

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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November 13, 2013

The Honorable Lamar Smith
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Robert Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Rep. Smith and Chairman Goodlatte:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, appreciates your steadfast efforts advocating for H.R. 1772, the "Legal Workforce Act."

This legislation represents a reasonable compromise to address an important component of reforming our nation's immigration system. That is why the Chamber is disappointed to note a recent letter sent by immigrant advocacy groups¹ to House leadership opposing the Legal Workforce Act. The bill would impose a nationwide mandate to use E-Verify.² The letter claims that the Legal Workforce Act proposes an "outdated" and "misguided" approach that "threatens our national economy." Diverging from the hyperbole of this letter, the facts suggest otherwise.

I write to set the record straight.³

E-Verify Errors

There have been many technological and process improvements to E-Verify in the last few years, so the commonly cited 12 percent rate of E-Verify errors⁴ is a thing of the past.

¹ <http://www.nilc.org/nr102213.html>.

² E-Verify is an electronic employment eligibility verification system operated by U.S. Citizenship and Immigration Services, a component of the Department of Homeland Security.

³ The U.S. Chamber testified about the terms and conditions of its support for mandatory E-Verify earlier this year. See, testimony of the U.S. Chamber of Commerce before the House Immigration Subcommittee, February 27, 2013 <http://judiciary.house.gov/hearings/113th/02272013/Johnson%2002272013.pdf>

⁴ Intel famously experienced tentative non confirmation rates in excess of 12 percent, even though all these non confirmations were eventually cleared. It turned out that Intel had such a high rate of tentative non confirmations because E-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. (See Intel's April 2008 public

However, the advocacy community letter is written as if that level of erroneous tentative non confirmations still exists. At present, E-Verify tentatively notes that an authorized worker is not verified for work in only a tiny fraction of cases—approximately 0.3 percent of queries⁵ return an incorrect, but tentative, notation that a U.S. citizen or other legal worker cannot be confirmed when she in fact is authorized.

“Given E-Verify’s current error rates,” a phased-in E-Verify mandate for new hires would *not* “threaten the livelihood of all workers, including U.S. citizens,” as claimed by the advocacy organizations’ letter. In fact, the current E-Verify error rates about which the letter raises an alarm are considered acceptable *accuracy* rates. 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. Moreover, it can be expected that erroneous non confirmations will continually be reduced once E-Verify were implemented in the coming years for new hires across the economy, as U.S. workers correct discrepancies in various queried databases.⁶

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 vital. U.S. Citizenship and Immigration Services (USCIS) has been, and is, using technology to do that. Most significantly, USCIS is taking steps to reduce name mismatches for naturalized Americans,⁷ which have been reduced by about 30 percent⁸ (and would be virtually eliminated except that not all naturalized citizens choose to present U.S. passports in the employment verification process).⁹

comments as part the FAR notice and comment rulemaking imposing E-Verify on federal government contractors, consistent with the December 2009 Westat study which also highlighted this example, based on a review of April to June 2008 data.)

⁵ July 2013 Westat report (dated July 2012 but publicly released 2013), “Evaluation of the Accuracy of E-Verify Findings” http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf.

⁶ See July 2013 Westat report. The .003 (.3 percent) rate at which authorized workers are tentatively told that work authorization cannot be confirmed would be expected to decline if E-Verify was phased-in as mandatory in the future. Reducing such rates is expected not only as a result of continued improved agency processes and use of technology, but also since: (1) While each U.S. worker will eventually have to correct any such inconsistencies, this is a onetime effort and thus tentative non confirmations will be further reduced once E-Verify is phased in and as more workers correct their records. (2) Moreover, the Legal Workforce Act clarifies that an employer may run an E-Verify query once workers decide to accept employment. Thus, authorized workers who receive a tentative non confirmation will often be able to know in advance of the first day of work if they need to correct their Social Security Administration records because of a tentative non confirmation in E-Verify. Individuals won’t “lose their jobs” because they will be able to correct any errors in their records before starting their job.

⁷ 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.

⁸ Testimony of U.S. Citizenship and Immigration Services before the House Immigration Subcommittee, February 27, 2013 <http://judiciary.house.gov/hearings/113th/02272013/Correa%2002272013.pdf>.

⁹ When name mismatches result in issuance of tentative non confirmations in E-Verify to authorized workers, it appears this occurs disproportionately to naturalized citizens. In December 2010, the Government Accountability Office reported that about 10 percent of all tentative non confirmations are for name mismatches but that nearly 76 percent of these name mismatches relate to naturalized American citizens. (See GAO December 2010 study evaluating E-Verify, “Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain.”)

E-Verify Worker Protections

The advocacy groups' letter states that the House legislation would leave citizens and legal workers without "any meaningful protection" from losing their jobs "due to a government error." Such protections are already being established at the agency level. USCIS recently revised the notification process so that each employer must provide a new, reworded Further Action Notice (FAN) to employees providing an improved explanation that makes it clear employees must take action to correct their records if there is a tentative non confirmation. Moreover, USCIS now has a Compliance and Monitoring division within E-Verify that reviews if employers print out the FAN, and USCIS currently reports employers who do not provide such notice 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. USCIS will consider a request at any time, and there is no legal 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.

Ironically, the advocacy groups' letter insists that it is of particular concern that the Legal Workforce Act would permit reverification of the current workforce in certain limited situations. As you well know, the Chamber remains staunchly opposed to any E-Verify mandate that includes a requirement to reverify the entire current workforce. Reverification of the 143 million Americans currently working is a stumbling block to nearly every employer in United States¹⁰ and would overwhelm E-Verify in any phase-in of a mandatory system.¹¹ In fact, H.R. 1772 would in no way require or incentivizes an employer to reverify its current workforce.¹²

Reform Needed to Amend Our Dysfunctional Immigration System¹³

The Chamber is dismayed that the groups signing the recent letter exhorting opposition to H.R. 1772 appear solely concerned about how to address the 11 million undocumented individuals living in the U.S. and fail to clearly acknowledge this element is only one facet of needed immigration reform, albeit perhaps the most difficult to tackle.

¹⁰ The only businesses that would not be burdened by a requirement to utilize E-Verify beyond new hires and to instead reverify those currently employed (current employees have already been confirmed through the I-9 employment verification process) are those employers that work completely without permanent staff, such as some seasonal businesses and temporary staffing agencies.

¹¹ USCIS has stated that E-Verify could presently handle queries for up to 50-60 million new hires annually, the typical range of new hires annually in the U.S. economy.

¹² The Legal Workforce Act default is to allow voluntary reverification of an employer's current workforce only if an employer chooses to reverify its entire employee population. An exception is recognized if the employer wants to reverify all of its workers in one area of employment or in one job category, in which case all existing employees in the area or in similar jobs can be run through E-Verify if an employer so chooses.

¹³ The Chamber summarizes the dysfunction of the current immigration system in a one-pager and debunks common myths about moving forward with immigration reform in an Immigration Myths and Facts report (http://immigration.uschamber.com/uploads/sites/400/why_system_dysfunctional_by_the_numbers_8_5_2013.pdf for one-pager and http://www.uschamber.com/sites/default/files/reports/Immigration_MythsFacts.pdf for report).

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America's immigration laws must be amended to transform border security and enforcement, employment verification, and our legal immigration system, to include revised temporary worker programs and green cards for both highly skilled and lesser-skilled but essential immigrant workers. The Chamber believes that it is in America's best interest for Congress to create a means for the undocumented to earn a lawful status, under strict criteria, without barring those that may qualify from later achieving citizenship.

If a key element of making our immigration system work is for employers to turn off the jobs magnet for unauthorized workers, then the Chamber's view is that the employment verification system must be workable for employers to use. The Legal Workforce Act would achieve that, and therefore the Chamber supports H.R. 1772. Although there may be some improvements that could be made to the bill, we recognize it as a key component of immigration reform and commend you for your work in achieving reasonable compromise on the issues underlying the important aspects of a revised employment verification system.

The Chamber thanks you for your consideration of these views.

Sincerely,

A handwritten signature in black ink, appearing to read "Randel K. Johnson", with a large, sweeping flourish at the end.

Randel K. Johnson
Senior Vice President
Labor, Immigration and Employee Benefits

cc: Members of the Committee on the Judiciary