

**THE IMPACT OF MANDATORY E-VERIFY
ON AMERICA'S SMALL BUSINESSES**

ROUNDTABLE
BEFORE THE
**COMMITTEE ON SMALL BUSINESS AND
ENTREPRENEURSHIP**
UNITED STATES SENATE
ONE HUNDRED THIRTEENTH CONGRESS
FIRST SESSION

MAY 16, 2013

Printed for the Committee on Small Business and Entrepreneurship



Available via the World Wide Web: <http://www.fdsys.gov>

U.S. GOVERNMENT PRINTING OFFICE

86-554 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

ONE HUNDRED THIRTEENTH CONGRESS

MARY L. LANDRIEU, Louisiana, *Chair*
JAMES E. RISCH, Idaho, *Ranking Member*

CARL LEVIN, Michigan	DAVID VITTER, Louisiana
TOM HARKIN, Iowa	MARCO RUBIO, Florida
MARIA CANTWELL, Washington	RAND PAUL, Kentucky
MARK L. PRYOR, Arkansas	TIM SCOTT, South Carolina
BENJAMIN L. CARDIN, Maryland	DEB FISCHER, Nebraska
JEANNE SHAHEEN, New Hampshire	MICHAEL B. ENZI, Wyoming
KAY R. HAGAN, North Carolina	RON JOHNSON, Wisconsin
HEIDI HEITKAMP, North Dakota	
WILLIAM M. COWAN, Massachusetts	

JANE CAMPBELL, *Democratic Staff Director*
SKIFFINGTON HOLDERNESS, *Republican Staff Director*

C O N T E N T S

OPENING STATEMENTS

	Page
Landrieu, Hon. Mary L., Chair, and a U.S. Senator from Louisiana	1
Risch, Hon. James E., a U.S. Senator from Idaho	5
Rubio, Hon. Marco, a U.S. Senator from Florida	11

WITNESS TESTIMONY

Poole, Sabrina, President and CEO, SERDI LLC	3
Judson, Rick, Chairman of the Board, National Association of Home Builders	3
Burton, David, General Counsel, National Small Business Association	3
Kearney, Ryan, Manager of Labor and Workforce Policy, National Restaurant Association	3
Arensmeyer, John, founder and CEO, Small Business Majority	4
Fiorille, Frank, Senior Director of Risk Management, Paychex	4
Monaghan, Pete, Deputy Associate Commissioner for Data Exchange and Policy Publications, Social Security Administration	4
Lotspeich, Katherine, Deputy Chief, Verification Division, U.S. Citizenship and Immigration Services	4

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Arensmeyer, John	
Testimony	4
Prepared statement	55
Burton, David	
Testimony	3
Prepared statement	36
Fiorille, Frank	
Testimony	4
Prepared statement	57
Judson, Rick	
Testimony	3
Prepared statement	34
Letter dated June 4, 2013, to Senators Landrieu and Risch	35
Kearney, Ryan	
Testimony	3
Prepared statement	38
Report titled "2012 E-Verify Survey: Summary of Results"	39
Landrieu, Hon. Mary L.	
Opening statement	1
Lotspeich, Katherine	
Testimony	4
Biographical sketch	61
Report titled "E-Verify Overview"	62
Map of States with Mandatory E-Verify Laws	71
Monaghan, Pete	
Testimony	4
Prepared statement	59
National Federation of Independent Business	
Prepared statement	74
Poole, Sabrina	
Testimony	3
Biographical sketch	32

IV

	Page
Risch, Hon. James E. Opening statement	5
Rubio, Hon. Marco Opening statement	11
The Main Street Alliance Letter dated May 28, 2013, to Senators Landrieu and Risch	72

THE IMPACT OF MANDATORY E-VERIFY ON AMERICA'S SMALL BUSINESSES

THURSDAY, MAY 16, 2013

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Washington, DC.

The Committee met, pursuant to notice, at 10:59 a.m., in Room SR-428A, Russell Senate Office Building, Hon. Mary L. Landrieu (chair of the committee) presiding

Present: Senators Landrieu, Shaheen, Risch, and Rubio.

OPENING STATEMENT OF HON. MARY L. LANDRIEU, CHAIR, AND A U.S. SENATOR FROM LOUISIANA

Chair LANDRIEU. Good morning, everyone. Our Small Business Roundtable on E-Verify will come to order. I really appreciate your patience. Both while the ranking member and I were required at an earlier meeting and we could not leave or the business of that Committee could not get done.

So, we got here as soon as we could, and really, really appreciate you all joining us this morning. I am going to start with just a short opening statement. This meeting will go until about 12:15, if you all can adjust your schedules to stay. If some of you have to leave at 12:00, I understand.

Good morning and thank you for joining us for this roundtable. The purpose of today's roundtable is to discuss the ramifications of the E-Verify program on small businesses as proposed in S. 744, The Border Security Economic Opportunity and Immigration Modernization Act of 2013.

The central question we will consider today or some of the central questions are, one, is the E-Verify mandate in the bill before the Judiciary Committee workable and affordable for small businesses; two, how does the system currently work for large and small employers in states where it is mandatory now—and there are examples around the country.

Three, are there effective alternatives to the E-Verify system that could be utilized by small businesses; and if so, what would they look like and how would they be shaped and designed?

And finally, what suggestions do the participants in today's roundtable have to make the E-Verify system as convenient as possible for small business owners?

We have assembled here today a very impressive group of policy experts and small business owners to have a very informal exchange. This is not official hearing but, of course, our record will

go into the Congressional Record and will be submitted to the Judiciary Committee as they consider the markup.

And so, what is spoken here, of course, is very important; and hopefully, it will be helpful to members of Congress as we move forward on this important piece of legislation.

As the Senate Judiciary Committee considers S. 744, the goal of this Committee is to give a platform for small businesses to speak about issues that are of particular concern to them.

And this has come up as I have traveled around the country and as people have come into my office there is a lot of interest in how the E-Verify system, particularly in its mandatory form, may affect small business.

So, we wanted this morning to provide a platform which is one of the important roles of our Committee to discuss that. We will share the ideas, comments, and questions, as I said, with the Committees of jurisdiction. So, I thank you all for preparing your remarks today.

As I mentioned, and the next week, I wanted to say, the Committee will host another roundtable focused on some different challenges faced by startups and small and medium size business relative to workforce training and the workforce gaps that are also part of the immigration reform bill. We just want to make sure that small businesses get their voice heard on these issues as this markup is going on.

According to the Small Business Administration's Office of Advocacy, there are 28 million small businesses in the country, including six million very small employers. Small businesses represent over 99 percent of all employer firms, are responsible for nearly 50 percent of all private-sector employment, employing more than 55 million workers and account for nearly 43 percent of all private-sector payroll.

So, there is nothing small in America about small business. These businesses are not only critical to the Nation's economic future but play a critical role in ensuring that those who are working in this country are eligible to do so.

E-Verify, as the federal electronic employment verification program available to employers to validate an individual's lawful employment status, provides the primary means for employers to do that.

E-Verify is an online system that uses data from the U.S. Department of Homeland Security. That will be explained more later and how it works currently.

At the federal level with the exception of federal contractors, including small businesses contracting with the federal government, participation in E-Verify is currently voluntary in most parts of the country.

I am going to let you all discuss what is happening in Alabama, Arizona, Mississippi, and South Carolina. We will discuss that in the form of questions.

So, let us get right into our panel discussion; and if each one of you starting with Ms. Poole will identify yourself and just say, you know, a word about yourself and your background and maybe a comment or two for a minute about the number one idea you want to leave with us today.

Ms. POOLE. Good morning—

Chair LANDRIEU. You have to speak right into the microphone and push your button to talk.

Ms. POOLE. Good morning. I am Sabrina Poole. I am the President and CEO of SERDI LLC. SERDI is a small, woman-owned, 8(a), certified IT consulting firm. We provide many services to the Federal Government and have a few commercial clients.

I really want to discuss today and learn more about the impact of E-Verify on my business. We are looking at cost. We are looking at compliance issues with being compliant and not being fined. And, I hope to leave here today with more information and knowledge on how that is going to be fixed.

Thank you.

Chair LANDRIEU. Thank you.

Mr. Judson.

Mr. JUDSON. Thank you. My name is Rick Judson. I am a builder and developer from Charlotte, North Carolina. I am also the Chairman of the Board of the National Association of Home Builders which is about 140,000 member companies, by definition, the majority of which are small businesses.

I also ran a large insulation contracting firm, subcontracting firm in 16 different states. So, dealing with some of the regulatory environments from different states was a challenge in its own right.

But NAHB does support fully some sort of E-verification system. We want to make sure it is workable and economically viable, just as you pointed out earlier. So, I am glad to be here with you and hope to make some contributions.

Chair LANDRIEU. Thank you, Mr. Judson. We really appreciate because the home builders are an important alliance in our country and will be right in the forefront of many of the aspects of this immigration bill.

Mr. JUDSON. Thank you.

Chair LANDRIEU. Mr. Burton.

Mr. BURTON. My name is David Burton. I am the General Counsel for the National Small Business Association. We are opposed to mandatory E-Verify; but I think in the current political context, we are almost certain to get it.

We have come up with a number of specific proposals to make an E-Verify system that will work better, work better for small businesses but also protect ordinary American citizens who are seeking employment in this country. E-Verify as proposed without amendment will affect literally hundreds of thousands of Americans adversely as they try to earn a living for their families.

Chair LANDRIEU. Thank you so much.

Mr. Kearney.

Mr. KEARNEY. Good morning. I am Ryan Kearney. I am the Manager of Labor and Workforce Policy with the National Restaurant Association. Thank you for the opportunity to be here. We are happy to discuss this important subject. I would be more than willing to discuss an E-Verify survey that we released two weeks ago that shows very high satisfaction among our members that use E-Verify.

Chair LANDRIEU. Wonderful. Could you speak into the mic a little bit more please.

Mr. KEARNEY. Okay.

Chair LANDRIEU. We will get back to the details but that would be terrific, and thank you so much.

Mr. KEARNEY. Please do.

Chair LANDRIEU. Mr. Arensmeyer.

Mr. ARENSMEYER. Thank you, Madam Chair, and thank you for holding this roundtable. I am John Arensmeyer. I am founder and CEO of Small Business Majority. We are a national small business advocacy group founded and run by small business owners.

We are here to make sure that any electronic verification system does not create undue burdens for small business owners and legally authorized workers. National scientific polling that we conducted in March shows that nine in ten small business owners agree that our immigration system is long overdue for a major overhaul and are eager to fix the broken system.

Our primary job creators agree something must be done because immigration is good for America and good for small business.

Chair LANDRIEU. We do not have to go into the statement now. Just something a short. That is fine. That is perfect.

Mr. ARENSMEYER. Okay.

Chair LANDRIEU. We will come back.

Go ahead, Frank. Mr. Fiorille. Frank Fiorille.

Mr. FIORILLE. Good morning. Frank Fiorille. I am the Senior Director of Risk Management at Paychex. Paychex actually has a unique perspective on this since we actually pay one out of every 15 private-sector employees every two weeks. What I would like to see is how this group can strike the right balance of not having something overly burdensome for small business and yet an efficient solution to this problem.

Chair LANDRIEU. Thank you so much.

Mr. Monaghan.

Mr. MONAGHAN. Thank you, Senator. I am Pete Monaghan from the Social Security Administration. I am Deputy Associate Commissioner for Data Exchange and Policy Publications. I am here to discuss our role in E-Verify, how we verify the Social Security number, and some other elements. I will be glad to discuss that in more detail.

Chair LANDRIEU. Thank you very much.

Ms. Lotspeich.

Ms. LOTSPEICH. Thank you. Good morning. My name is Kathy Lotspeich. I am Deputy Chief for the Verification Division at U.S. Citizenship and Immigration Services. We run the E-Verify program in partnership with the Social Security Administration. I am happy to talk today about how the system works and to clear up any questions or confusion people might have about its operation.

Chair LANDRIEU. Thank you so much. Excellent introductions. Senator Risch has joined us, and I explained that we were delayed because we both were needed for a quorum in an earlier meeting with Energy.

Senator, do you want to say any just short opening statements. We are going to work until about 12:15.

**OPENING STATEMENT OF HON. JAMES E. RISCH, A U.S.
SENATOR FROM IDAHO**

Senator RISCH. Well, briefly, first of all, thank you all for coming today. This is not the primary jurisdiction of this Committee. It is the Judiciary and Rules Committee. In fact, they are meeting right now writing this bill.

But we will have considerable input into them. Between the Chairman and I, if we have got parts of that bill that need to be changed, I think we have got sufficient horse power with the members of our Committee to do that.

We are really interested in how this affects small business. One thing I want to explore as we get into this, we pass all these laws in America and law abiding American citizens agree to them. They are a burden to some degree. Every time we pass a law is a burden on somebody, some entity.

How many people are going to avoid this, that is, how many people are going to, how many people are just not going to comply? That is always of concern to me, and I will be interested in hearing, Mr. Burton, your ideas on that and all of you who represent these small businesses.

Mr. Burton, you have got a practical approach to this and that is it is probably coming one way or another given the current state of affairs in the country. So, how do we live with this, that is, how do we make it better? How do we knock the rough edges off of this?

Mr. Arensmeyer, I am looking for you too to help us and all of you actually to help us with this, to make this as usable as it possibly can to small business because there will be some benefits with it too.

Obviously, if you comply with E-Verify, then you are off the hook, that is, you do not have to worry about the Federal Government coming in and breathing down your neck and causing a problem which is a, which is always a problem for businesses that hire immigrants.

So, with that, thank you so much all of you for coming and thank you, Madam Chair.

Chair LANDRIEU. Thank you very much. Let us begin and we are joined by Senator Shaheen. Did you have any brief comments to begin, Senator?

Senator SHAHEEN. No. Unfortunately, I am going to have to leave before the discussion is over but I am sure like the Chair and Ranking Member my interest is in hearing how you think this is going to affect small businesses and any changes we can make to make it easier for our small businesses.

New Hampshire is a State that is primarily small business, and so, we want to do whatever we can to try and ensure that small businesses are benefitted and not harmed by what we might do around the E-Verify.

Thank you, Madam Chair.

Chair LANDRIEU. Wonderful. Okay. Let us get right into our roundtable. The process of these roundtables is very different than a hearing. I am going to throw out some questions. If you all want to respond, I will direct some questions to some of the panelists but please feel like if you want to jump in and if you do just put your sign standing up vertically and that way I will know to call on you.

We really want to have a good discussion and we only have an hour so we are going to try to get it as much as we can.

I want to start, Kathy, if you do not mind with you. If you could do a three- or four-minute clear explanation as to the system that is in effect today which I understand you are primarily responsible for, one of the people responsible.

It is a voluntary system as far as the U.S. government goes. It is mandatory, I understand, in a few states in the union. Those would be Arizona, help me here, Alabama, Mississippi, South Carolina with some exceptions. But it is currently a voluntary system with small businesses. Here is a map.

But take four minutes and explain to us how the system is working now and to just kind of start our the discussion.

Ms. LOTSPEICH. Certainly. Thank you very much. For reference, there is a power point. I will not stick to that but just know you can look at that if you want to look at screen shots or to take back with you.

But basically, the employer asks the employee to fill out the Form I-9, which is that form that you must fill out to prove that you are authorized to work in the United States. You show documents.

The employer then takes that form and enters information into the E-Verify system. That information is then sent to the Social Security Administration and to the Department of Homeland Security to check to see if there is a match. If that name, Social Security number, date of birth, citizenship status match.

If that information does not match, then the system will send back what we call a tentative nonconfirmation. We call it a TNC for short, a tentative nonconfirmation.

The employer then is instructed to inform the employee that they have a tentative nonconfirmation and they must follow-up with either the Social Security Administration or the Department of Homeland Security.

Chair LANDRIEU. Currently, what is the percentage of noncompliance and are you getting more accurate as the system is being developed?

Ms. LOTSPEICH. When you say "noncompliance" you mean people—

Chair LANDRIEU. How many are sent back to the employer that asks to—

Ms. LOTSPEICH. Right now about 1.3 percent, looking at this fiscal year 2012 data.

Chair LANDRIEU. How many did you process in the year?

Ms. LOTSPEICH. 21 million queries last year.

Chair LANDRIEU. Out of 21 million queries last year, you only kicked back about 1.3 percent?

Ms. LOTSPEICH. That is correct.

Chair LANDRIEU. Can I assume that you all are learning more and more and more since we have had a little bit of this voluntary experience underneath our belts how to get that quickly back, because that is what I think the small business employers need to know?

Ms. LOTSPEICH. The employer gets to an answer within seconds regardless.

Chair LANDRIEU. Seconds?

Ms. LOTSPEICH. Absolutely. So, at 98.3 percent of the time in the fiscal year 2012, the employer got back an employment authorized response. So, they did not have to do anything more. They just had to record that response on the Form I-9 and store it for their records.

If the answer that came back was a tentative nonconfirmation, the system automatically generates a letter for the employer to give to the employee that is pre-populated with all of the employer's information about that, the employee's information about that particular case and instructions on what they are supposed to do next.

If the employee decides that they want to contest that tentative nonconfirmation, then they sign this letter, give it to the employer and the employer then refers that case either to SSA or DHS; and by referring, basically they press a button on the screen that says refer case.

Once a case is referred, a time clock starts for eight federal working days. The employee then either has to go in person to the Social Security Administration and update any information or clarify any information that SSA needs in order to close that case as work authorized or in the case of a mismatch with Department of Homeland Security, then they can call on us at 1-800 number and fax us information or send us information that we might need to settle their case.

Right now out of all the cases that E-Verify runs, about .3 percent of them are work authorize individuals who needed to go through this process. That .3 percent has been declining as we have had a study done and about five years ago it was more around .7 percent. So, we really tried to close that gap with having work authorized employees having to go through this process.

There are a lot of reasons that a person could get a tentative nonconfirmation or data mismatch with E-Verify. For example, they might not have updated their name or citizenship status. There might have been an inadvertent error on their Form I-9 or the employer may have also entered information incorrectly into E-Verify.

And, do not forget that of this 1.3 percent that are not coming back with an employment authorized, those are also flagging people that are not authorized to work, and the majority of people that get the tentative nonconfirmation which is about almost 80 plus percent of them do not follow up with either SSA or DHS to rectify that.

Chair LANDRIEU. Thank you so much. I am going to ask Mr. Monaghan to jump in here, Peter, if you would. And, we have been joined by senator Rubio, who is one of the lead sponsors of our comprehensive immigration bill, and Senator, before you came in, and thank you for your leadership.

Our Committee is focused on, as the bill moves through Judiciary and it is being marked up today, our Committee is giving voice to small businesses for them to really be able to express either their support or nonsupport for the mandatory E-Verify that is in the bill.

Most people here are supportive although there are some that are not. But we are looking at all sides of that to see if, you know, the language in the bill that you have introduced with other colleagues should be improved or, you know, just answering some questions that some of the small business owners here. And Kathy just gave a good explanation of how it is working now on a voluntary.

Senator Risch.

Senator Risch. Kathy, let me follow up with you for just a minute. I followed you all the way along and I think I understand it. The one question I have is: Once the employer sends in the information and says, I want you to verify, and you guys take it back and say, no, this person is not authorized, as I understand it, then you generate a letter and the employer is required to give that letter to the potential employee, the applicant. Okay.

Then if the applicant is dissatisfied, they sign the letter and the employer has to return the letter to you, is that correct?

Ms. LOTSPEICH. Not exactly. So, let me walk through that real quickly.

Senator Risch. Okay. Just that narrow area is where I am confused.

Ms. LOTSPEICH. Yes. First of all, it is not applicant. It is already somebody that has been hired. So, they have been offered the job. They accepted it. They have gone through the Form I-9 process and now they are onboard.

So, the employer gets a response. We never give a response saying this person is not work authorize. We give a response that says there is a mismatch with the data with the government, and the individual—

Senator Risch. What is the employer supposed to do when he gets that?

Ms. LOTSPEICH. The employer is supposed to give the employee a letter telling them that they need to follow-up with the government in order to rectify.

Senator Risch. Can employers say, I do not want to mess with this. You are fired?

Ms. LOTSPEICH. No, they are not supposed to do that. They sign a memorandum of understanding with the DHS saying that they will issue this information to the employee and that the employee has the right to continue working while they are resolving the case. The employer may not terminate them.

Chair LANDRIEU. Mr. Monaghan, can you add a little bit from the perspective of the Social Security Administration?

Mr. MONAGHAN. Sure, Senator.

Chair LANDRIEU. Speak into your mic if you would.

Mr. MONAGHAN. Sure. As Kathy said, we receive the information from the system—name, Social Security number, date of birth—and we confirm this information. If we have citizenship information or lawful permanent residence information, we send that back also and E-Verify gives the employer the verification.

If any of those items do not match, then we send back a tentative nonconfirmation. To fix that, hopefully the person comes in to our office with the non-confirmation letter and then notifies our employee exactly why they are there.

These cases typically involve a Social Security card fix. We do this all the time. In E-Verify cases we have to do a little bit more so E-Verify can notify the employer and stop the eight-day clock.

So, the person comes into our office. They will need to provide some kind of proof to correct or update their record. For example, if the match failed because a person got married and never changed their name, they would come into our office, provide proof of name change. We would correct the record, stop the eight-day clock.

Chair LANDRIEU. All of this has to be done within eight days.

Mr. MONAGHAN. Right.

Chair LANDRIEU. Under the proposed law? No?

Ms. LOTSPEICH. Currently, yes. But under the proposed law, I believe they have made a wider window for that process.

Chair LANDRIEU. Okay. Could somebody check to see what that is, on the staff, 30 days, et cetera?

Do people have any questions about this? John, do you want to respond in any way to the current system that your members, some of your members are using, because, in fact, I mean, I am really coming at this neutral. I do not know a lot about this issue one way or the other. I am generally supportive of the immigration bill, but I do not have a strong feeling right now about the system one way or another.

My State does not employ it so I am not that familiar with it. But what I can say broadly in my understanding is this could be a great help to small businesses who are currently having to take this load themselves to do some of this work on whether their employees have the right work permit or not.

If the system can be put into place, it could be a great help to very small businesses that just push a button and they get a response back pretty quickly. I mean, I could see this as a benefit but I do not know.

Senator RISCH. Madam Chairman, I agree with you 100 percent except that it could not only be a great benefit, it could be a real pain in the whatever for a small business.

Chair LANDRIEU. To the business?

Senator RISCH. Absolutely.

Chair LANDRIEU. In what way?

Senator RISCH. First of all, you know, to me, my philosophy is that this problem should not be the employer's problem. This should be the employee's problem. If this thing kicks back and says that you are not qualified to work, as far as I am concerned, I think that is the end of it for the employer.

That is not the law today, I understand, but the burden ought to be on the employee, not on the employer. The employer has got a business to run. He does not want to get involved in—she is nodding her head yes—he does not want to get involved in somebody has come in and they say, well, you have got this. Well, now they want to be in talking to you for an hour a day when you are trying to make widgets.

You know, that is the only problem I have with this. I agree with you. To me, the real benefit is if you can get the Federal Government off your back and you say, look, I got a number that says this

guy was cleared, get out, you know, and you are done with the federal inspector or whoever.

Chair LANDRIEU. Now, remember, though, the way Kathy just spoke about it—I understand what you are saying. But the way Kathy just spoke about this, this is an employee that has already been hired by the employer so the employer must like this employee or they would not have hired them.

And, I would imagine that if they hired somebody, they would like to keep them but maybe not—

Senator RISCH. Well, they like—

Chair LANDRIEU [continuing]. But also benefit—let me just say this—the benefit or the problem to resolve this is not with the employer. It is with the employee.

If the employee cannot get their documentation correct, then the employer can let that person go within 30 days, after 30 days.

And then I will get you, Jeanne.

Go ahead.

Ms. LOTSPEICH. Well, yeah, if they do not respond and rectify the case within that eight-day time clock, then—

Chair LANDRIEU. Eight-day time clock.

Ms. LOTSPEICH. Yeah. But if there is a, the government—

Chair LANDRIEU. They can be fired.

Ms. LOTSPEICH. Yes.

Senator RISCH. Okay. With no liability to the company.

Ms. LOTSPEICH. That is correct.

Chair LANDRIEU. Okay. Let us talk about that. Jeanne, do you want to say something, Senator? let me recognize you.

Senator SHAHEEN. To this issue, no.

Chair LANDRIEU. Go ahead. Let me recognize you. Go ahead.

Mr. BURTON. And you should evaluate the General Accounting Office's report on this. It takes three months, on average, to resolve the typical tentative nonconfirmation.

If you suddenly impose this on all new hires, that could easily become a year. Meanwhile, the small employer has to pay and keep this person on even though it is more likely than not that they are ultimately going to have to be discharged.

Chair LANDRIEU. Okay. Let us talk about this. This exactly—

Mr. BURTON. There are a lot of other problems with E-Verify. It is not a simple, painless thing. There are things that can be done to make it better.

Chair LANDRIEU. Okay. That is what we want to talk about today.

Senator RISCH. That is what we want to get.

Chair LANDRIEU. That is what we want to hear.

Kathy, you respond. And then Senator Risch. Go ahead, Senator Risch, you first and then Kathy.

Senator RISCH. You said, and that confirms what you said and that is that 80 percent of them do not even contact you to straighten it out, am I right on that, 80 percent of the kickbacks?

So that—

Mr. BURTON. You have an easy out now. You go to an employer where E-Verify is not mandatory because in most states it is only federal contractors. So, you just go find someplace else to work. Right.

So, there is not going to be an easy out in this new regime we are talking about. Take the 1.3 percent number that she just said and that has not been independently verified. It used to be higher. All right.

That means that with 50 and 60 million new hires a year that over half a million American citizens are going to get caught up in this bureaucratic morass to exercise one of their most fundamental rights, the right to work and earn a living and support their family.

There is a need to make this fixed. There is the need to make it right, and we can do it. But right now the way this process is rolling, nobody is interested in making E-Verify work.

Chair LANDRIEU. Hold on. Just a minute before you charge off.

Mr. BURTON. I thought I was doing well.

Chair LANDRIEU. The Senators and I would not be sitting here if we were not interested and you would never have been invited. So, the system may be rolling in other committees but our Committee is sincerely interested in a bipartisan way of hearing this so if everybody could just tap down a little bit.

I know you're feeling and so are we, you know, this is a big movement but that is what our Committee is for and I am very proud of our Committee to give voice to small business.

If we can figure out some of these things, we most certainly will do so. So, let us try to be clear and specific. But I understand what you are saying.

Right now because E-Verify is not mandatory, there are lots of people working in this country, not American citizens, people working in this country that should not be working in this country because they do not have a work visa to work but they are working anyway.

And, there is a big movement in the country to make sure that American citizens get jobs and not people that are here illegally, at the same time balancing that with the needs of the workforce.

And so, when this becomes mandatory, you are right. What happens is now, I guess, people that cannot get their documentation straight just leave that employer and go to someplace else where they will not be checked. But under the new system, everybody is going to have to be checked if this moves forward.

Senator Rubio, did you want to add anything on this—

Senator RUBIO. Yes, couple of points.

Chair LANDRIEU [continuing]. Because I really appreciate your views.

**OPENING STATEMENT OF HON. MARCO RUBIO, A U.S.
SENATOR FROM FLORIDA**

Senator RUBIO. Right. And so, I think one of the, maybe perhaps what is creating a lot of consternation is we are looking at the existing system and saying, we are going to apply this existing system to the whole world and make you do it right away.

So, let me just back up and say a couple of things about immigration reform. There will not be immigration reform without some sort of employer verification system, because, when we talk about securing the country, the magnet that does bring people in here il-

legally is the desire to work. So, there is a need for some sort of system.

We recognize the costs of it and, you know, we want to make sure this is not something that is so costly that people cannot use and also you have to scramble back and fix it.

So, let me just say that if there are ways to make it better, everybody wants to make it better. But a couple of points I would say.

Number one, we are not talking about suddenly requiring it of anybody. I have heard that term used a moment ago. Especially for smaller-sized businesses, there is a significant phase-in period. I think it is four years if I am not mistaken. Is it four? So, that is number one.

Number two, our desire is not to create a mechanism to force businesses to do anything. It is to create a safe harbor so that basically if you end up hiring someone who turns out to have been here illegally, you can say I ran them through the system. Here are the papers I printed from that screen. They said this was their name. I ran it against this database and it said that they were okay and I have got a paper that proves it.

That becomes a safe harbor for the employee, employer, I am sorry, to be able to protect themselves against what is going to be a significant increase in penalties for those who do violate the law in that regard.

The last point, and the one you raised about people that are in this country that may get caught in the bureaucracy, so there are a couple of ways that we created a couple of safety valves in that regard.

One of them is, if I am a U.S. citizen and I go apply for work and somehow I get caught up in a snafu where it is saying I am not authorized, I just produce a passport. That passport is a valid passport.

That is the kind of good faith, de facto information that will allow you to overcome. The employer would have to make a photocopy of that passport, put it in the file and say the system kicked him back but we got this passport. This is their picture. That is the guy I saw, and that is why I hired them.

Those are just one example and I know this is pretty detailed. I think it is one of the largest portions of the bill because of how detailed it is.

But I appreciate you holding this hearing because this system has to work. I mean, it has to work for everyone involved. On the employer side, the enormous majority of employers are not in the business of hiring illegal aliens to work for them. They simply want a way to verify that, if we are going to require that, if we are going to create these penalties for people that hire those who are here illegally, then you have got to create a system that people can comply with so that they have a safe zone.

Otherwise, you are at the mercy of what we have today which is somebody shows up with a Social Security card with someone's name on it, they claim to be that person, and that is it.

And if you hire them and it turns out that that is not the person, you could be in trouble even though you are relying on what looked like a valid Social Security card.

If we can make this right, it will be better for everyone but we have got to make it right and certainly we want to make sure that that happens.

And I appreciate, I think this Committee is the logical place to take the lead in any changes that we need to make in the current language we have drafted to ensure that these goals that I have talked about are being met.

Senator RISCH. Madam Chairman, first of all, Marco, we are glad to have you here. This is really important because, you know, we sit here in the halls of Congress and we draft these laws and there is all the language and, like you say, it is pages and pages.

And yet, we all think, well, you know, this is how it is going to be. Mr. Burton tells us what happens. Every small business in America knows what happens when you get mixed up with the Federal Government, whether it is OSHA whether it is EPA, whether it is Homeland Security, whoever it is.

What we draw up here, in our minds everything is neat and clean and orderly. But when the bureaucracy gets a hold of it, they start writing rules and regulations that we do not have any control over and it just becomes a nightmare for people, I mean.

So, in any event, I think it is really important that we do hear these kinds of things and we do make it work as best as possible.

Chair LANDRIEU. Senator Shaheen.

Senator SHAHEEN. I understand that the current system is free to employers and maybe Senator Rubio can answer this question. What is being talked about in terms of the new system that will cover everybody, how is that going to be paid for? Is there going to be a charge to the businesses who participate?

And my second question I think is for you, Kathy. I am sorry I cannot pronounce your last name.

Ms. LOTSPEICH. Lotspeich.

Senator SHAHEEN. Ms. Lotspeich. I think your answer to Senator Landrieu was about how many potential employees who are being checked out do not pass the E-Verify test.

My question is: Do we have enough data to know what the inaccuracy is of E-Verify in its current form and can we extrapolate if we take it broader for all businesses what the percentage of accuracy is going to be?

Senator RUBIO. Just on the cost side, so the bill, obviously there is a startup cost to enhance this E-Verify system so that it is accurate in terms of the information, because right now the bigger problem is if I give you a name, if I show up with a Social Security number that I bought from somebody and you run it through the system, it will say, yeah, he is verified but that is not me. And so, the system needs to be enhanced.

That is being paid for through a series of fees and the fines that are being leveled on those who have violated our laws on the visa programs, not the small businesses that are utilizing E-Verify but on the visa programs that we are putting in place to create a fee schedule that help pay for the upgrades to E-Verify and the upgrades to the entry-exit tracking system as well for guest workers.

Senator SHAHEEN. Can you answer on the accuracy piece?

Ms. LOTSPEICH. Absolutely, yes.

We have seen an increase in accuracy for work authorized workers. So, about five years ago .7 percent of all queries were work authorized employees who had to follow up with the government and then were subsequently found work authorized. That has declined to about .26 percent, about .3 percent, since we have been working on enhancing the system in 2007.

I believe the latter part of your question was whether or not we could extrapolate that to the broader population. I think it is challenging to do so because the employers that are enrolled in E-Verify now are not necessarily a representative sample of all employers.

However, I would say that of our employer base now, 81 percent of them have 100 or less employees on their payroll. So, we consider those to be smaller employers.

Senator SHAHEEN. Thank you.

Chair LANDRIEU. You wanted to say something?

Mr. BURTON. Well, we talked about a number of things but one of the amendments being offered today by Senator Franken would establish an advocate's office within USCIS, similar to the Taxpayer Advocate at the IRS and that would protect American citizens and small employers so that they could issue an assistance order if there is a mistake in the database and USCIS bureaucracy runs amok and that is one specific thing that I think deserves support from people who believe in E-Verify.

There is also, I think, a need to re-evaluate the level of penalties in the proposal. The criminal penalties associated with E-Verify now are more comparable to what we would normally associate with violent felonies.

They were 10 years; now they are five years. The penalties are up to \$25,000 per violation and then following the White House proposal that was leaked, the current bill also would allow those penalties to be increased by the Administration potentially to as much as \$75,000 per violation if there was a previous employment or other labor law violation potentially as little as \$500.

These are ruinous fines. It will destroy people's life savings for failure to use E-Verify even if their employees were lawful. Just a failure to use E-Verify can destroy someone's life; and there are a number of other things as well.

The accuracy standards should be high. The USCIS, as you just heard, claims 0.26 percent. There has to be incentives in this bill for USCIS is to meet accuracy standards.

They help everyone. They help employers. They help ordinary Americans. Those error rates are not very good compared to what you would normally see in the private sector. This is just a database matching program. They should be able to do better and there needs to be incentives for them to care.

It was only when the GAO looked into this that they actually started to substantially reduce it. We need to put incentives in the bill. People respond to incentives. We know that. The same with government agencies. They respond to incentives.

Chair LANDRIEU. Well, those are some excellent suggestions.

And one thing, Senator Rubio, that, I mean, there were three or four very good suggestions that, you know, will be recorded from this roundtable. But one that came immediately to my mind is that

the penalties should be different for big businesses and small businesses.

I mean, a \$75,000 penalty to GE is absolutely nothing, and a \$75,000 penalty to an employer that has two employees is literally life wrecking. So, I need us to consider that. Maybe there needs to be a penalty scale or something like that for small and large businesses.

Mr. BURTON. The bill does contain graduated—

Chair LANDRIEU. Okay. Let us look at that graduated penalty piece.

John, what are some of the thoughts that you can give and then, Rick, I am going to call on you to kind of add some things to this discussion. Your organization strongly supports the bill, and why do you not talk for a few minutes about why, for E-Verify.

Mr. ARENSMEYER. First of all, I wanted to echo, I mean, we do support an enforcement mechanism. Our polling shows that small businesses across the country want an enforcement mechanism. I think the question is the devil is in the details. How is that enforcement mechanism working?

I want to echo what David said. We are very concerned about the penalties, and we also do support the amendment to set up the office to help small businesses.

I also want to pickup on this error rate. We do support the amendment, the bipartisan amendment by Senators Franken, Lee, and Hirono to actually delay implementation of the enforcement mechanism for businesses of fewer than 50 employees until that error rate does get back down or meets the current standard of .26 percent, because I think we do not know what is going to happen when the system, it may be accurate that it is .26 percent now but once it starts to encompass the whole country with many more employers, I think it is going to be a bigger concern.

So again, I mean, you know, there is huge support, bipartisan support in the polling that we just did across-the-board, more bipartisan support than we ever see for anything else, for immigration reform.

It absolutely includes strong enforcement mechanisms but I think what is so important about you holding this roundtable here is that we do have to make sure that whether it is the penalties, whether it is the error rate and how that is going to impact small businesses, whether there is adequate support from the Federal Government, that those are taken into consideration as the enforcement mechanisms are set up.

Chair LANDRIEU. Excellence.

Go ahead, David.

Mr. BURTON. Well, I appreciate the support.

A number of other things that, I mean, there is one very good thing that Senator Rubio alluded to in the legislation which is a provision that would protect employers who made employment decisions based on E-Verify's mandate from liability, and the language in the bill is superb on that front, and it is something that we had sought.

But there is, however, I think something that we have not focused on and that people usually do not know. The current law and

the new law would prohibit employers from discharging people until they have gotten a permanent nonconfirmation. Okay.

If, through the process of lodging an appeal, that can drag out for many months and potentially when we increased by a factor of 12 the number of inquiries, by as much as a year. And yet, they are probably going to have to get discharged.

So, the small employer is going to be very reluctant to spend a lot of money training a person, integrating them into their 10- or 15-person company. We need to have a—

Chair LANDRIEU. I think that is a very legitimate point. So continue.

Mr. BURTON. Senator Rubio indicated that the bill would allow someone that had been through the I-9 process and had a U.S. passport to, in effect, trump E-Verify. Well, while I believe that is a very good idea, I read the bill and I do not see it in there. I may be mistaken. It is obviously a long bill.

I think it should be in there and I would support it being in there. We have proposed it being in there but I do not think it is in there.

Chair LANDRIEU. Let us follow up on that. But what Senator Rubio said, I think, is an excellent answer to that problem which would be you could present your passport. End of discussion. Everything is fine.

Senator RUBIO. I will just have somebody provide the language that cites that provision. If it needs to be improved, we can do that. But that is certainly the intent and we believe that is exactly what the bill will do to create that safety harbor for folks.

Let me go ahead and let you finish because there is another point I want to make.

Chair LANDRIEU. If I could just finish and then I will get you.

I think we will provide that language regarding the passport. But in the event that a passport is not available, because not everyone has a passport, correct? That would be very interesting. How many Americans have passports? Who knows what percentage of Americans, adult Americans over 18 have passports? Does anybody know?

Mr. BURTON. In the neighborhood of five percent.

Chair LANDRIEU. Five percent. Let us find that out, please. Somebody google it, ask Siri—

[Laughter.]

How many Americans over the age of 18 have passports, number one.

Number two, if that is not sufficient, I think this issue of what happens when you do have an employee that has been hired that gets kicked back because their paperwork is not accurate, the burden that that could place on a very small employer.

Now, this is what this Committee focuses on and no other Committee in the Congress focuses on this, Senator, and you are a proud member of this Committee.

We are not talking about GE, IBM, you know, Exxon in this Committee. We are talking about 20 million businesses that have one employee or two employees or, you know, three employees. When you have one of your employees, half of your employment,

one person, that gets kicked back and you operate with two people, this is what we need to focus on. Okay.

So, keep your eyes on this. Ten people, five people, 25 people, and how this is going to work for them. The big companies can figure this out. But this Committee is focused, and I am a passionate advocate for these small businesses. I have tons of them in my State.

So, let us figure that out.

Senator. Let me call on you and then, John, I am sorry, Rick.

Senator RUBIO. You actually touched the point I was going to raise is I think the passport will go up as a result of hopefully more people getting passports.

The other option that people have and we will share that with you as well is there are some states that comply with Real ID, not every state does, and we are not mandating that states do that.

But if a state has a Real ID mandate and they can produce a picture identification from one of those states, that will also apply as de facto proof of legal status.

So, we are looking for ways to address that issue particularly for those that are here. And then those who are here on non-immigrant status will also have documentation unlike what they have had in the past.

So, those that do rely on, whether it is guest workers or temporary workers or, you know, people that are not permanently with status in the United States will also make it easier to identify with them.

Then the key in all of this is to integrate the system. So, I just left a moment ago. I was watching the Judiciary Committee debate. So, one of the questions is, you know, one of the 40 percent of the people in this country illegally did not jump a fence. I mean, they came in on some sort of status that expired; they are still here. We do not know who they are because we do not track the exits. We only track the entries. That is going to change.

So, what will happen hopefully in real time is that on day 61, if I am here on 90-day visa or what have you, on day 91 the system will automatically upgrade and on day 91 you will go from being an authorized or authorize to unauthorized. Hopefully, that will all be operating in real time.

I did want to go through, real quickly, the implementation schedule. So, the folks who will be immediately required to have this in place, the Federal Government, the federal contractors. Critical infrastructure will be required to have it within one year, and there are some concerns about how that language is structured and we should visit that in a broader context.

Employers with more than 5000 employees have two years to comply. Employers with more than 500 employees will have three years and Ag employees will have four years and all other employees, meaning those under 500, will have four years to comply.

So, agriculture and basically small business will have four years to come up to this, and we think that is a pretty significant period of time to get the infrastructure in place.

Chair LANDRIEU. Okay. Let me just comment on that and then, Rick, I want you to.

Under four years which would be terrific if it were all small businesses giving them some time. But, Senator Rubio, under critical infrastructure, you will have some small business owners, depending on how that is identified in the bill, falling under that which you pointed out we should be concerned about.

In addition, some federal contractors are very small businesses because we really push our federal procurement officers to contract with small businesses. We may want an exception there because I do believe that the very small businesses should be at the end of the compliance chain.

If they want to, that is fine. If they can do it mandatorily, I mean, they can do it voluntarily as they are doing it now. But until the system gets work through so that they get the benefit of having the most efficient, less cumbersome program, and I think you probably agree with that.

So, let us look at that. And Real ID is embraced by 41 states, just FYI.

Senator RUBIO. Almost all of them.

Chair LANDRIEU. 110 million people over 18 years of age have a passport. So, that would probably be 50 percent of 18 year olds.

Senator RUBIO. A lot higher than I thought.

Chair LANDRIEU. A lot higher than I thought as well.

So, you know, because some people, about a third of our country is under 18. So, I am just quickly dividing the rest. So, about half. So, about 50 percent of adults have passports and 41 states implement some form of ID.

Senator, I will get you and then I really want Mr. Judson to say a word.

Senator RUBIO. I just want for your staff and for yourself, on page 425 of the bill it will outline the Real ID and the passport.

Chair LANDRIEU. You can come forward and read it.

Senator RUBIO. We do not want to read that holding, do we?

Chair LANDRIEU. This is very informal. You can sit there and read something or speak into the mic.

Senator RUBIO. He has to text his mom to tell her he is on C-SPAN.

[Laughter.]

Chair LANDRIEU. Put the mic closer to you.

Mr. BASELICE. It reads from page 424 to page 425, and it covers the covered identity documentation. It goes on to say it is a United States passport, passport card, or documented evidence of lawful permanent resident status, or employment authorized status issued to an alien.

Mr. BURTON. Well, that is in the I-9 process. It is the same as current law.

Mr. BASELICE. But we are getting rid of the paper I-9 and moving to electronic form of I-9 as opposed to just having the same paper documents that you will have moving forward in the E-Verify system.

Mr. BURTON. That does not, on the face of it, address the question. All employers still have to go through the I-9 process which is always involved in some sort of type A or type B identification. Type A being a passport or a permanent resident card. Type B

being Social Security card or something similar like that. That has not really changed. It is just changed in form not substance.

Now, let us hypothesize. The USCIS E-Verify says this person gets a TNC. All right. What we need to have is a rule that says if they have a blue passport, they are good to go. All right. In effect, that a type A identification trumps an E-Verify TNC.

You might want to require that the employer notify USCIS that there is this problem with their database. But the presumption should then shift so that the employer and the employee are lawful unless USCIS can disapprove it, because the State Department has issued that person a passport. All right. And that is not the way the law is.

Chair LANDRIEU. That is a very good point. The benefit, if you produce a passport issued by the United States, the burden of proof should shift away from the person with the passport to, you all can fix that.

Senator RUBIO. Yes. That is easy. I do not think that would be controversial.

Chair LANDRIEU. It is easy to fix and that is a very excellent suggestion, not that we can amend the bill in this Committee but Senator Rubio has a little bit of an inside track.

Senator RUBIO. Well, I think these are the kinds of things that I—have they dealt with that part of the bill? When are they going to take amendments up?

Mr. BURTON. Today.

Senator RUBIO. They are in the midst of that today. So, I think there is still time for those sorts of amendments.

Chair LANDRIEU. Well, there most certainly is time, because there are going to be amendments on the floor in this bill and this bill is just, you know, with all due respect to the Senator who is a cosponsor of the bill and is moving through the Judiciary Committee, the rest of the Senators are going to have a lot to say about what happens when this bill hits the floor, and it is not just going to be put in a package and rolled on out of here.

So, we are going to collect a lot of information on this Committee; and if it can get marked up in the Judiciary Committee, fine. But I am sure it is not going to be perfect when it comes out of Judiciary. It can be amended on the floor.

So, that is a very good suggestion and it is minor but important, and that is what we are hoping to give you some confidence that we really do want to listen to many, many different views of small businesses.

Rick.

Senator RUBIO. I just wanted to echo what you said. I always viewed the bill as a starting point that because it is so complex and involves the entire country. This is an issue that impacts the entire country.

I would just actually say that the, I would, even though we are under this jurisdictional issues in play, I would encourage and will work with, after this conversation with whomever the stakeholders are and your staff.

I think it would be very powerful if there were amendments that we could help come up with from the Committee through your staff and we could actually say this is a Small Business Committee

amendment basically, or suggestion. I think the folks on Judiciary are looking for that kind of input since their expertise is not—

Chair LANDRIEU. Exactly. And that is exactly why we are having this as the first of three roundtables on points in the immigration bill and, Senator, how we present that to you and the cosponsors and to Senator Leahy who knows and has blessed this roundtable, we do not know whether we will do it in the form of an amendment or do it in the form of a letter to you all with sort of strong signatures from both sides of our Committee, and you are a member of this Committee.

So, I am really hoping for your leadership and I know you have a lot on your plate. So, we will get as much to you as we can.

But, Rick, I want to really calling you and then Ms. Poole I will get to you. Do you want to jump in on any of this, Mr. Judson, your members and how, listing to all of this, how do you think your members are going to feel? Are they going to be happy about E-Verify, pushing buttons and getting immediate response; and do they trust that that system can work that way?

Mr. JUDSON. Thank you, Madam Chairman. Thank you both for what you are doing. I think you recognize the bureaucratic impact this could have on small business versus small business or large business versus small business. I think if you look at our membership which is almost 150,000 member companies with an average employee base being about eight people, they do not have HR departments. They work out of wherever they are.

Chair LANDRIEU. Right. They work out of the trunks of their cars and their pickup trucks.

Mr. JUDSON. They do. But I think it behooves us all to have a comprehensive immigration policy. Something we can live with and work with. That is affordable, practical, pragmatic.

One of the things that I think is important in that and I could spend the rest of the hour with it. But there are six right bullet points. I will be glad to get a copy to you and Senator Rubio before this day is over, to make the systems work more logically as opposed to why they will not work.

Chair LANDRIEU. Perfect.

Mr. JUDSON. So, I will be glad to get that to you. But they have all been addressed to some degree. The safe harbors if you do the right thing, if you are trying to do the right thing.

The issues of what his employer-employee relationship. The fact that you could verify at the initial date of offering of a job offer as opposed to waiting three or four or five days when the person shows up and you may be hiring an illegal unintentionally. So. But I will get those points to you and I think they are intended to be contributory and constructive.

But I think we, as an industry, support the fact that we are going to be able to hire people legally. Our industry is in desperate need of labor but we want to make sure that it is done properly. This is the point that I made three weeks ago to your larger Senate immigration hearing here. We want to be a contributor.

Chair LANDRIEU. Wonderful. And that is very excellent. For those of you that are opposed to it, I would love to see you come to the other side; but even if you cannot and stay on the side opposed,

give us some good suggestions because the bill may move and it may not. Who knows.

I mean, I think there is a lot of political power on both sides moving it forward. But, you know, until the bill is finally passed and signed by the President, it is not the law. We have the time to improve it.

And, I am going to stay focused like a laser on how this bill is going to affect 25, you know, employers of 50 and less to try to get it, if it is going to get signed it into law, in the least intrusive way and the most helpful way possible to them, because I really believe in small business in America and so do most of the colleagues that serve on this Committee or we would not have signed up for it.

Mr. BURTON. Most aspects of this legislation we support. It is E-Verify that is our primary concern.

Chair LANDRIEU. Okay. And we are trying to try to fix it if we can.

Mr. BURTON. We want to do things to make it better.

Chair LANDRIEU. Yes. Thank you very much.

Ms. Poole.

Ms. POOLE. As a small-business owner, I support E-Verify because I am a federal contractor; and although it is not mandatory, as we stated, when I get a statement of work from the government, the government has now put in that compliance requirement in the statement of work. They want to make sure that we are liable to use E-Verify on the employees that we will place on the contract.

Chair LANDRIEU. And you are already required to do that?

Ms. POOLE. Yes. And I want to make the point clear. It is already in the statement of work coming down from the Federal Government.

I am a federal contractor. I only support the Federal Government which means that when I get a statement of work, I must do what they tell me to do in the statement of work or else I lose my contract and I get a very bad past performance rating that the whole world can see.

Chair LANDRIEU. But hang on. How could we help you in this new system to take a little bit of that burden off of you, because now the burden is going to almost shift and maybe it is different, I know it is different for federal contractors now.

But is there any way that this immigration bill can help federal contractors like small business contractors giving them less burdensome paperwork or accountability that you can see, Kathy or Peter, or is their status going to stay the same?

I mean, right now, and if I am wrong, forgive me. Right now, it is voluntary for the country. Nobody has to do it except small businesses that are federal contractors. Correct?

Ms. LOTSPEICH. And some states where they require it.

Chair LANDRIEU. Okay. And some states. Minor. Correct?

Ms. LOTSPEICH. Yes.

Chair LANDRIEU. So, my question is: Is there anything that you can see in this bill that we are drafting that could relieve them of some of the burden that they have right now?

Ms. LOTSPEICH. No, because they are being asked to use it now and they would be asked to use it then. And I did not hear anything—

Chair LANDRIEU. You are using the same pushbutton system now?

Ms. POOLE. Yes.

Chair LANDRIEU. So it works for you.

Ms. LOTSPEICH. I did not hear any issues you are having.

Ms. POOLE. As a workaround solution, what we are doing which may get us in some compliance laws with DOL, the Department of Labor, we are trying to hire only cleared employees which eases the burden of any discrepancies with the E-Verify system.

So, for example, if I am placing folks in a federal contract, you have to have an MBI which is a minimum background investigation to come work for me.

So, when I am interviewing you to put you on the federal contract, that is what I asked you.

Chair LANDRIEU. Okay. But why cannot when a person walks in to comply with your contract, you just press a button and get the information whether they are clear or not? Why is that not working for her?

Ms. POOLE. If a person—

Chair LANDRIEU. Okay. Hold on just one second.

Kathy, why is that not working for her?

Ms. LOTSPEICH. I mean, I am afraid you are going to have to ask her. I do not know. She did not give any specific reasons.

Chair LANDRIEU. Okay. Go ahead.

Ms. POOLE. If you are cleared, the government has a system called JPAS which is through DOD. So, before I hire you, I go into JPAS, and have my HR department check you by Social Security number and they will see in JPAS when you had a minimum background investigation, if you have a top secrets, which agency cleared you.

Chair LANDRIEU. So, is this because she is a DOD contractor that she has a different system than all other small businesses, working with different agencies?

Ms. LOTSPEICH. What she is talking about is not related to E-Verify so I am not sure.

Ms. POOLE. Well, it is.

Senator RISCH. Do you guys recognize that system, though?

Ms. LOTSPEICH. No.

Senator RISCH. If you are qualified with that system, does it work with—

Ms. POOLE. That is my question. That is what I am saying. If they qualify that is another thing that you pointed at. If they qualify and they already have a TS clearance and they already have a background check—

Chair LANDRIEU. Right. They should not have to go through twice.

Ms. POOLE. Exactly, because DOD does an extensive two-year background on a person.

Ms. LOTSPEICH. Okay. I mean we, the regulation was issued by the FAR. We did not issue that regulation.

Chair LANDRIEU. What is FAR?

Ms. LOTSPEICH. The Federal Acquisition Regulations. It is part of the Federal Acquisition Regulations.

Chair LANDRIEU. Let me suggest this. I am going to suggest that after this meeting you all talk and get together and see if we can submit something from you, not from small business, recommendations to this Committee to either—if she has got to go through this now and she says it is not a big problem but she has to go through it, then we want this excepted under the new system for all of small business contractors working with DOD. We do not want them to have to do two. We will talk later.

Ryan, go ahead.

Mr. KEARNEY. I just wanted to echo Rick's comments. You know, with the survey that we have, we already see that half of our corporate-owned chains use it. The satisfaction among both corporate chain users and small business users in about 80 percent.

So, it is a high satisfaction level. But when you really get down to the details of small businesses and who uses it, it is really about 23 percent. So, if you look at those—

Chair LANDRIEU. Okay, 23 percent of small businesses are voluntarily using.

Mr. KEARNEY. That is correct.

Chair LANDRIEU. Tell me now again, 23 percent of small businesses in America.

Mr. KEARNEY. Are early adopters of E-Verify.

Chair LANDRIEU. Are early adopters.

Mr. KEARNEY. Of restaurants.

Chair LANDRIEU. Of restaurants?

Mr. KEARNEY. Yes.

Senator RISCH. What do you call a small business?

Chair LANDRIEU. And what is a small business, under how many?

Mr. KEARNEY. Probably 25 I think is what our survey put out. But my point in this is if you look at the three quarters that do not use it, the overwhelming response on why is because they do not have a dedicated HR professional.

Again, these are restaurants. A lot of restaurants do not even have offices or WiFi. So, again, I kind of want to stress what Rick said he is if we are going to have a new E-Verify system or we are going to make improvements to it, we need to limit the burdens.

Chair LANDRIEU. Exactly. What I—and I think Senator Risch and I are going to be together on this. While I am a supporter of comprehensive immigration reform, I am not going to support a bill that is overly burdensome to small business.

So, I am going to really focus on this as this bill moves forward. Let us talk about this for a minute. We do not want an HR office in every small business in America. We want this on a mobile app. We want them in their pickup truck, somebody they are hiring out on their ranch, they need somebody to do some work, we want it on a mobile app, hit a button, put the information in and it comes back immediately.

And we want to minimize the impact on these businesses. I am not interested in setting up, you know, for every farmer in America or every, you know, person in America to have to set up a big, complicated system.

Now, we have four years under the current bill, let me finish, we have four years under the current bill for small business to comply.

So, it is not like this year, six months they have to. But we can really start working on that now to minimize the impact if we work hard on it.

Go ahead.

Senator RISCH. I apologize. I had to step out.

Chair LANDRIEU. Go ahead.

Senator RISCH. Have you had a discussion about, and this is just a rumor. I heard that they have been talking about eliminating the ability, the option to pick up the telephone and call as opposed to using the Internet.

Have you had any discussion about that?

Chair LANDRIEU. Has anybody heard anything about that, about not being able to use the telephone?

Mr. KEARNEY. The toll-free telephoning option is included in the legislative text.

Senator RISCH. Is in the current text?

Mr. KEARNEY. That is correct.

Senator RISCH. Okay.

Chair LANDRIEU. Toll free.

Mr. KEARNEY. In both S. 744 and The House Legal Workforce Act.

Senator RISCH. Is that important to you?

Mr. KEARNEY. That is very important.

Senator RISCH. Mr. Burton, is that important to your people?

Mr. BURTON. It is not something that the members that I have talked to, which has been a lot, have talked a lot about.

Senator RISCH. It will now.

It is for somebody who does not have a computer. It will be very important.

Mr. BURTON. Right. But in this day and age at least most of the guys who are involved with us in terms of giving us input probably do have computers. So, I mean it makes a lot of sense to me. Do not get me wrong. It is just not something I have heard a lot about.

Chair LANDRIEU. Okay. Go ahead. I am sorry, Ryan, did you finish. I want you to finish and then please, Frank, because we only have about 15 more minutes.

Mr. KEARNEY. Okay. I will be very brief. Just adding to the telephonic option, I mean, think of sort of your average small restaurant, your corner restaurant, you do not necessarily have an office or maybe a computer. It depends. The ability to have that toll-free number at zero cost to the employer is important to us.

Chair LANDRIEU. Okay. Frank and then John and then Ms. Poole.

Mr. FIORILLE. I just wanted to bring up the point on this.

Chair LANDRIEU. Put the mic closer to you.

Mr. FIORILLE. The burdensome for small businesses and that. The businesses always have the option to outsource that. For example, small business do not want to do payroll. They do not want to worry about the compliance stuff. They can outsource that to a company like Paychex. So, I think these small businesses always will have that option to do something like that.

The other example I would like to mention to is this reminds me of my background is in banking. And when banks put in the AML OFAC screening processes, back then there were a lot of issues in

the beginning but they all got worked out to where the process over years got very smooth and is very well run. To me it is very analogous to that.

The last point I want to make, what we did not really mention, I do not think, is the self-check process that they can do. So, the employees can actually go in and kind of get almost like preapproved, if I am correct, to be self-checked on this. Is that correct?

Chair LANDRIEU. Kathy is that. She is saying no. Go ahead.

Ms. LOTSPEICH. No. You can check yourself but you cannot take that to your employer. Your employer still has to verify that.

Mr. FIORILLE. But you can do it, right? You can go ahead and check yourself, right?

Ms. LOTSPEICH. Yes, you can check yourself.

Mr. FIORILLE. So, maybe there is some improvement in there that we could work on.

Chair LANDRIEU. That is interesting. Also knowing that when you were out, Senator, we found a good thing that half the adults have passports, more than we thought. Half the people over 18 approximately have passports. And that if we put a passport, if you get into a jam and you can produce a passport, we could write the bill that it would clear you immediately.

Senator RISCH. Is that in the text now?

Chair LANDRIEU. Well, they are working on it. Senator Rubio does not, he says it is but it might not be as specific as it should be. So, that is kind of a good idea.

Senator RISCH. And a passport would cure all ills.

Chair LANDRIEU. It could. That is one of these suggestions. Now, what the Judiciary Committee will think about this or what other Senators will think, but I think it is kind of an interesting thought because that is a document that has been given a lot of attention, before you are given a passport, about your status. And if we do not trust our passport system, there is something wrong.

And so, we can shift the burden to the government and not have a citizen that has a passport been told, well, you cannot work. Well, I have a passport, you know, that has my status on this.

So, I think that is something that we could really help with.

John, and then I will get you Ms. Poole.

Mr. ARENSMEYER. Just really quickly, I wanted to just, a couple of other points from our scientific survey of small businesses. On our survey 15 percent use E-Verify or a similar system, and only one in four said it was easy to use.

Chair LANDRIEU. Wait. Only one in four said it was easy to use?

Mr. ARENSMEYER. Said it was easy to use.

Chair LANDRIEU. This is not good.

Mr. ARENSMEYER. Right. Well, I mean, what I think it says is we have a lot of work to do.

Chair LANDRIEU. Well, that is what we want to focus on. So, can you give us some interesting feedback from them about what would make it easier for them?

Mr. ARENSMEYER. Yes. We did not really delve into the details but we may do that.

Chair LANDRIEU. Well, please do, and the faster you can do that with your networks the better because—

Senator RISCH. They “why” is real important. Why is it not working?

Chair LANDRIEU. Why is it not working and, you know, because I really. I am just going to speak for myself. I am really going to focus, as I said five times this morning, on this immigration bill as it moves through and its impact to small business, and the better information, the quicker information I can get from networks that are both for the bill generally and against but how it could be improved the better I will be able to help and the members of my Committee will be able to help.

Mr. ARENSMEYER. Just real quickly. I mean we just skirted over, David talked a little bit about the penalties. I mean the penalties are really, really extreme including what is it now? Five years. I mean I understand this would not be applied all the time but a potential five-year jail sentence. I mean, there does need to be, we recognize there needs to be enforcement with teeth. I mean, if you do not have teeth, it is not going to work.

Chair LANDRIEU. If anybody tries to put a small business owner in jail like in the next year, this Senator will probably lose it. Okay. I know him well enough so I mean we better be careful before we start putting people in jail.

Mr. ARENSMEYER. And the other related, not quite as extreme thing is that, and again David talked a little bit about this, the practicalities as we are talking about all of this and this is why we are really pleased you are holding this roundtable, because sometimes, you know, people do not recognize that a lot of the practicalities that we are talking about are just impossible for small businesses.

Chair LANDRIEU. Exactly.

Mr. ARENSMEYER. In fact, having an employee in limbo, I mean as a longtime small business employer, somebody who runs a profit now—

Chair LANDRIEU. You cannot do that. You cannot have an employee in limbo for more than 24 hours.

Mr. ARENSMEYER. It does not work.

Chair LANDRIEU. It does not work for a small business owner. It might work, like I said, GE and IBM, they could have 100 employees in limbo. They would not even flinch.

Mr. ARENSMEYER. Right.

Chair LANDRIEU. But when you are running a small business and you only have to be people that work for you, having one person in limbo is a big deal.

So, let us focus on the limbo piece and how we can fix that and let's focus on jury members saying it is too complicated and what we can do.

And let me get Ms. Poole and then I will get you, Senator.

Ms. POOLE. Real quickly. I would like to see three things come out on this whole discussion. For me as a federal contractor, the burden should be on the employee, not the employer, because right now everything I bid is lowest price, technically acceptable. If I have to lower my profit margin to stay afloat so I do not sink as a small woman-owned business, then I also have to keep the employee on the payroll until this thing happens and I can not bill him to the government. And if I fire the employee, I may go to jail.

So, I really would like to see something come out of that.

Chair LANDRIEU. You need help.

Ms. POOLE. Yes.

Chair LANDRIEU. You need help. We are here to try to help.

Ms. POOLE. Thank you.

Chair LANDRIEU. Anything else you want to add?

Ms. POOLE. That is basically it. Thank you.

Senator RISCH. Well, let me say that, first of all, and, David, to you and to others who have reservations like myself, this is the one shot we have got because when this bill was drafted, my experience, I did almost 30 years in our State senate, and as with every law, what you just talked about the law of unintended consequences comes back and bites us more often than not.

At the State level we fixed them every year. This outfit never fixes these things. They pass the monumental 3000-page bills and not only is the bill a wreck but then the thousands of pages of regulations that follow it come out and they are nothing like we intended at all.

So, the language of the bill needs to be specific. It needs to tell these agencies what they can and, more importantly, what they cannot do.

So, now is our chance and we have got to be serious about this because if this thing does go, we are all going to have to live with it. So, we need to be really serious about looking for the unintended consequences in here and how it is going to attack us.

Thank you, Madam Chairman.

Chair LANDRIEU. Thank you. And we are going to have comments from those who have up. Go ahead, Ms. Poole.

Ms. POOLE. No.

Chair LANDRIEU. Done. Okay. If you could put your little marker down.

Mr. Judson.

Mr. JUDSON. Senator, your comment of unintended consequences is very accurate. We have encouraged our members whether they have to or not to try to use the E-Verify system, want to get familiar with it. Something is coming and we want to be on the cutting edge with it.

But I think the biggest concern they have across-the-board is that of accuracy. If it is .26 percent or 2.6 percent or 26 percent, that is quite a variance. If we are going to use it, if we are going to have something, we make sure that it is covered properly. It is accurate. That if we hire someone, that person is legitimately employable and we can begin a training process, because in our industry these are entry level jobs for the most part and that is where the immigrants are starting. That is where even our own domestic labor is starting with the opportunity to learn a trade.

So, we make an investment in these people and we want to make sure they are being hired properly. To do that, we have to start with the premise that the information we receive from the E verification is accurate.

Chair LANDRIEU. Okay. I am going to come back to you to do see if our idea of a mobile app is in your plans to develop one.

Mr. Burton.

Mr. BURTON. I just wanted to mention a couple of quick things. First of all, to emphasize John's discussion of the penalties, even a first-time violation is \$2- \$5000 per violation, all right, for not using E-Verify in the latest bill. It has been higher.

But that means that if you, say, had 10 employees and your employees are all legal, you just did not use E-Verify, that you are potentially on the hook for a \$50,000 penalty for the first time you did not use E-Verify. These penalties really, I think, show a lack of perspective in terms of what they can do to a small firm.

Chair LANDRIEU. So, in the bill there is a penalty for not using E-Verify?

Mr. BURTON. Uh-huh.

Chair LANDRIEU. In the bill.

Mr. BURTON. Correct.

Chair LANDRIEU. Okay. And there are also penalties, well, for not using it and they are graded up. Okay.

Mr. BURTON. Penalties for hiring unauthorized workers but for just—

Chair LANDRIEU. But they are hard different penalty is for different, okay.

Mr. BURTON. In point of fact, probably it would be imposed concurrently.

Senator RISCH. Should not the room rule be no harm-no foul, that is, if you hired somebody whether you use E-Verify or did not use E-Verify and the person is perfectly legitimate person to work—

Mr. BURTON. We would be absolutely fine with that.

Senator RISCH. That would seem to me, I mean, that is common sense and that does not always work in Washington, D.C., but that is a common sense approach to this thing. No harm-no foul should be the law.

Mr. BURTON. I just also wanted to make you, Senator Landrieu, the wait is not going to be a couple of days. I mean, GAO has determined that now it is on average three months which means many times it is more than that.

Once we increase by a factor of 12 a number of people going through this system, it is going to be very long. It is not going to be simple.

Chair LANDRIEU. We are going to try to make it better. Go ahead.

Mr. BURTON. The other thing is that we need to have independent evaluation of this. I mean, I am sure you see this all the time in your oversight capacity. Unless GAO or the Inspector General, someone else is evaluating the error rates, you are going to be told one story rather than another.

Chair LANDRIEU. Correct. We do not want them evaluating themselves.

Mr. BURTON. That is correct, and then we need to have actual consequences and standards. So, standards as to what the error rates should be and then consequences if they are not.

You know, I have some ideas of what the standards should be but the consequences could easily be simply that they do not apply to the smallest businesses because those are the businesses that

are going to have the most adverse consequences when you have unjustified errors in the system.

Chair LANDRIEU. Thank you. Kathy, will you respond and then we are going to wrap up and have some closing remarks.

Ms. LOTSPEICH. Sure. Thank you very much.

I just wanted to say, you mentioned a couple of times about 30 days or three months for resolving a TNC. That would be a very, very extreme case. I just wanted to let you know that the average right now for resolving a TNC with the Social Security Administration is 3.4 days, and the average with resolving one with the Department of Homeland Security is 5.6.

Chair LANDRIEU. Okay. Averages are important and I want to say this because if Bill Gates, when he was worth \$40 billion, I think he is worth a lot more than that. But if he walked into a homeless shelter, you know, one day and there were 39 other men there, the day before he got there their average would be, you know, zero.

And if he spent one night in the homeless shelter and you took an average, their average would be, you know, \$1 billion each. Not a good reflection of what the homeless shelter really looks like. Average is can throw things off a lot.

So, what I would like is not just averages submitted by what your worst case was, what your, you know, best case was, kind of mediums and ranges from you all about X number of cases the X amount of time.

Averages are but they are not always as accurate a picture of what is going on in. All right. The way I think we should end this, and Senator, we want to add some ending remark.

I am very encouraged to by what I heard today because I think there were some excellent suggestions made by all of you. Those of you that are leaning for, towards supporting the bill, some of you are leaning against supporting the bill but I think all of you gave some great input.

And particularly from a federal contractor that is already being mandated to operate in the system, we got some very good information from you, Ms. Poole.

I am going to talk with Senator Risch about how he wants to proceed. But one thing that we have done after these roundtables is gather all this information, majority and minority staff, and then almost have like a staff working group that could work together to sort through some of the ideas that both the Democratic staff and the Republican staff could agree on.

And then the Senator and I will look at that document and if we can fashion something together that we could send to the Judiciary Committee for their consideration or we might put something together that could turn into a floor amendment, a small business floor amendment jointly supported by Republicans and Democrats, that is one possibility.

The other is our staffs meet. We do not completely agree on everything. The Republicans may have a document that they would submit. The Democrats may submit a document.

But I promise you that the suggestions that you all have made today you will see them again. And we really appreciate it.

This record will be open for two weeks until May 30. So, any additional information you want to send; and finally, John, I really want you to follow-up, if you can, with your survey members of your three fourths that said they are not happy with the system and try to see if they can identify these three or four things that they are least happy with. If anybody else wants to do that, that would be great.

Go ahead.

Senator RISCH. Madam Chairman, first of all, let me say that, you know, we are dealing with a very narrow part of the immigration reform bill that is being talked about here.

My experience over many, many years is I have very, very little confidence in the Federal Government to do just about anything. When this thing is enacted, I absolutely guarantee you there is going to be problems with it; and all we can do for the purposes of self-preservation is to twist on it as hard as we can right now, try to anticipate what the consequences are going to be, and do the best we can to make it as simple and least burdensome to particularly small businesses.

We always talk about small businesses here and that is 25 people, I guess even up to 500 people on some definitions that we have. But small businesses to me are people that employ one, two, three, four, five people and these are the people that are going to get caught up in this mess.

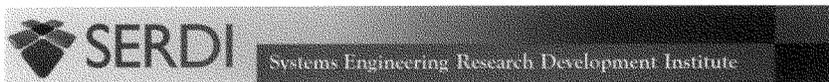
I think it is up to us, up to this Committee and up to you who advise us to try to make this pill as easy to swallow as it can, knowing it is going to be a tough pill to swallow.

Thank you, Madam Chairman.

Chair LANDRIEU. Thank you. And, the meeting is adjourned.

[Whereupon, at 12:17 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED



1700 Rockville Pike
Rockville, Maryland 20852
☎ 202-558-0209 ☎ 301-987-0471
✉ contact@serdi-llc.org

05-13-13

Reference: Two Minute Introductory Statement

Members of the Committee,

I am Sabrina Poole, President and CEO of SERDI.

SERDI is a woman owned small business and has been operational for the last 10 years.

SERDI is an IT Service Consulting Firm.

I am here to discuss the impact to my business of the mandatory E-verify requirement.

Thank you.

Sabrina B. Poole | President & CEO | SERDI

☎: 202-558-0209, ☎: 301-987-0471 ✉: sabrina@serdi-llc.com 🌐: www.serdi-llc.com





1700 Rockville Pike
Rockville, Maryland 20852
☎ 202-558-0209 ☎ 301-987-0471
✉ contact@serdi-llc.org

05-15-13

Ms. Sabrina Poole serves as the President and CEO of SERDI; Subject Matter Advisor to various Government and Commercial senior executives in areas of Cyber Security, Program/Project Management, Systems Engineering, Software Engineering, Human Factors Engineering and Enterprise Architecture.



Sabrina B. Poole
President & CEO

As a Senior Information Technology leader with over 20 years of experience in Federal and Commercial consulting, Ms. Poole is transitioning SERDI from a small consulting practice to a fast-growing, information technology solution provider with an outstanding track record of successful government and private sector contracts.

Ms. Poole earned a BSc. and MSc. in Computer Science at the University of Maryland and is a distinguished member of the National Gold Key Honors Society.

SERDI is a small, woman-owned, certified 8(a)/Small Disadvantaged Business (SDB) providing subject matter expertise (SME) services to Federal, State, and commercial clients. Founded in 2003 by a group of Information Technology experts, SERDI provides superior engineering and professional services to the Federal Government, Defense Contractors, and commercial industry.

Sabrina B. Poole | President & CEO | SERDI
☎: 202-558-0209, ☎: 301-987-0471 ✉: sabrina@serdi-llc.com 🌐: www.serdi-llc.com





**Rick Judson
2013 Chairman of the Board,
National Association of Home Builders**

**Before the
Senate Committee on Small Business and Entrepreneurship
May 16, 2013**

**Roundtable Discussion on
“The Impact of Mandatory E-Verify on America’s Small Businesses”**

Introductory Statement

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to participate in today's roundtable discussion. My name is Rick Judson, and I am a homebuilder and developer from Charlotte, North Carolina and NAHB's 2013 Chairman of the Board.

I have over 35 years of experience in the building industry, both as a practitioner and an industry representative. The building industry is made up of a vast system of general contractors and subcontracted businesses, and having run both a large, multi-state insulation company and a small home building and real estate development company, I am intimately knowledgeable of the industry and its needs.

As an industry representative, I have been active in the NAHB leadership structure at the local, state, and national levels throughout my career. I also served as the President of the Insulation Contractors Association of America in 1985.

Throughout my career, immigration reform has been an important topic, and I appreciate that employers do play a role in ensuring the nation has an authorized workforce.

NAHB supports comprehensive immigration reform. As a national industry representative and a small business owner, I greatly appreciate the importance of today's discussion on E-Verify. To be workable for all businesses, large and small, a nationwide, mandatory E-Verify system must be fair, efficient, and not impose significant burdens on employers. Congress must also be mindful of the building industry and its intricate system of general contractors and subcontractors for the system to be workable.

I look forward to today's discussion, and thank you again for the opportunity to participate.



National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

nahb.org

June 4, 2013

The Honorable Mary Landrieu
Chair, Senate Committee on Small Business
and Entrepreneurship
U.S. Senate
Washington, D.C. 20510

The Honorable
Ranking Member, Senate Committee on
Small Business and Entrepreneurship
U.S. Senate
Washington, D.C. 20510

Dear Chair Landrieu and Ranking Member Risch:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), thank you for the opportunity to participate in the roundtable on "The Impact of Mandatory E-Verify on America's Small Businesses" on May 16, 2013. We appreciate the committee's expertise on small business matters and welcome the opportunity to work with you on this key element of immigration reform.

NAHB supports the goal of many of those in Congress to enact comprehensive immigration reform. A stable, just, and efficient immigration system will provide the certainty needed to grow our economy and increase competitiveness.

S.744 strikes a balance between a mandatory, nationwide, E-Verify program and the employer community's role in addressing illegal immigration. The legislation creates a fair, efficient, and workable system that gives employers clarity with regard to their duties and obligations. It pre-empts the current patchwork of state laws, providing employers with a straightforward rulebook for compliance. Perhaps most importantly, S.744 honors the direct employer-employee relationship and the current "knowing" liability standard.

We also appreciate that the legislation includes a robust safe harbor and provisions to make the system workable for our nation's small businesses, which are the engine of the American economy. S.744 provides small employers with important tools: 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 strongly encourages you to defend these important provisions that will make the mandatory, nationwide system workable for small businesses in the residential construction sector.

NAHB is grateful for your continued leadership, and we welcome the opportunity to work with you on this key element of immigration reform and other housing-related issues.

Sincerely,

Rick Judson
2013 Chairman of the Board



Short Introductory Remarks

David R. Burton

The Impact of Mandatory E-Verify on America's Small Business

Roundtable of the Senate Committee on Small Business and Entrepreneurship

May 16, 2013

I am David R. Burton, General Counsel of the National Small Business Association (NSBA). NSBA opposes mandatory E-Verify. We are confident that Congress will regret making E-Verify mandatory for all new hires because of its adverse impact on small businesses, farmers and American citizens seeking work. However, if Congress proceeds with mandatory E-Verify legislation, it is important that it contain at least six provisions.

First, the penalties imposed need to be reasonable. The Legal Workforce Act reported out of the House Judiciary Committee last Congress would have imposed penalties for failing to use E-Verify as high as many states impose for second degree murder (up to 10 years in prison). Certainly, employing someone should not rank in seriousness with taking another person's life. The civil money penalties in the present Senate Judiciary Committee bill can be as high as \$25,000 per violation. These penalties in turn may be increased still further if the business has had some labor or employment violation in the past. These are potentially ruinous penalties that can destroy a small business owner's life savings. We believe the penalties being considered show a lack of perspective.

Second, there should be a specific, reasonable limit on how long those receiving a temporary non-confirmation (TNC) should have to wait for the resolution of database errors. 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 increase dramatically. During that time, small businesses must retain the person in question knowing that it is more likely than not they will ultimately be found to be unauthorized to work. Moreover, many American citizens will find their fundamental right to earn a living endangered. If either the employee has presented a U.S. passport or two months have elapsed since an appeal of a TNC and the I-9 process has been complied with, then the employer should be able to hire the person without penalty or discharge the person without being subjected to lawsuits and liability.

Third, there needs to be independent measurement and evaluation of accuracy of the system combined with serious consequences if the error rate remains too high. Current error rates are so high that hundreds of thousands of American citizens each year will have to endure a bureaucratic nightmare simply to exercise their right to work. If error rates remain high, then it is appropriate that the mandatory nature of the system be relaxed. This could be accomplished

by a phased-in implementation with large employers first and a statistically valid, independent accuracy evaluation being conducted before the next stage is authorized. For example, employers with 500 or more employees could be required to use the system immediately. If the error was less than 1 in 250, then the system would apply to employers of 250 or more. If after a year, the error rate was less than 1 in 500, then the system would apply to employers of 100 or more. And so on. The final target should be at least an error rate of less than 1 in 1000.

Fourth, there should be a low- cost, administrative means for compensating employers and employees for actual costs incurred or wages lost because of E-Verify errors.

Fifth, there should be an ironclad protection against liability for small businesses that make employment decisions based on the mandates of the E-Verify employment verification system.

Sixth, there should an office at U.S. Citizenship and Immigration Services (USCIS) similar to the Taxpayers Advocate Service at the Internal Revenue Service. This office should be independent and have the authority to issue binding assistance orders to aid small businesses or employees when the USCIS bureaucracy runs amuck.



**Statement of Ryan Kearney for the National Restaurant Association
Senate Committee on Small Business and Entrepreneurship**

**Roundtable on:
“The Impact of Mandatory E-Verify on America’s Small Businesses”**

**Thursday, May 16, 2013, at 10:30 a.m.
Room 428A of the Russell Senate Office Building**

My name is Ryan Kearney and I am Manager of Labor & Workforce Policy for the National Restaurant Association. The Association is the leading business association for the restaurant and food service industry. The industry is comprised of 998,000 restaurant and foodservice outlets employing 13.1 million people—about ten percent of the U.S. workforce. Restaurants are job creators and the nation’s second-largest private-sector employer. Despite its size, small businesses dominate the industry; even larger chains are often collections of smaller franchised businesses.

Two week ago, we released the results of an E-Verify national survey of restaurant owners and operators, non-restaurant foodservice operators, and supply chain professionals. The survey was fielded online and distributed to the Association’s membership, and a total of 789 responses were received. The respondents are a diverse mix of ownership types from independents, franchisees and corporate-owned chains.

We understand the need for, and support the creation of, a nationwide E-Verify system, but it must be done right, which is the reason why the feedback we are getting is so important to share we lawmakers. The findings reflect what we have been hearing for a while, namely, that soon most corporate-owned chain restaurants will be using E-verify, currently at 49%, and those that use the program would recommend it to others, 80%.

Disproportionally, independent restaurants that do not use E-Verify gave the reason for it as the lack of a Human Resources department and technical capabilities, which is why we are calling on changes as part of a broad national mandate that simplifies the current two-step process and the need for internet access and a computer. The Legal Workforce Act being debated right now in the House of Representatives is the best alternative we have seen so far and we hope it eventually becomes law as part of any comprehensive immigration reform package.

Also, because even small businesses do business across localities and even states, we support adopting one national uncomplicated federal employment verification system that provides employers certainty in regard to their legal obligations, while preempting state and local laws. The current patchwork of local and state immigration laws—sometimes inconsistent with each other—exposes employers to unfair liability and an untenable regulatory structure.

Thank you for this opportunity to participate in this roundtable.



2012 E-Verify Survey

Summary of Results

April 2013



Table of Contents

Executive Summary2

Introduction.....3

E-Verify Usage4

Number of Years Using E-Verify5

Reasons for Enrolling in E-Verify6

Changes to Hiring Procedures7

Accuracy of E-Verify System9

Changes in Pool of Applicants10

Difficult Features or Burdensome Requirements of E-Verify11

Would you recommend E-Verify to a colleague?.....12

Reasons for Not Enrolling in E-Verify14

Executive Summary

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

Here are some key findings.

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

Introduction

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

E-Verify Usage

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

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

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

Number of Years Using E-Verify

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

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

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

**Based on small sample size*

Reasons for Enrolling in E-Verify

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

Why did you enroll in the E-Verify program?

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

*Based on small sample size

Changes to Hiring Procedures

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

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

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

*Based on small sample size

Changes to Hiring Procedures (cont.)

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

Extensive changes. It was more disruptive than anticipated.

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

Significant changes. But that is to be expected.

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

Only minor changes. It was not a major problem.

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

Accuracy of E-Verify System

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

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

	As far as I know, it has been 100 percent	There have been some errors	It has been frequently inaccurate
All Restaurants	79%	17%	4%
Industry Segment			
Fullservice	77%	16%	7%
Quickservice	81%	19%	0%
Ownership Category			
Independent	80%	14%	5%
Franchisee	78%	22%	0%
Corporate-Owned Chain	75%	21%	4%
Number of Employees			
Fewer than 50	79%	15%	6%
50 to 99	90%	5%	5%
100 to 499	71%	29%	0%
500 to 999	88%	13%	0%
1,000 or more	74%	23%	3%
Annual Sales Volume			
Less than \$1 million	73%	20%	7%
\$1 million to \$4.9 million	83%	12%	6%
\$5 million to \$9.9 million	69%	31%	0%
\$10 million to \$19.9 million	77%	23%	0%
\$20 million or more	78%	19%	3%
Non-Restaurant Foodservice Operations*	86%	7%	7%
Supply Chain Companies*	25%	75%	0%

*Based on small sample size

Changes in Pool of Applicants

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

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

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

*Based on small sample size

Changes in Pool of Applicants (cont.)

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

Pool of applicants has changed significantly.

- Fewer applicants.

Pool of applicants has changed somewhat.

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

Difficult Features or Burdensome Requirements of E-Verify

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

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

Would you recommend E-Verify to a colleague?

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

Would you recommend E-Verify to a colleague?

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

**Based on small sample size*

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

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

Yes, would recommend E-Verify to a colleague.

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

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

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

Reasons for Not Enrolling in E-Verify

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

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

	I see no need to enroll	I am a small company with no HR professional	I am concerned about a disruptive transition	I am concerned about likely changes in the applicant pool
All Restaurants	50%	62%	9%	9%
Industry Segment				
Fullservice	51%	61%	9%	11%
Quickservice	49%	64%	10%	7%
Ownership Category				
Independent	52%	62%	8%	8%
Franchisee	45%	66%	11%	15%
Corporate-Owned Chain	44%	22%	33%	0%
Number of Employees				
Fewer than 50	49%	68%	4%	6%
50 to 99	48%	63%	15%	15%
100 to 499	62%	47%	15%	18%
500 to 999	56%	33%	11%	11%
1,000 or more	43%	21%	50%	14%
Annual Sales Volume				
Less than \$1 million	51%	69%	4%	5%
\$1 million to \$4.9 million	48%	65%	7%	10%
\$5 million to \$9.9 million	50%	54%	21%	13%
\$10 million to \$19.9 million	64%	45%	0%	27%
\$20 million or more	52%	19%	38%	14%
Non-Restaurant Foodservice Operations*	53%	50%	0%	6%
Supply Chain Companies*	43%	50%	0%	7%

*Based on small sample size

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

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

I see no need.

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

I am a small company with no HR professional.

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

I am concerned about a disruptive transition.

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

I am concerned about likely changes in the applicant pool.

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



**STATEMENT FOR THE RECORD
BEFORE THE SENATE COMMITTEE ON SMALL BUSINESS AND
ENTREPRENEURSHIP**

ON

**THE IMPACT OF MANDATORY E-VERIFY ON AMERICA'S SMALL
BUSINESSES**

ON MAY 16, 2013

2 Minute Version

**JOHN ARENSMEYER
FOUNDER & CEO
SMALL BUSINESS MAJORITY**

Thank you, Madame Chair and members of the Committee.

This testimony is submitted in support of an effort to ensure that any electronic employment verification system such as E-Verify does not create undue burdens for small business owners and legally authorized workers.

National scientific polling Small Business Majority conducted in March shows 9 in 10 small business owners agree our immigration system is long overdue for a major overhaul, and are eager to fix the broken system. Our primary job creators agree something must be done because immigration is good for America and good for small business. The vast majority (84 percent) support the comprehensive reform proposal being considered in the Senate. However, entrepreneurs strongly believe there must be safe harbors carved out for the use of E-Verify.

Our polling only 15 percent have used a federal system such as E-Verify and only four in 10 are even familiar with it. Of those who have used the system, only one in four reported it being easy and

convenient to use, while nine percent found it difficult and confusing to use and 55 percent found the experience to be somewhere in between.

Our polling confirmed that seven in 10 small business owners believe that if a system like E-Verify is put in place nationally, there must be protections for small business owners. There are a number of important safe harbors that can help ease the transition. The amendment sponsored by Senators Franken (D-MN), Lee (R-UT) and Hirono (D-HI) would put one such protection in place, by delaying E-Verify requirements for small businesses with fewer than 15 employees, until the system's error rate is stable.

This is a very modest carve-out. Small employers have extremely different HR structures and operating modes than big businesses. That is why we simply cannot have a one-size-fits-all policy on this issue. As such, we support requiring E-Verify's error rate to remain at or below the current level before the smallest firms are required to use it. Thank you.

Comments for the record by Frank Fiorille

Paychex prides itself on being a key partner for America's businesses; a large percentage of our nearly 600,000 clients are small businesses. We pay one out of every 15 American private sector employees every two weeks.

As many of these businesses don't have dedicated compliance or legal support teams, they often look to us both for education on key regulatory and legislative developments which may impact them – such as immigration reform and the specific use of tools like E-Verify – and for products and services which can aid them in meeting their regulatory obligations.

In those states where E-Verify is currently mandated, we have spent time informing our clients, some of whom were anxious about this incremental responsibility, and our internal client support teams in what the specific requirements are, and made available our suite of product options for those clients who may benefit from them.

We are also closely watching the evolving immigration conversation at the federal level. While we certainly understand the benefits that reform could bring, we are also sensitive to the need to ensure that reform, including the broader use of an employment verification tool like E-Verify, considers the possible burden on employers, especially small businesses.

As such, we are eager to share our unique perspective on the small business community and contribute to a solution which addresses the need for enhancements to our immigration process but does so in a matter which minimizes adverse business impact.

Frank Fiorille Bio

Frank is the Sr. Director of Risk Management at Paychex, a leading provider of payroll, human resource, and benefits outsourcing solutions for small- to medium-sized businesses. The company has more than 100 offices and serves approximately 567,000 payroll clients and 12 million employees nationwide. Fiorille has over 20 years experience in risk management and credit and joined Paychex in 2002 to lead the company's initiative to build an enterprise wide risk apparatus.

He was named as one of the 100 Most Influential People in Finance-Treasury & Risk Magazine in 2008 and 2009. Frank's team received 11 individual Alexander Hamilton Awards over the past 6 years in excellence in Risk Management, more than any other company over that time frame.

Before joining Paychex he spent four years with PNC Financial in Pittsburgh, Pennsylvania working in their Corporate Credit Policy area overseeing various commercial and consumer risk units and reporting directly to the Chief Credit Officer of the company. Prior to his work with PNC, he spent twelve years with Citigroup in New York holding various risk management and credit roles within their U.S consumer bank. He is an also graduate of the inaugural 2007 class at the Wharton Business School at the University of Pennsylvania advanced risk management program.

He is also credited for leading very successful projects to build the first risk and retention models in both the educational lending and payroll outsourcing industries. He has also spent time working internationally by teaching and facilitating strategic risk management courses for senior level executives.

About Paychex, Inc.

Paychex, Inc. is a leading provider of payroll, human resource, and benefits outsourcing solutions for America's businesses. The company offers comprehensive payroll services including payroll processing, payroll tax administration, and employee pay services. Other offerings include health insurance, workers' compensation administration, and a professional employer organization. Founded in 1971, with headquarters in Rochester, NY, Paychex delivers superior customer service and a suite of innovative mobile and technology solutions to small businesses around the country.



E-Verify Introductory Remarks: Senator Landrieu Roundtable

- The Social Security Administration (SSA) plays a supporting role in the Department of Homeland Security's (DHS) E-Verify process.
- When an employer inputs information into the E-Verify system, DHS sends the information to us to verify that the Social Security number (SSN), name, and date of birth submitted match our records. For employees alleging United States citizenship, we also confirm citizenship status as recorded in our records.
- When the information submitted does not match our records, or we cannot confirm U.S. citizenship, the new hire receives an SSA tentative non-confirmation (TNC). To contest the TNC, the new hire must visit us to update or correct our records—to notify us of a name change, for example. Because we must verify the new hire's identity, this usually requires a face-to-face interview, which takes about 20 minutes.
- During the interview, the new hire must present documentation to support his or her request for record update. Sometimes the new hire may not have the documentation we require, and he or she must request the document from the custodian of record or issuing agency.
- DHS reimburses us for all costs we incur in support of E-Verify. Our fiscal year 2013 agreement provides us over \$9.4 million based on estimates that we will receive a total of 23.2 million E-Verify queries.

Bio

Peter Monaghan is the Deputy Associate Commissioner for Data Exchange and Policy Publications. He has extensive and diverse experience, including policy development, systems development, and management of program implementation in the front line, customer service environment. He is responsible for policy development and implementation related to electronic data sharing and has worked for years with the U.S. Citizenship and Immigration Service on E-Verify and other programs.

Background for Katherine Lotspeich

Katherine Lotspeich is the Deputy Chief for the Verification Division at U.S. Citizenship and Immigration Services. Ms. Lotspeich will discuss the how E-Verify works, proposed timelines for expanding E-Verify nationally, and efforts to reduce the error rate.

E-Verify Overview

May 16, 2013

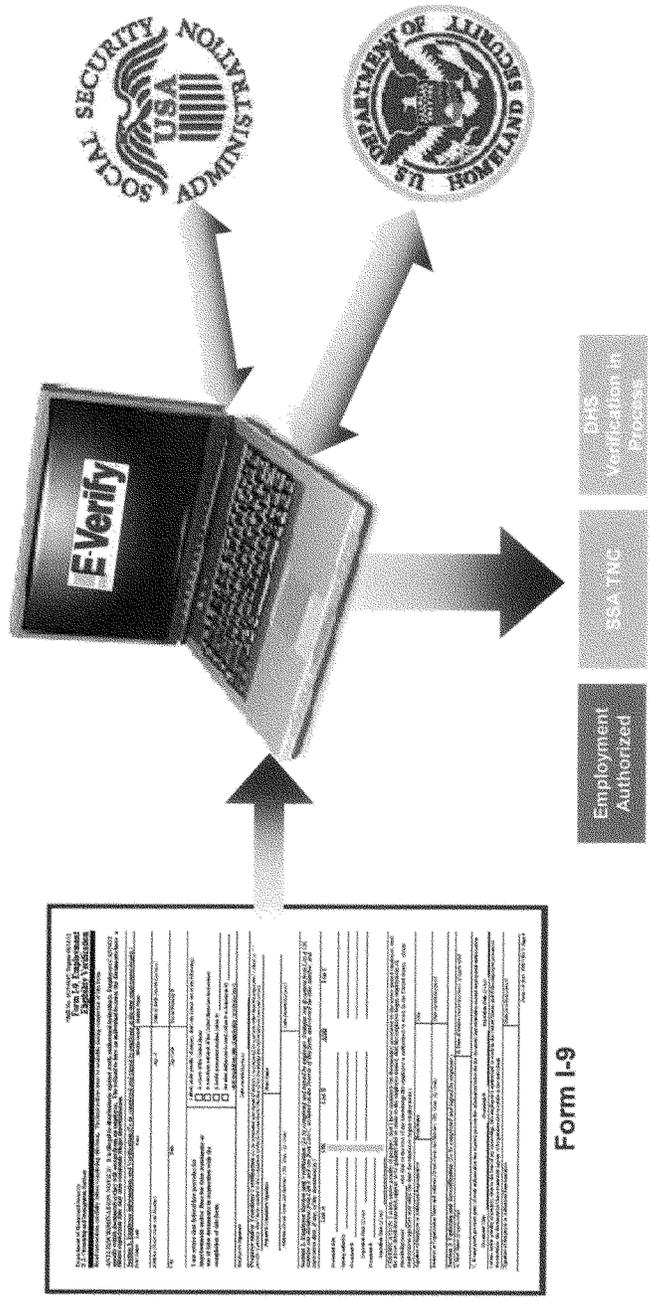
What is E-Verify?

- Electronically verifies the employment eligibility of:
 - Newly hired employees
 - Existing employees assigned to work on a qualifying federal contract
 - Free web-based service
 - Fast and easy to use
- Partnership between the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA)



63

E-Verify: How it works



E-Verify: How it works

Initial verification will return one of three results in just seconds.

Employment Authorized	SSA Tentative Nonconfirmation	DHS Verification in Process
The employee is authorized to work.	There is an information mismatch.	DHS will usually respond within 24 hours with either: Employment Authorized or DHS Tentative Nonconfirmation.

E-Verify
Employment Eligibility Verification

Click any for help

Home
My Cases
New Case
View Cases
Search Cases
My Profile
Edit Profile
Change Password
Change Security Questions
My Company
Edit Company Profile
Add New User
View Existing Users
Close Company Account
My Reports
View Reports
My Resources
View Essential Resources
Take Tutorial
View User Manual
Contact Us

Verify Employee Employee Name Case Verification Number
2012053124510CV View/Print Case Details

Enter Form I-9 Information Verification Results Close Case

Employment Eligibility:
SSA Tentative Non-confirmation (TNC)

The name and/or date of birth entered for this employee do not match SSA records. This does NOT mean that the employee is not authorized to work in the United States; however, additional action is required.

- To begin the TNC process click **Continue**.
- If you created this case in error or no longer need to continue this verification, click **Close Case**.
- To return to this case at a later time, click **Save Case and Exit**.

Close Case Save Case and Exit Continue

U.S. Department of Homeland Security - www.dhs.gov U.S. Citizenship and Immigration Services - www.uscis.gov Accessibility Download Viewers

E-Verify

Social Security Administration (SSA) Notice to Employee of Tentative Nonconfirmation (TNC Notice)

For SSA Field Office Staff Use EV-STAR and See POMS RM 10245.006F

Employee's Last Name	Employee's First Name
Employee's Social Security Number	Employee's Month/Year of Birth
Date of SSA Tentative Nonconfirmation	Case Verification Number

Reason for this TNC: SIN does not match. The same error code is not entered for this employee do not mean Social Security Administration records. Ask if invalid. The Social Security Administration records. Ask if unable to confirm U.S. citizenship. The citizenship data entered for this employee does not match Social Security Administration records. Ask if unable to confirm U.S. citizenship. The Social Security Administration has a discrepancy with the employee's records. Ask if unable to provide valid. The Social Security Administration has a discrepancy in the employee's records.

Instructions for the Employer

The employee must appear in person at the TNC Notice.

- Review the TNC Notice to provide the employee as soon as possible.
- Review the TNC Notice to provide the employee as soon as possible. If this information is incorrect, you must call the SSA at 1-800-870-5772. If the employee does not fully understand English, and speaks Spanish, Chinese, Italian-Creole, Japanese, Korean, Russian, Tagalog or Vietnamese, you must provide the employee with the TNC Notice in one of these languages, found in "Your Essential Resources".
- Ask the employee to indicate on page 2 whether he or she will contact the SSA TNC.
- Ask the employee to sign and date the TNC Notice on page 2, then sign and date in the space provided below.
- Give a copy of this signed TNC Notice in English to the employee and attach a copy to the employee's Form I-9.
- Indicate in E-Verify that you notified the employee of the TNC and then click "Continue".
- Follow the instructions in E-Verify to enter the case or close the case based on the employee's decision.

NOTE: If the employee chooses not to contact the Tentative Nonconfirmation, you may terminate his or her employment and close the case in E-Verify.

Identify the employee's name, date of birth, and Social Security Number on the TNC Notice. If the employee does not fully understand English, and speaks Spanish, Chinese, Italian-Creole, Japanese, Korean, Russian, Tagalog or Vietnamese, you must provide the employee with the TNC Notice in one of these languages, found in "Your Essential Resources".

CCS Tech Corp Company
Employee's Name
Employer Representative's Name

E-Verify

Referral Letter to the Social Security Administration (SSA)

For SSA Field Office Staff Use EV-STAR and See POMS RM 10245.005F

Employee's Last Name	Employee's First Name
Employee's Social Security Number	Employee's Month/Year of Birth
Date Referred to SSA	Case Verification Number

Reason for this Referral Letter: SIN does not match. The same error code is not entered for this employee do not mean Social Security Administration records. Ask if invalid. The Social Security Administration records. Ask if unable to confirm U.S. citizenship. The citizenship data entered for this employee does not match Social Security Administration records. Ask if unable to confirm U.S. citizenship. The Social Security Administration has a discrepancy with the employee's records. Ask if unable to provide valid. The Social Security Administration has a discrepancy in the employee's records.

Instructions for the Employer

The employee must sign and date below.

- Review the Referral Letter (in private) with the employee as soon as possible.
- Review the Referral Letter (in private) with the employee as soon as possible. If this information is incorrect, you must call the SSA at 1-800-870-5772. If the employee does not fully understand English, and speaks Spanish, Chinese, Italian-Creole, Japanese, Korean, Russian, Tagalog or Vietnamese, you must provide the employee with the Referral Letter in one of these languages, found in "Your Essential Resources".
- You and the employee must sign and date this letter in the space provided below.
- Give a copy of this signed Referral Letter in English to the employee and attach a copy to the employee's Form I-9. Inform the employee that he or she must bring the Referral Letter when he or she visits an SSA field office.

Complete all blank fields below.

CCS Tech Corp Company
Employee's Name
Employer Representative's Name
Employer Representative's Title
Employer Representative's Signature
Employee's Signature
Date
Date

E-Verify
Employment Eligibility Verification

Home | My Cases | New Cases | Search Cases | My Profile | Change Password | Change Security Questions | My Company | Add New User | View Existing Users | Close Company Account | My Reports | View Essential Resources | Take Tutorial | View User Manual | Contact Us

U.S. Department of Homeland Security | www.dhs.gov | U.S. Citizenship and Immigration Services | www.uscis.gov

Log In: 01/12 PM - 02/26/2012 | Log Out

Case Verification Number: 201205014274EV | View Print Case Details | Close Case

Verify Employee
Employee Name: [Redacted] | Verification Results | Close Case

Enter Form I-9 Information
Employment Eligibility: Employment Authorized
[Redacted] is authorized to work in the United States. To complete the verification process, click close Case.

Last Name	First Name	Middle Initial
[Redacted]	[Redacted]	[Redacted]
Maiden Name	Date of Birth	Social Security Number
[Redacted]	[Redacted]	[Redacted]
Citizenship Status	Alien Number	Document Number
A lawful permanent resident	[Redacted]	[Redacted]
Document Type	Employer Case ID	E-Verify Displayed Photo
Permanent Resident Card or Alien Registration Receipt Card (Form I-551)	[Redacted]	 Click to Enlarge
Hire Date	Submitted On	Submitted By
February 28, 2012	February 29, 2012	WW117910

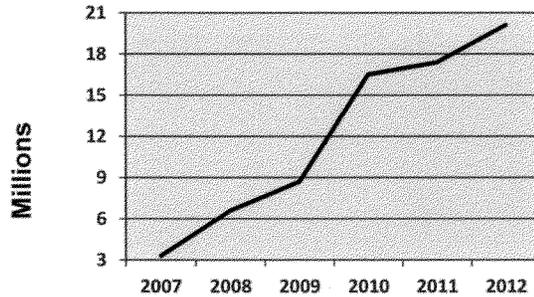
Close Case

Program Growth and Usage

E-Verify

Registered Employers: 450,854*

Queries: 21 million in FY12



Number of Locations: 1.3M*

*As of May 11, 2013

Nationwide Phase-in:

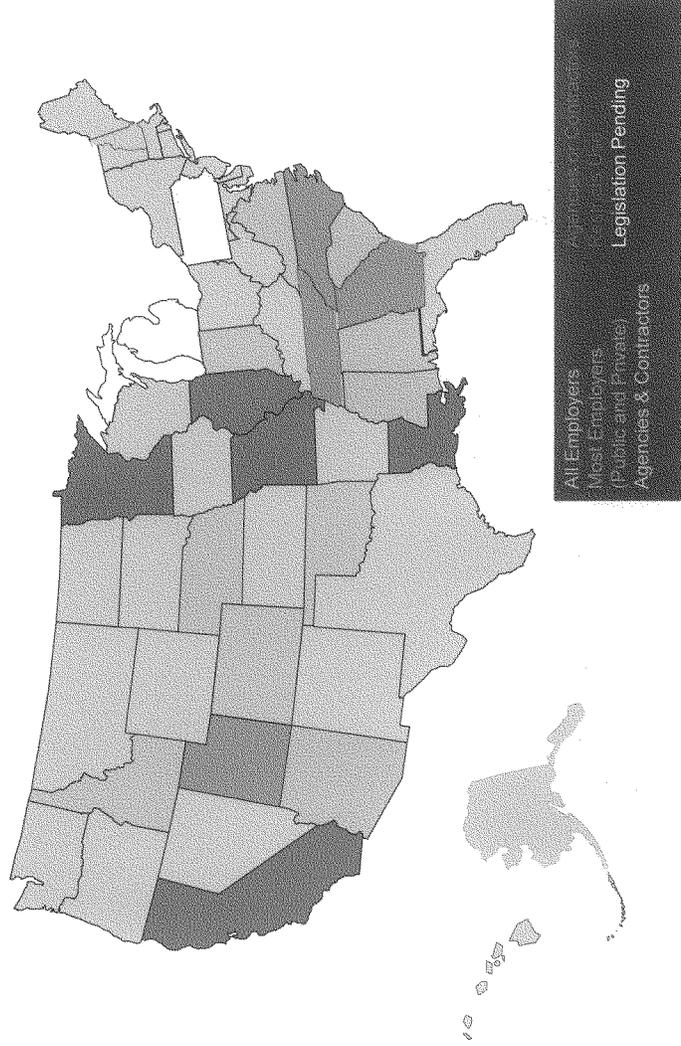
- Will phase-in over 5 years by employer size (large to small)
- Employer registrations will grow to 6 million employers representing 7.7 million locations.
- Will require a regulation writing period and IT enhancements prior to phased in employer enrollment.

E-Verify Accuracy

- ⌘ A common misperception of E-Verify's accuracy is that the government data is wrong whenever a mismatch—or tentative nonconfirmation (TNC)—is returned. However, a TNC can occur when:
 - ⌘ an employee did not update his or her information with SSA or DHS, or made an error when completing the Form I-9;
 - ⌘ the employer made an error when entering information into E-Verify;
 - ⌘ there was a data error in the employee's government record; or
 - ⌘ an unauthorized worker provided fraudulent information.
- ⌘ DHS continues to improve E-Verify's accuracy by increasing the number of databases the system accesses and by making system enhancements which will reduce typos/data entry errors.
- ⌘ A recent independent evaluation found that **the rate of authorized employees who need to resolve a TNC declined from 0.7 percent to 0.3 percent** from 2005 to 2010. This evaluation will be released later this year.

70

Map of States with Mandatory E-Verify Laws





Small business owners. Small business values.

May 28, 2013

The Honorable Mary L. Landrieu, Chair
Senate Committee on Small Business
& Entrepreneurship
428A Russell Senate Office Building
Washington, DC 20510

The Honorable James E. Risch, Ranking Member
Senate Committee on Small Business
& Entrepreneurship
428A Russell Senate Office Building
Washington, DC 20510

Re: Urging support for increasing accountability, accuracy, and protections for small businesses in E-Verify provisions of S. 744

Dear Chair Landrieu and Ranking Member Risch,

On behalf of the Main Street Alliance, a national network of local, independent small business owners, we are writing to submit comments for the record of your May 16 roundtable on mandatory E-Verify. In particular, we want to urge your support for increasing accountability, improving accuracy, and ensuring protections for small businesses from unintended consequences in the E-Verify provisions of the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744).

As small business owners, we need economy-boosting immigration reform. That is, we need immigration reform to be not only about filling temporary jobs, but also about spurring new job creation and boosting customer demand on Main Street. That's why we support reforms that strengthen the small business workforce and customer base, reward initiative with the American promise of opportunity, promote productivity and reduce red tape for small businesses.

Many elements of the Border Security, Economic Opportunity, and Immigration Modernization Act advance these important priorities for America's small businesses. But we are concerned that the bill's proposed E-Verify requirements, as written, threaten to undermine the economy-boosting potential of immigration reform. We share a broad concern that the costs of mandatory E-Verify to small businesses will outweigh the benefits. If mandatory E-Verify provisions are to remain part of the Senate's comprehensive immigration package going forward, we believe adjustments are needed to mitigate the negative impacts of E-Verify errors on small businesses and our workers.

E-Verify error rates and the challenges of correcting mistakes have created problems for small business owners and employees in the past. As the Senate considers expanding this program from less than 10 percent of employers to mandatory participation by all employers, we are concerned there is a real risk of increasing error rates. This threatens to increase red tape in the

hiring process, increase costs to small businesses, and take small business owners' time and focus away from building our businesses and creating jobs.

Even if the latest reported error rates for E-Verify are held constant through the program's rapid expansion, E-Verify would still return erroneous non-confirmations for over 150,000 authorized workers each year. Dealing with these errors will already represent a significant cost and disruption of operations for small business owners and our employees. An increase in the error rate would compound these costs and threaten to undercut the economy-boosting potential of immigration reform.

Furthermore, with the error rate for authorized foreign-born workers found to be more than 20 times the error rate for U.S.-born workers, the threat of major workplace disruptions due to E-Verify errors is far greater for businesses in sectors that rely more heavily on immigrant workers.

With these concerns in mind, we encourage you to support changes to the E-Verify provisions of S. 744 to ensure that error rates and unintended consequences are minimized before participation in the program is required for small businesses.

We need economy-boosting immigration reform that works for small businesses, not against us. We urge you to ensure that the electronic employment verification provisions of S. 744 include a strong commitment to accuracy and adequate protections for small businesses as the process moves forward.

Sincerely, on behalf of the Main Street Alliance national steering committee,

Mary Black
The UPS Store at Citiplace
Baton Rouge, Louisiana

Cristina McNeil
Office Web International
Boise, Idaho

ReShonda Young
Alpha Express, Inc
Waterloo, Iowa

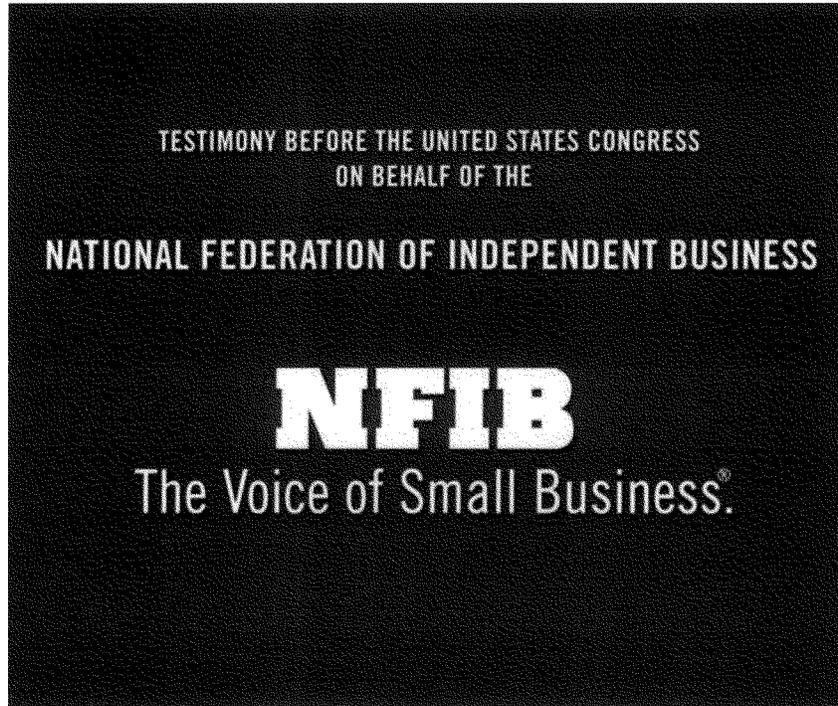
Jim Houser
Hawthorne Auto Clinic, Inc
Portland, Oregon

Kelly Conklin
Foley-Waite Associates, Inc
Bloomfield, New Jersey

Jose Gonzalez
Tu Casa Real Estate
Salem, Oregon

David Borris
Hel's Kitchen Catering
Northbrook, Illinois

John Costin
Veneer Services Unlimited
Kennebunk, Maine



Statement for the Record for the

U.S. Senate Small Business and Entrepreneurship Committee

"Impact of Mandatory E-Verify on America's Small Businesses"

May 16, 2013

National Federation of Independent Business (NFIB)

1201 F Street, NW Suite 200

Washington, DC 20004

Thank you Chairwoman Landrieu, Ranking Member Risch, and Members of the Committee for holding this roundtable entitled, "Impact of Mandatory E-Verify on America's Small Businesses." The National Federation of Independent Business (NFIB) appreciates the Senate Small Business and Entrepreneurship Committee's focus on the electronic employment-verification system program (also known as e-verify).

The NFIB is the nation's leading small business advocacy organization. NFIB believes that in order for an immigration reform effort to be successful, the requirements and enforcement provisions must be workable, efficient, and fair for small businesses. Most important, understanding that each small business is unique in location, structure, and operation is key and that a adopting a "one size fits all approach" will not work for small business.

NFIB supports an 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, minimizes paperwork burdens, and contains an appropriate phase-in time of the new e-verify system.

NFIB Research Foundation's *National Small Business Poll – Business Structure* found that 87.5 percent of all small businesses do not have at least one employee (excluding the owner) whose only job is personnel or human resources.¹ Since few NFIB members employ a dedicated human resources professional to handle employment matters, a strong, clear safe harbor to protect employers from liability if incorrect information on a worker is given by the e-verify system is needed. Additionally, it is important that the small business owner is not unduly burdened with recordkeeping or paperwork requirements under an e-verify system.

While most small business owners appear to be embracing technology, it is important to recognize that some employers have not. NFIB's Research Foundation has found that 91 percent of small employers now personally use a computer in their businesses, which means nearly one in 10 do not. Furthermore, for those small employers who utilize a computer within their businesses, a majority (51 percent) spend less than an hour a day working on the Internet on the computer.² Additionally, a large percent of small businesses are rural and may not have access to reliable, consistent Internet connections. Therefore, small businesses must have the option to phone-in toll-free for e-verify.

As Congress begins consideration of immigration reform, NFIB believes that America's small businesses should not be unduly burdened, unfairly scrutinized, or otherwise affected by any unintended consequences resulting from the implementation of a nation-wide employee verification system. Again, NFIB appreciates the Senate Small Business and Entrepreneurship Committee taking a closer look at the challenges small employers face regarding e-verify. We look forward to working with you on this issue in the future.

¹ See, *Business Structure – NFIB National Small Business Poll*, NFIB Research Foundation, Washington, D.C., Volume 4, Issue 7, 2004.
² See, *Communication – NFIB National Small Business Poll*, NFIB Research Foundation, Washington, D.C., Volume 12, Issue 8, 2012.