

Background on Franken-Lee E-Verify Amendment

In late 2010, a U.S. citizen born in Florida was hired by a telecommunications firm – but E-Verify told her employer that she was ineligible to work. Her local Social Security office couldn't help her. She was fired from her job and was unemployed for three months.

In 2009, a U.S. citizen and former captain in the U.S. Navy with 34 years of service – and who had held a high security clearance – reported that he was flagged by E-Verify as being ineligible to work. It took him, his wife, and an attorney two months to resolve the error.

In 2008, a restaurant owner in Phoenix, Arizona, hired one of his own daughters – born in the U.S. – and ran E-Verify. As the *Arizona Republic* reported, “she flunked the eligibility test.”

E-Verify errors are time-consuming, expensive, and alarmingly frequent. A 2009 audit of E-Verify found that one out of 125 authorized workers was told, at least initially, that he or she was *not* authorized to work. If your car had this error rate (0.8%), it would break down four times a year. According to the study, it took the average worker 7 to 13 days to fix these errors.

Under S. 744, E-Verify queries will triple and the number of employers using the system will increase twelve-fold, from 447,737 to 6 million. DHS has improved the system and reported a 0.26% error rate for 2012. Yet DHS officials report that error rates will likely *increase* with the E-Verify mandate – but they don't know by how much.

If error rates stay at current levels, E-Verify will tentatively reject 156,000 *legal* workers a year. **If error rates return to 2009 levels, almost half a million (480,000) *legal*, authorized workers will have to navigate federal bureaucracies just to earn a living.**

High error rates will hurt two groups more than anyone: small business owners and *legal*, immigrant workers. Large employers with H.R. departments can handle errors; small employers are less likely to have the time and resources to navigate the system. A Bloomberg analysis recently found using E-Verify cost small businesses twice as much as large businesses. For their part, legal, foreign-born workers are falsely rejected at more than 20 times the rate as their native-born counterparts; naturalized citizens are rejected 32 times more often than citizens born in the U.S. **This isn't fair for entrepreneurs, and it isn't fair for immigrants.**

The Franken-Lee Amendment fixes this problem. It requires that error rates for *legal* workers return to current levels before the federal government forces small businesses (with 14 or fewer employees) to use the system. This is a very achievable error rate; in fact, Secretary Napolitano has already testified that she can meet it. Once the E-Verify mandate applies to all businesses, the Franken-Lee Amendment keeps pressure on DHS to keep error rates low by reducing the cap on employer penalties for *first-time* non-compliance whenever error rates rise above 2012 levels.

The amendment has the support of a broad coalition of progressive, conservative and centrist small business, immigrant, labor and civil liberties groups, including the **ACLU**, the **Competitive Enterprise Institute**, the **National Association of Home Builders**, the **National Small Business Association**, the **National Immigration Law Center**, the **National Council of La Raza** and the **Small Business Majority**.

May 3, 2013

Dear Member of Congress:

We, the undersigned organizations, representing thousands of businesses and millions of Americans from all sides of the political spectrum, write to express our desire for greater accountability in the electronic employment verification (E-Verify) provisions of the Border Security, Economic Opportunity, and Immigration Modernization Act (Title III of S. 744). We believe that a simple reform is needed to protect small businesses and their legal employees.

Our concern is that the system could create unnecessary burdens on Americans by initially failing to confirm hundreds of thousands of *authorized* workers. If the present E-Verify error rate (0.26%) was applied nationally, it would fail to approve 156,000 authorized employees every year.

As E-Verify's rollout expands from just 7.5 percent of employers to 100 percent, it is vital to us that the error rate remains at least this low. Errors thrust employers into a state of regulatory uncertainty as to whether their new hire will be able to work or not. Many small employers lack the full time human resource staffs necessary to help workers correct these problems, and they will often incur significant costs attempting to do so.

Errors also burden *legal* workers, forcing them to spend time and money sorting out the errors at federal offices. These errors will disproportionately impact authorized foreign-born workers and naturalized citizens, who are at least 20 times as likely to receive an error as a native born American, according to E-Verify's most recent independent audit. Based on this number, one recent study found that foreign-born workers would receive 82 percent of all errors. This could create an incentive for discrimination against foreign-born workers. It also places an undue burden on the Social Security Administration, impacting seniors and those with disabilities who rely on a timely response from SSA.

Basic accountability can protect both workers and employers. **We propose that Congress require that E-Verify's error rate remain at or below its current level before small businesses are forced to comply with the mandate.** This gives the government over four years to work out any issues with the system, and Department of Homeland Security (DHS) Secretary Janet Napolitano has already testified that she believes that the current rate can be maintained.

Requiring the government to consider the impact on small businesses and foreign-born workers before E-Verify implementation is just simple accountability. It will protect businesses from the bureaucratic limbo that comes from not knowing if a new hire will be able to work, and it will give authorized employees the confidence that their transition to a new job will not be subject to costly and unnecessary delays.

For these reasons, we urge you to support this commonsense reform.

Sincerely,

Advocacy for Principled Action in Government

American Civil Liberties Union
American Immigration Lawyers Association
American Library Association
American Policy Center
Arizona Employers for Immigration Reform (AZEIR)
Arizona Small Business Association
Campaign for Community Change
CALEGISLATION
CAMBIO
CASA In Action
Center for Digital Democracy
Center for Financial Privacy and Human Rights
Competitive Enterprise Institute
Consumer Action
Council of Smaller Enterprises
Electronic Frontier Foundation
Illinois Coalition for Immigrant and Refugee Rights
The Leadership Conference on Civil and Human Rights
Liberty Coalition
The Multiracial Activist
National Center for Transgender Equality
National Council of La Raza (NCLR)
National Consumers League
National Immigrant Justice Center
National Immigration Forum
National Immigration Law Center
National Small Business Association

OneAmerica

The Rutherford Institute

Patient Privacy Rights

Privacy Activism

Privacy Journal

Privacy Rights Clearinghouse

Privacy Times

Rights Working Group

SEIU

Small Business & Entrepreneurship Council

Small Business Association of Michigan

Small Business California

Small Business Majority

Taxpayers Protection Alliance

UFCW International Union

World Privacy Forum



National Association of Home Builders

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May 6, 2013

The Honorable Al Franken
U.S. Senate
Washington, DC 20510

Dear Senator Franken:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to share our support for your small business amendment to the employment verification title in S.744, the *Border Security, Economic Opportunity, and Immigration Modernization Act*. This amendment makes a modest, commonsense improvement to the employment verification title, which NAHB strongly supports.

As members of the employer community, NAHB recognizes the important role employers play in ensuring the nation has a legal workforce. We believe that S.744 creates a fair, efficient, and workable employment verification 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, and includes a robust safe harbor for employers who use the system in good faith. Perhaps most importantly, S.744 honors the direct employer-employee relationship and the current "knowing" liability standard.

S.744 also includes many provisions that acknowledge the unique nature of the small business community. NAHB believes the Franken Small Business Amendment will complement the spirit of the Gang of 8's objectives.

The federal government has worked diligently to reduce error rates over the last several years, and NAHB appreciates their efforts. NAHB remains concerned, however, about the possibility of the error rate increasing as the nationwide, mandatory system is put into place and individuals seeking temporary provisional status are entered into the system. The Franken Small Business Amendment will provide employers and their workforce with the confidence that the federal government has done its due diligence to mitigate the error rate as the mandatory system is implemented.

NAHB stands ready to work with the Senate Judiciary Committee to enact comprehensive immigration reform, which should include the Franken Small Business Amendment.

Thank you again for your leadership on this important component of comprehensive immigration reform.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Tobin III', is written over a white background.

James W. Tobin III

Government Affairs

James W. Tobin III
Senior Vice President & Chief Lobbyist