



E-Verify Program

What is E-Verify?

Under U.S. law, employers may only hire individuals who are permitted to legally work in the United States – either U.S. citizens or foreign citizens who have obtained the necessary authorization. E-Verify is an Internet-based system administered by the U.S. government that allows businesses to determine the eligibility of their employees to legally work in the United States.¹ To confirm employment eligibility, E-Verify compares information from an employee's Form I-9, "Employment Eligibility Verification," to data held by U.S. Citizenship and Immigration Services (USCIS), a branch of the Department of Homeland Security (DHS), as well as Social Security Administration records.

Is E-Verify mandatory?

While [E-Verify](#) is currently a voluntary program for most employers, it is mandatory for some, such as employers with federal contracts or subcontracts subject to the Federal Acquisition Regulation's E-Verify clause.²

Which states mandate E-Verify?


The following [states](#) have laws mandating use of E-Verify for:³

- [All New Hires](#). Alabama, Arizona, Mississippi, and South Carolina.
- [All New Hires for Companies over a Certain Size](#). Georgia (10 employees or more), Utah (15 employees or more), and North Carolina (25 employees or more).
- [All New Hires for State Agencies, Public Employers, and Government Contractors](#). Florida, Georgia, Idaho, Indiana, Louisiana, Missouri, Nebraska, North Carolina, Pennsylvania, Tennessee, and Virginia.
- [All New Hires for State Contractors](#). Minnesota and Colorado.

In addition, certain counties or municipalities in the states of Michigan, New York, Oregon, and Washington have mandated use of E-Verify as well.

How does the current voluntary E-Verify system work?

Employers voluntarily participating in E-Verify follow the [process](#) outlined below.⁴

- [Step One](#). The employer registers with USCIS and agrees to follow the E-Verify program rules, which are delineated in a Memorandum of Understanding (MOU) between the employer and USCIS.
 - [Step Two](#). Prior to accessing the system, the employer submits the MOU online and completes an online tutorial and examination. The examination covers the employer's legal duties and responsibilities to his or her employees, including the duty to inform an employee of the results of his or her E-Verify check. The employer must then post a notice of his or her participation in E-Verify in a location visible to prospective job applicants.
 - [Step Three](#). Once a new worker is hired, the employer must record the employee's identity information on the I-9 form. The employer then uses the E-Verify system to check the information provided on the I-9 form against information held by the Social Security Administration and DHS.
 - [Step Four](#). E-Verify will then designate an employee as work authorized if it finds the employee's identity information to be valid.
 - [Step Five](#). Alternatively, if the system finds the identity information to be invalid or suspects identity theft, the employee will be designated as a tentative non-confirmation (TNC). The employer must notify the employee of the TNC. The employer or employee may then
- 

engage in a process to appeal the TNC.

- **Step Six.** If an appeal of the TNC is not undertaken within ten days, or if the appeal confirms ineligibility for employment, E-Verify will issue a final non-confirmation (FNC). If this occurs, the employer must immediately terminate the worker's employment.

What are the legislative origins of E-Verify?

The [1986 Immigration Reform and Control Act \(IRCA\)](#) made it illegal to knowingly hire or continue to employ individuals who are not eligible to work in the United States under U.S. immigration law.⁵ IRCA further provided that employers must examine the newly created I-9 form that new employees must fill out.⁶ The [Illegal Immigration Reform and Immigrant Responsibility Act \(IIRIRA\) of 1996](#) created the Basic Pilot program that became the E-Verify system in 2005.⁷ The program was created to test whether verification procedures could improve the existing I-9 process by reducing document fraud and false claims of U.S. citizenship, discouraging discrimination against employees, avoiding violations of civil liberties and privacy, and minimizing the burden on employers.⁸ The program was initially rolled out to a small number of users; it saw a large increase in users when the program went online from 2006-2007.⁹

There have been two major bills introduced in Congress which would have made E-Verify mandatory. The first was the [Legal Workforce Act](#), introduced by Representative Lamar Smith in 2011.¹⁰ The second was the [Border Security, Economic Opportunity, and Immigration Modernization Act of 2013](#), introduced by Senator Charles Schumer.¹¹ Neither bill was made law. Nonetheless, E-Verify is currently used in a voluntary capacity by more than 600,000 employers nationally at more than 1.9 million hiring sites.¹²

Does USCCB/MRS have a position on E-Verify?

Yes. The U.S. Conference of Catholic Bishops' Migration and Refugee Services (USCCB/MRS) believes that the overarching goals of E-Verify are meritorious but that mandatory expansion of the system should only take place as part of a larger legislative effort on immigration reform. Additionally, should E-Verify be included as part of comprehensive immigration reform, it needs to be rolled out in an incremental fashion due to the costs of implementation and the financial and administrative burdens on small business owners. Any expansion should include: (1) complementary labor and employment protections to ensure that E-Verify does not become a tool to undermine workplace rights or take advan-

tage of workers' vulnerabilities (2) expansion of legal avenues for low-wage workers to enter the U.S. lawfully and work in humane conditions; (3) curbing employer efforts to misuse E-Verify; and (4) improvement of the inaccuracies of the E-Verify system.

Have any Bishops publically spoken on E-Verify?


Yes. In 2011, Archbishop Gomez issued a [statement](#) on expansion of E-Verify on behalf of USCCB's Committee of Migration before the House Judiciary Subcommittee on Immigration Policy and Enforcement.¹³

What financial costs are associated with E-Verify?

- **Implementation.** There are [costs](#) associated with implementation of the E-Verify program. For example, the [Border Security, Economic Opportunity, and Immigration Modernization Act of 2013](#) included \$1.37 billion for initial enforcement staff, technology, and overhead associated with E-Verify. The bill also specifically called for the hiring of 5,000 new DHS agents to administer the program and to enforce compliance. This would have amounted to more than \$227 million per year in new salaries just to administer E-Verify¹⁴ and roughly \$2.27 billion over a decade.¹⁵
- **Compliance.** In addition to the large implementation costs, there are costs associated with business compliance. It is [estimated](#) that filling out the current I-9 form requires employers to expend 13.48 million man hours per year.¹⁶ Use of the E-Verify system would require additional company resources beyond this.

What are some policy concerns with E-Verify?

- **Undocumented Immigrant Workers Can Suffer Exploitation.** Some employers in industries that rely on undocumented labor utilize strategies to evade E-Verify and other workplace verification programs. For instance, certain employers engage in "[identity masking](#)," the practice of providing valid documents to undocumented workers in order to [circumvent](#) verification programs.¹⁷ Im-



plementation of [mandatory E-Verify](#) will likely only intensify these practices. Additionally, certain mandatory E-Verify proposals protect employers at the expense of immigrant workers.¹⁸ These proposals provide significant safe harbors for employer conduct but assign criminal penalties to unauthorized workers for merely applying for a job. Other proposals turn a blind eye to employers' undetected fraud on the system while simultaneously failing to provide protection for an exploited employee who reports wage theft or unsafe work conditions. All proposals for mandatory E-Verify should include protections for workers, such as providing all those who report unscrupulous employers with a temporary stay of deportation. This would ensure that workers are not cast into the shadows and that their vulnerabilities are not exploited.

- [E-Verify's Inaccuracies Can Cause Americans to be Incorrectly Disqualified from Work.](#) Some U.S. citizens and lawful permanent residents authorized to work in the U.S. are and will continue to be barred from work due to false positives being returned in the E-Verify system. An estimated [0.15%](#) of all E-Verify queries result in a false FNC (final non-confirmation). While this is a small percent of current cases, the potential nationwide impact is sizable. On the American labor pool of roughly 125 million workers, E-Verify inaccuracies would result in 187,500 wrongly issued FNCs to American workers each year.¹⁹

the state in which the business operates. Robust public education campaigns accompanying mandatory E-Verify use would help to clarify the verification process.

What are some policy benefits that could be derived from E-Verify?

- [E-Verify Can Ensure an Eligible Workforce.](#) As noted above, E-Verify can ensure workforce eligibility by determining the authenticity of the personal information and credentials offered by new hires.
- [E-verify Can Provide Workers and Employers with a Transparent Process.](#) Uniform adoption and use of E-Verify, along with increased protections for workers and adequate public education on the E-Verify system, could ensure transparency in the employment verification process. Currently, there are numerous verification rules in place; which rule applies will depend on the type of business operated and

1 *What is E-Verify?*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) (FEB. 26, 2016), [HTTPS://WWW.USCIS.GOV/E-VERIFY/WHAT-E-VERIFY](https://www.uscis.gov/e-verify/what-e-verify).

2 E-VERIFY USER MANUAL, USCIS (AUG. 2016), AVAILABLE AT [HTTPS://WWW.USCIS.GOV/SITES/DEFAULT/FILES/USCIS/VERIFICATION/E-VERIFY/E-VERIFY_NATIVE_DOCUMENTS/E-VERIFY%20MANUALS%20AND%20GUIDES/EVERIFY_USER_MANUAL_EMPLOYER.PDF](https://www.uscis.gov/sites/default/files/uscis/verification/e-verify/e-verify_native_documents/e-verify%20manuals%20and%20guides/everify_user_manual_employer.pdf).

3 Alex Nowrasteh and Jim Harper, *Checking E-Verify*, 775 CATO INSTITUTE POLICY ANALYSIS 1, 3 (JULY 7, 2015).

4 *Id.* at 4.

5 Pub. L. 99-603 § 101(a)(1).

6 Employers are not required to complete I-9 forms for: i) employees hired on or before November 6, 1986; ii) independent contractors; iii) casual domestic service employees working in a private household when work is sporadic, irregular, or intermittent; iv) individuals providing labor who are employed by a contractor providing services (e.g., employee leasing agency); and v) employees working outside the United States. See *id.* §§ 101(a)(1)-(5); USCIS, HANDBOOK FOR EMPLOYERS 2 (2017), AVAILABLE AT [HTTPS://WWW.USCIS.GOV/SITES/DEFAULT/FILES/FILES/FORM/M-274.PDF](https://www.uscis.gov/sites/default/files/files/form/m-274.pdf).

7 Pub. L. 104-208 § 401.

8 See Richard M. Stana, *Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Verification System*, Statement before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, 110th Cong. (2007), available at <http://www.gao.gov/products/GAO-08-895T>.

9 MARC R. ROSENBLUM, E-VERIFY, MIGRATION POLICY INSTITUTE 2 (FEB. 2011), AVAILABLE AT [HTTP://WWW.MIGRATIONPOLICY.ORG/SITES/DEFAULT/FILES/PUBLICATIONS/E-VERIFY-INSIGHT.PDF](http://www.migrationpolicy.org/sites/default/files/publications/e-verify-insight.pdf).

10 Legal Workforce Act, H.R. 2885, 112th Cong. (2011).

11 Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, 113th Cong. (2013).

12 *What is E-Verify?*, *supra* note 1.

13 Archbishop José H. Gomez, Testimony before the Judiciary Subcommittee on Immigration Policy and Enforcement, House of Representatives, 112th Cong. (Feb. 10, 2011).

14 This calculation is based on an average baseline federal pay for current immigration enforcement agents of \$45,416 per year.

15 CONGRESSIONAL BUDGET OFFICE, S.744 BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT,

COST ESTIMATE, (JUNE 18, 2013).

16 USCIS, Agency Information Collection Activities, Comment Request, 77 Fed. Reg. 18,256 (March 27, 2012).

17 Sarah B. Horton, *Ghost Workers*, 37 ANTHROPOLOGY OF WORK REVIEW 11 (2016).

18 Sarah B. Horton, *The Hole in Trump's Wall*, THE HUFFINGTON POST (SEPT. 9, 2016), [HTTP://WWW.HUFFINGTONPOST.COM/SARAH-B-HORTON/THE-HOLE-IN-TRUMPS-WALL_B_11939958.HTML](http://www.huffingtonpost.com/sarah-b-horton/the-hole-in-trumps-wall_b_11939958.html).

19 Alex Nowrasteh, *Serious Problems With E-Verify*, CATO INSTITUTE (NOV. 3, 2016), [HTTPS://WWW.CATO.ORG/BLOG/SERIOUS-PROBLEMS-E-VERIFY](https://www.cato.org/blog/serious-problems-e-verify).