



**STATEMENT OF TODD MCCRACKEN**

**PRESIDENT OF**

**THE NATIONAL SMALL BUSINESS ASSOCIATION**

**on**

**“E-Verify: The Perspective of Employers Who Use It”**

**Before the House Judiciary Committee**  
**Subcommittee on Immigration Policy and Enforcement**

**April 27, 2012**

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Chairman Gallegly, Ranking member Lofgren and members of the Committee, on behalf of the 150,000 small-business owners represented by the National Small Business Association (NSBA), I would like to thank you for the opportunity to discuss E-Verify and the Legal Workforce Act. NSBA, now celebrating its 75<sup>th</sup> year, has members throughout the United States in every imaginable line of business. We have many strong state or regional affiliates, a Small Business Exporters Association and a Small Business Technology Council.

NSBA opposes making E-Verify mandatory and opposes the Legal Workforce Act (H.R. 2885). The bill mandates that all employers in the U.S. use E-Verify to determine whether their employees are legally authorized to work. If passed, small businesses will have 12 to 24 months to comply with the law, depending on their size.

This bill is bad policy and we are firmly convinced that Congress would regret passing this legislation. Once it is implemented, there is likely to be a storm of protest from American citizens who would be either denied employment by this legislation or forced to navigate a months-long bureaucratic process to exercise their right to earn a living. Moreover, small employers will react very negatively to the cost and uncertainty associated with mandated use of E-verify.

NSBA opposes the Legal Workforce Act because:

- It would impose significant administrative costs on small businesses;
- The database has a unacceptably high error rate;
- It would place small business in the position of having to retain and train employees who have received tentative non-confirmations until their status has been clarified even though they are highly likely to be deemed unauthorized to work;
- It currently takes about 100 days to resolve database errors but if the use of E-Verify is made mandatory for all new hires, the time to resolve errors is likely to be increase dramatically;
- Hundreds of thousands of ordinary American citizens may have their employment status endangered by E-Verify; and
- The bill would impose draconian penalties on small business owners that fail to use the system.

Bloomberg news has estimated that businesses with fewer than 500 workers would bear the greatest burden of E-Verify, spending about \$2.6 billion a year, compared with less than \$100 million for the 4 percent that used it in 2010.

Both the Government Accountability Office and Westat, a Rockville, Maryland-based social science research firm under contract to USCIS, have found that the system continues to be highly inaccurate. More unauthorized workers are deemed authorized by the system (3.3 percent of all E-Verify cases) than are found unauthorized to work (2.9 percent of all E-verify cases).

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On average, 0.7 percent of authorized workers are found unauthorized initially (a tentative non-confirmation or TNC). There are four to five million new hires in the U.S. per month. That means that E-Verify will deny employment opportunities for about 28,000 to 35,000 American citizens per month (340,000 to 420,000 annually) or force them to navigate a bureaucratic morass, usually for months. USCIS and SSA estimate that about 60 million queries would be generated annually under E-Verify if the program were made mandatory for new hires nationwide. These agencies estimate that 164,000 people will be given a TNC for name-related reasons alone. The system generates erroneous tentative non-confirmations for 3.2 percent of naturalized citizens (one in 31), 2.1 percent of lawful resident aliens (one in 48) and 0.1 percent of U.S. born citizens (one in a 1000). Thus tens of thousands of American citizens will be deemed unauthorized to work by the system each month. It takes months to resolve database mistakes. Meanwhile, both the employer and employee are in legal and business limbo. The employer is forced to pay the employee although there is a high chance that he or she will eventually be deemed unauthorized. And the employer and employee will be forced to navigate a complex bureaucratic morass just to exercise their right to work.

Section 2(b)(1)(C)(ii)(II) of the Legal Workforce Act would provide that “In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a non-confirmation becomes final.” Given that it currently takes 100 days and is likely to take many, many months once all new hires are in the system, small business will be forced to keep people on the payroll that are probably unauthorized to work, and will have to ultimately be discharged, until the system errors are resolved. This will be expensive and disruptive.

There are also a large number of erroneous final non-confirmations. Thus, a large but unknown number of Americans will be denied employment and made unemployable because of E-Verify. This is unjust.

E-verify does not address the major problem of false documents being used. GAO found that “identity fraud continues to be a challenge for E-Verify as well as for current employment verification processes. We have previously reported that weaknesses in the Form I-9 system, such as difficulty in detecting document and identity fraud and the large number of acceptable documents for proving work eligibility, have undermined the effectiveness of the employment verification process. Because E-Verify is an automated system based on the Form I-9, it possesses the same inherent weaknesses.”

Under the legislation, businesses would be subject to civil fines up to \$25,000 and criminal penalties up to 10 years in prison and criminal fines of \$15,000 per illegal immigrant for non-compliance. If this legislation passes, the penalties imposed on non-compliant businesses would be absurdly disproportionate to the severity of the offense. The proposed prison sentence is as severe as the punishment for second degree murder in many states and twice the median sentence for kidnapping or drug trafficking, according to the Bureau for Justice Statistics.

Passing H.R. 2885 is ill-advised and we urge you to oppose this bill if it reaches the floor of the House of Representatives.

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