented Population out of Eligible Workforce (28.5%)
- **Agricultural Sector**
 - 2.4 million Farm Workers (Census of Agriculture and FLS)
 - 1.2 million FTE equivalent of Farm Worker count (Census of Agriculture and FLS)
 - 9-13 million fluctuation in FTE based on seasonality (Census of Agriculture and Farm Labor Survey)
 - 1,063,000 2012 Total of All Hired Farm Workers (FLS)
 - 288,000 Agricultural Service Workers
 - 199,000 Part Time Hired Workers
 - 576,000 Full Time Workers
 - 2 workers per farm job after accounting for seasonality and part time work
 - 2-2.1 million operator and family workers on FTE basis (Census of Agriculture)
 - 2:1 ratio of operator and family labor to hired labor
 - 90% Share of Hired Farm Workers that are foreign born (NAWS)
 - 50% share of hired worker interviewees who reported being undocumented (NAWS)
 - 525,000 undocumented farm workers hired in 2012 assuming 50% share (FLS and NAWS)
 - \$10.80 cost per hour for hired workers as reported by employers (FLS)

B. Hired Worker Concentration by Commodity, Region, and Farm Size

- **Hired Labor Costs as Share of Production Costs (2006-2012 Agricultural Resource Management Survey)**
 - 48% Fruit
 - 46% Nursery
 - 35% Vegetables
 - 26% Tobacco
 - 17% Other Crops
 - 17% All Farms
 - 16% Poultry
 - 15% Other Livestock
 - 14% Dairy
 - 12% Peanuts
 - 12% Cotton
 - 10% Rice
 - 10% Hogs
 - 9% Sorghum
 - 9% Wheat
 - 8% Cattle
 - 7% Cash Grain
 - 6% Soybeans
 - 5% Corn
- **Hired Workers by Region (ERS analysis of Current Population Survey Earnings and Census of Agriculture)**
 - 38.7% Southwest Including California
 - 21.8% South
 - 20.1% Midwest
 - 12.1% West
 - 7.2% Northeast
- **Hired Workers by Farm Size (ERS analysis of Agricultural Resource Management Study data)**
 - 77% Share of hired labor employed on 47,000 farms reporting sales of \$50,000 or more out of total of 2.1 million farms
 - 95,000 Number of farms reporting paying unemployment tax for 1.1-1.3 million hired farm workers \$10.80 cost per hour for hired workers as reported by employers (FLS)

C. H-2A Visas

O Approved Applications for H-2A Visa

1997	16,011
2002	31,538
2012	65,345
2013	95,000 estimate \$10.80 cost per hour for hired workers as reported by employers (FLS)

D. % of Hired Worker with Undocumented Status

1989-91	14%
1992-94	37%
1995-97	47%
1998-00	54%
2001-03	50%
2004-06	50%
2007-09	50%
2010-12	50%

Appendix 2. Recent Federal and State Efforts at Comprehensive and Stand-Alone Immigration Reform

A. Stand-Alone Reform Proposals

1. Arizona SB 1070 (2010) Stand-Alone Enforcement

Act strengthens state- and local-level enforcement of federal immigration regulations by making it a misdemeanor for any undocumented individual to be within the state of Arizona. Act allows police to check immigration status and detain anyone that they suspect is undocumented. "Papers Please" provision upheld by Supreme Court.

2. Georgia HB 87 (2010) Stand-Alone Enforcement

Statute requires all state and local government agencies and private companies to check the immigration status of all applicants for any public service and all jobs. All state and local government benefits restricted to individuals who can prove their legal immigration status. Federal judge blocks most extreme provisions but remainder go into effect.

3. Pennsylvania HB 1502 (2010) Stand-Alone Enforcement

Prohibits employment of undocumented workers by state contractors. Mandates use of E-Verify for all employees.

4. Utah HB 497 (2010) Stand-Alone Enforcement

Requires Identification Cards for all "guest workers" and their families and requires that guest workers have a "clean record" and pay fees of \$1,000 to \$2,500 for card. Cards must be presented upon request of police and to qualify for public services and to qualify for employment.

5. Florida HB-1C (2010) Stand-Alone Enforcement

Prohibits any restrictions on state and local enforcement of immigration law. Makes it a misdemeanor for undocumented immigrants within the state to apply for work or work as an independent contractor. Requires check of all employment applicants through E-Verify.

6. Alabama HB 56 (2011) Stand-Alone Enforcement

Prohibits law enforcement officers from releasing any arrested person before checking his/her immigration status. Prohibits undocumented immigrants from receiving any state benefits, enrolling in state universities, applying for work, or soliciting work in a public space. Landlords prohibited from renting to undocumented immigrants.

7. Agricultural Guest Worker Act HR 1773

Bill creates a new agricultural guest worker program designed to insure sector access to immigrants documented through special visa program enables US farmers to recruit people in other countries for temporary or seasonal agricultural work based on demonstration of local labor shortage.

8. Legal Agricultural Workforce Act HR 242 (2013)

Bill creates new guest work program aimed at insuring agricultural sector's continued access to immigrant labor legalized through a special visa program

B. Comprehensive Reform Proposals

9. Comprehensive Immigration Reform Act of 2011 (S. 1258)

Comprehensive reform including enforcement, path to legalization, and Agnos Guest Worker Program (Agricultural Job Opportunities, Benefits, and Security Act) passes Senate but not the House.

10. The Border Security, Economic Opportunity, and Immigration Modernization Act (2013) Comprehensive Reform

Combines tougher border security and enforcement provisions with path to legalization/citizenship and provisions for guest worker programs.

Appendix 3. Data and Information Sources

A. Data Sources

Agricultural Resource Management Study (ARMS)

USDA/NASS and ERS annual probability-based survey of farm sector performance including financial profile identifying total labor requirements, use and cost of hired farm labor by state, region, commodity concentration, farm size, and farm management characteristics. Given ARMS' complete accounting for commodity costs of production, total and hired farm labor costs can be compared to total costs to determine importance of labor vis-à-vis other inputs and estimate sensitivity to variations in hired labor availability and costs.

Census of Agriculture (COA)

USDA/NASS comprehensive census of farm sector operations conducted every 4 years and structured to provide financial profile by farm size, type, commodity concentration, and location by state and county. Financial performance measures include total costs of production, cost by individual inputs including hired labor, and more detailed information on labor use and costs differentiated between hired and operator/family labor. ARMS and COA activities coordinated to insure compatibility between ARMS surveys and COA census so that annual more limited results can be used to update key Census results only available every 4 years.

Current Population Survey (CPS)

Department of Labor/Census Bureau probability-based survey of the general population by county and state including specialized information on employment, wages, and job characteristics for major employment categories that allows the breakout of farm labor use and labor use in other sectors of the economy. Results support comparison of labor use and wages in the agricultural sector and in comparable low-skill job categories in the general economy.

CPS's March Monthly Supplement/Earnings File provides most in-depth information on labor topics.

Farm Labor Survey (FLS)

USDA/NASS quarterly survey of farm workers generating information on hired farm worker numbers, hours, and wages by type of farm employment by type of farm, commodity specialty, farm size, and location. Results published for 16 states and 15 multi-state regions. Break-out provided for migrant workers verses settled workers in the hired farm labor category.

National Agricultural Workers Survey (NAWS)

Probability-based survey of crop workers conducted annually by USDA/NASS. Survey collects information on farm worker hours worked, wages, assets, employment history, and characteristics of farm workers including legal status, age, literacy/education levels, family status and composition, employment histories, and uses of social services.

Appendix 4. Labor: Wage Elasticities in the General and Agricultural Economies

Considerable research has been done on the critical measure of how wages and labor supplies interact—that is, how a change in labor supply affects wages as the price of labor. This relationship is critical for the purposes of this study since the primary impact of immigration reform would be to change the supply of labor available in both the general and the agricultural economies.

For the purposes of this study, two wage elasticities (a -0.5 to -1.0) were used to translate Alternative I-III's reductions in the general labor supply into a wage impact. These elasticities are generally accepted in the research community and are consistent with the parameters included in USDA's partial equilibrium models and modeling work done at the land grant universities.

As Figure 1 below indicates, using -0.5 and -1.0 elasticities indicates that Alternative I's 4.7% reduction in the general labor supply would generate a 4.7% to 9.4% increase in the general wage rate. This indicates that any adjustment in the wages of hired farm workers would take place in a general economy where immigration reform had already raised general wage rates 4.7 to 9.4% from a 2012 average of \$20.48 per hour reported in Appendix 1 to \$21.44-22.40 per hour.

However, these elasticities can be limited in their usefulness in this analysis due to the following factors:

- More than wages determine worker responsiveness just as more than wages determine employers' decisions about how much they will use a change in wages to offset a change in labor supply. An employer can and tends to use a mix of options to replace lost workers as the size of the loss increases. These alternatives can include changing the scale of the operation, the product mix, and/or the input mix possibly by varying the mix of labor and capital in the form of increased or decreased investment in labor-saving mechanization; and
- Most of the elasticities available in the literature were estimated over time periods with slower, smaller, and more episodic changes in worker numbers and wages. Hence, the results are less reliable in estimating the impact of faster, larger changes—particularly if reform changes are viewed as permanent/fundamental changes rather than normal fluctuations in the labor market to be expected from time-to-time. Even the smaller changes in labor supply and wages in the general economy under Alternative I are outside the range of historical experience.

Keeping these concerns in mind, several studies provide insight into just how elastic labor supply and wages are in the general economy. The analyses reported by Haggler and Zanier as well as work by Dixon, Duffield, and Higgs using Computerized General Equilibrium Modeling frameworks (such as the Zanier USAGE Model described in Appendix 5) cite labor elasticities in the inelastic (-.3 to -.5) range. This indicates that a relatively large change in wages is needed to offset a change in labor availability—a 14.3% change in wages would be needed to offset a 5% change in the labor force. This is consistent with CGE's primary focus on optimizing resource allocation in what is generally assumed to be full-employment economy. Other CGE analyses

suggest elasticities in the $-.4$ to $-.8$ range for a U.S. economy operating at less than full employment. This higher range indicates that a 6.25 to 12.5% change in wages would be needed to offset a 5% change in the labor force.

The issue under Alternative 1, however, is a much larger and more permanent reduction in the labor supply that would presumably discourage employers from responding with a “business as usual” approach to the shock. If this is indeed the situation, these $-.3$ to $-.5$ and $-.4$ to $-.8$ ranges may overstate the wage adjustment associated with Alternative 1 as employers opt to mix wage increases with changes in the mix of inputs used in their production processes (i.e. substitute capital for labor in the form of more mechanization), changes in their mix of products to reduce labor needs, changes in their day-to-day business practices to reduce labor needs, and possibly scaling back or exiting the business. This broader perspective on the adjustment to the shock would boost the elasticity.

Labor Elasticity in the Agricultural Economy

Given the far larger percentage change in the hired farm workforce likely with Alternative 1 (50% versus 4.7%) and the different characteristics of the sector’s hired work force compared with the general workforce, it is important to consider whether the elasticities used for the general economy can be used in analyzing the agricultural sector. As already noted here, many of the particular characteristics of hired farm worker jobs tend to make the jobs distinctly lower-preference than jobs elsewhere in the general economy. In broad terms, this would tend to make the increases in wages necessary to attract replacement workers from outside agriculture into agriculture higher. This worker preference concern would tend to offset the low-skill threshold for farm jobs and the sector’s ability to absorb virtually any worker from elsewhere in the economy that would otherwise make the sector’s labor supply more elastic.

Based on these considerations, two elasticities were used here—a $-.4$ and a $-.8$ —indicating that the hired farm worker market is somewhat less elastic than the general labor market.

As Figure 1 indicates, these $-.4$ and $-.8$ elasticities suggest that the 50% change in the supply of hired farm workers would spark a 62.5-125% change in wages over and above the 4.7-9.4% rise in the general wage rate. The two impacts in combination would boost farm wages by 70% to 146% from the \$10.80 per hour reported for 2012 in Appendix 1 to \$18.36-26.57 per hour.

Regarding specific elasticity estimates, several research efforts have addressed the issue empirically and arrived at estimates of $-.3$ to $-.8$. Research by Duffield published in 1990, work by Gunter published in 1992, and research by Coltrane published in 1992 established that the hired farm labor market was more wage-inelastic, as did subsequent research by Long in 2008, Orson in 2009, and Rurik in 2011. The most recent work done by Zanier (2012) in a CGE context reinforced this conclusion, suggesting an elasticity less than 1 and possibly as low as $-.3$.

But given the 50% magnitude of the changes in the hired farm work force under Alternative 1, how relevant are these low elasticities calculated over a historical period when changes were dramatically smaller and represented short term fluctuations rather than permanent fundamental

A. General Economy	
All U.S. Wage and Salaried Workers ('000)	142,653
Illegal Wage and Salaried Workers	6,700
Illegal Share	4.7%
Elasticities Used in Report	(.5) to (1.0)
Changes in Wages Associated with 4.7% Decrease in Workers assuming -.5 Elasticity	9.7%
Changes in Wages Associated with 4.7% Decrease Decrease in Workers assuming -1.0 Elasticity	4.7%
B. Agricultural Economy	
All Hired Farm Workers ('000)	1,050
Illegal Hired Farm Workers ('000)	525
Illegal Share	50%
Elasticities Used in Report	(.4) to (.8)
Changes in Wages Associated with 50% Decrease in Workers assuming -.4 Elasticity	125%
Changes in Wages Associated with 50% Decrease in Workers assuming -.8 Elasticity	62.5%
C. Combined Impact of General Increase in Wages and Agricultural Sector Increase in Wages	70% to 14%

change? Many of the concerns pointing to higher elasticities in the general labor market apply as much, or more, to the hired farm worker market. For example, Alternative 1's changes would discourage agricultural employers from adopting a "business as usual" response. As Martin and Calvin found in their study, farm employers have historically looked to other alternatives than raising wages to meet their labor needs and would be likely to do so even more in a setting with a 50% labor loss.

If this is indeed the situation, elasticities in at the lower end of the -3 range despite the convincing case made by Zanier may be too inelastic as farm employers opt to mix wage increases with more basic changes in the mix of commodities produced, the combination of labor and capital used in their operations, accelerated development and adoption of labor saving machinery and business management practices, and possibly a decision to scale-back or exit agriculture.

Given the far larger percentage change in the hired farm workforce likely with Alternative 1 (50% versus 4.7%) and the different characteristics of the sector's hired work forced compared with the general workforce, it is important to consider whether the elasticities used for the general economy can be used in analyzing the agricultural sector. As already noted here, many of the particular characteristics of hired farm worker jobs tend to make the jobs distinctly lower-preference than jobs elsewhere in the general economy. In broad terms, this would tend to make the increases in wages necessary to attract replacement workers from outside agriculture into agriculture higher. This worker preference concern would tend to offset the low-skill threshold for farm jobs and the sector's ability to absorb virtually any worker from elsewhere in the economy that would otherwise make the sector's labor supply more elastic.

Based on these considerations two elasticities were use here—a -4 and a -8 —indicating that the hired farm worker market is somewhat less elastic than the general labor market.

As Figure 1 indicates, these -4 and -8 elasticities suggest that the 50% change in the supply of hired farm workers would spark a 62.5-125% change in wages over and above the 4.7-9.4% rise in the general wage rate. The two impacts in combination would boost farm wages by 70% to 146% from the \$10.80 per hour reported for 2012 in Appendix 1 to \$18.36-26.57 per hour.

Appendix 5. Description of the Modeling Systems Used in Study Analyses

This appendix describes the two modeling systems used in this study—the U.S. Applied General Equilibrium Model (USAGE) and the WAEES Partial Equilibrium World Agricultural Modeling System (WAMS). The two systems provide different but complementary insight into how the U.S. agricultural sector would likely adjust to alternative immigration reform initiatives.

The USAGE Model

The USAGE Model is a recursively, dynamic, general equilibrium model of the general U.S. economy. USAGE is based on fundamental work on the Australian economy that produced the MONASH Model. Both the MONASH and USAGE models are based on supply and demand equations for each of the major sectors of the economy that are linked and solved interactively to optimize the decisions made by firms, investors, consumers, and labor market participants in each of the sectors and across the general economy. Each sector chooses the mix of outputs that maximize its revenues from a given set of inputs and structures the inputs used to minimize the cost of producing any given set of outputs. The Model includes the primary product, intermediate product, and final product sectors and depends on fixed input-output coefficients to provide for cross sector linkages and optimized economy-wide solutions.

The version of the USAGE Model used in this analysis was enhanced by Steven Zahniser and reported on in a USDA/ERS report entitled “The Potential Impact of Changes in Immigration Policy on U.S. Agriculture and the Market for Hired Farm Labor.” Zahniser et al expand the labor components of the USAGE Model to differentiate between authorized and unauthorized labor in the agricultural sector and the other sectors of the economy. The Model was solved to develop a baseline—a set of 15 year projections—that assume continuation of current immigration policy and to develop an alternative set of projections that incorporate different immigration policy assumptions.

As with most CGE models, the USAGE model before and after Zahniser’s modifications generated what is generally referred to as a long term equilibrium solution. This means that Model output describes the state of the general economy and the agricultural sector after all the adjustments necessary to reach a steady-state equilibrium have been made. Hence, there is no time-path of adjustment to track as the economy and the sector adjust. Hence, the final equilibrium solution typically understates the short and medium term adjustments necessary to reach a new long term equilibrium.

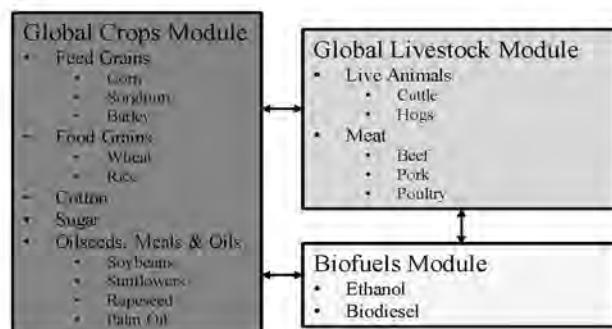
Zahniser’s work focused on solving the USAGE Model with two sets of alternative immigration assumptions. The first set of assumptions adds 156,000 H-2A workers over 3 years and describes the long term equilibrium likely at the end of a 15-year adjustment period. This set of assumptions reduced the undocumented labor force by 5.8 million over an initial 3 years and gauges impacts at the end of a 15-year adjustment period. The analyses are helpful in gauging the relationships at work in both the agricultural sector and the general economy. As noted in the report, the CGE results emphasize how elastic/inelastic the link is between farm worker number and wages and

overall labor supply and wages in the general economy. These relationships suggest a wage elasticity of labor supply in the -0.35 to -1 range.

WAEES Partial Equilibrium World Agricultural Modeling System

The second WAEES analytic system to be used in the proposed project is the *World Agriculture Modeling System (WAMS)*. The WAMS is a partial equilibrium modeling system made up of a set of linked global econometric models emulating the behavior of the global agricultural sector. The partial equilibrium models can be broken down into crops, livestock and biofuels components encompassing feed grains, food grains, cotton, sugar, oilseeds, beef, pork, and poultry.

Model Coverage Overview



The WAEES models cover 38 countries/regions with an additional 12 regional aggregates including the world total. WAEES follows USDA's reported data coverage which may mean that a zero is reported for a particular commodity which USDA does not cover or has discontinued covering. USDA currently covers at least 90 percent of global production; therefore, the countries which are omitted represent a small portion of total global production.

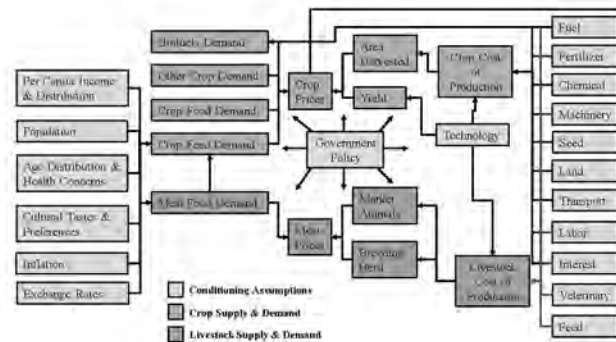
Specifically the WAEES model includes Canada, Mexico, the United States, Caribbean and Central America, Argentina, Brazil, Other South America, the European Union 27, Other Europe, Russia, Ukraine, Uzbekistan, Other Former Soviet Union, Saudi Arabia, Turkey, Other Middle East, China, Japan, South Korea, Taiwan, Other East Asia, India, Pakistan, Other South Asia, Indonesia, Malaysia, Myanmar, Philippines, Thailand, Vietnam, Other Southeast Asia, Australia, Other Oceania, Egypt, Other North Africa, Kenya, South Africa, and Other Sub-Saharan Africa.

Partial Equilibrium Models

Each partial equilibrium module is broken down into commodities with a system of structural equations capturing the supply and demand components for each of them. The drivers of these equations are theoretically derived based upon the behavioral postulates from economic theory of profit maximization by the market participants and utility maximization by consumers subject to various domestic and international trade policies.

The diagram below illustrates the inter-linkages of the crops and livestock model. In the diagram, the blue boxes represent the key drivers (conditioning assumptions) of the agricultural sector including income, population, culture, inflation, exchange rates, domestic and trade policy, technology and input costs. The green boxes are an aggregate approximation of the crops sector. The pink boxes are an aggregate approximation of the livestock sector encompassing beef, pork and broilers. The diagram illustrates how income, population, and other factors drive food demand for crops and meats. Crude oil prices (and policies) drive the demands for biofuels. As demand increases, crop prices increase providing an incentive for production expansion. Technology growth drives yield expansion providing much of the needed production. Crop area may also grow to meet demand needs although in developed countries this often amounts to tradeoffs among crops. Ultimately supply and demand are balanced via commodity prices. If demand is stronger than supply, commodity prices increase until demand growth is slowed and supply growth increases enough for supply and demand to balance.

Interlinked Crops and Livestock Econometric Modeling System

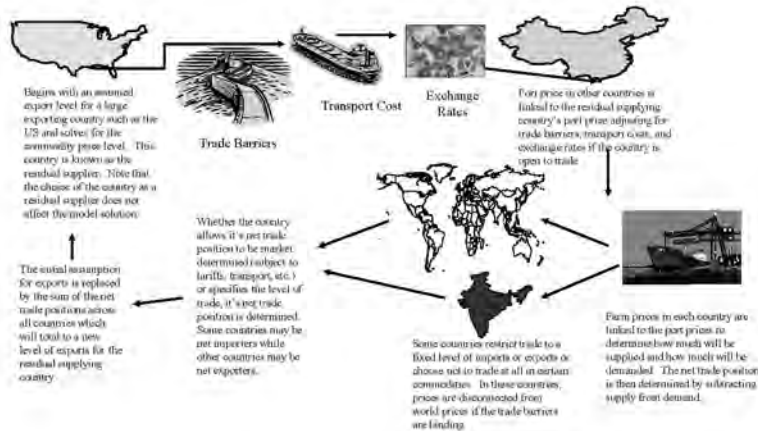


Partial equilibrium models solve iteratively to balance global supply and demand. This occurs at the country level for each commodity. Most countries are at least somewhat open to trade all-be-it

with tariffs. The trade diagram below illustrates conceptually how global supply and demands are balanced within a "global" price equilibrium solution. Typically a large exporting country is chosen as the residual supplier for the world. The choice of this country does not affect the solution. The commodity price in the residual supplying country is solved for by assuming an initial level of exports. This price is then transferred to other countries through trade barriers, transportation costs, and exchange rates.

Based on a given price level, each country determines how much it is willing to supply or demand at that price and subsequent how it wants to import or export. Occasionally a country has tariffs high enough that no trade will occur or only a fixed amount of trade will occur at the lower tariff level. Note that in those countries internal prices may not reflect the world level of prices because supply and demand must be balanced from domestic sources. After the supply and demand in each country is determined and the implied trade position, these trade positions are summed to find the new level of exports for the residual supplying country replacing the initial assumption. The process then repeats itself until prices adjust to balance global supply and demand. For example, if the sum of trade across all other countries is lower than the initial starting assumption for the residual supplying country, the price level in the residual supplying country will fall to balance supply and demand. This lower price level will then get transferred to all other countries affecting their supply and demand and ultimately net trade positions and of course replace the exports again in the residual supplying country. This process continues until global supply and demand balance.

How do partial equilibrium models solve for a global supply and equilibrium price?

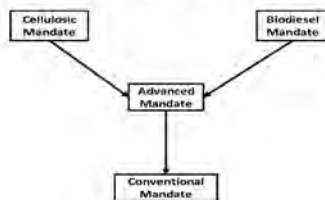


An Example of the US Partial Equilibrium Model for the Biofuels Sector

Within the model, the US ethanol and biodiesel sectors are set up as partial equilibrium models with supply and demand equations and an endogenous ethanol and biodiesel price. The structure of the model is rooted in the ethanol specifications documented by John Kruse, Patrick Westhoff, Seth Meyer, and Wyatt Thompson in a 2007 journal article in *AgBioForum* ("Economic Impacts of not Extending Biofuel Subsidies." With the second Renewable Fuel Standard, these original specifications have been updated to reflect the hierarchical system of mandates. The biofuels mandates require compliance with each specific mandate type including biodiesel, cellulosic, advanced and the overall renewable fuel mandate.

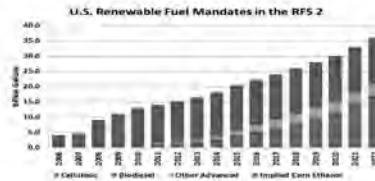
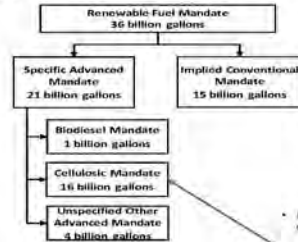
The rationale for different mandates in the legislation was to encourage biofuel producers to move towards feed stocks that provided the greatest level of greenhouse gas (GHG) reductions compared with conventional petroleum. The term "advanced biofuels" was used to describe biofuels that reduced GHG emissions by at least 50 percent compared with a 20 percent reduction requirement for conventional feed stocks. Cellulosic derived biofuels must reduce GHG emissions by 60 percent. Compliance with the mandates by the obligated parties is enforced by the EPA through a system of Renewable Identification Numbers (RINS) assigned to each type of biofuel produced. Obligated parties must demonstrate that they have met their assigned obligations through the number of RINS they have for each type of fuel. Theoretically there could be a specific RIN value for each type of mandate – cellulosic, biodiesel, advanced, and conventional, if each mandate was binding. Mandates are binding when the market is forced by policy to produce more than what normal economic conditions would suggest. The advanced biofuels are typically more expensive to produce than conventional biofuels resulting in those mandates being more binding than conventional biofuels mandates. Therefore RIN values (or prices) are typically significantly higher for advanced biofuels than conventional biofuels.

Hierarchical RINS Modeling



- Theoretically there can be 4 different RIN prices specific to each mandate if all the mandates are binding.
- Mandates are binding when the market is forced by policy to produce more than what normal economic conditions would suggest.
- Given the hierarchy of the mandates, it must be the case that RIN values for biodiesel are greater than or equal to advanced RIN values and advanced RIN values must be greater than or equal to conventional RINS. This is because biodiesel RINS can be used as advanced RINS and advanced RINS can be used as conventional RINS. (This process is referred to as demotion.)
- Biodiesel RINS can have the same value as advanced RINS if the biodiesel mandate is less binding than the advanced mandate.

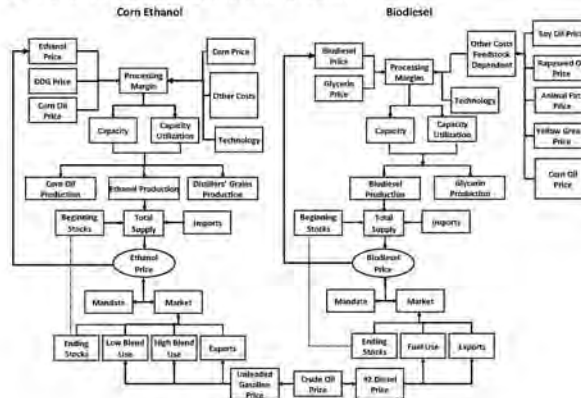
US Biofuels Mandates in 2022



- EPA has waived the cellulosic mandate in 2011 and 2012 because cellulosic biofuels are still very expensive to produce.
- While the cellulosic mandate has been waived, the overall advanced mandate continues to be retained forcing more demand for other advanced fuel feed stocks such as biodiesel and sugarcane ethanol.

A detailed diagram of the US biofuels models is presented below. The demand for biofuels is largely mandate driven now that the tax credits have expired. Although as crude oil price edge higher it is possible for ethanol demand to be driven by market forces although the blend wall presents another hurdle. The supply of biofuels is driven by the profit margins of the biofuel plants. Profit margins are derived by subtracting the cost of the feed stocks and other variable costs of production from the value of the products. In the case of ethanol, the value of the ethanol plus the

US Biofuels Partial Equilibrium Models



value of the byproducts including corn oil and distiller's grains form the gross returns. The cost of ethanol is composed of the feed stock cost, primarily corn, and the other inputs. In the case of biodiesel, the value of biodiesel and the byproduct glycerin form the gross returns. The cost of producing biodiesel is composed of the feed stock costs, soybean oil, and other inputs. The respective margins for ethanol and biodiesel drive capacity expansion in the longer term and capacity utilization in the short term for each sector. Equilibrium between biodiesel supply and demand is found by solving for the biodiesel price.

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Mr. PIERLUISI. Thank you.

Mr. GOWDY. I thank the gentleman from Puerto Rico.

The Chair would now recognize the gentleman from Texas, the former United States Attorney, Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman.

It is no secret that when ICE opens a worksite enforcement matter, it is usually based on information or intelligence that there is a workforce of illegal aliens at a particular company. One of things that a prosecutor wants to find out early in an investigation before making any charging decisions is whether the employer had knowledge or reason to believe that illegal aliens were, in fact, part of the company's workforce.

When I was a prosecutor in such cases, and the employer was relying solely on the I-9 process, whether an employer was subjected to penalties and fines ultimately hinged on prosecutorial discretion, namely whether I was persuaded that counterfeit documents, sometimes for hundreds of employees, could, in fact, be mistaken as genuine or authentic by the employer.

That coupled with the fact that I never had a worksite enforcement action against an employer that used E-Verify seems to provide anecdotal evidence that E-Verify is a great protection for employers. But again, that is anecdotal, so I want to get some testimony in that regard.

And I want start with you, Ms. Blitstein. In the years, as I understood your testimony, for 8,000 employees that have gone through and been subjected to E-Verify, can you talk briefly and hopefully quantify whether there were instances where E-Verify did in fact identify I-9 process documents that were false even though they may have looked valid on their face?

Ms. BLITSTEIN. Yes. Thank you, Mr. Ratcliffe.

I would like to say, at least for N.C. State, we actually probably at this point, after using the system for 8 years, we have probably E-Verified about 30,000 employees over the course because usually, when the semester is underway, when you add in the additional 8,000 students and other workers, then our workforce doubles to 16-plus-thousand during an academic year. So over 8 years, people come and go, about 30,000.

Off the top my head, I can tell you I can remember very distinctly two incidents where people presented false green cards. One of them was actually very good, and the system came back with the final nonconfirmation. We let the person go. I studied it for a while and finally was able to see some of the flaws. One of the other fake green cards was actually rather terrible. So once I got involved at my level and saw it, I knew right away. But we let E-Verify just kind of clean up the process there. So we have had those two.

I would have to say that our industry is higher education, so we probably have smaller rates of people without documentation trying to pass themselves off. We really don't experience it to the same degree that I am sure some other industries probably do.

But at this point now we are very reliant on the system after 8 years. We are required by the State. We are going to keep using it probably indefinitely. But again, the safe harbor idea is very attractive for us.

And in over 30,000, I can remember those two. There might be a few others, but I would probably say less than 10 over the 8 years we have been using it where we actually were dealing with something that might be related to fake or false documents.

Mr. RATCLIFFE. Okay, thank you. And you mentioned safe harbor, and I apologize, I know there has been some testimony. I have gone in and out. But, Ms. Blitstein, you offered a number of recommendations in your testimony about ways that you believe the Legal Workforce Act could be improved, but one of them didn't include any changes to the safe harbor provisions. Do I take that as an endorsement of the current safe harbor provisions?

Ms. BLITSTEIN. That is correct. We did not see any additional need for improvement, based on what is already in the act.

Mr. RATCLIFFE. Okay, thank you.

Mr. Amador, you already spoke to that issue, so I think I am clear on that point. I think you called it the strongest language that you had seen thus far with respect to safe harbor.

Mr. AMADOR. Correct.

Mr. RATCLIFFE. Okay.

What I am not clear is, Mr. Johnson, have you given testimony with respect to that? And if not, on behalf of many folks associated with the Chamber, your thoughts on that?

Mr. JOHNSON. Well, look, we have had a lot of experts look at this language, litigators, before we agreed to it. We think it is solid. As more and more individuals and experts look at it, there may be a tweak here and there that we can recommend to the Committee. But as of right now, we are satisfied with it.

Mr. RATCLIFFE. Terrific. Great.

Thank you, Mr. Chairman. I yield back.

Mr. GOWDY. I thank the gentleman from Texas.

The Chair would now recognize himself.

Mr. Conner, I want to start with you, and I want you to deliver this message for me, because it is really, really important that this message be delivered. The secretary of agriculture in South Carolina is a longtime friend of mine named Hugh Weathers, who happens to be a dairy farmer.

Mr. CONNER. He is a good man.

Mr. GOWDY. He is a good man. He married into the very first family that helped me when I ran for district attorney, so if anybody is wondering who to blame, it would be the Gramling family from South Carolina. They are peach farmers, so I am keenly aware of agriculture's interest, and so is our Chairman, who is the architect and the author of an agricultural bill, which the South Carolina Farm Bureau endorsed last session.

We necessarily cannot have simultaneous hearings, or at least I have not figured out how to have simultaneous hearings, so you have to start with one. But I do not want you, and I would ask you to take back to the farmers, the fact that we started with E-Verify in no way, shape, or form means that we are not cognizant of the issues that the agriculture community faces.

So if you would let them know how much we appreciate them, and we had to start somewhere. Had we start started with the ag bill, then other folks would have been critical of us for going in that

chronology. So if you could help me get that message to your constituency, I would be most grateful to you.

Mr. Johnson, I know the Chairman asked Mr. Amador, but I want to hear from you as an entity that had overall support for the Senate immigration bill, but yet had some concerns about their E-Verify process. What were those concerns, with particularity?

Mr. JOHNSON. Well, the safe harbor language is better in the House bill. There is a crazy provision in the Senate bill that deals with the so-called U visa, which is a narrow visa for people who testify in criminal, very egregious kinds of cases. It was expanded to cover virtually any kind of workplace complaint, which we viewed as an incentive really for somebody to come forward and file a complaint against an employer because the result of that would be they cannot be deported from the country while that event was pending.

They, frankly, changed the legal authority of the Office of Special Counsel over there from enforcing intentional discrimination to intentional plus unintentional discrimination—i.e., disparate impact, which since I did my graduate paper in that area, I was particularly annoyed by. And they have a whole matrix of sort of appeals when the tentative nonconfirmation comes back that the employee could stay on the payroll forever while this mouse trap of appeals was going forward.

And look, Mr. Chairman, there has to be a balance here, but there is no perfect answer to a lot of cases. And you have to balance giving the employee a chance to correct the records, if in fact there is a mistake, which I think Mr. Smith's bill does, versus creating a whole matrix of other requirements and lawsuits, which our members are not going to just buy into.

I have a treatise on my desk. It is 2,000 pages long, just talking about what employers must comply with under our few civil rights law. We have enough litigation. We have enough gold mines for plaintiff lawyers without creating more.

Mr. GOWDY. And correct me if I am wrong, if my memory serves, U visas would be utilized by victims of domestic violence, hypothetically, in one area so they could come forward and cooperate with law enforcement and not have any fear of any legal consequence for coming forward. And then that was expanded in the Senate version to include labor violations.

Mr. JOHNSON. Also workplace disputes.

Mr. GOWDY. Okay.

Ms. Blitstein, your written testimony stated that you had developed a successful program for handling foreign national scholars and graduate students who are coming to the U.S. for the first time and, necessarily, do not have a Social Security number. What is the process?

Ms. BLITSTEIN. We have developed a system. Especially with our electronic system now, we are able to do the I-9 without the Social Security number, because when they first come, they have to wait about 10 days after ending the U.S. before they are eligible to apply for a number at the Social Security Administration.

So we still do the electronic I-9. It is kind of pending until they go to Social Security. When they are able to get their number, they come back to us. We enter it, and then it gets pushed through to

E-Verify. And for that process, the E-Verify 3-day timeframe is suspended because there is just practically no way, and Social Security is not going to turn it around that fast either.

So we have developed that process that we have trained a number of our decentralized campus users of the E-Verify system on. It is still not perfect, which is why one of our suggestions was to allow a little more time, because once the Social Security Administration gives the new number to the individual, they give it straight to them. They do not notify us as the employer when they have issued them the number. So we still sometimes need to work with the new employees to make sure they come back to us, provide us with that number, so we can finish up the process.

So we are still always searching for ways to improve and to make things even better. But that is our current system.

Mr. GOWDY. Thank you. I inadvertently overlooked, I do not know how, Mr. King, when he was here. I want to apologize to him and now recognize the gentleman from Iowa for his 5 minutes of questioning.

Mr. KING. I thank the Chairman for recognizing me and for holding this hearing. And I thank the witnesses for your testimony. Having listened to your testimony, a number of questions emerge, and I would direct my first one to Mr. Johnson.

That would be, there are limitations written in the bill on how an employer might verify an existing employee. Can you perhaps explain to this panel why—I will make this assertion. If I am an employer and I have an employee tell me that he is unlawfully present in the United States and can't legally work, but he has slipped through my bookkeeping system, why should I not be able to run him through E-Verify and deal with him according to the law?

Mr. JOHNSON. I think you would be able to deal with him under this system. If he slips through because of false paper?

Mr. KING. If I suspected an employee of being unlawfully working for me, why wouldn't an employer who had the best intentions of complying with the law, which is what Mr. Conner said his people do, why couldn't that employer just get a E-Verify, run the data through E-Verify to see if that employee can actually lawfully work?

Mr. JOHNSON. Well, I think the bill does provide a process by which, if a tentative nonconfirmation comes back, that the employee—I think it is right to give the employee a chance before he is fired to see whether or not the information is wrong when it comes back.

Mr. KING. I agree.

Mr. JOHNSON. It is only 10 days under the bill, as I recall, and then the employer can fire the employee.

Mr. KING. Let me suggest we are really not quite on point here, because the bill has been improved from what it originally was a couple years ago, in that now the employer has to check everyone either within a geographic area or within a work category. I suggest that is an unnecessary limitation, although it is an improvement.

So I would move on from that and thank you for your response.

Also, it has a conditional job offer for an employee, a potential employee. That is an improvement in the bill.

But I am concerned, then, Mr. Johnson, about the preemption of the States. My concern has been in the past that if States are preempted from enforcement, and I understand in this now new version of the bill that they can enforce in parallel with and in mirror to the Federal law, but if States are preempted, and the Federal Government doesn't enforce, wasn't that one of the reasons for preemption in the first place, that if the Federal Government doesn't enforce, then we don't have to worry about the States doing that, as was the basis of S.B. 1070?

Mr. JOHNSON. Well, I have the Section 6 language here in front of me on preemption, and it is quite complicated. I would say that it still allows the States, even on its most restriction reading, Mr. King, it allows the States to check whether or not the employer is complying with Federal E-Verify rules and regulations, and if not, step in.

I think it is perhaps a little unclear whether or not the State has power beyond simply—not simply. Removing the license for the business to operate.

Mr. KING. And also to levy fines.

Mr. JOHNSON. And levy fines.

Mr. KING. And retain those fines.

Mr. JOHNSON. And retain them.

So to me, this was a balance that, as I said before, we would have preferred a broader preemption, but this does allow the States to have a role. It is obviously a smaller one than after the Supreme Court's decision in *Whiting*.

Mr. KING. Thank you, Mr. Johnson. I appreciate it.

I would like to turn to Mr. Conner. I was interested in the percentages that you gave of the different components of agriculture, in particular, that could be the potential losses, if there was mandatory E-Verify abruptly without time to adjust to that.

Can you tell us how those numbers, those percentage losses, were calculated?

Mr. CONNER. Certainly, Congressman King. Those numbers were the result of the study by the American Farm Bureau Federation and we would be happy to provide that full study with those results for the Committee record, if you so choose that.

Mr. KING. Could I ask you to do that and ask if the Chair, at his discretion, might forward that onto the Committee Members, the Farm Bureau analysis?

Mr. GOWDY. Yes, sir.

Mr. KING. I thank the Chairman of the Committee for that.

And you also mentioned that there was as much as a 50 percent worker rate that would not be in compliance right now. Did I hear that correctly?

Mr. CONNER. Yes. We have an existing workforce of about 1.2 million to 1.4 million, and the estimates of what that constitutes is somewhere between 50 percent to 70 percent that we believe probably would not have proper work authority in this country.

Mr. KING. I am fairly shocked by that, but I would go further with these questions and just make this concluding statement instead, Mr. Conner. And that is that it appears to me over my work-

ing life, all of it within sight of cornfields and soybean fields and agriculture, as you know, that this country has evolved into a high dependency on illegal labor, particularly in agriculture.

I can replay this through my mind's eye on what it would look like today if that were not the case, if these 50 States were islands unto themselves rather than a continent that allowed for a flow of labor.

And I would just make this point in conclusion. There are 92,890,000 Americans of working age who are simply not in the workforce. And to all employers out there, I would suggest that if you need one, you can find one from that list. Thank you.

Thank you, Mr. Chairman. I yield back.

Mr. GOWDY. I thank the gentleman from Iowa.

In conclusion, I would ask unanimous consent to enter into the record statements from the Society of Human Resource Management and the National Federation of Independent Business.

[The information referred to follows:]

WRITTEN STATEMENT OF
THE FOOD MANUFACTURERS IMMIGRATION COALITION (FMIC),
COUNCIL FOR GLOBAL IMMIGRATION, AND
SOCIETY FOR HUMAN RESOURCE MANAGEMENT (SHRM)

BEFORE THE
HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

FEBRUARY 4, 2015

Mr. Chairman, Ranking Member Lofgren, members of the Subcommittee, thank you for the opportunity for our coalition to submit a statement for the record as Congress considers the Legal Workforce Act and ways to create an effective employment verification system to prevent unauthorized employment. Our coalition represents U.S. employers and in-house immigration and human resources professionals in thousands of small to large private and public organizations across every sector of the American economy. Our coalition shares in the goal of the Subcommittee in being committed to enacting legislation that provides employers with effective tools to ensure they are hiring a legal workforce as effective worksite enforcement is central to efforts to secure America's borders.

Our collective memberships have direct knowledge and experience on the topic of employment eligibility verification and the problems U.S. employers face with the current system in the hiring process. As the Subcommittee is aware, the Immigration Reform and Control Act (IRCA) makes it unlawful for an employer to knowingly hire or continue to employ someone who is not authorized to work in the United States. Federal law requires employers to examine numerous

documents presented by new hires to verify identity and work eligibility, and to attest to that examination on the Form I-9. Furthermore, IRCA contains a prohibition against employment discrimination based on an employee's national origin and citizenship status.

As of 2009, certain federal contractors must use the eligibility verification system, known as E-Verify, for employees hired during a contract and employees assigned to that contract. Other employers may be required by state or local law to use E-Verify, and others voluntarily choose to use the E-Verify system. Even if an employer chooses to use the E-Verify system, he or she must still complete Form I-9 for every newly hired employee. E-Verify, which relies on the Social Security Administration and Department of Homeland Security databases to confirm work authorization, lacks sufficient security features to protect employers from persons using fraudulent identities to assert authorization to work. As noted above, E-Verify continues to rely on paper documentation that is susceptible to theft, forgery and alteration, and cannot be verified for authenticity.

Our coalition members are seeking to improve the current process of employment verification by creating a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment. We appreciate the many improvements to the current system proposed in the Legal Workforce Act (LWA), including creating a seamless, entirely electronic, employment verification system. This step alone is a vast improvement over the current paper-based, two-part verification system that in practice results in a focus on imposing liabilities on employers for paperwork violations, as opposed to curbing unauthorized employment. However, our coalition respectfully submits that the LWA leaves two major problems unsolved: the first, providing employers with a reliable mechanism in the verification system to confirm that the person applying for a position is actually the person who owns the identity on the documents used to establish identity

and work status, and second, the lack of protection of employers from liabilities for errors that occur despite good faith reliance on the outputs of the verification system.

The proposed Legal Workforce Act does require the Department of Homeland Security (DHS) to create at least two identity authentication pilot programs, but these pilots will not adequately address identity theft. First, the pilots are not accessible to all employers who wish to participate in the program as DHS selects the employers that are allowed to participate in the program. Second, the pilots contain limited identity authentication standards and goals which the coalition believes will be ineffective in combatting identity fraud. Third, DHS is given 48 months to develop the pilot, with *no* deadline for implementation. Our coalition believes this is too long for employers who face constant threats from identity thieves to have to wait before a system is available to them. Our coalition has specific proposals to address these concerns.

Additionally, an effective employment verification system must also include protections for employers that use the system in accordance with the law but, due to failings in the government-run verification program, inadvertently hire unauthorized workers. It is unjust to hold employers accountable for relying on incomplete or inaccurate information provided by the federally-run system.

Unfortunately, under current law, employers who use E-Verify are highly vulnerable to government action if they inadvertently employ people who used identity fraud to secure employment. Although the provisions in the Legal Workforce Act take meaningful steps to address this issue through a safe harbor, the bill's safe harbor provision is ineffective, because it is conditioned on Immigration Custom Enforcement (ICE) interpretation of whether a company relied in "good faith" on an E-Verify confirmation. However, ICE has historically argued that the presence of identity thieves in an employer's workforce contradicts an employer's position that its

reliance on E-Verify was in good faith. Given the prevalence and sophistication of identity theft, this position renders the safe harbor meaningless. Our coalition has crafted alternative language that addresses this problem.

U.S. employers want to be part of the solution for preventing unauthorized immigration to the United States, but they need a more reliable employment verification system to do it.

Thank you for considering the recommendations of employers, in-house immigration and human resources professionals to improve and build upon the many important reforms contained in the Legal Workforce Act. We look forward to continuing to work with the Subcommittee to shape this legislation to assure that employers and legal workers have adequate tools and protections they require to help curtail unauthorized employment.

Coalition members include the Council for Global Immigration, National Chicken Council, National Pork Producers Council, National Turkey Federation, North American Meat Institute and Society for Human Resource Management.



February 4, 2015

Chairman Goodlatte, Ranking Member Conyers, and members of the Committee on the Judiciary, thank you for the opportunity to provide a statement for the record regarding the E-Verify program and its impact on small business owners.

NFIB members have long supported a mandatory E-Verify system that takes into account the size of an employer in its fee structure, includes a reasonable limit on small business penalties and reduces such penalties on first-time offenders, prohibits penalties for good-faith violations, protects employers from liability if incorrect information on a worker is given by the E-Verify system, reduces paperwork burdens, and contains an appropriate phase-in time of the new E-Verify system. We remain concerned with the system's error rates and how the Department of Homeland Security would educate employers on their responsibilities.

NFIB also agrees that a civil penalty structure should strongly deter businesses from hiring unauthorized workers. However, applying one penalty structure to all businesses regardless of size would disproportionately affect small firms. In addition to clear safe harbor language, NFIB's priority in this matter is to ensure that a mandatory E-Verify system distinguish the small employer from the large by taking into account the size of an employer in its fee structure. For example, the Occupational Health and Safety Administration (OSHA), housed within the Department of Labor, uses a separate fine structure for small business. NFIB strongly recommends that any legislation considered by the Committee include a similar reduced fine structure based on business size.

NFIB supports a phase-in of a minimum of four years after enactment for E-Verify. Previous mandatory E-Verify legislation considered by the Committee places even the smallest of employers into E-Verify two years after enactment. However, most businesses – almost 5.3 million employer firms – are not placed into the system until the last six months of the two-year phase in period, compared to the approximately 20,000 businesses that will be phased in during the first year.

The commonsense approach would spread such a large number of employer firms over two additional years. NFIB has previously supported phasing in firms with more than 50 employees in year three, and those with fewer than 50 employees in year four. As there is no penalty for early enrollment, any employer could enter the E-Verify system in advance of their phase-in date and alleviate some of the enrollment burden on the system.

On behalf of NFIB members, thank you for keeping small business in mind as you move forward on this very important issue. Should you have any questions on the priorities listed above, please contact Kate Bonner, Senior Manager of Federal Public Policy, at (202) 314-2046 or kate.bonner@nfib.org

Sincerely,

A handwritten signature in cursive script, appearing to read "Amanda Austin".

Amanda Austin
Vice President
Public Policy

Mr. GOWDY. This concludes our hearing today.

I do want to thank every one of our witnesses for your expertise, your collegiality among one another and with the Committee, and your cordiality with the same. We have all benefited from your expertise, and we thank you.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

With that, the hearing is adjourned.

[Whereupon, at 11:43 a.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

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



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

December 17, 2013

H.R. 1772
Legal Workforce Act

As ordered reported by the House Committee on the Judiciary on June 26, 2013

SUMMARY

H.R. 1772 would replace the federal government's existing voluntary system for verifying the employment eligibility of individuals in the United States with a mandatory system. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1772 would cost about \$635 million over the 2014-2018 period and a similar amount in the subsequent five-year period.

In addition, CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would decrease direct spending and increase on-budget revenues but decrease off-budget revenues. (Payroll taxes for Social Security are classified as off-budget revenues.) Summing those budgetary impacts, CBO and JCT estimate that enacting H.R. 1772 would increase budget deficits as measured by the unified federal budget by about \$30 billion over the 10-year period.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. CBO and JCT estimate that enacting the bill would increase on-budget revenues by about \$49 billion over the 2014-2023 period and would decrease direct spending by \$9 billion over the same period. Thus, we estimate that enacting H.R. 1772 would decrease the on-budget deficit by about \$58 billion over the 10-year period. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

H.R. 1772 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on employers and other entities that hire, recruit, or refer individuals for employment. CBO estimates that the aggregate annual cost to comply with those mandates on public entities would exceed the intergovernmental threshold (\$75 million in 2013, adjusted annually for inflation) in fiscal year 2014. In addition, CBO estimates that the aggregate annual compliance costs for private entities would exceed the private-sector threshold (\$150 million in 2013, adjusted annually for inflation) beginning in 2016 once the mandates are fully in effect.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1772 is shown in the following table. The costs of this legislation fall within budget functions 750 (administration of justice) and 800 (general government).

	By Fiscal Year, in Millions of Dollars											2014-	2014-
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2018	2023	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Costs to DHS													
Estimated Authorization Level	68	88	96	102	105	99	100	102	104	106	459	970	
Estimated Outlays	64	87	96	102	105	99	100	102	104	106	454	965	
Costs to SSA													
Estimated Authorization Level	43	47	27	23	22	22	21	22	22	23	162	272	
Estimated Outlays	39	47	29	24	22	22	21	22	22	23	161	271	
Costs to Other Federal Agencies													
Estimated Authorization Level	15	3	*	*	*	0	0	0	0	0	20	20	
Estimated Outlays	15	3	*	*	*	0	0	0	0	0	20	20	
Total Changes													
Estimated Authorization Level	126	138	124	126	127	121	121	124	126	129	641	1,262	
Estimated Outlays	118	137	125	126	127	121	121	124	126	129	634	1,255	
CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854	
Estimated Outlays	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854	
CHANGES IN REVENUES													
On-Budget Revenues	1,396	3,392	4,499	4,765	5,042	5,326	5,619	5,920	6,227	6,546	19,094	48,732	
Off-Budget Revenues	-2,510	-6,097	-8,087	-8,566	-9,065	-9,578	-10,106	-10,648	-11,202	-11,777	-34,325	-87,637	
Total Changes	-1,115	-2,705	-3,588	-3,801	-4,023	-4,252	-4,487	-4,728	-4,975	-5,231	-15,232	-38,905	
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS													
Impact on Deficit	1,125	1,928	2,576	2,750	2,933	3,322	3,527	3,740	3,959	4,190	11,311	30,050	

Notes: DHS = Department of Homeland Security; SSA = Social Security Administration; * = less than \$500,000.

Positive changes in spending or revenues indicate an increase, and negative changes in spending or revenues indicate a reduction. Components may not sum to totals because of rounding.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted late in 2013, the necessary amounts will be provided each year, and spending will follow historical patterns for operating the government's employment verification system.

Spending Subject to Appropriation

H.R. 1772 would replace the federal government's existing voluntary system for verifying the employment eligibility of individuals with a mandatory system. (The existing system is known as E-Verify and is administered by the Department of Homeland Security—DHS.) The requirement for employers to use the system would be phased in over several years, with different deadlines for employers of different sizes. Within 30 months of the bill's enactment, all employers would be required to use the system for all employees newly hired in the United States.

Costs to DHS. Based on information from DHS about the costs to hire new employees and upgrade computer systems, CBO estimates that it would cost \$454 million over the 2014-2018 period to implement the new system. CBO expects that most of the additional funding would be used to pay for staff, technological components, and overhead to handle the increased workload. The E-Verify program has received funding of about \$100 million annually in recent years, and the current system handled roughly 20 million cases in 2012. DHS expects that the caseload under the bill would more than double. Because the current system has some excess capacity, initial costs to ramp up capacity under the bill would be reduced by the use of that existing capacity. Estimated costs also include expenses for a new office to address state and local government issues, programs to prevent fraud involving social security numbers, and pilot programs to improve identity authentication and verification of employment eligibility.

Costs to the Social Security Administration (SSA). Based on information from SSA, CBO estimates that it would cost \$161 million over the 2014-2018 period to implement the new system. CBO estimates that the additional funding would be needed for additional staff to handle the increased fallout rate (the number of individuals who are initially not verified as eligible for employment) under the mandatory system and for additional technological components.

Costs to Other Federal Agencies. H.R. 1772 would require federal agencies to verify the employment eligibility of current employees. Federal agencies are now required to verify the employment eligibility of new employees, but those hired before 2007 were not required to be verified. Currently, there are just over 4.5 million federal government employees (including military personnel), and the employment eligibility of about 3.5 million of those employees would need to be verified under H.R. 1772. CBO estimates that verifying those employees would cost federal agencies about \$20 million over 2014-2018 period.

Direct Spending

CBO and JCT estimate that enacting H.R. 1772 would decrease net direct spending by about \$9 billion over the 2014-2023 period.

Refundable Tax Credits. JCT estimates that enacting H.R. 1772 would reduce outlays for refundable credits by about \$9 billion over the 2014-2023 period. JCT expects that implementing the proposed system of mandatory verification for employment eligibility would cause more workers to be paid outside of the tax system. As a result, fewer workers would claim refundable income tax credits, primarily the child tax credit. (If refundable tax credits exceed a taxpayer's other income tax liability, the excess may be refunded to the taxpayer, with the amount of the refund classified as outlays in the federal budget.)

Compensation for Errors. H.R. 1772 would require employers to fire employees who are determined to be ineligible for employment by the new verification system. Under the bill, individuals who lost their employment because of an error in the new system could seek compensation through the Federal Tort Claims Act (FTCA). (Under FTCA, the federal government waives its sovereign immunity and consents to being sued in federal courts in certain cases.)

CBO expects that the size of compensation awards for such errors would primarily stem from employees' lost wages. We expect that affected employees would be compensated for about three months' salary. Payments would probably be higher in the initial years and decline over the 10-year period. Those amounts would be paid through the government's Judgment Fund (which is a permanent, indefinite appropriation for claims and judgments against the United States). Based on information from SSA about the system's likely error rate and data on wages from the Bureau of Labor Statistics and using an average of about three months of lost wages per successful claim, CBO expects that the Judgment Fund would pay claims totaling about \$70 million over the 2014-2023 period.

Revenues

CBO and JCT estimate that enacting H.R. 1772 would increase on-budget revenues from income and payroll taxes and civil penalties by about \$49 billion over the 2014-2023 period and would decrease off-budget (Social Security payroll tax) revenues by about \$88 billion over that period. Thus, we estimate that the net revenue loss to the unified budget would total \$39 billion over the 10-year period.

Income and Payroll Tax Revenues. Almost all of the total estimated effect on revenues of H.R. 1772 reflects JCT's expectation that the mandatory verification of employment authorization would result in some undocumented workers being paid outside of the tax system—that is, they would move into the underground economy.

Under current law, some employers withhold income and payroll taxes from the wages of unauthorized workers and deposit those amounts in the Treasury, where they are classified as federal revenues. Under H.R. 1772, some employers would decrease those tax withholdings as some workers move outside of the tax system. A substantial portion of those estimated revenue reductions—\$88 billion over 10 years, JCT estimates—is

attributed to lower off-budget revenues from Social Security payroll taxes. Those revenue losses would be partially offset because employers whose workers move outside the tax system would have fewer wage deductions and therefore higher taxable business profits on their income-tax returns, boosting their income taxes. On net, JCT estimates that on-budget revenues would increase by about \$49 billion.

Civil Penalties. H.R. 1772 would increase the minimum and maximum civil fines imposed under current law on employers who violate requirements for verifying the identity and authority to work of individuals that they hire. As a result of those changes, CBO estimates that civil penalties, which are recorded in the budget as revenues, would increase by about \$0.1 billion over the 2014-2023 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

CBO Estimate of Pay-As-You-Go Effects for H.R. 1772 as ordered reported by the House Committee on the Judiciary on June 26, 2013

	By Fiscal Year, in Millions of Dollars												2014-	2014-
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2018	2023	2018	2023
NET INCREASE OR DECREASE (-) IN THE ON-BUDGET DEFICIT														
Statutory Pay-As-You-Go Impact	-1,386	-4,169	-5,511	-5,816	-6,132	-6,256	-6,579	-6,908	-7,243	-7,587	-23,014	-57,587		
Memorandum:														
Changes in Outlays	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854		
Changes in Revenues	1,396	3,392	4,499	4,765	5,042	5,326	5,619	5,920	6,227	6,546	19,094	48,732		

INTERGOVERNMENTAL AND THE PRIVATE SECTOR IMPACT

H.R. 1772 would impose intergovernmental and private-sector mandates, as defined in UMRA. The bill would require employers and other entities that hire, recruit, or refer individuals for employment to verify the employment eligibility of potential employees and some current employees. In some cases, the same mandate would apply to both public and private-sector entities; in other cases, only one sector would face the mandate. Because of the number of public employees that would need to be verified in a short amount of time, CBO estimates that the aggregate annual cost for those entities would exceed the intergovernmental threshold (\$75 million in 2013) in fiscal year 2014. Many private-sector entities also would be affected by the bill, and CBO estimates that the aggregate annual costs of the mandates imposed on those entities would exceed the private-sector threshold (\$150 million in 2013) beginning in 2016.

Mandates that Apply to Both Public and Private Entities

Verifying Work Eligibility. The bill would impose intergovernmental and private-sector mandates on many employers and other entities that hire, recruit, or refer individuals for employment in the United States by requiring them to participate in the electronic verification system to confirm the work authorization of those individuals. Some employers would need to verify all current employees as well as future hires, while others would only be required to verify future hires.

Current Employees. All public and some private employers would be required to confirm, within six months after the bill is enacted, the work authorization of current employees who have not been verified under the current employment verification program. Based on Census data and information from organizations representing state governments, CBO estimates that about 18 million current public employees would need to be verified. CBO estimates that the average cost would be about \$5 per person and the total cost for public entities to comply with the mandate would be about \$90 million in fiscal year 2014.

Current employees working for private employers that would need to be verified include certain employees who require a federal security clearance. According to the Department of Homeland Security and the National Infrastructure Advisory Council, employers that are generally considered part of the critical infrastructure already participate in the current employment verification program. Many of those employers are likely to employ workers with a federal security clearance. Future regulations would determine the number of current employees who would be required to have their work authorization confirmed. Therefore, the incremental costs of the additional verifications are uncertain but would probably be small relative to the annual threshold for private-sector mandates.

Newly Hired Employees. The bill would require all public and private employers to verify the work eligibility of newly hired employees as well as those whose temporary employment authorization was expiring. In addition, employers would have to maintain a record of the verification for such employees for a specific amount of time in a form that would be available for government inspection. The requirements would begin six months after the bill is enacted for some employers and would be phased-in over two years for other employers depending on the number of their employees. Entities that recruit or refer workers would have to verify job candidates within one year of enactment, and employers that employ agricultural workers would have to verify new employees within two years of enactment.

Currently, 20 states require some public entities to verify work eligibility of new hires. CBO estimates that once all public entities are subject to the verification requirements, about 2 million public employees that are not currently required by state law to be verified would need to meet the new requirements each year. We estimate that the average cost for verifying work eligibility would be about \$5 per person, so the cost for public entities to comply with this mandate would be about \$10 million annually.

Based on data from the Bureau of Labor Statistics, CBO expects that for private entities the number of verifications for newly hired employees and employees requiring repeat verifications would rise to about 50 million in 2016. Also, based on that data, CBO estimates that the direct costs to comply with the verification requirement could total \$200 million or more annually from 2016 through 2018 and, thus, would exceed the annual threshold for private-sector entities in those years.

Mandates Affecting Only State, Local, or Tribal Entities

The bill would preempt state and local laws related to work verification. Although the preemption would limit the application of state and local laws, it would impose no duty on state or local governments that would result in significant spending or loss of revenues.

Mandates Affecting Only Private-Sector Entities

Under the bill, individuals would be required to provide specific documentation to establish their identity for use when verifying employment eligibility. The documents required would include most standard forms of identification including passports, permanent residence cards, state drivers' licenses, and military identification cards. CBO estimates that the cost to comply with that mandate would be relatively small.

ESTIMATE PREPARED BY:

Federal Spending: Mark Grabowicz (DHS)
Matthew Pickford (SSA, other federal agencies)

Federal Revenues: Barbara Edwards and staff of the Joint Committee on Taxation

Impact on State, Local, and Tribal Governments: Melissa Merrell

Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis



Statement for the Record

Subcommittee on Immigration and Border Security of the House Judiciary Committee

“H.R. ____, The Legal Workforce Act”

February 4, 2015

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

The National Immigration Forum thanks the Subcommittee for holding this hearing in an attempt to fix America's broken immigration system and urges the Subcommittee to take up a broad immigration reform approach.

In 2013 the National Immigration Forum launched Bibles, Badges and Business for Immigration Reform (BBB), an alliance of conservative faith, law enforcement and business leaders, to achieve the goal of broad immigration reform. This network developed through outreach in the evangelical community, the development of state compacts, and regional summits convened across the country which formed a new consensus on immigrants and America. Targeting key states through a combination of field events, media coverage and direct advocacy, BBB and its partners have had more than 700 meetings with Members of Congress and their staffs and have held 303 events in key congressional districts across 40 states.

The National Immigration Forum is opposed to the mandatory use of an electronic work authorization verification system absent broad immigration reform that brings the undocumented out of the shadows and includes a path to citizenship. Without immigration reform, we believe such a worker verification system cannot succeed. If an electronic work authorization verification system is forced on the estimated 7.7 million American employers and

154 million workers without fixing our broken immigration system, the results will be disastrous for everyone in our nation and for our economy.

A large percentage of our workforce is without legal status—5 percent overall and substantially more in industries such as agriculture, dairy, construction, and meat and poultry processing. In agriculture, an estimated 50 to 70 percent lack status. It is common sense to address the problem holistically, by bringing undocumented workers into a revised and expanded legal system so that companies in industries that are very dependent on undocumented workers—agriculture, for example—will not face the choice of risking the consequences of non-compliance, closing altogether or, where possible, moving their operations to other countries.

Whether employers move their workers off the books or offshore, the effect on American workers and consumers would not be positive. While supporters of mandatory verification legislation would like to portray the legislation as a solution for unemployment among Americans, the reality likely will be quite different. American workers either would have to compete in a workforce that would be largely underground, or they would be put out of a job as their employer moved operations outside of the U.S. In agriculture, which is very dependent on an undocumented workforce, for every job lost in farming, three jobs are lost in related support industries. As more of our agricultural production moved to other countries, we would become more dependent on imports and spend more money to import our food.

According to the Congressional Budget Office (CBO), the imposition of mandatory E-Verify absent immigration reform would result in a loss of more than \$17 billion in revenue for the government over a period of 10 years due to the increase in workers who would be working off the books. In contrast, passing broad immigration reform would boost our economy and reduce our deficit. In 2013, the CBO released its “score” of the Senate’s broad immigration reform bill, which showed not only that it would reduce the deficit by almost \$900 billion in 20 years but also that it would increase the gross domestic product 3.3 percent in the first 10 years and 5.4 percent in the next 10 years.

As stated above, the National Immigration Forum believes a standalone Legal Workforce Act is the wrong approach. Our immigration problem is a national problem that deserves a national, comprehensive approach. Besides the need to account for future flow in our immigration system, one of the key lessons from the 1986 Immigration Reform and Control Act, which resolved the status of most undocumented immigrants but failed to provide for adequate future flows of legal immigrant labor, is that all parts of our complex immigration system are interrelated and must be dealt with in a cohesive manner. Otherwise we will experience unintended consequences and will need to revisit the issues again in the future as the failings are made known.

Congress must work to reform the system as a whole, striking the right balance between interior enforcement and border security, earned legalization and a path to citizenship, needed reforms to

our current family and employer immigration system and efforts to deal with the current immigration backlog. Movement to a piecemeal approach can be workable, provided that Congress considers a holistic package of reforms on a step-by-step basis. It is our hope that this Subcommittee will work to advance bills touching on each of these crucial issues.

**Statement of Joshua Stehlik
Workers' Rights Attorney, National Immigration Law Center**

**House Committee on the Judiciary
Subcommittee on Immigration Policy and Border Security**

Hearing H.R. ___, the "Legal Workforce Act"

February 4, 2015

The National Immigration Law Center (NILC) is the primary national organization in the United States exclusively dedicated to defending and advancing the rights of low-income immigrants. Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and the employment rights of low-income immigrants. NILC's extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. employment and labor laws is an important resource for a wide range of audiences, including immigrant rights coalitions, faith and community-based organizations, policymakers, legal aid attorneys, labor unions, government agencies, and the media.

NILC has analyzed and advocated for improvements to the E-Verify program since it was first implemented in 1997 as the Basic Pilot program, and has extensive experience assisting advocates and attorneys in responding to problems with E-Verify as it affects workers—immigrants and U.S.-born alike.

Overview

The Legal Workforce Act would mandate the use of E-Verify, an ineffective and expensive employment eligibility verification system that will harm our economy, hurt small business, and increase unemployment. The Congressional Budget Office (CBO) found that the Legal Workforce Act, as reported in the 2013th Congress, would increase federal budget deficits by \$30 billion and cost the federal government—and U.S. taxpayers—over \$1.2 billion to implement.¹ In addition to increasing the deficit, the Legal Workforce Act would cost small business billions in out of pocket costs, put U.S. citizens' and work-authorized noncitizens' jobs at risk, and compound the discriminatory impacts of the current E-Verify system on Latino and foreign-born workers and on working women. The bill does nothing to create jobs, but instead will exacerbate the problems caused by our broken immigration system.

The critical starting point for any mandatory E-Verify proposal is a roadmap to citizenship for the 11 million aspiring Americans in our communities. Mandating E-Verify without creating a legal labor force will set the program up for failure. Passage of the Legal Workforce Act will cause employers to move off the books into the underground economy, resulting in staggering losses of federal, state, and local tax revenues, including drastic reductions in contributions to the Social

¹ *Congressional Budget Office Cost Estimate: H.R. 1772: the Legal Workforce Act* (Congressional Budget Office, Dec. 17, 2013), <http://www.cbo.gov/sites/default/files/hr1772.pdf>, p. 1. These costs are calculated over 10 years.

Security trust fund. Workers will be pushed further in the underground economy, where they are more vulnerable to exploitation, giving unscrupulous employers a competitive advantage over law-abiding businesses. And given E-Verify's error rates and lack of due process protections, the Legal Workforce Act will require hundreds of thousands of U.S. citizens and work-authorized immigrants to visit a government office or lose their jobs. Instead of superimposing the E-Verify program created by the Legal Workforce Act onto a broken immigration system, we need to fix the system by creating a roadmap to citizenship for the 11 million and ensuring that all workers are protected.

I. E-Verify will cost federal and state governments billions of dollars in lost tax revenue, and small businesses billions in out of pocket costs, but it detects undocumented workers less than half the time.

The reality is that undocumented workers are not going to leave the workforce if the Legal Workforce Act is enacted. Instead, employers will move undocumented workers off the books, misclassifying them as independent contractors, and simply avoid running them through any employment eligibility verification system.² As workers move off the books, much-needed revenue is drained from federal and state governments' coffers. The CBO found that the Legal Workforce Act would increase federal budget deficits by \$30 billion and cost the federal government over \$1.2 billion to implement.³ A significant portion of this lost revenue would be the result of the increase in the number of employers who pay workers under the table, outside of the tax system, since, as the CBO noted, under an E-Verify mandate, "[s]ome employers who currently withhold income and payroll taxes from the wages of unauthorized workers . . . would no longer withhold or report such taxes."⁴ The experience of Arizona, which adopted a statewide E-Verify mandate in 2008, bears this out, as income tax collection dropped 13 percent in the first year the law was implemented.⁵

In addition to robbing federal and state governments of revenue, an E-Verify mandate would threaten the solvency of the Social Security trust fund. When employers move workers into the underground economy, the trust fund loses those workers' contributions. The chief actuary of the Social Security Administration has stated that without undocumented immigrants' contributions to the trust fund, there would have been a "shortfall of tax revenue to cover [payouts] starting [in] 2009, or six years earlier than estimated under the 2010 Trustees Report."⁶ By driving unauthorized workers in the underground economy, an E-Verify mandate would rob the trust fund of their contributions and threaten the entire system's solvency.

² See Jim McTague, "The Underground Economy: Illegal Immigrants and Others Working Off the Books Cost the U.S. Hundreds of Billions of Dollars in Unpaid Taxes," *The Wall Street Journal Class Room Edition*, April 2005, http://wsjclassroom.com/archive/05apr/econ_underground.htm.

³ *Congressional Budget Office Cost Estimate*, *supra* note 1, p. 1.

⁴ *How Changes in Immigration Policy Might Affect the Federal Budget* (Congressional Budget Office, Jan. 2015), <https://www.cbo.gov/sites/default/files/cbofiles/attachments/49868-Immigration4.pdf>, p. 31.

⁵ Daniel Gonzalez, "Illegal Workers Manage to Skirt Arizona Employer-Sanctions Law: Borrowed Identities, Cash Pay Fuel an Underground Economy," *The Arizona Republic*, Nov 30, 2008. Although income tax collection dropped by 13 percent, sales taxes dropped at a far smaller rate, leading state economists to conclude that workers weren't paying income taxes, but were still earning money to spend—meaning that the underground economy was growing.

⁶ Edward Schumatcher-Matos, "How illegal immigrants are helping Social Security," *The Washington Post*, Sept. 3, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/02/AR2010090202673.html>.

Mandatory E-Verify would cost business billions as well. Based on 2010 data, if E-Verify was made mandatory, it would cost 2.7 billion dollars, with America's small businesses paying 2.6 billion dollars of that cost.⁷ Small businesses have noted that mandatory E-Verify would be a "direct threat" to businesses and local economies.⁸ Realizing that mandatory E-Verify forces small businesses "to act as immigration agents," they have urged Congress to "do better" and comprehensively reform the immigration system.⁹

All of these enormous costs occur even as E-Verify has faltered in detecting undocumented workers. A study commissioned by the Department of Homeland Security (DHS) found that 54 percent of unauthorized workers who were checked by E-Verify were erroneously confirmed as being work-authorized.¹⁰ The Migration Policy Institute estimates that E-Verify erroneously confirmed 230,000 unauthorized workers as work-authorized in 2009.¹¹

II. The Legal Workforce Act would put hundreds of thousands of U.S. citizens' and work authorized immigrants' jobs at risk.

The Legal Workforce Act would put hundreds of thousands of currently-employed workers at risk of losing their jobs. According to the most recent DHS-commissioned study of E-Verify, the program erroneously issues a tentative nonconfirmation of work authorization (TNC) in 0.3 percent of cases.¹² While that may seem like a low rate of error, if the Legal Workforce Act were to pass, it would mean that a total of approximately 170,000 to 450,000 citizen, Lawful Permanent Resident, and work-authorized noncitizens would have to either contact a government agency to attempt to correct their records or face losing their jobs.¹³ That is the numerical equivalent of the entire population of Green Bay, Wisconsin (on the low end of the estimated

⁷ Jason Arvello, "'Free' E-Verify May Cost Small Businesses \$2.6 Billion: Insight," *Bloomberg*, Jan. 28, 2011.

⁸ Letter to Rep. Lamar Smith, Chair, Committee on the Judiciary, U.S. House of Representatives, from Main Street Alliance, Sept. 14, 2011, <http://mainstreetalliance.org/wp-content/uploads/2011/09/MSA-letter-to-House-Judiciary-Committee-on-HR-2885-Sept-14-2011.pdf>.

⁹ J. Kelly Conklin, "E-Verify program would be costly to small businesses," *Houston Chronicle*, July 14, 2011, <http://www.chron.com/opinion/outlook/article/E-Verify-program-would-be-costly-to-small-2078257.php>.

¹⁰ *Findings of the Web-Based E-Verify Program Evaluation* (Westat Corporation, Dec. 2009), http://www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. 118 (hereinafter, Westat 2009).

¹¹ Marc Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Migration Policy Institute, Feb. 2011), <http://www.migrationpolicy.org/research/e-verify-strengths-weaknesses-and-proposals-reform>, p. 17, footnote 13.

¹² *Evaluation of the Accuracy of E-Verify Findings* (Westat Corporation, July 2012), http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf, pp. X, 23 (hereinafter Westat 2012). Though dated July 2012, this report was not released to the public until July 2013.

¹³ The Legal Workforce Act would require all employers to use E-Verify on newly hired employees. The Act would also allow employers to reverify their current workforce using E-Verify. Over the 12 months ending in November 2014, total U.S. hires equaled 57.6 million. See "Job Openings and Labor Turnover—November 2014," a Bureau of Labor Statistics news release, <http://www.bls.gov/news.release/jolts.nr0.htm>. 57.6 million multiplied by 0.3 percent (the tentative nonconfirmation error rate from Westat 2012) equals 172,800 (about 170,000) workers who would experience an erroneous tentative nonconfirmation. The Legal Workforce Act allows employers to reverify all workers, which could result in E-Verify being applied to the entire workforce. As of December 2014, the number of workers in the U.S. workforce was 147,190,000. See "Table A-1: Employment Status of the Civil Population" (Bureau of Labor Statistics, U.S. Dept. of Labor, Jan. 9, 2015), <http://www.bls.gov/news.release/empsit.t01.htm>. 147,190,000 multiplied by 0.3 percent is 441,570 (about 450,000) workers who would receive an erroneous tentative nonconfirmation if E-Verify were used on the entire workforce.

range), or of Tucson, Arizona (on the high end), facing job loss because of an E-Verify system error.¹⁴

More startling, the same DHS-commissioned study also examined E-Verify's final nonconfirmation of work authorization (FNC) accuracy rate—an estimate of how many of the final mismatches issued by the system are correctly issued for unauthorized workers. The study estimated that “6 percent [of FNCs] were inaccurately issued to employment authorized workers,” meaning that 6 percent of final nonconfirmations of work authorization were issued to U.S. citizens or work-authorized noncitizens.¹⁵ Since employers must terminate workers who receive an FNC or risk liability under federal immigration law, these erroneously-issued TNCs likely resulted in job termination of work-authorized employees.

Moreover, workers who receive an erroneous E-Verify determination often have to take unpaid time off from work to attempt to correct their records—which may require more than one trip to a government office. A government-commissioned study found that almost half of such workers lost partial or complete days of work, and 14 percent lost more than two days of work as a result of their efforts to correct an E-Verify error.

Perhaps most disturbing about these statistics is the fact that workers who experience an erroneous E-Verify FNC currently have no formal way to contest it and the Legal Workforce Act provides no meaningful due process for workers who are victims of a program error. In fact, the Legal Workforce Act bars workers from bringing any claim under virtually any law—including laws explicitly designed to provide labor protections—for loss of their job or violations that occur as a result of an employer's use of the program.¹⁶

III. The Legal Workforce Act will increase discrimination against Latino and other foreign-born workers and against women—all of whom are disproportionately likely to experience an E-Verify error.

The current E-Verify system already contributes to discrimination against Latinos and foreign-born workers, since Lawful Permanent Residents (LPRs) and other work-authorized noncitizens receive erroneous E-Verify determinations at much higher rates than U.S. citizens.¹⁷ According to the most recent DHS-commissioned study, the TNC error rate for LPRs is 0.9 percent and for other noncitizens who are legally authorized to work (e.g. asylees) is 5.4 percent.¹⁸ This means that an LPR is *four times* more likely to receive an erroneous TNC than a U.S. citizen. For other noncitizens, this discrepancy is even more pronounced, as a noncitizen legally authorized to work in the U.S. is over *twenty-seven times* more likely to receive a TNC than a U.S. citizen. Because workers who receive a TNC often face negative impacts such as suspension from work or reduced pay, the heightened TNC error rate for LPRs and other work-authorized noncitizens

¹⁴ See <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

¹⁵ Westat 2012, *supra* note 12, p. X.

¹⁶ The only avenue of redress that the bill allows workers who unjustly lose employment because of an E-Verify error is to sue the federal government under the Federal Tort Claims Act (FTCA) for lost wages. However, this is an empty remedy, given the procedural hurdles to bringing an FTCA claim, see 28 U.S.C. § 2675, the FTCA's restrictions on attorney's fees, and the limits of the “discretionary function exception” of the FTCA, see 28 U.S.C. § 2680(a).

¹⁷ See Westat 2012, *supra* note 12, p. 24.

¹⁸ See Westat 2012, *supra* note 12, p. 24. By comparison, the TNC error rate for U.S. citizens for the same time period is 0.2 percent.

results in discrimination.¹⁹

Similarly, working women are more vulnerable to experiencing an E-Verify error. E-Verify errors can result from name inconsistencies on various authorizing documents in the E-Verify system. These name inconsistencies can result from name changes, most commonly because of marriage or divorce, that are much more likely to affect female workers. Additionally, name inconsistencies can result from the use of compound surnames or other culturally-specific naming practices.²⁰ This can result in E-Verify's errors having a potentially disparate impact on certain cultural groups and, in particular, on women from these cultures.

The Legal Workforce Act would expand and compound the discriminatory impacts inherent in the current E-Verify system. Given that E-Verify error rates already disproportionately impact Latino and foreign-born workers and working women, the massive expansion of the use of E-Verify under the Legal Workforce Act would result in a much higher number of such workers experiencing an erroneous E-Verify determination and potentially facing a subsequent adverse employment action and job loss as a result.

Moreover, the Legal Workforce Act would exacerbate the discriminatory impacts of the current E-Verify system, particularly against Latino and other foreign-born workers, since it allows employers to condition job offers on verification through E-Verify. Current law allows use of E-Verify only after a worker is hired precisely because allowing employers to screen workers before they are actually hired opens the door to the discriminatory application of E-Verify to selectively screen job applicants and thereby to discriminate against lawfully-present workers who appear to be foreign-born.

IV. Policy Recommendations

Passing the Legal Workforce Act without legalizing the status of immigrants in the labor force who are currently undocumented will not create jobs, but will result in billions of dollars in lost tax revenue and implementation costs, the loss of jobs for American workers, and poorer working conditions. At a minimum, before expansion of E-Verify is considered, the following steps must be taken:

1) *Enact immigration reform that protects workers' labor and employment rights.*

Instead of focusing on ineffective "solutions," Congress should pass commonsense legislation that overhauls our nation's immigration system and provides a roadmap to citizenship for the 11 million aspiring Americans in our communities. Unlike the Legal Workforce Act, which would decrease contributions to state and federal tax revenue, passage of immigration reform would provide an estimated \$1.5 trillion dollar benefit to the gross domestic product over 10 years in addition to \$66 billion boost in federal tax collection.²¹

¹⁹ See Westat 2009, *supra* note 10, pp. 205-206, which documents that nearly 40 percent of workers surveyed experienced some form of adverse action by their employer as a result of a TNC.

²⁰ Report to the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives: *Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (Government Accountability Office, Dec. 2010, GAO-11-146), www.gao.gov/new.items/d11146.pdf, p. 20.

²¹ The Financialist, *The Cost of Partisan Politics* (Credit Suisse, Feb. 2013), <http://www.thefinancialist.com/the-cost-of->

2) *Ensure that E-Verify is not used to undermine workers' rights under labor and employment law.*

Too often, workers experience egregious violations of their most basic workplace rights. When these workers complain about the unlawful treatment, they face retaliation in the form of firing, suspension, or even physical abuse. Because E-Verify compounds workers' vulnerability and can detract from labor law enforcement, the program should explicitly prohibit the use of E-Verify to undermine workers' rights under labor and employment law. This prohibition should come with meaningful penalties.

3) *Create a review process that would allow citizens and work authorized individuals to correct errors in their records and maintain their jobs.*

Under the current E-Verify system and the Legal Workforce Act, workers who experience an erroneous FNC have no formal way to resolve this error, get their job back, or get compensation for the time they were out a job due to the government's mistake. USCIS should create a process to allow U.S. citizens and work-authorized workers to correct TNCs and FNCs easily, remain on the job while they correct these government errors, and receive compensation for any time they are out of a job.

4) *Prohibit employer misuse of E-Verify.*

There continues to be significant employer misuse of E-Verify—including prescreening of workers and adverse action against workers who receive TNCs. Workers who report mistreatment should be treated as whistleblowers. We should learn from the failure of employer sanctions created by the Immigration Reform and Control Act of 1986 (IRCA)²² and ensure that the penalties do not result in *employee sanctions*, as has been the case under IRCA. As a result of IRCA, employees who speak up in the face of abusive treatment are often fired or detained and deported while the employer simply turns around to hire another unauthorized worker without any penalties.

5) *Before any expansion of E-Verify as part of immigration reform, ensure that the program meets specified requirements regarding database accuracy, low error rates, privacy, and measurable employer compliance before implementation.*

Mandatory E-Verify would represent an enormous increase in utilization of the program, from only 20 million name checks—by only 7% of employers—in fiscal year 2012 to over 60 million name checks if applied only to new hires. Moving forward without addressing problems within the system will result in harm to all workers and businesses. Performance evaluations should address, at a minimum: wrongful terminations due to system errors, employer compliance with program rules, and the impact of the system on workers' privacy. The best way to ensure that implementation of mandatory E-Verify is accurate is to set standards for system performance upfront, clear benchmarks that need to be met, and timelines for meeting those metrics. These metrics should be met *before* any expansion of E-Verify is implemented.

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²² 8 U.S.C. §§ 1324a-1324b.

Conclusion

E-Verify is a costly, ineffective program that does not prevent employers from hiring unauthorized workers, but that instead increases our federal deficit, undermines American jobs, and imposes new burdens on our economy, businesses, and workers. It is time for Congress to stop focusing on ineffectual worksite enforcement and instead focus on passing commonsense immigration reform. It is clear that the public is ready for the 11 million Americans at heart to become Americans on paper, as diverse constituencies are expressing their support for immigration reform. For example, the AFL-CIO and the Chamber of Commerce support immigration reform,²³ as do faith leaders,²⁴ small business owners,²⁵ law enforcement,²⁶ and educators.²⁷ The time has come for Congress to respond to the country's growing consensus, and pass commonsense immigration reform.

²³ *Joint Statement of Shored Principles by U.S. Chamber of Commerce President and CEO Thomas J. Donohue & AFL-CIO President Richard Trumka*, February 21, 2013, <http://www.aflcio.org/Press-Room/Press-Releases/Joint-Statement-of-Shored-Principles-by-U.S.-Chamber-of-Commerce-President-and-CEO-Thomas-J.-Donohue-AFL-CIO-President-Richard-Trumka>.

²⁴ *1000 Faith Leaders Call for Immigration Reform*, (New America Media, Jan. 23, 2013), <http://newamericamedia.org/2013/01/1000-faith-leaders-call-for-immigration-reform.php>

²⁵ Mark Anthony, "Commonsense Immigration Reform Will Boost the Economy," *Battle Creek Enquirer*, Feb. 22, 2013, <http://www.battlecreekenquirer.com/article/20130222/OPINION02/302220028/Mark-Anthony-Common-sense-immigration-reform-will-boost-economy>.

²⁶ Stephanie Czekalinski, "Bibles, Badges, Businesses Call for Immigration Reform," *National Journal*, Dec. 2012, <http://www.nationaljournal.com/thenextamerica/politics/bibles-badges-businesses-call-for-immigration-reform-20121204>.

²⁷ *Wisconsin Teacher Fights for His Students and Immigration Reform* (National Education Association, Feb. 19, 2013), <http://educationvotes.nea.org/2013/02/19/wisconsin-teacher-fights-for-his-students-and-immigration-reform/>.



CALIFORNIA FARM BUREAU FEDERATION

NATIONAL AFFAIRS & RESEARCH DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5610 • FAX (916) 561-5693

**Statement of California Farm Bureau Federation
to
The House Judiciary Subcommittee on Immigration
And Border Security
Hearing on *H.R. _____, the Legal Workforce Act*
February 5, 2015**

California Farm Bureau Federation welcomes the opportunity to comment on the subject of the subcommittee's February 5, 2015 hearing on *The Legal Workforce Act* (introduced by Chairman Goodlatte in the 113th Congress as H.R. 1772), legislation to require mandatory universal electronic verification of the employment eligibility of employees at the time of hire. California Farm Bureau Federation works to protect family farms and ranches on behalf of more than 30,000 farm families who produce a variety of fruits, nuts, vegetables, livestock, dairy, flowers, shrubs, and other crops that feed and clothe our nation.

Farm Bureau has consistently opposed the implementation of a mandatory E-Verify Program prior to the development and successful implementation of an improved, streamlined, and economically viable agricultural guest worker program. It is imperative that an Agricultural Worker Visa Program allow for the smooth, orderly travel of temporary immigrant workers to the United States for jobs in which they are urgently needed, as well as facilitate the safe and orderly return of these workers to their home country. It is also critically important to deal in a practical and humane way with our industry's current unauthorized farm workforce. Farmers and ranchers in California and across the nation need a solution that provides a legal workforce to cultivate and harvest our crops and tend our livestock. Any solution must be economically practical and recognizes the value of the people who work in agriculture to provide Americans with products grown in the U.S.

The national agricultural workforce consists of an estimated 1.83 million hired workers. According to the U.S. Department of Labor's National Agricultural Worker Survey (NAWS), more than half of agricultural workers are unauthorized. However, that estimate may be too low. Some experts estimate that 70% or more of hired farm employees responsible for America's fruit, vegetable, dairy, livestock, nursery plant, and other production are, in fact, not authorized to work in the United States. In California alone, we rely on more than 400,000 employees during peak season. The Agricultural sector is diverse and highly labor intensive, with many seasonal and highly perishable commodities that require human hands for cultivation and harvest. Crops like dairy, sheep herding, strawberries, leafy greens, tree fruits, as well as grapes are cared for and harvested by a labor force that is predominately foreign born.

Agriculture is a very diverse industry; the needs across sectors and states are similarly diverse and cannot be addressed through a one-size-fits-all, single-program solution. It is not a problem confined to agriculture in the northeast, southern Border States or western states. This also is not just a problem for large farmers. According to U.S. Department of Agriculture, 60% of hired farm labor is hired by farms with annual sales less than \$1 million.

Shortages of Agricultural Workers are Real and Persistent

The Texas AgriLIFE Extension Service of Texas A&M University found more than three-fourths of employers surveyed in that state indicated they experienced significant labor shortages in 2006 and 2007. These shortages had already forced Texas farmers to reduce the size and/or scope of their operations, consider moving their farming operations to another country or going out of business entirely. The Texas A&M study also reported another worrisome trend: an aging workforce. The Texas A&M study reported that 28 percent of their workers exceed 45 years of

age, which is fairly old for field labor employees. Employees 25 years of age and younger represented only 10 percent of the labor force.¹

California Farm Bureau surveyed its members in 2012² and found California agricultural producers struggling with employee shortages. Over 700 Farm Bureau members responded to the voluntary survey, which found:

- Overall, 61% of respondents said they were experiencing worker shortages;
- Of farmers growing labor-intensive commodities, 71% reported labor shortages.

The expansion of Deferred Act for Childhood Arrivals (DACA) from 2012, and the creation of the new Deferred Action for Parental Accountability (DAPA) will also introduce a new element of uncertainty about the future availability of farm labor. DACA and DAPA could potentially give work eligibility to hundreds of thousands of people who are currently present in the United States without legal status. How many of these people work in agriculture? How many may choose to leave seasonal agricultural jobs for more permanent employment? We simply don't have answers to these questions, but the impact of DACA and DAPA could result in even more profound shortages of workers than we currently encounter.

Imposing Mandatory E-verify

In 2011, Congress considered legislation that would make E-Verify mandatory for all employers, regardless of size or industry, and this committee is considering similar legislation now. These bills offer no solution to address the unique challenges that a national E-Verify mandate will create for agriculture. As a result, we must oppose any E-Verify legislation that does not adequately address the farm workforce shortages a national E-Verify mandate will create. We are here today because a growing number in Congress are beginning to recognize what we in agriculture already know: E-Verify without a workable, economical way to ensure a legal agricultural workforce will be a disaster for American agriculture. E-Verify without a workable solution will send American agricultural production, and the on-farm and off-farm jobs that go with it, to other countries.

We need not speculate about what will happen "the day after" if Congress chooses to impose a national E-Verify mandate. We have ample experience from Alabama and Georgia where there is not an available domestic labor force for our industry, including prisoners and parolees. One Florida citrus harvester found his workforce dried up as a result of the mere discussion of an E-Verify mandate in Florida. After the state's employment service was unable to help him, he turned to his local sheriff, who offered him inmates on work-release. Sixteen inmates made themselves available, but only 8 actually showed up at the farm; 2 finished the week; none returned for the next week.

¹ Parr Rosson, Flynn Adcock, Marco Palma, Luis Ribera and Jose Pena, *Hired Labor use in the Texas Fruit and Vegetable Industry*, (Center for North American Studies, Texas A&M University Extension Service, 2008)

² *Walking the Tightrope, California Farmers Struggle with Employee Shortages*, (California Farm Bureau Federation, 2012)

A 2014 report commissioned by the American Farm Bureau Federation prepared by World Agricultural Economic Services (WAEES)³ modeled the economic effects of three possible permutations of immigration reform:

1. Enhanced enforcement, including mandatory use of E-Verify and measures to effectively reduce or nearly eliminate illegal border crossing;
2. Enhanced enforcement combined with a legal pathway to permit current illegal immigrants to legalize their status; and,
3. Enhanced enforcement, a pathway to legalization, and a guestworker program for sectors like agriculture with special labor needs.

WAEES found substantial negative impacts on agriculture should Congress choose to implement only enhanced enforcement:

- 15% to 31% reductions in vegetable production; 30% to 61% reduction in fruit production;
- 30% to 40% reduction in net revenues of fruit and vegetable producers due to lower production and higher wage costs, particularly wage costs as these producers attempt to attract more workers with higher wages;
- A drop in overall farm income of 15% to 29%;
- A drop in farm asset values between 10% and 15%.

It is plain that imposition of an enforcement-only solution that would probably include universal and mandatory implementation of E-Verify would result in an economic disaster for agriculture.

Experience also shows us there is no realistic prospect of a domestic work force for agriculture. We in California have learned the hard way that few Americans seek agricultural jobs. In the late 1990's, facilitated by the leadership of Sen. Dianne Feinstein, a multi-county welfare-to-farm-work program was launched in the Central Valley. Regional unemployment rates ranged from nine to 12 percent; in some localities, unemployment exceeded 20%. State and county agencies and grower associations collaborated to identify cropping patterns, labor needs, training, transportation, and other impediments. Out of over 100,000 prospective "welfare to work" placements, three individuals were successfully placed. In the aftermath of the program, several employment agencies indicated – in writing – that they would no longer seek to place the unemployed in seasonal agricultural work. Other examples of this "on-the-ground" experience include the UFW's "Take Our Jobs" campaign, which placed a total of 9 people in agricultural jobs, few of whom lasted more than a few days.

These jobs are not for the unskilled, as farm work requires experience, stamina and dedication. As our society has grown older, better educated, and more urban, our native-born seek other jobs outside the agricultural sector. A farmer cannot survive and compete without a skilled and dedicated workforce.

³ Patrick O'Brien, John Kruse, Darlene Kruse. *Gauging the Farm Sector's Sensitivity to Immigration Reform via Changes in Labor Costs and Availability*. (World Agricultural Economic and Environmental Services, 2014)

Agriculture needs a timely solution that will work in the real world. A day's delay harvesting a perishable crop can result in crop loss, in addition to lost markets. The solution we need must fill the gap between the legally-authorized workforce and the agricultural needs. It is estimated our industry today employs between 900,000 to potentially 1.2 million unauthorized workers with special skills and abilities that we cannot exist without. The daunting reality is that a true solution must be capable of converting or replacing these workers with legally authorized workers.

Any solution must address the following:

A workable solution must deal with the industry's ongoing need for a future workforce. The overall size of our workforce has been stable for decades. Because much agricultural work is seasonal, intermittent, and physically demanding, agriculture does not attract a domestic workforce. Some advocate for improvements to the existing temporary work visa program intended for agriculture, the H-2A program. The program has long needed an overhaul; the Department of Labor's new rules that took effect March 15, 2010 have nearly destroyed the program.

While the program provides only a tiny share of the industry's workforce, in some sectors and some regions the program is important for producers who can use it. H-2A reform is a vital piece of the reform puzzle. However, the program suffers from critical structural, administrative and operational flaws that make it unlikely the program can scale up to meet the on-going labor needs in agriculture, – as illustrated by the small number of farm jobs certified for H-2a in some of the largest farm employment states:

- California relied on the labor of more than 400,000 hired workers in our peak season in 2012. But in 2012, only 2,871 farm jobs in California were certified for H-2A;
- In 2012, only 4,432 farm jobs were certified for H-2A in Florida; and,
- In 2012 in Texas, only 2,253 farm jobs were certified for H-2a.

Even if H-2A could be substantially improved, reform of that program alone could never realistically stabilize the farm labor situation. Extensive reform of the program, intensive education of agricultural employers and expansion of the Department of Labor's labor certification program and American consulates abroad would be needed for H-2A to provide a meaningful percentage of the agricultural labor force. It would be impossible for a program which admitted 90,000 workers in 2012 to process the much larger numbers agriculture would require the day after E-Verify became law.

To ensure our industry a future workforce, we need a new program model that is more flexible, scalable, and market-oriented. Such a program can only succeed with greater cooperation from government at both the state and federal levels. It should include biometric visas, and incentives for workers to abide by the terms of their visas and return home when the work is done. The closer a new program comes to replicating the unique labor needs among employers, crops and locations, the more likely it will succeed at meeting the industry's needs. Agricultural and rural organizations should be allowed to file the required paperwork with the agency on behalf of producers seeking labor. To ensure future programs meet the needs of agriculture, it would be most appropriate for them to be administered by USDA instead of the

Department of Labor, which has not had good performance reviews relative to their use of the H-2A program.

A workable program must also see to the needs of dairy and livestock. Western dairies and ranches may be larger than their counterparts in other parts of the country, but the problem of finding a viable, legal workforce is the same, only the scale is different. It is not merely an issue of raising wages and benefits to attract more domestic workers. The jobs in the dairy industry typically start at twice the minimum wage, often with additional benefits. Under current law, dairies and ranches have no “safety net” program to obtain legal workers. The industry requires work visas that allow workers to stay for longer periods of time without interruption.

Any solution must avoid needless disruptions of the industry and must accommodate the large, experienced labor force our industry has now. Our industry is dependent upon an experienced workforce. It has been and will be impossible to find and deport the current unauthorized farm workforce and replace it with new workers properly authorized under a new visa program or a combination of a new program and improved H-2A. Any solution must deal somehow, in a practical and humane way, with current workers. For others, especially long-tenured and highly-skilled employees and employees with close family members who are U.S. citizens, options beyond temporary visas are needed. The most important features of a solution for our industry will be to recognize that many of our workforce want and need the ability to come to the U.S., work on our farms and ranches, and return to their home country.

The consequences of getting it wrong are very serious. California leads the nation in fruit, vegetable, dairy, and nursery production, being the largest producer of 60 farm grown food products. These sectors are high-value agriculture, responsible for farm income and farm-dependent jobs that sustain communities and economies in California and across the country. Agriculture’s annual farm-gate value of \$40+ billion employs 175,000 Californians every day, and as many as 450,000 during peak season per year. Across America, several million jobs are at risk, both on the farm and in farm-dependent businesses that provide goods and services used by farms or are dependent upon products produced on farms: every single on-farm job in California creates three additional off-farm jobs. Undoubtedly, denying the agricultural industry a means of obtaining a legal workforce will jeopardize our nation’s food security, and deprive our state and nation of an important economic engine.

Impacts to American farmers

Imposing an E-Verify mandate will endanger America’s food supply, grown in America. USDA statistics show that foreign producers are gaining market share in the U.S. Fruit and vegetable exports from China have increased 555.6% over 10 years; Mexico has seen a 156% increase in their share of the U.S. market and Peru has seen a staggering 693% increase. American producers have responded to this by moving some of their operations out of California and other parts of the United States, taking jobs and the related economic vitality with them. Indeed, the United States is well on the road to reliance on food imports, especially in the fruit and vegetable sectors. According to a 2008 Congressional Research Service report:

Over the last decade, there has been a growing U.S. trade deficit in fresh and processed fruits and vegetables. Although U.S. fruit and vegetable exports totaled nearly \$9 billion in 2007, U.S. imports of fruits and vegetables were more

than \$16 billion, resulting in a gap between imports and exports of more than \$7 billion. This trade deficit has widened over time — despite the fact that U.S. fruit and vegetable exports have continued to rise each year — because growth in imports has greatly outpaced export growth. As a result, the United States has gone from being a net exporter of fresh and processed fruits and vegetables in the early 1970s to being a net importer of fruits and vegetables today. (“The U.S. Trade Situation for Fruit and Vegetable Products”, Renée Johnson, Congressional Research Service, October 15, 2008)

One might wonder why it matters whether we produce our own food or import our food from other countries. The United Nations Food and Agriculture Organization (FAO) recently released a report on global food inflation. That report had some interesting findings:

*The F.A.O. price index, which tracks 55 food commodities for export, rose 3.4 percent in January (2011), hitting its highest level since tracking began in 1990. **Countries not dependent on food imports are less affected by global volatility.** Still, food prices are expected to rise 2 percent to 3 percent in the United States this year. [Emphasis added]*

Imposing an E-Verify mandate without an effective way for farmers and ranchers to obtain a stable, legal workforce will also run counter to consumers’ growing interest in organic food and “locally grown” foods. Why? Organic and “locally grown” foods tend to be more labor intensive with less available mechanization than conventionally grown food. A successful agriculture industry that can feed America with food grown in America needs all types of producers, growing all sorts of crops that American consumers want to eat and can afford across a broad spectrum of our society. In testimony before the Senate Judiciary Committee in October 2011, Dr. Ronald Knutson, former Director of the Food and Agricultural Policy Center at Texas A&M University testified:

“The shift in American diet is new, major, and will require increased production of fruits and vegetables. Farm labor immigration policy will have a major impact on whether the fruit and vegetables used to improve the health of Americans will be produced in the United States or in foreign countries. Initiatives that involve an even higher level of government regulation will assure that an increased share of fruit and vegetable production, as well as of other agricultural products, will be produced overseas—outsourced.” (Testimony of Dr. Ronald Knutson, Senate Judiciary Committee, October 4, 2011)

Finally, a 2006 USDA report on the fruit and vegetable sector underscored the importance of immigration reform to the continued economic vitality of American agriculture and the contributions it makes to the economy as a whole. Though the report was narrow in its focus, the implications are equally true for other agricultural sectors including dairy, nursery and greenhouse, and even ranching.

The U.S. fruit and vegetable sector is at a crossroads. As an increasingly important component of U.S. agriculture, with nearly a third of U.S. crop cash receipts and a fifth of U.S. agricultural exports, the industry is becoming recognized by policymakers as pivotal to the health and well-being of consumers

and to the economy of rural America. The various challenges facing the sector come from both domestic and international trade arenas. Key issues include labor cost and availability (including immigration reform and access to an affordable labor pool), strategies to enhance domestic demand, increased access and competition in foreign markets, and environmental issues. Confronting these challenges is vital for the U.S. fruit and vegetable industry to continue into the future as a healthy and vibrant sector of the U.S. economy. USDA "Fruit and Vegetable Backgrounder" (Electronic Outlook Report from the Economic Research Service, Gary Lucier, Susan Pollack, Mir Ali, and Agnes Perez, April, 2006).

Conclusion

In conclusion, California Farm Bureau urges you to remember that the farmers and ranchers who produce your food need a workable means of hiring the people required to do the work. We need a solution that is economically practical, one that recognizes the impact of our past inability to resolve this problem by resolving the problem in a humane way that recognizes the humanity and value of the people who work for us, and our families.



**Written Statement of Farmworker Justice
Submitted to the House Judiciary Subcommittee on Immigration
and Border Security Hearing on “The Legal Workforce Act”
February 4, 2015**

Contact:

Adrienne DerVartanian
Director of Immigration and Labor Rights
(202) 293-5420
adervartanian@farmworkerjustice.org

Megan Horn Essaheb
Staff Attorney & Policy Analyst
202-800-2518
mhorn@farmworkerjustice.org

Farmworker Justice submits this statement for inclusion in the record of the February 4, 2015 House Judiciary Subcommittee on Immigration and Border Security hearing on “The Legal Workforce Act.” For over thirty years, Farmworker Justice has engaged in policy analysis, education and training, advocacy and litigation to empower farmworkers to improve their wages and working conditions, immigration status, health, occupational safety and access to justice. Since its inception, Farmworker Justice has played an important role in immigration policy discussions, monitored the H-2A agricultural guestworker program throughout the country and helped farmworker organizations participate in policy debates.

The “Legal Workforce Act,” HR 1772, a mandatory E-Verify bill introduced by Rep. Lamar Smith (R-Texas), will harm the farmworkers who work hard to put food on our tables. The bill would require employers to check job applicants’ immigration status through USCIS’s electronic verification system, but would not offer a constructive solution to the fact that more than one-half of the nation’s roughly 2.4 million farmworkers are undocumented.

Our nation’s broken immigration system, labor laws that discriminate against farmworkers, and the labor practices of many agricultural employers have combined to create an agricultural labor system that is unsustainable and fundamentally unfair to the farmworkers who harvest our food. Undocumented workers’ fear of deportation deprives them of bargaining power with their employers and inhibits them from challenging illegal employment practices. The presence of so many vulnerable farmworkers depresses wages and working conditions for all farmworkers, including U.S. citizens and lawful immigrants. Poverty among farmworkers is more than double that experienced by other wage and salary workers.¹ According to 2011-12 data from the U.S. Department of Labor’s National

¹ See Kandel, W. Profile of Hired Farmworkers, A 2008 Update, United States Department of Agriculture, Economic Research Report, No. 60, July 2008. Available at <http://www.ers.usda.gov/Publications/ERR60/>.

Agricultural Workers Survey (“NAWS”), the average total individual income of farmworkers is \$15,000-\$17,499.² The average farmworker family’s total income is \$17,500- \$19,999. The federal poverty level for a family of 3 is \$19,790. Twenty-five percent of all farmworkers surveyed in 2011-12 had a family income below the federal poverty line.

Such poor conditions and discriminatory laws have resulted in substantial employee turnover. In the absence of an immigration system that functions sensibly to control our borders and to provide immigration visas when workers are needed, most of the newly hired farmworkers have been undocumented. Still, estimates indicate that there are at between 720,000-1,200,000 legally authorized U.S. workers in the agricultural labor force.³ The sensible, rational and moral solutions to stabilize the farm labor force include ending discrimination in labor laws, improving wages and working conditions for farmworkers, and establishing a program to allow undocumented farmworkers to earn legal immigration status.

While the President’s deferred action program will potentially benefit hundreds of thousands of farmworkers, many other farmworkers will remain without work authorization and vulnerable to abuse. Mandatory e-verify would cause further harm in a workforce that already experiences high turn-over and poor wages and working conditions. Instead of further destabilization of our farm labor force, immigration reform that values our nation’s workers is needed.

In the past, some members of Congress have responded to E-Verify by proposing changes to the H-2A agricultural guestworker program to weaken worker protections and “streamline” the program by removing government oversight. These efforts have repeatedly failed due to a recognition that one-sided exploitative guestworker reform is not a solution to agriculture’s needs and not an approach reflecting our nation’s values. Rep. Goodlatte’s “Agricultural Guestworker Act” is one such proposal. The bill would create one of the worst agricultural guestworker programs in decades. Instead of providing the comprehensive immigration solution this nation desperately needs and wants, this bill represents a flawed piecemeal approach to convert an entire industry, from the fields to the processing plants, to an army of guestworkers with essentially no rights and no ability to become members of our society.

The terms of Rep. Goodlatte’s proposed agricultural guestworker program would deprive U.S. citizens and lawful permanent residents of job opportunities, lower farmworkers’ already poor wages, and allow exploitative conditions for hundreds of thousands of new guestworkers. The legislation offers workers fewer protections than the notoriously abusive bracero program. By slashing virtually all of the protections in the current exploitative H-2A program, abuses in the new program will be amplified as the new guestworkers will be even more vulnerable to exploitation and will have extremely limited access to judicial relief and legal assistance. US workers who are not displaced will face huge wage cuts and other reductions in working conditions due to lack of protections for US workers and temporary workers. Finally, the bill lacks an opportunity for the hundreds of thousands of current experienced undocumented farmworkers to earn a green card or citizenship. The only option for current undocumented farmworkers would be to self-deport and apply to become temporary workers in the new guestworker program; however, they would then be required to leave the country after their

² The average does not include individuals who had no income for the year being surveyed. This figure includes income that some farmworkers earn from jobs outside agriculture.

³ Estimations based on a range of 30% - 50% US workers of a total labor force of 2.4 million farmworkers.

job or their visa ends, with no chance to become a member of the society they help to feed. The bill would tear families apart as it fails to provide any opportunity for the farmworkers' spouses and children to obtain immigration status. Consequently, many farmworkers would not come forward to apply for the program, and as a result, the bill would fail to meet the needs of the farm labor system.

We hope that there will not be efforts this Congress to repeat those same mistakes of the past. We already have an agricultural guestworker program available to employers, the H-2A program, and its provisions do not need to be expanded because – unlike most other visa programs – it has no limit on the number of guestworkers that may be brought in annually. As detailed in our report, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, the H-2A program, despite its labor protections, is fundamentally flawed and rife with abuses that harm U.S. and foreign workers.⁴ Certainly it should not be made any worse by reducing government oversight, lowering wage rates and removing labor protections, as Rep. Goodlatte's bill would do. Moreover, it makes no sense to bring in hundreds of thousands of new guestworkers – under either the H-2A program or a new guestworker program – when there are already over a million undocumented farmworkers, in addition to citizens and documented immigrants, performing agricultural work productively and contributing to their communities. More importantly, large-scale guestworker programs are anathema to American values of freedom and democracy. A practical, meaningful, fair solution to our broken immigration system has to include an opportunity for our current workforce to earn immigration status. Neither mandatory E-Verify nor easy access to cheap expanded guestworker programs, nor any combination of the two, will solve the current challenge in the agricultural labor market: that a majority of the workforce is undocumented.

Instead of pursuing this misguided expansion of E-Verify, Congress should pass comprehensive immigration reform that includes an opportunity for undocumented farmworkers, their family members and the rest of the 11 million to obtain permanent immigration status and an opportunity for citizenship. Immigrant farmworkers and other aspiring Americans deserve to be treated with respect and should be given the opportunity to earn immigration status and citizenship. Demands by some employer groups for exploitative guestworker programs should be rejected. Congress should pass immigration legislation that honors our history as a nation of immigrants.

⁴ Farmworker Justice, *No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers*, September 2011. Available at <http://farmworkerjustice.org/images/stories/cBook/pages/fwj.pdf>. We ask that this report be included in the record of this hearing.



Lutheran Immigration and Refugee Service

STATEMENT FOR THE RECORD

On

"H.R. _____, the Legal Workforce Act"

House Judiciary Committee

Subcommittee on Immigration and Border Security

February 4, 2015

By Lutheran Immigration and Refugee Service

Lutheran Immigration and Refugee Service (LIRS)¹ appreciates the opportunity to submit this statement for the record. LIRS is the national organization established by Lutheran churches in the United States to serve uprooted people. Through our extensive work with churches, network partners, refugees and migrants all across the country, LIRS sees the increasingly important role that migrants play in the U.S. economy, starting up new businesses, revitalizing communities, increasing tax revenues, and filling jobs that many Americans are unwilling to perform. The Legal Workforce Act will not accomplish what it promises, put many workers who are legally allowed to work at risk of being fired, and be burdensome to small businesses. Widespread use of E-verify will only be fair and meaningful for our country when it protects the rights of all workers and is accompanied with broader immigration reform.

The Legal Workforce Act and E-Verify

The Legal Workforce Act is a broad-reaching bill that would impact millions of individuals in the United States – both U.S. citizens and non-citizens. Within just three years, this would require all

¹ LIRS welcomes refugees and migrants on behalf of the Evangelical Lutheran Church in America, the Lutheran Church—Missouri Synod and the Lutheran Evangelical Lutheran Church in America. LIRS is nationally recognized for its leadership advocating with and on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

U.S. businesses to use E-Verify, an internet-based employer verification program, including small businesses with as few as one employee.

E-Verify was created in 1997 and is implemented by the Department of Homeland Security (DHS) in conjunction with the Social Security Administration. Use of E-Verify for new hires is required for federal agencies; and some states have also passed legislation that requires E-Verify for new hires. However, for all other U.S. employers, E-Verify is voluntary. While program participation continues to increase, very few of the approximately 7 million U.S. employers are currently enrolled.

Impact of Mandatory Expansion of E-Verify

If E-Verify were required for every U.S. business, it would have a tremendous impact on U.S. citizen and non-citizen workers alike. Due to errors in E-Verify, lawful workers were wrongfully fired from their jobs. Although these error rates have decreased since the program first began, the number of erroneous firings would be compounded if all businesses in the United States were required to use E-Verify.

E-Verify is Also Problematic for Refugees and Asylees

E-Verify expansion would also create obstacles for lawful migrants including those who have been given protection in the United States, such as refugees and migrants granted asylum in the United States (asylees). Federal government data reveals a number of cases of refugees and asylees whose employment was terminated, suspended or was delayed because of problems with E-Verify. For example:²

- DHS issued a Somali refugee in Nebraska an employment authorization card that listed an incorrect birth date. When the refugee was hired by an employer who uses E-Verify, the system could not confirm the worker's eligibility. The refugee contested the notice. However, the employer did not provide the refugee with the proper way to resolve the issue. Because the refugee did not know how to contact the correct DHS office and, thus, did not contact DHS in a timely way, the refugee's job was terminated.
- When a Burmese refugee in Texas was hired, his employer incorrectly entered his date of birth. Therefore, when the employer tried to confirm the refugee's work eligibility, the E-Verify system issued a tentative non-confirmation. The employer then incorrectly suspended the employee until they could resolve the issue. To make matters worse, the employer did not provide the refugee with the proper letter and contact information to follow up with DHS.
- In Tennessee, an asylee from Guinea was hired by a trucking company. However, the company incorrectly listed his information and the system indicated that it could not confirm the asylee's work authorization. The employer then did not provide him with information about how to resolve the issue.

² http://www.justice.gov/cris/about/osc/hum/telephone_interventions/ti_e-verify.php

Although all three of these individuals were ultimately able to regain their jobs, they all faced undue harm, lost wages, and had to take additional steps to fix errors made by the federal government or their employers. These cases underscore the challenges that national expansion of E-Verify would likely create for thousands of U.S. citizens and work authorized non-citizens.

Mandatory Employer Verification Must be Accompanied by Other Reforms

The United States needs a functional employment verification system to ensure U.S. employers hire legal workers, to identify unscrupulous employers and to protect all workers. However, while the government should continue to improve employer verification programs to reduce their impact on U.S. citizen and legal workers, policymakers must keep in mind that there are more than 11 million undocumented migrants in the country who are important members of our families, communities and congregations and who have important economic ties to the country.

The success of a mandatory employment verification program will depend on full participation by both U.S. employers and workers. However, this legislation would drive undocumented workers off the books and result in the likely growth of a large underground economy, not to mention force undocumented community members even further into a shadowed existence.

To ensure full participation in a national employer verification system, Congress must fix the broken U.S. immigration system by including a roadmap to earned legal status for undocumented workers, protecting families and workers, and ensuring the humane enforcement of immigration laws. Congress and the Administration must pursue smart policies that protect and create jobs and identify new ways to leverage the contributions of all workers in the United States.