

# WebMemo



Published by The Heritage Foundation

No. 2622  
September 22, 2009

## Congress Should Stop Playing Politics with E-Verify

*Jena Baker McNeill*

On September 8, the rule requiring E-Verify for federal contractors went into effect. A positive step forward for workplace enforcement, this rule shows that the federal government is dedicated to enforcing its own immigration laws. However, E-Verify's pending expiration—September 30—threatens this new rule. Consequently, Congress should reauthorize the E-Verify program.

Uncertainty over the future of E-Verify will only lead to confusion as the private sector attempts to understand its obligations under this new rule. Congress should clarify this matter by permanently authorizing the program and refining it in a way that encourages employer participation and improves accuracy. Additionally, it should support other effective workplace immigration enforcement tools such as Social Security No-Match.

**Workplace Insecurity.** E-Verify helps employers confirm that their newly hired employees are eligible to work in the United States by verifying their employment information through a web-based portal. The system compares this data to information in Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. It then issues either a confirmation or a non-confirmation. Non-confirmations can be resolved if an employee can later prove that there was a discrepancy in the system. If it is not resolved, a final non-confirmation is issued, and the employer is not allowed to hire the worker.

E-Verify is a tremendous success: Over 134,000 employers voluntarily use the program. Recognizing this success and the need for workplace enforce-

ment across the federal government, the Bush Administration proposed a rule that would require federal contractors and subcontractors to use E-Verify. The rule was amended in November 2008 to require verification of both new hires and current employees working on federal contracts.

The rule was met with legal challenges and subsequently delayed into the Obama Administration, which then proceeded to postpone implementation four more times. Despite these delays, on September 8, the rule went into effect.

**The Right Example.** The federal contractor rule is important because it shows that the federal government is committed to following its own laws and that the private sector must eliminate its addiction to illegal labor. This restriction on illegal labor should equally apply when the federal government contracts work to other entities. E-Verify is the ideal system for the federal contractor rule because:

- *It works.* E-Verify is a tool that tackles the immigration problem by going to the heart of what draws illegal immigrants into the U.S.: finding employment. The program provides an incentive for illegal immigrants to return to their home countries without forced deportation. In the past year, the number of illegal immigrants in the

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/HomelandSecurity/wm2622.cfm](http://www.heritage.org/Research/HomelandSecurity/wm2622.cfm)

Produced by the Douglas and Sarah Allison  
Center for Foreign Policy Studies

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting  
the views of The Heritage Foundation or as an attempt to  
aid or hinder the passage of any bill before Congress.

United States has dropped by more than 1 million, and a number of these departures can be directly linked to increased workplace enforcement measures.

- *It is cost-effective.* E-Verify can be used in a cost-effective manner so that businesses regardless of size can check the legal status of their employees without breaking the bank. The software is free and the cost of the checks is low. In fact, DHS permits designated agents to process queries for companies at a cost of around \$2 to \$15 per employee.
- *It is accurate.* E-Verify can quickly and accurately determine the authenticity of the personal information and credentials offered by new hires. More than 96.9 percent of submissions receive an initial positive confirmation. The program also provides a process to correct erroneous initial findings, ensuring that those who can work legally are given an opportunity to resolve the discrepancy within a short period of time.

**Time for Commitment.** If Congress does not act to reauthorize E-Verify by September 30, the program will expire and this progress will be in vain. The lack of authorization sends a confusing message to the private sector regarding its obligations under the rule. Congress needs to send a clear message that E-Verify is here to stay. Congress should:

- *Permanently authorize E-Verify and provide adequate funding.* Unless Congress steps in, E-Verify will expire and the federal contractors provision, as well as the voluntary E-Verify usage, will be void.
- *Reject DHS plans to abandon the amended No-Match rule.* The Obama Administration announced plans to abandon Social Security No-Match. No-Match would have enabled SSA to send letters to employers who submitted 10 or more W-2s that could not be matched to SSA records or who have no matches for more than 0.5 percent of their workforces. Employers would have certain obligations once this information is received. While there were legal challenges to

No-Match, DHS resolved these concerns in a supplemental rule, and there is every reason to believe that the judge would be forced to lift the stay if the matter is re-litigated. Congress should not only pressure DHS to move forward on No-Match but also enact legislation that would facilitate information sharing between DHS and SSA. Allowing this sharing and giving DHS the resources and authority to target large-scale employers in the sectors of the economy with large numbers of undocumented workers will make a major impact on the problem.

- *Encourage DHS to Refine E-Verify.* E-Verify is highly accurate, but it can always be improved. Nearly all erroneous tentative non-confirmations are the result of simple errors in the databases (such as misspelled names, maiden names, clerical errors in date of birth, missing date of birth, and, most commonly, missing naturalization data). Reducing these simple errors would be helpful in making the system even more accurate, and it would allow individuals to correct their own information outside of the workplace processes.
- *Encourage state and local initiatives.* Several states, such as Arizona, have made the use of E-Verify mandatory, which courts have found permissible. Efforts like these should be supported because they act as force multipliers in the nation's immigration enforcement effort.

**Time for Assurances.** The federal government and its contractors must demonstrate a commitment to the laws they are tasked to enforce. Such a commitment is vital to the preservation of immigration laws in the United States. However, without a firm pledge by Congress, the private sector will remain hesitant and cautious. It is time for Congress to reassure employers by renewing E-Verify.

—Jena Baker McNeill is Policy Analyst for Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.