



**E-VERIFY/BASIC PILOT PROGRAM :  
STATES SHOULD NOT MAKE A FLAWED FEDERAL SYSTEM MANDATORY AT STATE LEVEL**

States across the country, frustrated by Congress' failure to pass comprehensive immigration reform, have taken immigration into their own hands. Some have turned to ill-conceived immigration "enforcement only" approaches. These raise serious questions, from Constitutional to practical. States should reject them. Instead, they should adopt proposals that would protect all workers against the actions of unscrupulous employers.

Some states have proposed requiring employers to take part in an internet-based program to allow employers to electronically verify workers' employment eligibility. The program, based on Department of Homeland Security (DHS) and Social Security Administration (SSA) databases, is called E-verify (formerly the Basic Pilot program). Use of the process is not widespread, not required by federal law, and fraught with error. Mandating use of the program will result in increased employment discrimination against workers who look or sound foreign, as has been documented under existing employer sanctions laws.

**Verification not required by federal law.** Federal law, the Immigration Reform and Control Act (IRCA) makes it unlawful for an employer to "knowingly" employ an "unauthorized alien." IRCA sets up a process by which employers must request certain documents from workers within three days of their hire, and keep a record of the data that was submitted. Federal law does not require an employer to "verify" immigration status through, for example, a federal database.

**Databases for verification are fraught with error.** The E-verify program, which is used only by about 23,000 employers nationwide, has been hindered by inaccurate and outdated information in the DHS and SSA databases.

SSA estimates that its database contains 17.9 million discrepancies (not accounting for errors in the Department of Homeland Security (DHS) database) which could affect the results of a verification check by employers.<sup>1</sup>

Two independent entities evaluated the program early on, and concluded the program is "not ready for larger-scale implementation at this time."<sup>2</sup> In the fall of 2007, a review found that "the database used for verification

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<sup>1</sup> Office of Inspector General, Social Security Administration, *Accuracy of the SSA's Numident File*, Report A-08-06-26100 (December 2006), at <http://www.socialsecurity.gov/oig/ADOBEPDF/auditxt/A-08-06-26100.htm>

<sup>2</sup> *Findings of the Basic Pilot Program Evaluation* (Temple University Institute for Survey Research and Westat, June 2002).

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is still not sufficiently up to date to meet the [Congressional] requirement for accurate verification, especially for naturalized citizens." more than 10 % of naturalized U.S. citizens who were ultimately found to be work-authorized were initially misidentified as not authorized to work by employers using the program.<sup>3</sup>

**Databases misused by employers.** Basic Pilot/E-Verify is misused by employers. Although the rules of the program prohibit adverse action based on an initial finding that a particular worker may not be eligible for employment, 22 percent of employers restrict work assignments, 16 percent delay job training and two percent reduce pay while workers challenge errors, according to the most recent review.

**Verification through use of E-verify will result in increased discrimination.** The federal employment verification system set up by Congress recognizes that employer sanctions can cause discrimination based on national origin. Because of these concerns, IRCA also contained protections from unfair discrimination against workers. Congress considered these anti-bias provisions "a complement to the [employer] sanctions provisions, and must be considered in this context."<sup>4</sup> Nevertheless, a report on employer sanctions from the Government Accountability Office (GAO) found "a widespread pattern of discrimination." Requiring employers to verify immigration status will cause more discrimination.

**Harsh employer sanctions won't solve our immigration crisis and will contribute to an economic crisis.** States that have passed anti-immigrant bills, like Arizona and Oklahoma, are seeing immigrant families abandon their state and their economy. Labor commissioners and economists have expressed concern about the damage that such exodus might cause to states' economies, because studies show that immigrants represent a sum contribution to states' economies.<sup>5</sup> More importantly, enforcement-only strategies do nothing to bring the some 8 million undocumented immigrants working in our country out of the shadows. All in all, legislation in this area subjects states and cities to grave economic risks.

**Immigration is Constitutionally a matter of federal law.** Immigration is a subject wholly regulated by federal law. States that add their own provisions risk, at the least, entanglement with that system. States may also find that their provisions run afoul of the federal system.

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<sup>3</sup> See *Immigration Enforcement: Weaknesses Hinder Employer Verification and Worksite Enforcement Efforts* (Government Accountability Office, August 2005) and *Report to Congress on the Basic Pilot Program* (U.S. Citizenship and Immigration Service, June 2004),

<sup>4</sup> H.R. Conf. Rep. No 99-1000 (1986), *reprinted in* U.S.C.C.A.N. 5840, 5842.

<sup>5</sup> See, Miriam Jordan, *Arizona Squeeze on Immigration Angers Business*, Wall Street Journal, Dec. 14, 2007, <http://online.wsj.com/article/SB119760108815428771.html>.



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**Real problem, real solution.** The real problem for state treasuries, immigrant and non-immigrant workers are employers who pay workers “off the books,” fail to provide workers’ compensation or pay their fare share of payroll taxes, fail to offer workers a lawful wage and a safe place to work, and weak labor and employment enforcement regimes in many states. The solution is real labor standards, coupled with vigorous enforcement of those rules – a new kind of “employer sanction” against low-road employers who abuse all workers. NELP’s paper on models for enforcement, called “From Anti-Immigrant to Pro-Worker,” <http://www.nelp.org/docUploads/FromAnti-ImmigranttoPro-workerFinal.pdf>, offers some alternatives.

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