CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

December 17, 2013

H.R. 1772
Legal Workforce Act

As ordered reported by the House Committee on the Judiciary on June 26, 2013

SUMMARY

H.R. 1772 would replace the federal government's existing voluntary system for verifying the employment eligibility of individuals in the United States with a mandatory system. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1772 would cost about $635 million over the 2014-2018 period and a similar amount in the subsequent five-year period.

In addition, CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would decrease direct spending and increase on-budget revenues but decrease off-budget revenues. (Payroll taxes for Social Security are classified as off-budget revenues.) Summing those budgetary impacts, CBO and JCT estimate that enacting H.R. 1772 would increase budget deficits as measured by the unified federal budget by about $30 billion over the 10-year period.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. CBO and JCT estimate that enacting the bill would increase on-budget revenues by about $49 billion over the 2014-2023 period and would decrease direct spending by $9 billion over the same period. Thus, we estimate that enacting H.R. 1772 would decrease the on-budget deficit by about $58 billion over the 10-year period. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

H.R. 1772 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on employers and other entities that hire, recruit, or refer individuals for employment. CBO estimates that the aggregate annual cost to comply with those mandates on public entities would exceed the intergovernmental threshold ($75 million in 2013, adjusted annually for inflation) in fiscal year 2014. In addition, CBO estimates that the aggregate annual compliance costs for private entities would exceed the private-sector threshold ($150 million in 2013, adjusted annually for inflation) beginning in 2016 once the mandates are fully in effect.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1772 is shown in the following table. The costs of this legislation fall within budget functions 750 (administration of justice) and 800 (general government).

	By Fiscal Year, in Millions of Dollars											
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014-2018	2014-2023
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Costs to DHS												
Estimated Authorization Level	68	88	96	102	105	99	100	102	104	106	459	970
Estimated Outlays	64	87	96	102	105	99	100	102	104	106	454	965
Costs to SSA												
Estimated Authorization Level	43	47	27	23	22	22	21	22	22	23	162	272
Estimated Outlays	39	47	29	24	22	22	21	22	22	23	161	271
Costs to Other Federal Agencies												
Estimated Authorization Level	15	3	*	*	*	0	0	0	0	0	20	20
Estimated Outlays	15	3	*	*	*	0	0	0	0	0	20	20
Total Changes												
Estimated Authorization Level	126	138	124	126	127	121	121	124	126	129	641	1,262
Estimated Outlays	118	137	125	126	127	121	121	124	126	129	634	1,255
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854
Estimated Outlays	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854
CHANGES IN REVENUES												
On-Budget Revenues	1,396	3,392	4,499	4,765	5,042	5,326	5,619	5,920	6,227	6,546	19,094	48,732
Off-Budget Revenues	-2,510	-6,097	-8,087	-8,566	-9,065	-9,578	-10,106	-10,648	-11,202	-11,777	-34,325	-87,637
Total Changes	-1,115	-2,705	-3,588	-3,801	-4,023	-4,252	-4,487	-4,728	-4,975	-5,231	-15,232	-38,905
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS												
Impact on Deficit	1,125	1,928	2,576	2,750	2,933	3,322	3,527	3,740	3,959	4,190	11,311	30,050

Notes: DHS = Department of Homeland Security; SSA = Social Security Administration;* = less than $500,000.

Positive changes in spending or revenues indicate an increase, and negative changes in spending or revenues indicate a reduction. Components may not sum to totals because of rounding.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted late in 2013, the necessary amounts will be provided each year, and spending will follow historical patterns for operating the government's employment verification system.

Spending Subject to Appropriation

H.R. 1772 would replace the federal government's existing voluntary system for verifying the employment eligibility of individuals with a mandatory system. (The existing system is known as E-Verify and is administered by the Department of Homeland Security—DHS.) The requirement for employers to use the system would be phased in over several years, with different deadlines for employers of different sizes. Within 30 months of the bill's enactment, all employers would be required to use the system for all employees newly hired in the United States.

Costs to DHS. Based on information from DHS about the costs to hire new employees and upgrade computer systems, CBO estimates that it would cost $454 million over the 2014-2018 period to implement the new system. CBO expects that most of the additional funding would be used to pay for staff, technological components, and overhead to handle the increased workload. The E-Verify program has received funding of about $100 million annually in recent years, and the current system handled roughly 20 million cases in 2012. DHS expects that the caseload under the bill would more than double. Because the current system has some excess capacity, initial costs to ramp up capacity under the bill would be reduced by the use of that existing capacity. Estimated costs also include expenses for a new office to address state and local government issues, programs to prevent fraud involving social security numbers, and pilot programs to improve identity authentication and verification of employment eligibility.

Costs to the Social Security Administration (SSA). Based on information from SSA, CBO estimates that it would cost $161 million over the 2014-2018 period to implement the new system. CBO estimates that the additional funding would be needed for additional staff to handle the increased fallout rate (the number of individuals who are initially not verified as eligible for employment) under the mandatory system and for additional technological components.

Costs to Other Federal Agencies. H.R. 1772 would require federal agencies to verify the employment eligibility of current employees. Federal agencies are now required to verify the employment eligibility of new employees, but those hired before 2007 were not required to be verified. Currently, there are just over 4.5 million federal government employees (including military personnel), and the employment eligibility of about 3.5 million of those employees would need to be verified under H.R. 1772. CBO estimates that verifying those employees would cost federal agencies about $20 million over 2014-2018 period.

Direct Spending

CBO and JCT estimate that enacting H.R. 1772 would decrease net direct spending by about $9 billion over the 2014-2023 period.

Refundable Tax Credits. JCT estimates that enacting H.R. 1772 would reduce outlays for refundable credits by about $9 billion over the 2014-2023 period. JCT expects that implementing the proposed system of mandatory verification for employment eligibility would cause more workers to be paid outside of the tax system. As a result, fewer workers would claim refundable income tax credits, primarily the child tax credit. (If refundable tax credits exceed a taxpayer's other income tax liability, the excess may be refunded to the taxpayer, with the amount of the refund classified as outlays in the federal budget.)

Compensation for Errors. H.R. 1772 would require employers to fire employees who are determined to be ineligible for employment by the new verification system. Under the bill, individuals who lost their employment because of an error in the new system could seek compensation through the Federal Tort Claims Act (FTCA). (Under FTCA, the federal government waives its sovereign immunity and consents to being sued in federal courts in certain cases.)

CBO expects that the size of compensation awards for such errors would primarily stem from employees' lost wages. We expect that affected employees would be compensated for about three months' salary. Payments would probably be higher in the initial years and decline over the 10-year period. Those amounts would be paid through the government's Judgment Fund (which is a permanent, indefinite appropriation for claims and judgments against the United States). Based on information from SSA about the system's likely error rate and data on wages from the Bureau of Labor Statistics and using an average of about three months of lost wages per successful claim, CBO expects that the Judgment Fund would pay claims totaling about $70 million over the 2014-2023 period.

Revenues

CBO and JCT estimate that enacting H.R. 1772 would increase on-budget revenues from income and payroll taxes and civil penalties by about $49 billion over the 2014-2023 period and would decrease off-budget (Social Security payroll tax) revenues by about $88 billion over that period. Thus, we estimate that the net revenue loss to the unified budget would total $39 billion over the 10-year period.

Income and Payroll Tax Revenues. Almost all of the total estimated effect on revenues of H.R. 1772 reflects JCT's expectation that the mandatory verification of employment authorization would result in some undocumented workers being paid outside of the tax system—that is, they would move into the underground economy.

Under current law, some employers withhold income and payroll taxes from the wages of unauthorized workers and deposit those amounts in the Treasury, where they are classified as federal revenues. Under H.R. 1772, some employers would decrease those tax withholdings as some workers move outside of the tax system. A substantial portion of those estimated revenue reductions—$88 billion over 10 years, JCT estimates—is attributed to lower off-budget revenues from Social Security payroll taxes. Those revenue losses would be partially offset because employers whose workers move outside the tax system would have fewer wage deductions and therefore higher taxable business profits on their income-tax returns, boosting their income taxes. On net, JCT estimates that on-budget revenues would increase by about $49 billion.

Civil Penalties. H.R. 1772 would increase the minimum and maximum civil fines imposed under current law on employers who violate requirements for verifying the identity and authority to work of individuals that they hire. As a result of those changes, CBO estimates that civil penalties, which are recorded in the budget as revenues, would increase by about $0.1 billion over the 2014-2023 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

CBO Estimate of Pay-As-You-Go Effects for H.R. 1772 as ordered reported by the House Committee on the Judiciary on June 26, 2013

	By Fiscal Year, in Millions of Dollars											
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014-2018	2014-2023
NET INCREASE OR DECREASE (-) IN THE ON-BUDGET DEFICIT												
Statutory Pay-As-You-Go Impact	-1,386	-4,169	-5,511	-5,816	-6,132	-6,256	-6,579	-6,908	-7,243	-7,587	-23,014	-57,587
Memorandum:												
Changes in Outlays	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854
Changes in Revenues	1,396	3,392	4,499	4,765	5,042	5,326	5,619	5,920	6,227	6,546	19,094	48,732

INTERGOVERNMENTAL AND THE PRIVATE SECTOR IMPACT

H.R. 1772 would impose intergovernmental and private-sector mandates, as defined in UMRA. The bill would require employers and other entities that hire, recruit, or refer individuals for employment to verify the employment eligibility of potential employees and some current employees. In some cases, the same mandate would apply to both public and private-sector entities; in other cases, only one sector would face the mandate. Because of the number of public employees that would need to be verified in a short amount of time, CBO estimates that the aggregate annual cost for those entities would exceed the intergovernmental threshold ($75 million in 2013) in fiscal year 2014. Many private-sector entities also would be affected by the bill, and CBO estimates that the aggregate annual costs of the mandates imposed on those entities would exceed the private-sector threshold ($150 million in 2013) beginning in 2016.

Mandates that Apply to Both Public and Private Entities

Verifying Work Eligibility. The bill would impose intergovernmental and private-sector mandates on many employers and other entities that hire, recruit, or refer individuals for employment in the United States by requiring them to participate in the electronic verification system to confirm the work authorization of those individuals. Some employers would need to verify all current employees as well as future hires, while others would only be required to verify future hires.

Current Employees. All public and some private employers would be required to confirm, within six months after the bill is enacted, the work authorization of current employees who have not been verified under the current employment verification program. Based on Census data and information from organizations representing state governments, CBO estimates that about 18 million current public employees would need to be verified. CBO estimates that the average cost would be about $5 per person and the total cost for public entities to comply with the mandate would be about $90 million in fiscal year 2014.

Current employees working for private employers that would need to be verified include certain employees who require a federal security clearance. According to the Department of Homeland Security and the National Infrastructure Advisory Council, employers that are generally considered part of the critical infrastructure already participate in the current employment verification program. Many of those employers are likely to employ workers with a federal security clearance. Future regulations would determine the number of current employees who would be required to have their work authorization confirmed. Therefore, the incremental costs of the additional verifications are uncertain but would probably be small relative to the annual threshold for private-sector mandates.

Newly Hired Employees. The bill would require all public and private employers to verify the work eligibility of newly hired employees as well as those whose temporary employment authorization was expiring. In addition, employers would have to maintain a record of the verification for such employees for a specific amount of time in a form that would be available for government inspection. The requirements would begin six months after the bill is enacted for some employers and would be phased-in over two years for other employers depending on the number of their employees. Entities that recruit or refer workers would have to verify job candidates within one year of enactment, and employers that employ agricultural workers would have to verify new employees within two years of enactment.

Currently, 20 states require some public entities to verify work eligibility of new hires. CBO estimates that once all public entities are subject to the verification requirements, about 2 million public employees that are not currently required by state law to be verified would need to meet the new requirements each year. We estimate that the average cost for verifying work eligibility would be about $5 per person, so the cost for public entities to comply with this mandate would be about $10 million annually.

Based on data from the Bureau of Labor Statistics, CBO expects that for private entities the number of verifications for newly hired employees and employees requiring repeat verifications would rise to about 50 million in 2016. Also, based on that data, CBO estimates that the direct costs to comply with the verification requirement could total $200 million or more annually from 2016 through 2018 and, thus, would exceed the annual threshold for private-sector entities in those years.

Mandates Affecting Only State, Local, or Tribal Entities

The bill would preempt state and local laws related to work verification. Although the preemption would limit the application of state and local laws, it would impose no duty on state or local governments that would result in significant spending or loss of revenues.

Mandates Affecting Only Private-Sector Entities

Under the bill, individuals would be required to provide specific documentation to establish their identity for use when verifying employment eligibility. The documents required would include most standard forms of identification including passports, permanent residence cards, state drivers' licenses, and military identification cards. CBO estimates that the cost to comply with that mandate would be relatively small.

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