

Do Gaps in E-Verify Justify a National ID?

BY **STUART ANDERSON**, *an adjunct scholar at the Cato Institute and executive director, National Foundation for American Policy.*

A recent report on E-Verify, which seeks electronically to verify lawful work status in the United States, indicates a significant gap remains in the system's ability to prevent illegal immigrants from being hired. That and other problems with the system are not new but have taken on new urgency with Members of Congress seeking to require all U.S. employers to use E-Verify. The gap in the system is likely to increase calls for a National ID card.

In 1986, Congress made it against the law for U.S. employers to knowingly hire a person who is not authorized to work in the United States. This "employer sanctions" law failed to reduce illegal immigration. Some argue these provisions have not been sufficiently enforced. Others point out employers are not document experts and can violate civil rights laws if they excessively scrutinize the documents presented to them.

Some hope a way around the false document and civil rights dilemmas is to require employers to use the electronic verification system known as E-Verify. In theory, the system is voluntary. However, the federal government, along with some state legislatures, has started to require employers to use E-Verify. Federal contractors, for example, cannot receive U.S. government contracts unless they utilize E-Verify.

To start using E-Verify, an employer must enter into a Memorandum of Understanding (MOU) with the federal government, specifically the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services bureau (USCIS) and the Social Security Administration (SSA). After enrolling, the employer transmits information electronically on new hires that are checked against SSA and DHS databases.¹

SHORTCOMINGS IN E-VERIFY

From an immigration enforcement perspective, the clearest shortcoming in the system is that E-Verify cannot reliably prevent people from using a false identity to appear eligible to work even if they are ineligible. In a 2005 report describing the Basic Pilot Program, the forerunner to E-Verify, the Government Accountability Office (GAO) stated: "...the program cannot currently help employers detect identity fraud . . . If an

unauthorized worker presents valid documentation that belongs to another person authorized to work, the Basic Pilot Program may find the worker to be work-authorized. Similarly if an employee presents counterfeit documentation that contains valid information and appears authentic, the Basic Pilot Program may verify the employee as work-authorized."² Changing the name of the program to E-Verify has not eliminated this problem.

A December 2009 report on E-Verify by the consulting group Westat, which is on contract to the U.S. Department of Home-

land Security, identified similar shortcomings in the system:

"Due primarily to identity fraud, the inaccuracy rate for unauthorized workers is approximately 54 percent. Approximately 3.3 percent of all E-Verify findings are for unauthorized workers incorrectly found employment authorized and 2.9 percent of all findings are for unauthorized workers correctly not found employment authorized. Thus, almost half of all unauthorized workers are correctly not found to be employment authorized (2.9/6.2) and just over half are found to be employment authorized (3.3/6.2). Consequently, the *inaccuracy rate for unauthorized workers* is estimated to be approximately 54 percent with a plausible range of 37 percent to

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64 percent.”³

The Westat analysis reached the same conclusion as the GAO: “This finding is not surprising, given that since the inception of E-Verify it has been clear that many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify.”⁴

U.S. legislators rarely abandon programs that don’t work well, despite the costs or the impact on law-abiding individuals. The more typical response is to expand the program and increase the burdens on taxpayers and affected parties. In this case, the “affected parties” are everyone in America who wishes to hold a job.

THE PATH TOWARD MAKING E-VERIFY MANDATORY

Legislation Congress considered in 2006 and 2007 would have mandated that all employers eventually use E-Verify for new hires. Some proposals in Congress have called for verifying the legal status of all current employees as well. Any future comprehensive immigration reform legislation is almost assured to include provisions to require employers to use E-Verify.

Currently, approximately 180,000 employers utilize E-Verify.⁵ While that sounds like a large number it is not when one considers there are more than 5.8 million firms that employ one or more people in the United States.⁶ That means only about 3 percent of employers in America currently use E-Verify.

A NATIONAL ID CARD TO PLUG THE HOLES?

The idea of plugging any perceived gaps in E-Verify and employer sanctions generally is on the minds of elected officials. Discussing their plans for immigration legislation in a *Washington Post* op-ed, Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) write, “We would require all U.S. citizens and legal immigrants who want jobs to obtain a high-tech, fraud-proof Social Security card. Each card’s unique biometric identifier would be stored only on the card; no government

database would house everyone’s information. The cards would not contain any private information, medical information or tracking devices. The card would be a high-tech version of the Social Security card that citizens already have.”⁷

Employers would be compelled to use the system. “Prospective employers would be responsible for swiping the cards through a machine to confirm a person’s identity and immigration status. Employers who refused to swipe the card or who otherwise knowingly hired unauthorized workers would face stiff fines and, for repeat offenses, prison sentences,” write Schumer and Graham.⁸

CONCLUSION

When it comes to illegal immigration, policymakers often present conflicting narratives. Elected officials cannot decide whether the problem is that employers are unscrupulous or that they are honest but unable to verify documents. Most of the recent rhetoric emanating from Washington, D.C., indicates elected officials think most employers are cheats.

But if employers are dishonest, then the easiest way to beat E-Verify, a National ID card, or any other combination of systems and documents is simply not to use them, hiring workers “under the table.” The costs and burdens then would fall on those who obey the law, not on those who break the law.

Few are asking the more obvious question: Wouldn’t the issue of unauthorized workers be resolved if employers were simply given access to a legal supply of workers who are willing and able to work in the United States? If a robust temporary visa program were operating, almost all employers would hire only legal and available workers. Such a policy is far preferable to requiring 97 percent of the population—legal immigrants, native-born and naturalized citizens—to carry National ID cards to make it more difficult for 3 percent of the population to work in the United States.

STUART ANDERSON, Editor

IMMIGRATION REFORM BULLETIN provides timely information, insight, and analysis about efforts to expand opportunities for legal immigration to the United States. The bulletin seeks to highlight immigration policies that promote economic growth, national security, and individual liberty.

For more information on immigration policy, visit www.cato.org/immigration.

¹The MOU for E-Verify can be found at <http://www.uscis.gov/files/native/documents/MOU.pdf>
²Government Accountability Office, *Immigration Enforcement*, August 2005, GAO-05-813, pp. 22-23.
³Westat, *Findings of the E-Verify Program Evaluation*, Report Submitted to the U.S. Department of Homeland Security, December 2009, pp. xxx-xxi.
⁴Ibid.
⁵Ibid.
⁶U.S. Census Bureau, data on employment size of employer and nonemployer firms, 2004.
⁷Charles Schumer and Lindsey Graham, “The Right Way to Mend Immigration,” *The Washington Post*, March 10, 2010.
⁸Ibid.

Jim Harper, Cato's Director of Information Policy Studies, Answers Some Key Questions About a National ID Card

CATO: What are the key civil liberties objections to a National ID card?

JIM HARPER: Put simply, a national ID system would transfer power from individuals to governments. Created to give the government control over access to employment, a national ID would quickly come to give government control over access to health care, financial services, gun ownership, housing, and any other thing that Congress saw fit to regulate.

The creation and operation of a national ID system would have huge consequences for privacy. Digital copies of our foundational identity would go into government databases, as well as copies of our biometrics – fingerprints, iris scans, DNA, and such. Government and businesses (which too willingly share with governments) would require card swipes from people regularly, creating deep reservoirs of data about our comings and goings, our purchases, our spending, our communications, and so on.

The security issues around the card system and these data-bases are immense, creating further risks to the privacy of all Americans.

CATO: Is there evidence National ID cards would be successful in eliminating illegal immigration?

JIM HARPER: Using a national ID card to control access to work would make life a little more difficult for illegal immigrants, so it could reduce illegal immigration by some small amount. But a number of countermeasures and complications mean that a national ID would not chase illegal workers out of the country.

For example, the already common practice of working “under the table” would increase. The undocumented workers that now present someone else’s Social Security Number would deepen these minor identity

frauds so they can get a national ID and access valuable employment. Not only fraud, but corruption of Department of Motor Vehicles (DMVs) would increase. It’s worth tens or hundreds of thousands of dollars over a period of years to access legal work, and a DMV worker might take a cut of that in order to bring people into the “legal” system. Given the value of having a national ID, forgery networks would likely spring up to produce high-quality fake documents.

There is a theoretical fix for each of these problems, but every step to “strengthen” the national ID and the background check system would increase the burden and the privacy intrusion on the law-abiding citizen.

CATO: Not that it necessarily matters to lawmakers, but are National ID cards likely to be costly for taxpayers? If so, why?

JIM HARPER: To get their national ID, American citizens would have to locate identity documents buried deep in old files, ordering new birth certificates and such when these documents have been lost. Americans would spend hours in line waiting to be fingerprinted or digitally scanned into the system. And Americans would have to make multiple trips to enrollment centers when their papers were found to be out of order, taking time away from work, family, and leisure to get their national IDs.

The Department of Homeland Security estimated that implementation of the REAL ID Act would cost over \$17 billion dollars. That was a modest proposal compared to the biometric systems now being proposed, which, given past state refusals in this policy area, are likely to be built from the ground up. Costs for a biometric national ID system could easily top \$100 billion and, given the history of government programs, may reach as high as \$1 trillion over a period of years.