

11. Declaration of Mary Conroy.
12. Declaration of Katelan Eno (with Exhibits).
13. Exhibit AA, *Del Rio-Mocci v. Connelly Properties*, Civil Action No. 08-2753 (WJM) (D. N.J. Apr. 8, 2009), Letter Opinion.
14. Exhibit BB, “City torn by immigration proposal” by Leslie Reed, published June 10, 2010 in the Omaha World Herald (Accessed July 21, 2010).
15. Exhibit CC, “City in Nebraska Torn as Immigration Vote Nears” by Monica Davey, published June 17, 2010 in the New York Times (Accessed July 21, 2010).

Dated: July 22, 2010

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3. I obtained the Department of Homeland Security and the Social Security Administration's E-Verify User Manual for Employers, dated March 2009, by visiting the following website and downloading the file found at http://www.uscis.gov/files/nativedocuments/E-Verify_Manual.pdf on July 20, 2010. A true and correct copy of the document is attached to this declaration as Exhibit A.

4. I obtained a copy of the standard Memorandum of Understanding (MOU) issued by the Department of Homeland Security and the Social Security Administration by visiting the following website and downloading the file found at http://www.foreignlaborcert.doleta.gov/pdf/SWA_MOU.pdf on July 20, 2010. A true and correct copy of the document is attached to this declaration as Exhibit B.

5. I obtained a copy of the Office of the Inspector General of the Social Security Administration's Audit Report: The Social Security Administration's Implementation of the E-Verify Program for New Hires, released in January 2010 (Document no. A-03-09-29154), by visiting the following website and downloading the file found at <http://www.ssa.gov/oig/ADOBEPDF/A-03-09-29154.pdf> on July 20, 2010. A true and correct copy of this document is attached to this declaration as Exhibit C.

6. I obtained a copy of the Statement by Richard M. Stana, Director of Homeland Security and Justice Issues at the Government Accountability Office, made before the Subcommittee on Social Security of the Committee on Ways and Means in the U.S. House of Representatives, released on June 7, 2007, by visiting the following website and downloading the file found at <http://www.gao.gov/new.items/d07924t.pdf> on July 20, 2010. A true and correct copy of this document is attached to this declaration as Exhibit D.

7. I obtained a copy of the Westat report entitled “Findings of the Web Basic Pilot Evaluation” presented to the Department of Homeland Security in September 2007 by visiting the following website and downloading the file found at <http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf> on July 20, 2010. A true and correct copy of the report is attached to this declaration as Exhibit E.

8. I obtained a copy of the Social Security Administration’s Office of the Inspector General’s Congressional Response Report entitled “Accuracy of the SSA’s NUMIDENT File” presented in December 2006 (Document no. A-08-06-26100) by visiting the following website and downloading the file found at <http://www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm> on July 21, 2010. A true and correct copy of this report is attached to this declaration as Exhibit F.

9. I obtained a copy of the U.S. Citizenship and Immigration Services Report to Congress on the Basic Pilot Program released in June 2004 by calling the Congressional Liaison Unit in Los Angeles, California and speaking with Mariana Gitomer, who faxed it to the ACLU Immigrants' Rights Project in San Francisco, California on July 19, 2010. A true and correct copy of the document (along with fax cover sheet) is attached to this declaration as Exhibit G.

10. I obtained a copy of the Social Security Administration's Office of the Inspector General's Audit Report entitled "Impact of Unauthorized Employment on Social Security Benefits," dated December 2006 (Document no. A-14-05-14042), by visiting the following website and downloading the file found at <http://www.ssa.gov/oig/ADOBEPDF/A-14-05-14042.pdf> on July 20, 2010. A true and correct copy of the report is attached to this declaration as Exhibit H.

11. I obtained a copy of a report entitled "INS Basic Pilot Evaluation Summary Report," dated January 29, 2002, which was prepared by Temple University's Institute for Survey Research and submitted to the U.S. Department of Justice Immigration and Naturalization Service, by visiting the following website and downloading the file found at http://www.uscis.gov/files/nativedocuments/INSBASICpilot_summ_jan292002.pdf on July 20, 2010. A true and correct copy of the report is attached to this declaration as Exhibit I.

12. I obtained a copy of the Congressional Response Report entitled “Employer Feedback on the Social Security Administration’s Verification Programs,” dated December 2006 (Document no. A-03-06-26106), which was issued by the Social Security Administration’s Office of the Inspector General, by visiting the following website and downloading the file found at <http://www.ssa.gov/oig/ADOBEPDF/A-03-06-26106.pdf> on July 20, 2010. A true and correct copy of this document is attached to this declaration as Exhibit J.

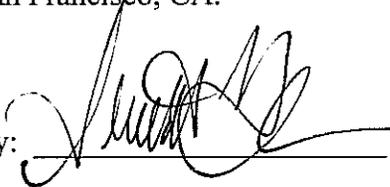
13. I obtained a copy of the Statement by Richard M. Stana, Director of Homeland Security and Justice Issues at the Government Accountability Office, made before the Subcommittee on Immigration, Border Security, and Citizenship of the Committee on the Judiciary in the U.S. Senate on June 19, 2006, by visiting the following website and downloading the file found at <http://www.gao.gov/new.items/d06895t.pdf> on July 20, 2010. A true and correct copy of this document is attached to this declaration as Exhibit K.

14. I obtained a copy of the Testimony of Tyler Moran, Employment Policy Director of the National Immigration Lawer Center, made before the House Committee on Ways and Means, Subcommittee on Social Security during the Hearing on Employment Eligibility Verification Systems on June 7, 2007 by visiting the following website and downloading the file found at

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:47008.pdf on July 21, 2010. A true and correct copy of this document is attached to this declaration as Exhibit L.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection.

Executed this 21st day of July, 2010, San Francisco, CA.

By: 

Sheetal Dhir

Exhibit A



User Manual

For Employers

March 2009

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1. INTRODUCTION

1.1 Basic Overview of E-Verify

E-Verify is an Internet-based system operated by USCIS in partnership with SSA. E-Verify is currently free to Employers and is available in all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands.

1.2 Privacy Statement

It is essential to protect the privacy of individuals submitting information for processing through E-Verify. Since E-Verify involves collecting and using an individual's personal information, it is your responsibility to ensure that this information is safeguarded, and that it is used only for the purposes outlined in the Memorandum of Understanding (MOU) between the E-Verify Program administrators and you. Failure to properly protect individuals' information can result in identity theft or fraud and can cause considerable inconvenience, harm, or embarrassment to the individuals affected. In addition, if you do not comply with the Privacy Act or other applicable laws and regulations, you may be subject to criminal penalties. At a minimum, you should take the following steps to protect personal information and comply with the appropriate regulations:

- Allow only authorized employees to use E-Verify. Ensure that only the appropriate employees handle information and perform verification queries.
- Secure access to E-Verify. Protect the password you use to access E-Verify and ensure that unauthorized users do not gain access to the system.
- Protect and store individuals' information properly. Ensure that applicants' information is stored in a safe and secure location and that only authorized individuals have access to this information.

1.3 User Roles

There are three types of user roles:

- **General Users:** This user performs verification queries, views reports, and has the capability to update his or her personal user profile.
- **Program Administrators:** This user is responsible for creating user accounts at his or her site for other Program Administrators and General Users. Program Administrators have the capability to view reports, perform queries, update profile information, and unlock user accounts.
- **Corporate Administrators:** This user is responsible for managing multiple company accounts from a central location. Corporate Administrators have the ability to unlock accounts, view reports for multiple company sites, as well as register and administer company sites and user accounts.

	IMPORTANT
	The Corporate Administrator user role is accessible only when a company is registered under a certain heading if you feel you need access to the Corporate Administrator user role please go to the E-Verify registration page: https://www.vis-dhs.com/EmployerRegistration/StartPage.aspx

User roles determine permissions assigned to an individual.
 The following table shows the permissions for the different User Roles:

User Role Permission	General User	Program Administrator	Corporate Administrator
<i>Perform verification queries</i>	✓	✓	
<i>Register Verification Locations</i>		✓	✓
<i>Create accounts for new users</i>		✓ Other Program Administrators/ General Users at their site	✓ Other Corporate Administrators/ Program Administrators and General Users for all sites)
<i>View Reports</i>	✓	✓	✓ (for all Sites)
<i>Update Reports</i>			
<i>Update personal user profile</i>	✓	✓	✓
<i>View Users</i>		✓	✓
<i>Request Termination</i>		✓	✓

1.4 Contacting the Department of Homeland Security for Assistance
If you need help operating E-Verify, please call the DHS Verification Division for assistance.

Contact Us for Help	
Technical Help Desk E-Verify General Information E-Verify Support Email	(800) 741-5023 (888) 464-4218 e-verify@dhs.gov

2. GETTING STARTED

2.1 The Rules of Use

1. Employees must be newly hired with a completed Employment Eligibility Verification Form I-9 (referred to hereafter as Form I-9) before you can use E-Verify to initiate queries about the employees for your company.
2. Form I-9 requirements remain the same except that all "List B" identity documents must bear a photograph.
3. Employers must submit verification queries for newly hired employees no later than the 3rd business day after they start work for pay.
4. If you haven't started a verification query by the third business day after the employee starts work for pay immediately start the verification process. If you also failed to complete the Form I-9, a new Form I-9 must be completed before the query process is started.

IMPORTANT	
If a verification query is not initiated by the 3rd business day after the employee starts work for pay, the Employer must note the reason for the delay and attach it to the Form I-9.	

5. Employers may not verify newly hired employees selectively and must follow E-Verify procedures for all new hires while their company is participating in the program.
6. Employers may not request that the employee use certain documentation for Form I-9 or E-Verify purposes.
7. Employers may not use E-Verify to discriminate against any job applicant or new hire on the basis of his or her national origin, citizenship, or immigration status.
8. Employers may not use the system to pre-screen applicants for employment.

9. Employers may not go back to check employment eligibility for employees hired before their company signed the MOU with USCIS and SSA.
10. Employers must provide their employees with an opportunity to contest a Tentative Nonconfirmation (TNC).
11. Employers cannot take any adverse action against an employee based upon a TNC unless E-Verify issues a Final Nonconfirmation (FNC).
12. Employee must be allowed to continue to work during the verification process.

2.2 Notifying Prospective Employees of your E-Verify Participation

As a participating Employer, you are required to post the English and Spanish notice provided by DHS indicating your company's participation in the program, as well as the Right to Work Poster issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices. Both of these notices must be clearly displayed in plain view at your hiring site(s) to inform prospective and current employees that your company is participating in the E-Verify Employment Verification Program. These notices are available in the Online Resources section of E-Verify.

IMPORTANT	
	If you have difficulty posting E-Verify participation notices due to the setup of your business, ensure that all prospective employees receive them with their application materials in addition to posting them in the most appropriate location for viewing by potential and current employees.

2.3 Protecting Passwords

Every system user will receive a User ID and password.

For security purposes, passwords need to be protected. You should not:

- Share your password with anyone, or
- Post or write down your password where it can be viewed by others.

Passwords expire every 90 days. E-Verify will automatically ask you to create a new password when the old one expires. However, if you feel your password has been compromised, you should change it immediately. (See Section 4.1 of this Manual for step-by-step instructions on how to change your E-Verify password).

If you attempt to log on with an incorrect password 3 times, the system will lock your user account. If this happens, contact your Program Administrator, who is able to unlock your user account or use the Password Challenge feature to unlock your account. For information on changing, retrieving or unlocking your password go to section 4 of this manual.

2.4 E-Verify Navigation Basics

Screens within E-Verify are called pages. Each E-Verify page has five distinct areas:

1. Banner Area
2. Options Area
3. Message Area
4. News Ticker
5. Navigation Area

Exhibit 2-1: E-Verify Home Page



1. Banner Area

The Banner area contains the E-Verify name and logo.

2. Options Area

The Options area contains five navigational controls: Online Resources, Tutorial, Home, About and Exit.

- If you select Online Resources, the system will display additional information relating to employment verification, including the E-Verify participation poster, the Right to Work poster, and the E-Verify User Manual.
- If you select Tutorial, the system will display the Web-based tutorial.
- If you select Home, the system will display the E-Verify home page.

- If you select Exit, you will be logged out of E-Verify and the Verification Information System Logon page will be displayed.

IMPORTANT	
	To exit E-Verify, you should always select Exit from the Options area. Otherwise, the system will consider you logged in.

3. Message Area

The Message area provides important updates on E-Verify and displays the number of cases requiring action.

4. News Ticker

The News Ticker provides information affecting employment verification and best practices.

5. Navigation Area

The Navigation area contains menus that list various options. Selecting an option from a menu is the first step of a task or function and displays the page that is needed for completion. The menus that are available depend on your role (General User, or Program Administrator) and which version of E-Verify you are using.

Exhibit 2-2: E-Verify Menus in the Navigation Area

Case Administration

- > Initial Verification
- > View Cases

User Administration

- > Change Password
- > Pwd Challenge Q&A
- > Change Profile

Site Administration

- > Add User
- > View Users
- > Maintain Company
- > Terminate Company Participation

Reports

- > View Reports

3. CASE ADMINISTRATION

3.1 What is Case Administration?

In the Case Administration section, Employers can manage the verification process, by submitting an initial query, viewing the verification results, acknowledging an employee's response to a Notice of Tentative Nonconfirmation, referring a case, and resolving a case.

3.1.1 E-Verify Requirements for Use

See Section 2.2 for the rules Employers must follow when using E-Verify.

3.2 Overview of the Verification Process

The verification process consists of the following steps:

- Completing the Form I-9 (See Section 3.2.1)
- Submitting an Initial Query (See Section 3.2.2)
- Viewing the Results of an Initial Verification (See Section 3.2.3)
- Requesting Additional Verification from DHS (See Section 3.2.4)
- Notifying an Employee of a Tentative Nonconfirmation Response (See Section 3.2.5)
- Referring an Employee to SSA (See Section 3.2.6)
- DHS Verification in Process (See Section 3.2.7)
- Photo Screening Tool (See Section 3.3)
- Resolving cases in E-Verify (See Section 3.4)

3.2.1 Completion of the Form I-9

Employers must ensure that their newly hired employees fully complete Section 1 of the Form I-9. Unless the employee attests in Section 1 of the Form I-9 that he or she is a citizen or national of the United States, the employee must provide his or her Alien Number or I-94 Number.

IMPORTANT	
	In general, providing a social security number on the Form I-9 is voluntary; however, it is mandatory for employees hired by Employers participating in E-Verify.

Employers must complete Section 2 of the Form I-9 by examining the documents that prove the identity and employment eligibility the employee. The Employer may not specify which document(s) from the List of Acceptable Documents on the Form I-9 an employee may present.

An Employer may accept one document from List A, which proves both identity and employment eligibility, or a combination of documents from List B, which proves identity, and List C, which proves employment eligibility.

IMPORTANT	
	Any List B document presented to an Employer participating in E-Verify must contain a photograph.

Employers may not ask to see a document that shows the employee's Alien Registration Number if the employee provides an Alien Number but no supporting document. However, if the employee presents a Social Security card with the legend "VALID FOR WORK ONLY WITH DHS AUTHORIZATION," then the Employer may ask to see the immigration document authorizing employment.

If the employee presents a Form I-551 (Lawful Permanent Resident Card) or I-766 (Employment Authorization Card) for their Form I-9, you must make a copy of their document. This is a requirement for the Photo Screening Tool (see Section 3.3)

To view or download the Form I-9, go to: <http://www.uscis.gov/files/form/I-9.pdf> .

TIP	
	If you need more information on Form I-9 procedures, refer to the Online Resources page of your E-Verify account, where you will find the <i>Handbook for Employers</i> or go to http://www.uscis.gov/files/nativedocuments/m-274.pdf . For assistance in finding additional Form I-9 resources, call the E-Verify Customer Support at 1-888-464-4218.

3.2.2 Submitting an Initial Verification Query

- Once a newly hired employee has completed the Form I-9, the Employer may then initiate a verification query in E-Verify. Employers must conduct this initial verification query no later than the 3rd business day after the employee begins work for pay.
- If the Employer learns that it has failed to begin the verification process by the 3rd business day after the employee starts work for pay, it should immediately initiate a verification query (if the Employer has also failed to complete the Form I-9, that should be corrected first).

Employers must follow E-Verify procedures for all new hires at designated hiring sites while participating in the program and may not verify selectively.

Employers use the Case Administration menu to verify employment eligibility for all newly hired employees, and to manage open or closed cases. The Case Administration menu provides the following options:

- Initial Verification
- View Cases

To verify a newly hired employee, select Initial Verification from the Case Administration menu.

TIP	
	<p>When entering data onto a page, you may type it directly into a field, select an option button, or select from a field's drop-down list.</p> <p>An asterisk (*) to the right of a field's text box indicates a required field.</p> <p>To view the helper text included in some fields, click on the question mark icon. When you place your cursor over the box, the helper text gives you a brief explanation of the field.</p> <p>In addition to the command button(s) specific to a displayed page, some pages may also contain navigation buttons: Back, Next, Close, or Resolve Case.</p> <ul style="list-style-type: none">• Back will take you to the previous page.• Next will take you to the next page.• Close will stop a task and return you to the E-Verify home page. Your case will be saved and you may return to it later.• Resolve Case will allow you to end, or cancel, a case at any point after the initial verification query has been submitted.

To submit an initial verification, perform the following steps:

1. Select Initial Verification from the Case Administration menu.

Exhibit 3-1: Employee Information from Form I-9



Enter Employee Information from Form I-9:

The employee attests to be (select one of the following):

A citizen or national of the United States

A Lawful Permanent Resident

An alien authorized to work

Next

2. After indicating both the employee's attested citizenship status from Section 1 of the Form I-9 and the documents the employee has presented, the Initial Verification page will appear.

Exhibit 3-2: Initial Verification

Enter Employee Information from Form I-9:

Alien Number: * ?

I-94 Number:

Passport Number: *

Visa Number: ?

Last Name: * ?

First Name: *

Middle Initial:

Maiden Name:

Social Security Number: *

Date of Birth: *
(mm/dd/yyyy)

Hire Date: * ?
(mm/dd/yyyy)

Employer Case ID: ?

Passport Exp. Date:
(mm/dd/yyyy)

3. Type the employee's name exactly as it appears in Section 1 of the Form I-9 in the Last Name, First Name, Middle Initial, and Maiden Name fields. Only those fields with an asterisk (*) are required. For assistance in entering compound and hyphenated names, select the question mark icon ? located to the right of the Last Name field.
4. Type the employee's Social Security number (SSN) as it appears in Section 1 of the Form I-9 in the Social Security Number field. This number is required for all employees. You have three options for entering an SSN: with spaces, without spaces or with hyphens.
5. Type the employee's date of birth as it appears in Section 1 of the Form I-9 in the Date of Birth field. (Enter the date in mm/dd/yyyy format. Slashes (/) must be included in the date field.)
6. Type the employee's hire date in the Hire Date field. (Enter the date in mm/dd/yyyy format. Slashes (/) must be included in the date field.)
7. Type the expiration date for the presented document(s), if applicable, in the Document Expiration Date field (Enter the date in mm/dd/yyyy format. Slashes (/) must be included in the date field.)
8. If the employee is a non-citizen, the Alien Number or I-94 number is required. If the Alien Number is less than nine (9) digits, add leading zeros to the number. Do not include the letter "A" as part of the Alien Registration Number. The I-94 number consists of 11 digits.

IMPORTANT	
	<p>Alien Numbers and I-94 numbers are not the same:</p> <ul style="list-style-type: none">• Alien numbers consist of nine digits or less. I-94 numbers consist of 11 digits.• Because the Alien Registration Number field requires a nine-digit number, add leading zeros if the alien number is less than nine (9) digits.• Alien numbers are preceded by the letter "A," but do not type the letter "A" into the Alien Registration Number field in E-Verify.• For example, an Employer would enter the alien number A1234567 as 001234567.

9. The Employer Case ID is an optional field for those who wish to assign an internal tracking mechanism to a case.

10. When you are finished entering the employee's information, select Next to submit the initial verification.

3.2.3 Viewing the Results of an Initial Verification

If the information that you entered matches the information in SSA and DHS' databases, you will receive the results within three to five seconds.

If the information that you entered does not match SSA's or DHS' databases, you will be asked to review the information you entered to make sure that it is correct. If the information does not match the employee's Form I-9 because of a typing error or otherwise, make corrections on this page. When finished, select Continue Verification.

IMPORTANT	
	<ul style="list-style-type: none">• Do not select the Back button on your browser, as this will initiate a new query.

Exhibit 3-4: SSA Verification Information

Case Verification Number: 20080221039422M

Review the entered employee information for correctness. Ensure that you correctly entered the name, birth date, and social security number from the Form I-9.

If the data was correctly entered, select the 'Continue Verification' button. If corrections need to be made, make the necessary corrections and select the 'Continue Verification' button. If this case was entered in error, select the 'Resolve Case' button to close it as an invalid query.

SSA Verification Information

Last Name:	<input type="text" value="Doe"/> *	
First Name:	<input type="text" value="John"/> *	
Middle Initial:	<input type="text"/>	
Maiden Name:	<input type="text"/>	
Social Security Number:	<input type="text" value="000-00-0000"/> *	
Date of Birth:	<input type="text" value="01/01/1965"/> *	
Hire Date:	01/01/2008	
Citizenship Status:	Citizen or National of the United States	
Document Type:	List B, C Documents	
Doc. Expiration Date:		
Employer Case ID:		

After selecting Continue Verification, you will see one of the following responses:

- **EMPLOYMENT AUTHORIZED:** This response indicates that employment eligibility is verified and the case may be resolved.
- **SSA TENTATIVE NONCONFIRMATION (SSA TNC):** This response indicates that the employee's Social Security information could not be verified. The employee must be notified of the TNC response and referred to SSA if he or she contests the SSA TNC. See Section 3.2.6 for how to refer the new hire to SSA to resolve a TNC.
- **DHS VERIFICATION IN PROCESS:** This response indicates that the non-citizen's information provided to SSA matches the information contained in SSA records, but did not match DHS' records. The case is then automatically referred to DHS for further verification. You do not need to take any action at this point. DHS will respond to most of these cases within 24 hours, although some responses may take up to three (3) Federal government workdays. You should check the system daily for a response.

IMPORTANT
<p>The Case Verification Number is a unique number returned by E-Verify. Write the Case Verification Number on the employee's Form I-9 or print the Case Details page, which includes the Case Verification Number, and attach it to the employee's Form I-9. Keep the Case Verification Number in your records so that DHS can help you resolve any problems that arise in the case.</p>

Exhibit 3-5: Case Details Page

Case Verification Number: 2007241124430MK

Initial Verification

Last Name:	linsberg	First Name:	rodney
Middle Initial:		Maiden Name:	
Social Security Number:	111-11-1111	Date of Birth:	08/28/2000
Hire Date:	08/08/2007	Citizenship Status:	Alien Authorized to Work (Alien or I94 # required)
Alien Number:	111111111	I-94 Number:	
Document Type:	Unexpired Foreign Passport with I-94 Stamp	Doc. Expiration Date:	
Initiated By:	RJON9865	Initiated On:	08/29/2007

Verification Response

Eligibility:	DHS Tentative Nonconfirmation	Response Date:	02/22/2008
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Case Documents for Printing

[Case Details](#)
[Notification to Employee - Department of Homeland Security Tentative Nonconfirmation \(English version\)](#)
[Notification to Employee - Department of Homeland Security Tentative Nonconfirmation \(Spanish version\)](#)

Initiate DHS Referral Resolve Case Close

3.2.4 Requesting Additional Verification for DHS Employment Authorized

Occasionally, the name displayed by E-Verify in the Initial Verification section is different from the name you submitted to E-Verify. Ensure that both the first and last names in E-Verify match the information that you provided. If they do not match, you should request additional verification.

When you request additional verification, E-Verify will forward the case to a DHS Immigration Status Verifier. A message will appear at the bottom of the Case Details page within seconds, indicating that the request is in process. DHS usually returns a response to a request for additional verification within 24 hours of receipt; however, DHS has up to (three) 3 Federal government workdays in which to respond.

Exhibit 3-6: Request Additional Verification

Initial Verification Results

Last Name:	HERRERA LOMELI	First Name:	IGNACIO
Initial Eligibility	EMPLOYMENT AUTHORIZED		

Case Documents for Printing

[Case Details](#)

Request Additional Verification Resolve Case Close

To request an additional verification, perform the following steps:

1. Select Request Additional Verification
2. Type the reason for the additional verification request in the Comments field.
3. Select Submit Additional Verification. An updated Case Details page will appear, and the verification response will be DHS VERIFICATION IN PROCESS.
4. Check E-Verify daily for a response.

3.2.5 Notifying an Employee of a Tentative Nonconfirmation (TNC) Response

A TNC response indicates SSA and/or DHS could not confirm that the employee's personal information matches SSA and/or DHS records. A TNC does not necessarily mean that the employee is not authorized to work in the United States.

It is the Employer's responsibility to contact the employee as soon as possible to provide them the opportunity to contest the TNC and resolve the discrepancy in their record. Under the law, the employee must be allowed to continue working while resolution of a TNC is pending.

3.2.5.1 If an Employee Receives an SSA TNC

If your employee receives an SSA TNC, perform the following steps:

Exhibit 3-7: TNC Response

The screenshot shows the E-Verify Employment Eligibility Verification interface. At the top, it displays the E-Verify logo and the text "Employment Eligibility Verification". On the right, there are links for "Online Resources | Tutorial | Home | Contact Us | Exit". The main content area shows a "Case Verification Number: 2008218134041VE".

On the left side, there is a navigation menu with the following sections:

- Case Administration
 - Initial Verification
 - View Cases
- User Administration
 - Change Password
 - Pwd Challenge Q&A
 - Change Profile
- Site Administration
 - Add User
 - View Users
 - Maintain Company
 - Terminate Company Participation
- Reports
 - View Reports

The main content area is divided into several sections:

- Initial Verification**

Last Name:	Doe	First Name:	Jane
Middle Initial:	Q	Maiden Name:	
Social Security Number:	111-11-1111	Date of Birth:	01/01/2001
Hire Date:	10/10/2001	Citizenship Status:	Citizen or National of the United States
Alien Number:		I-94 Number:	
Document Type:	Unexpired or Expired U.S. Passport	Doc. Expiration Date:	
Employer Case ID:	1234		
Initiated By:	HRAC086	Initiated On:	08/03/2008
- Initial Verification Results**

Initial Eligibility: SSA TENTATIVE NONCONFIRMATION
SSN is invalid
- Case Documents for Printing**

Case Details
[Notification to Employees - Social Security Administration Tentative Nonconfirmation \(English version\)](#)
[Notification to Employees - Social Security Administration Tentative Nonconfirmation \(Spanish version\)](#)

At the bottom of the main content area, there are three buttons: "Initiate SSA Referral", "Resolve Case", and "Close".

At the very bottom of the page, there is a footer: "U.S. Department of Homeland Security | U.S. Citizenship and Immigration Services"

1. Notify the employee of the TNC as soon as possible.

2. Select Notification to Employee to display the TNC notice in English and Spanish. The Notice to Employee of Tentative Nonconfirmation will appear.
3. Print the Notice to Employee of Tentative Nonconfirmation using your browser's print option.
4. Provide the notice to your employee and review it with them. Instruct the employee to indicate whether he or she wants to contest the TNC by clicking Contest or Not Contest.
5. Instruct the employee to sign and date the notice in the Signature of Employee area.
6. The Employer also must sign and date the notice in the Signature of Employer Representative area.
7. Give a copy of the signed notice to the employee.

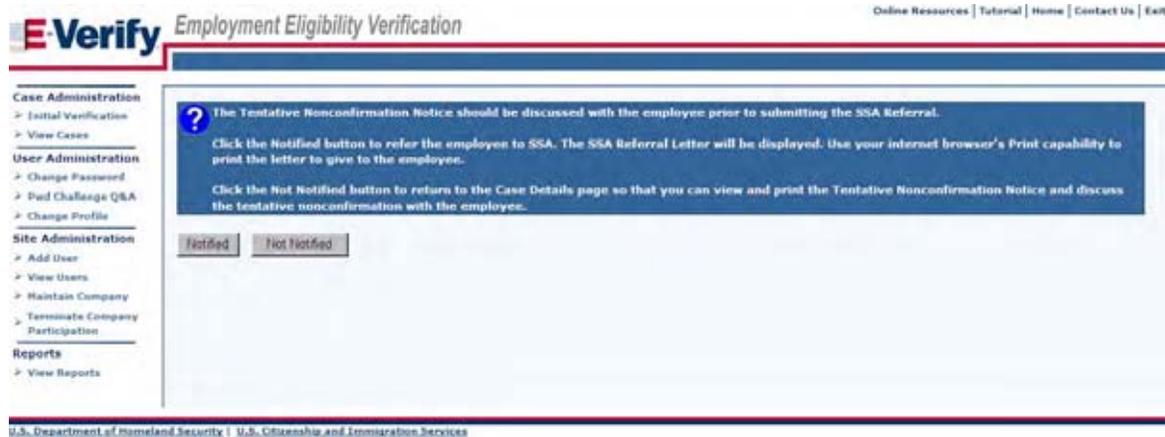
	IMPORTANT
	The Notice to Employee of Tentative Nonconfirmation notifies the employee of the TNC response, but does not provide instructions on how to resolve the discrepancy in the employee's records. If the employee contests the TNC, the Employer must provide an SSA or DHS Referral Letter to the employee.

8. File the signed Notice to Employee of Tentative Nonconfirmation with the employee's Form I-9.
9. If the employee does not contest the TNC, select Resolve Case. (See Section 3.2.8). The Employer may now terminate employment with no civil or criminal liability as noted in Article II, Section C – Responsibilities of the Employer (#6) in the Memorandum of Understanding (MOU).
10. If the employee contests the TNC, you must electronically refer the employee to the appropriate agency. Select Initiate SSA Referral at the bottom of the screen, which allows SSA electronic access to the employee's case when he or she visits the SSA field office to resolve the discrepancy in his or her record. The Employer may not take action against the employee while the employee resolves his or her case within the time allotted.

	IMPORTANT
	The employee must visit an SSA office within eight (8) Federal government workdays of referral to resolve his or her employment eligibility.

Two buttons will appear on the Confirm Employee Notification page: Notified and Not Notified.

Exhibit 3-8: Notification Buttons



- If the employee has been notified of the TNC and has signed the Notice to Employee of Tentative Nonconfirmation, then select Notified. The Case Details page will appear.
- If you click Not Notified, the SSA referral will not appear. You will be returned to the Case Details page so that you can view and print the TNC notice and discuss it with the employee.

3.2.6 Referring an Employee to SSA

If an employee contests an SSA TNC, you must refer him or her to SSA. SSA will take the following steps on an SSA TNC case.

- SSA will determine if the Social Security record needs to be updated.
- SSA will update the Social Security records based on acceptable evidence provided.
- SSA will verify the authenticity of evidence submitted with the issuing entity.
- SSA will send the Employer updated case status information on the employee's Case Details page based on Social Security number record.

To complete the SSA referral process, perform the following steps:

1. Access the employee's Case Details page.

Exhibit 3-9: Case Details Page to Initiate an SSA Referral

2. Select the Notification to Employee – Referral to Social Security Administration document in either English or Spanish.
3. Print the SSA referral letter using your browser’s print option.
4. Sign and date the SSA referral letter.
5. Instruct the employee to sign and date the referral letter.
6. Give a copy of the SSA referral letter to the employee and instruct him or her to take it to the SSA office within eight (8) Federal government workdays. See Attachment A for instructions on locating the correct SSA office for the employee. The SSA referral letter provides specific instructions for the employee on how to contact SSA in order to remedy their records.
7. File a copy of the SSA referral letter with the employee’s Form I-9.
8. Check E-Verify regularly for a change in an employee’s status for a contested SSA TNC case. This is similar to the process for DHS referrals. If the employee does not visit SSA within eight (8) days, E-Verify will automatically send an SSA Final Nonconfirmation response to you 10 days after the referral was generated, unless SSA notifies you that the case is still pending.

3.2.6.1 E-Verify Responses to SSA Referrals

E-Verify will respond with one of the following messages:

- **EMPLOYMENT AUTHORIZED:** This response indicates that employment eligibility is verified. You should resolve the case, ending the verification process.
- **SSA FINAL NONCONFIRMATION:** This indicates that the SSA could not verify the furnished information. You should resolve the case, ending the verification process.
- **SSA CASE IN CONTINUANCE (this is rare):** This response indicates that the employee has visited SSA, but that SSA needs more than 10 federal government workdays to confirm employment eligibility. Check the system daily to see if the case status has been updated with any of the other responses listed on this page. You must wait until SSA provides a definitive response before moving forward or resolving the case, and you may not terminate or take adverse action against the employee unless E-Verify returns a response of SSA FINAL NONCONFIRMATION (or DHS EMPLOYMENT UNAUTHORIZED or DHS NO SHOW, as explained in section 3.2.7.2 of this manual).
- **DHS VERIFICATION IN PROCESS:** This response indicates that the non-citizen's information provided to SSA matches the information contained in SSA records. The case is then referred to DHS for employment eligibility verification. DHS responds to most of these cases within 24 hours, although DHS is permitted up to three (3) Federal government workdays in which to respond. You should check the system daily for a response.
- **DHS TENTATIVE NONCONFIRMATION: (Photo Tool Non-Match):** This response indicates that the Employer determined that the photo on the employee's document does not match the photo supplied by E-Verify. At this point, inform the employee of the DHS Tentative Nonconfirmation and give them the option to contest.
- **REVIEW AND UPDATE EMPLOYEE DATA:** In some cases, SSA will prompt you to review and update the employee information you entered into E-Verify and resubmit the case (see Section 3.2.6.1.2). This means that SSA has determined that there appears to be a discrepancy in the Employer's data. This discrepancy may result from any of the following situations:
 - An Employer typing error on E-Verify;
 - The newly hired employee unintentionally provided incorrect information on the Form I-9; or
 - The newly hired employee intentionally provided incorrect information on the Form I-9.

3.2.6.2 Initiating a Resubmittal Case to SSA

If the response "Review and Update Employee Data then Resubmit" appears, there was an error found in the employee's data that you submitted for the initial verification. Review the employee's "Form I-9" and correct the information in E-Verify as needed before you continue the case. You will receive a response immediately.

To resubmit a case to SSA, perform the following steps:

1. Review with the employee, or have the employer review with the employee, the accuracy of the information they provided on the Form I-9. If the employee made a mistake on the Form I-9, update the Form I-9 for your records.
2. Access the employee's Case Details page to ensure that you entered the information on the employee's Form I-9 correctly into E-Verify.
3. If you need to make changes to the employee's information in E-Verify, select Initiate SSA Resubmittal on the Case Details page.

Exhibit 3-10: Initiate SSA Resubmittal

Case Verification Number: 2007241144217MZ			
Initial Verification			
Last Name:	Vaughn	First Name:	James
Middle Initial:		Maiden Name:	
Social Security Number:	000-00-0001	Date of Birth:	12/12/1950
Hire Date:	10/23/2006	Citizenship Status:	Citizen or National of the United States
Alien Number:		I-94 Number:	
Document Type:	List B, C Documents	Doc. Expiration Date:	
Initiated By:	MSOLPA01	Initiated On:	08/29/2007
Initial Verification Results			
Initial Eligibility	SSA TENTATIVE NONCONFIRMATION SSN is invalid		
SSA Referral			
Referral By:	MSOLPA01	Referral Date:	08/29/2007
Verification Response			
Eligibility:	Review and Update Employee Data then Resubmit Invalid SSN		Response Date: 08/29/2007
Case Documents for Printing			
Case Details Notification to Employee - Referral to Social Security Administration (English version) Notification to Employee - Referral to Social Security Administration (Spanish version)			
<input type="button" value="Initiate SSA Resubmittal"/> <input type="button" value="Resolve Case"/> <input type="button" value="Close"/>			

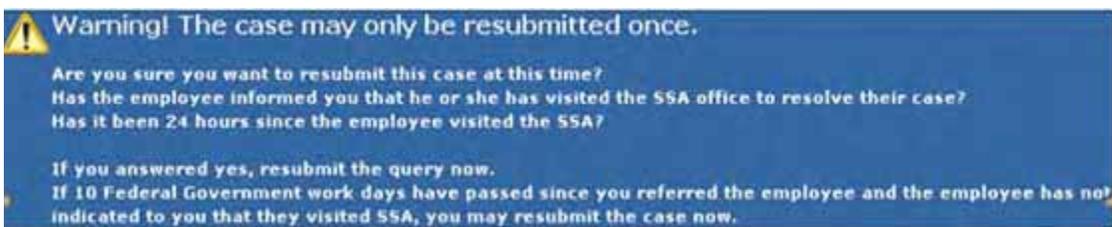
4. The Modify SSA Information section will appear on the Case Details page. Edit the information confirmed by the employee in the Modify SSA Information section.

Exhibit 3-11: Case Details Page to Modify SSA Information

Case Verification Number: 2007241144217MZ				
Initial Verification				
Last Name:	Vaughn	First Name:	James	
Middle Initial:		Maiden Name:		
Social Security Number:	000-00-0001	Date of Birth:	12/12/1950	
Hire Date:	10/23/2006	Citizenship Status:	Citizen or National of the United States	
Alien Number:		I-94 Number:		
Document Type:	List B, C Documents	Doc. Expiration Date:		
Initiated By:	MSOLPA01	Initiated On:	08/29/2007	
Initial Verification Results				
Initial Eligibility	SSA TENTATIVE NONCONFIRMATION SSN is invalid			
SSA Referral				
Referral By:	MSOLPA01	Referral Date:	08/29/2007	
Verification Response				
Eligibility:	Review and Update Employee Data then Resubmit Invalid SSN		Response Date:	08/29/2007
Modify SSA Information (revise if necessary)				
Last Name:	<input type="text" value="Vaughn"/>			
First Name:	<input type="text" value="James"/>			
M. I.:	<input type="text"/>			
Maiden Name:	<input type="text"/>			
Social Security Number:	<input type="text" value="000-00-0001"/>			
Date of Birth:	<input type="text" value="12/12/1950"/>			
	<small>(mm/dd/yyyy)</small>			
<input type="button" value="Submit SSA Resubmittal"/> <input type="button" value="Close"/>				

5. Select Submit SSA Resubmittal. The Confirm SSA Resubmittal page appears with a warning message and a Submit SSA Resubmittal button.

Exhibit 3-12: Case Warning



6. Read the warning message on the Confirm SSA Resubmittal page. Employers may only resubmit a case once. Therefore, you must ensure that you meet the Resubmittal criteria in the warning message before proceeding with the Resubmittal.
7. Select Submit SSA Resubmittal. When you do so, the information is compared to SSA records and E-Verify will provide a response within seconds.

3.2.7 DHS Verification in Process

Exhibit 3-13: DHS Verification in Process

Case Verification Number: 2008084171309ND

Initial Verification			
Last Name:	Wolfgang	First Name:	Matt
Middle Initial:		Maiden Name:	
Social Security Number:	123-45-6789	Date of Birth:	03/12/1970
Hire Date:	03/24/2008	Citizenship Status:	Alien Authorized to Work (Alien or 194 # required)
Alien Number:	123456789	I-94 Number:	
Document Type:	I-94	Doc. Expiration Date:	
Initiated By:	LRIV6867	Initiated On:	03/24/2008
Verification Response			
Eligibility:	DHS Verification in Process	Response Date:	
Case Documents for Printing			
Case Details			
<input type="button" value="Close"/>			

Once SSA verifies that the furnished information on the employee matches the information in SSA records, SSA refers the case to DHS to verify the employee's employment eligibility. If DHS is unable to electronically verify the information, the case is sent to an Immigration Status Verifier, resulting in a DHS VERIFICATION IN PROCESS. A DHS VERIFICATION IN PROCESS could have the following results:

- **EMPLOYMENT AUTHORIZED:** This response indicates that employment eligibility is verified and the case can be resolved.
- **DHS TENTATIVE NONCONFIRMATION:** This response indicates that employment eligibility could not be verified; therefore the employee must be notified of the response and referred to DHS if he or she contests.
- **DHS TENTATIVE NONCONFIRMATION (Photo Tool Non-Match):** This response indicates that the Employer determined that the photo on the employee's document does not match the photo supplied by E-Verify. At this point, inform the employee of the DHS Tentative Nonconfirmation and give him or her the option to contest.
- **CASE IN CONTINUANCE:** This response indicates that DHS needs more than 10 Federal government workdays to resolve employment eligibility. You must wait until DHS provides a definitive response before resolving the case.

	IMPORTANT
	The employee should continue working throughout the verification process.

3.2.7.1 If an Employee Receives a DHS TNC

If DHS sends a DHS TENTATIVE NONCONFIRMATION message, perform the following steps:

1. Notify the employee of the TNC as soon as possible.

Exhibit 3-14: TNC Response

Case Verification Number: 200724110430MK

Initial Verification			
Last Name:	insberg	First Name:	rodney
Middle Initial:		Maiden Name:	
Social Security Number:	111-11-1111	Date of Birth:	08/28/2000
Hire Date:	08/08/2007	Citizenship Status:	Alien Authorized to Work (Alien or 194 required)
Alien Number:	111111111	I-94 Number:	
Document Type:	Unexpired Foreign Passport with I-94 Stamp	Doc. Expiration Date:	
Initiated By:	RJON9865	Initiated On:	08/29/2007
Verification Response			
Eligibility:	DHS Tentative Nonconfirmation	Response Date:	02/22/2008
Case Documents for Printing			
Case Details Notification to Employee - Department of Homeland Security Tentative Nonconfirmation (English version) Notification to Employee - Department of Homeland Security Tentative Nonconfirmation (Spanish version)			
<input type="button" value="Initiate DHS Referral"/> <input type="button" value="Resolve Case"/> <input type="button" value="Close"/>			

2. Select Notification to Employee to display the TNC notice in either English or Spanish. The Notice to Employee of Tentative Nonconfirmation will appear.
3. Print the Notice to Employee of Tentative Nonconfirmation using your browser's print option.
4. Provide the notice to your employee and review it with them. Instruct the employee to indicate whether he or she wants to contest the TNC by clicking Contest or Not Contest.
5. Instruct the employee to sign and date the notice in the Signature of Employee area.
6. The Employer also must sign and date the notice in the Signature of Employer Representative area.
7. Give a copy of the signed notice to the employee.

IMPORTANT	
	<p>The Notice to Employee of Tentative Nonconfirmation notifies the employee of the TNC response, but does not provide instructions on how to resolve the discrepancy in the employee's records. If the employee contests the TNC, the Employer must provide an SSA or DHS Referral Letter to the employee.</p>

8. File the original signed Notice to Employee of Tentative Nonconfirmation with the employee's Form I-9.

9. If the employee does not contest the TNC, select Resolve Case. (See Section 3.2.8). The Employer may now terminate employment with no civil or criminal liability as noted under “Responsibilities of the Employer” in the Memorandum of Understanding (MOU).
10. If the employee contests the TNC, you must electronically refer the employee to the appropriate agency. Select Initiate DHS Referral at the bottom of the screen, which allows DHS electronic access to the employee’s case when he or she calls DHS to resolve the discrepancy in his or her record. The Employer may not take action against the employee while the employee resolves his or her case within the time allotted.

	IMPORTANT
	The employee must contact DHS by phone within eight (8) Federal government working days of referral to resolve his or her employment eligibility.

	IMPORTANT
	When employees do not contest a DHS TNC, Employers can terminate employment without being liable for civil penalties.

3.2.7.2 Referring an Employee to DHS

If the employee contests the DHS TNC, you must refer him or her to DHS to resolve the discrepancy in the employee’s record. To refer an employee to DHS, perform the following steps:

1. Access the Case Details page, then select Initiate DHS Referral. The Confirm Employee Notification page will appear with the question: “Has the employee been notified of the Tentative Nonconfirmation Notice?” Two buttons also appear: Notified and Not Notified.
2. If the employee has been notified of the referral, select Notified. The DHS referral letter will appear.
3. Print the DHS referral letter using your browser’s print option and review it with the employee. The letter provides specific instructions for the employee on how to contact DHS in order to remedy the TNC. Failure to provide the letter to the employee may constitute unlawful discrimination.
4. Instruct the employee that he or she has eight (8) Federal government working days from the date of referral to resolve the discrepancy in his or her case.
5. Both you and the employee will sign the referral letter. Before filing with the employee’s Form I-9, provide a copy to the employee.
6. Check E-Verify daily for a response.

Contact Information	
	<p>The toll-free number on the DHS referral letter is staffed by Immigration Status Verifiers. Office hours are 7 a.m. until 5:30 p.m., Pacific Standard Time. To contact an Immigration Status Verifier to resolve a case call (888) 897-7781. If an Immigration Status Verifier requests information be faxed to them their toll-free fax number is (888) 265-0999.</p>

E-Verify will provide one of the following responses, depending on whether the employee contacts DHS:

- **EMPLOYMENT AUTHORIZED:** This response indicates that the employee contacted DHS and is authorized to work. The Employer should resolve the case in E-Verify.
- **DHS EMPLOYMENT UNAUTHORIZED:** This response indicates that the employee contacted DHS and is not authorized to work. The Employer should resolve that employee's case within E-Verify. Also, the Employer may now terminate employment with no civil or criminal liability as noted in Article II, Section C – Responsibilities of the Employer (#6) in the MOU.
- **DHS NO SHOW:** This response indicates that the employee did not contact DHS, and 10 Federal government workdays have passed since the date of referral. This response is considered a Final Nonconfirmation, and if received, the Employer should resolve the case. Also, the Employer may now terminate employment with no civil or criminal liability as noted in Article II, Section C – Responsibilities of the Employer (#6) in the MOU.

3.3 Photo Screening Tool

With the Photo Screening Tool, Employers can determine whether employee documents are fraudulent by matching the photograph on the employee's document to the official photo displayed by E-Verify. The Photo Screening Tool is activated automatically when employees present the Permanent Resident Card (I-551) (Exhibit 3-16) or an Employment Authorization Card (I-766) (Exhibit 3-17) for completion of the Form I-9.

TIP	
	<p>Additional document types checked by the Photo Screening Tool may be added in the future.</p>

3.3.2 Initial Verification with the Photo Screening Tool

To submit an initial verification in which the Photo Screening Tool will activate, follow these steps:

1. Select Initial Verification from the Case Administration menu. The Initial Verification page will appear.
2. Select the status to which the employee attests:
 - Citizen of the United States
 - Lawful Permanent Resident
 - Alien Authorized to Work
3. After you select the employee's status, you will be asked to select the document the employee has presented as Form I-9 documentation.
4. After selecting the document type, enter the employee information from the Form I-9 on the next screen and click Next.
5. If the employee presented a PRC or EAC during the Form I-9 process, enter the card number on the Enter Employee Information page.

IMPORTANT	
	<p>All new cards have a card number consisting of three (3) letters and 10 numbers. To find the card number, click on the blue question mark icon next to the Card Number field and a help page will appear.</p> <p>Older Permanent Resident Cards (I-551) without expiration dates do not have card numbers and cannot be verified with the Photo Screening Tool. When an employee presents this card, enter AAA000000000 in the Card Number field to continue. No photo will display.</p>

A confirmation screen appears that gives you a chance to check for errors. If you entered any information incorrectly, correct the information and select Continue Verification. Do not use your browser's Back button.

TIP	
	<p>Always check your work; incorrectly entered information will lead to a TNC and delay the verification process.</p>

If the employee provides documentation other than a PRC or EAC, the Photo Screening Tool will not activate and the E-Verify process will continue as usual.

3.3.3 Verifying the Photograph

A photo will be displayed on the E-Verify screen only if all of the following conditions are met:

- The employee presented a PRC or EAC during the Form I-9 process.
- The Employer entered the correct card number (See Section 3.3.2)
- The information entered from the employee's Form I-9 matches the records in SSA and DHS databases.
- E-Verify is able to locate a photograph in the Department of Homeland Security's database for that individual.

If the four conditions listed above are met, E-Verify will display the photograph that corresponds to the information you entered and ask you to choose one of the following:

- Yes: This means the photo on the employee's document matches the photo displayed by E-Verify. Clothing, hair style, facing direction and appearance on the card should be identical to the photo displayed by E-Verify.
- No: This means the photo on the employee's document is not identical to the photo displayed by E-Verify. (Even if it looks like the same person, the clothing, hair style, facing direction and appearance should be identical).
- Cannot determine: This means the Employer could not determine whether the photo on the employee's document matches the photo displayed by E-Verify.

3.3.3.1 Standard for Photographic Comparison

USCIS recognizes that Employers are not experts in comparing documents or photographs. However, because the photograph transmitted by E-Verify should be identical to the photograph that appears on an employee's USCIS-issued document, Employers should be able to determine whether the photographs match.

Employers should determine if the photograph supplied by E-Verify reasonably appears identical to the photograph on the employee's USCIS-issued document. USCIS does not require 100 percent certainty in determining whether photographs are identical. For example, Employers should account for minor variances in shading and detail between the two photographs based upon the following non-exhaustive list of factors:

- The age and wear of the employee's DHS-issued document
- The quality of your computer monitor
- Whether you are comparing the E-Verify generated photograph with a copy or faxed copy of an employee's document

3.3.4 Viewing the Results of a Photo Verification

Within seconds of verifying the photo, the Case Details page will display the results in the Initial Verification Results section.

Exhibit 3-17: Initial Verification page with Sample Photograph

Case Verification Number: 2007241141101HQ			
Initial Verification			
Last Name:	LN	First Name:	SU
Middle Initial:		Maiden Name:	
Social Security Number:	000-00-0007	Date of Birth:	03/05/1987
Hire Date:	08/01/2007	Citizenship Status:	Lawful Permanent Resident (Alien # required)
Alien Number:	00000001	I-94 Number:	
Card Number:	HSC1234567891	Doc. Expiration Date:	
Document Type:	I-551	Initiated On:	08/29/2007
Initiated By:	TDONBP01		
Initial Verification Results			
Last Name:	LN	First Name:	SU
		Expire Date:	INDEFINITE
Initial Eligibility	<input checked="" type="checkbox"/> Sub. Is. Eligible EMPLOYMENT AUTHORIZED		
Case Documents for Printing			
Case Details			
<input type="button" value="Resolve Case"/> <input type="button" value="Close"/>			

The Initial Eligibility statement will be one of the following responses:

- **EMPLOYMENT AUTHORIZED:** This response indicates you select Yes because the photos were identical, and that employment eligibility is verified. You may now resolve the case.
- **TENTATIVE NONCONFIRMATION (TNC):** This response indicates you selected No because the photos were not identical. You must notify the employee of the TNC response and refer him or her to DHS if he or she chooses to contest this finding. If your employee contests the TNC, follow the instructions in 3.3.6 to submit a copy of the document to DHS. You may not take adverse action against the employee based on a TNC until it is resolved. This response does NOT indicate the employee is not authorized to work.
- **PHOTO TOOL NON-MATCH RESULTING IN DHS TENTATIVE NONCONFIRMATION:** This response indicates that you could not determine whether the employee's photo on his or her document matched the photo displayed by E-Verify. You must notify the employee by providing the Notification to Employee: Verification in Process to him or her, and submit a copy of the document to DHS when this response is received. Once receiving a copy of the document, DHS responds to most of these cases within 24 hours.

To send a copy of the document to DHS, select:

- **Submit Electronic Document.** The file must be in .GIF format.
- **Mail Paper Copy.** See Section 3.3.6 for more information about mailing documents to DHS and using DHS' courier service.

Check the system daily for a response. Additional DHS verification is not grounds for adverse action against the employee.

3.3.5 Referring an Employee to DHS after Photo Verification

If the employee contests a TNC or receives a notice of Verification in Process when the Photo Screening Tool is used, you must refer him or her to DHS to resolve the discrepancy in his or her record according to the steps below:

1. Select the Initiate DHS Referral button.

TIP	
	Cannot Determine cases are automatically referred to DHS, so you will not need to select Initiate DHS Referral.

2. On the following page, select Notified if the employee has been notified of the TNC and has signed the Notice to Employee of Tentative Nonconfirmation.
3. Choose whether to upload or mail copies of the employee's documents by selecting either Submit Electronic Document or Mail Paper Copy. If you choose to upload an electronic copy of the document, the file must be in .GIF format. For mailing options, see Section 3.3.6.
4. On the following page, select Notification to Employee: Referral to the Department of Homeland Security at the bottom of the screen. The referral letter is available in English and Spanish.
5. Print the referral letter using your browser's print option.
6. Sign and date the referral letter.
7. Instruct the employee to read, sign and date the referral letter.
8. Make two copies of the signed referral letter – one for the package that will be sent to DHS and one for the employee.
9. Give the referral letter to the employee.
10. Follow the instructions in Section 3.3.6 to send paper copies of documents to DHS.

IMPORTANT	
	Only send DHS a copy of the employee's document and referral letter if there has been a photo mismatch or you could not determine whether the photographs matched.

3.3.6 Mailing Copies of Documents to DHS

You may send the documents via an express mail courier of your own choice at your own expense. Keep in mind that USCIS must have this documentation in order to resolve the employee's Tentative Nonconfirmation.

Your package must include:

- A photocopy of the employee's PRC or EAC
- A photocopy of the employee's DHS referral letter

	IMPORTANT
	Do NOT send original documents to USCIS.

You may send copies of the employee's documentation using an express mail courier service of your choice. Do NOT send via regular USPS mail. Please send to:

Status Verification Unit / Photo Tool
Verification Division Mail Stop 2610
US Citizenship and Immigration Services
490 L'Enfant Plaza East, SW Suite 8001,
Washington DC 20529-2610

3.3.7 E-Verify Responses after Employee Referral to DHS

The employee has 8 Federal government workdays from the date of referral to resolve the discrepancy in his or her case by calling a toll-free number provided on the referral letter and providing the Immigration Status Verifier with his or her verification number and other information on the referral letter.

E-Verify will provide one of the responses previously described on page 28 within 10 days of the referral, depending on whether the employee contacts DHS.

3.4 Resolving Cases

The final step in the E-Verify process is to resolve the case. Resolving cases will:

- Remove cases from your screen, and
- Assist DHS with maintaining statistics on the E-Verify program.

If you do not resolve your cases, the system will indicate that you have cases requiring action and that some of those cases need to be closed. You may resolve a case under the following circumstances:

- When the SSA response is either EMPLOYMENT AUTHORIZED or SSA FINAL NONCONFIRMATION.
- When the DHS response is EMPLOYMENT AUTHORIZED, DHS EMPLOYMENT UNAUTHORIZED, or DHS NO SHOW.
- When the employee does not contest a response of SSA TNC or DHS TNC.
- When the employee quits or has been terminated for reasons unrelated to immigration status while the verification query is in process.

- When a duplicate case or case with incorrect data was entered into the system, you should resolve as an invalid query.

You may not resolve a case if you receive a response of SSA CASE IN CONTINUANCE or DHS CASE IN CONTINUANCE. Your employee should continue to work until SSA or DHS returns one of the responses listed above.

After you resolve the case, the Case Resolution section appears on the Case Details page, which includes the case resolution, the User ID of the person who resolved the case, and the date of resolution. The Case Details page also includes the information on the case in the order in which it was entered or supplied by the system. It is recommended that you print the case information for your records.

Exhibit 3-18: Case Details Page

Case Verification Number: 200808418109PK

Initial Verification			
Last Name:	Barnes	First Name:	Marco
Middle Initial:		Maiden Name:	
Social Security Number:	000-00-0003	Date of Birth:	02/12/1970
Hire Date:	03/24/2008	Citizenship Status:	Alien Authorized to Work (Alien or I-94 # required)
Alien Number:	123456789	I-94 Number:	
Document Type:	1-688	Doc. Expiration Date:	01/01/2010
Initiated By:	LRIV6867	Initiated On:	03/24/2008

Initial Verification Results

Initial Eligibility: SSA TENTATIVE NONCONFIRMATION
SSN does not match

Case Documents for Printing

[Case Details](#)
[Notification to Employee - Social Security Administration Tentative Nonconfirmation \(English version\)](#)
[Notification to Employee - Social Security Administration Tentative Nonconfirmation \(Spanish version\)](#)

Initiate SSA Referral | Resolve Case | Close

To resolve a case, perform the following steps:

1. Access the Case Details page if it is not already displayed.
2. Select Resolve Case.
3. In the Enter Case Resolution section, select the appropriate resolve option.

Exhibit 3-19: Case Details Page with Resolution Options

Case Verification Number: 2008218134041VE

Initial Verification			
Last Name:	Doe	First Name:	Jane
Middle Initial:	Q	Maiden Name:	
Social Security Number:	111-11-1111	Date of Birth:	01/01/2001
Hire Date:	10/10/2001	Citizenship Status:	Citizen or National of the United States
Alien Number:		I-94 Number:	
Document Type:	Unexpired or Expired U.S. Passport	Doc. Expiration Date:	
Employer Case ID:	1234	Initiated On:	08/08/2008
Initiated By:	HLAAD986		

Initial Verification Results

Initial Eligibility: SSA TENTATIVE NONCONFIRMATION
SSN is invalid

SSA Referral

Referral By: HLAAD986 | Referral Date: 08/08/2008
 Expect Gov't Response By: 08/19/2008

Enter Case Resolution

Resolve Options:

- Resolved Authorized
- Resolved Unauthorized / Terminated
- Self Terminated
- Invalid Query
- Employee Not Terminated

Submit Resolve Case | Close

- Resolved Authorized: Select this option when employment is authorized.
- Resolved Unauthorized/Terminated: Select this option when employment is not authorized (SSA FINAL NON-CONFIRMATION, DHS EMPLOYMENT UNAUTHORIZED, or DHS NO SHOW), or when there is an uncontested TNC response and employment is terminated.
- Self Terminated: Select this option if an employee quits or is terminated for reasons unrelated to employment eligibility status while the verification query is in process.
- Invalid Query: Select this option if you discover that you sent a duplicate query, or a query with incorrect data.
- Employee Not Terminated: Select this option to notify DHS that you are not terminating an employee whose employment is not authorized (SSA FINAL NON-CONFIRMATION, DHS EMPLOYMENT UNAUTHORIZED, or DHS NO SHOW), or who is not contesting a TNC response.

Employers who fail to notify E-Verify that they are choosing to NOT terminate an employee who has received an FNC may be subject to a civil money penalty of between \$550 and \$1,100.

4. Select Submit Resolve Case. The Enter Case Resolution section changes to the Case Resolution section, and the Print Case Details button returns to the Case Details page.

	IMPORTANT
	Once you have resolved a case, no further changes may be made to the case.

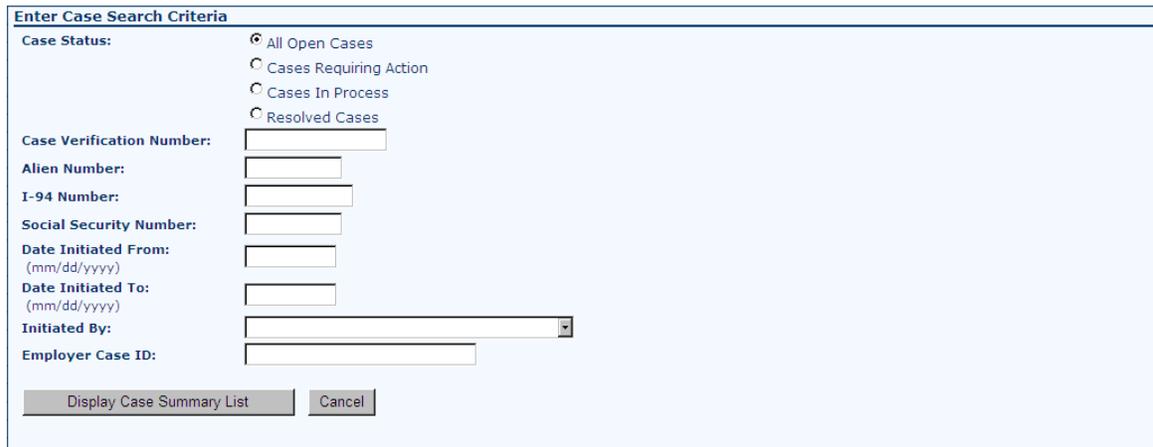
5. Select Print Case Details.
6. The Case Details Report appears on another page.
7. Print the report by selecting your browser's print option.
8. Select Back on the browser's toolbar to return to the Case Details page.
9. Select Close to return to the Case Summary List.
10. File the report with the employee's Form I-9.

	TIP
	You may print the Case Details Report at any time during the verification process.

3.5 Searching for Cases

The View Cases option allows you to search for cases, display a list of cases, and access the details of a specific case.

Exhibit 3-20: Case Search Page



You are able to search by Case Status if you choose:

- All Open Cases-This feature allows the user to see all open cases.
- Cases Requiring Action- This feature allows the user to see cases requiring action.
- Cases in Process-This feature allows the user to see cases currently pending in E-Verify.
- Resolved Cases-This feature allows the user to select the appropriate option to resolve (close) all cases queried through the E-Verify system.

Once you have selected the appropriate case status, you may search by:

- Case Verification Number
- Alien Number
- I-94 Number
- Social Security Number
- Date Initiated From
- Date Initiated To
- Initiated By

Select Display Case Summary List after you have entered your search terms.

3.5.1 Navigating the Case Summary List Page

After entering the case search criteria, each row on the Case Summary List page displays information for a single case, which is identified by the verification number. Click the row of the case you wish to examine to open the case summary.

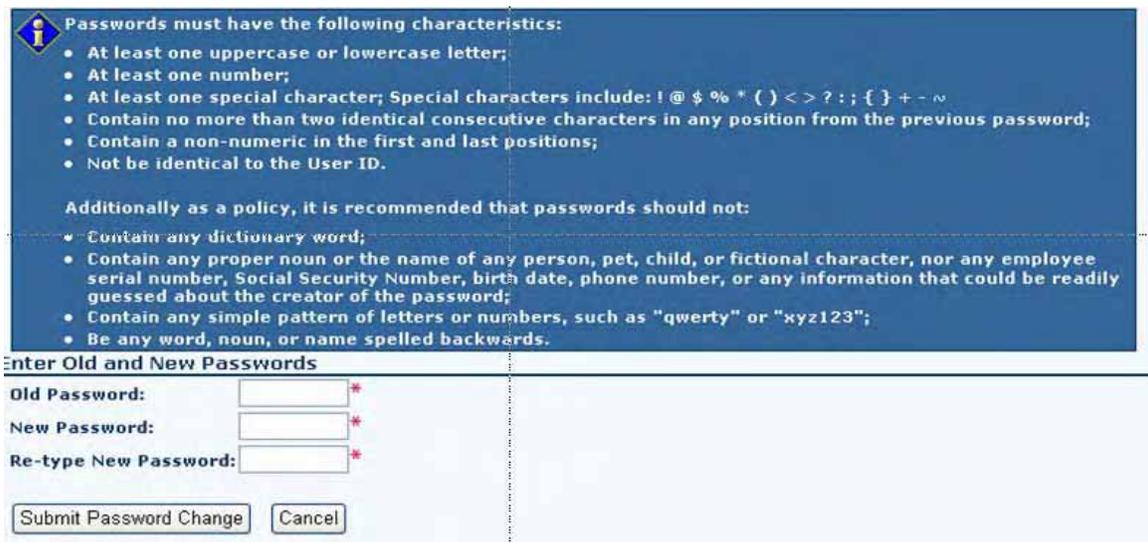
4. User Administration

Employers may use the User Administration menu to change passwords and update personal profiles.

4.1 Changing Your Password

Passwords need to be protected; therefore, do not write down passwords or share them with anyone. If you feel that your password may have been compromised, change it immediately.

Exhibit 4-1: Change Password Page



Passwords must have the following characteristics:

- At least one uppercase or lowercase letter;
- At least one number;
- At least one special character; Special characters include: ! @ \$ % * () < > ? : ; { } + - ~
- Contain no more than two identical consecutive characters in any position from the previous password;
- Contain a non-numeric in the first and last positions;
- Not be identical to the User ID.

Additionally as a policy, it is recommended that passwords should not:

- Contain any dictionary word;
- Contain any proper noun or the name of any person, pet, child, or fictional character, nor any employee serial number, Social Security Number, birth date, phone number, or any information that could be readily guessed about the creator of the password;
- Contain any simple pattern of letters or numbers, such as "qwerty" or "xyz123";
- Be any word, noun, or name spelled backwards.

Enter Old and New Passwords

Old Password:

New Password:

Re-type New Password:

To change your password, perform the following steps:

1. Select Change Password from the User Administration menu. The Change Password page will appear.
2. Type your current password in the Old Password field.
3. Type your new password in the New Password and the Re-Type New Password fields. The new password cannot be the same as any of your last six passwords.
4. View the confirmation message:
 - If the system processed the password change, then use the new password for the next E-Verify session.
 - If the system was unable to process the password change due to user error, carefully repeat the steps for changing your password.
 - If the system was unable to process the password change, try changing your password later.

4.1.2 Password Requirements

Passwords must be at least eight characters but no more than 14 characters in length and must include at least three of the following characters:

1. At least one uppercase or lowercase letter and be between 8-14 characters long;
2. At least one number;
3. At least one special character (Special characters include: ! @ \$ % * () < > ? : ; { } + - ~);
4. Contain no more than two identical consecutive characters in any position from the previous password;
5. Contain a non-numeric in the first and last positions;
6. Not be appended with a single digit or with a two-digit "year" string, such as "Welcome98"; and,
7. Not be identical to the User ID.

Additionally, as a policy, passwords shall not:

1. Contain any dictionary word;
2. Contain any proper noun or the name of any person, pet, child, or fictional character, nor any employee serial number, Social Security Number, birth date, phone number, or any information that could be readily guessed about the creator of the password;
3. Contain any simple pattern of letters or numbers, such as "qwerty" or "xyz123"; and,
4. Be any word, noun, or name spelled backwards.

IL!keH2O is an example of a password that is eight characters in length with three of the four required characteristics (an uppercase letter, a lowercase letter, and a number).

Passwords are case-sensitive.

4.2 How to Retrieve a Forgotten Password or Reset a Locked Password

The password challenge enables you to reset your password if you forget your password, or if your account is locked after three consecutive, unsuccessful login attempts.

To activate the password challenge, you must select the Forgot Your Password Link on the login page and correctly answer three questions that you have chosen beforehand.

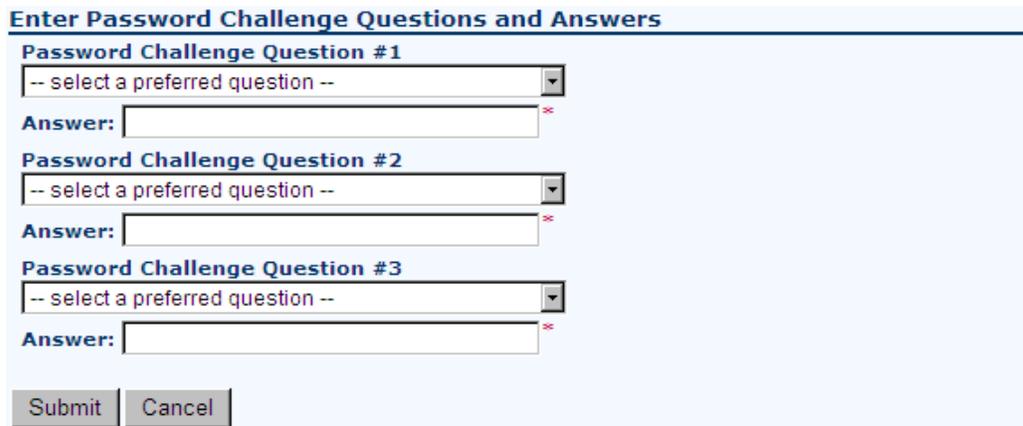
Once you have selected Password Challenge Q&A, select the question you want to use for each of the three challenge questions and enter the answer in the Answer field and then select Submit.

All new users are required to set up their password challenge questions and answers when they first log in to E-Verify. However, if you haven't set up your questions and answers or if you feel your answers have been compromised, select Change Password from the User Administration menu. The Change Password page will appear. If the system processed the password change, use the new password for your next E-Verify session.

4.3 Password Challenge Q&A

The password challenge Q & A enables you to reset your password without having to contact a Program Administrator if you forget your password or if your account is locked after three consecutive, unsuccessful login attempts.

Exhibit 4-2: Password Challenge Q&A



Enter Password Challenge Questions and Answers

Password Challenge Question #1
-- select a preferred question --
Answer:

Password Challenge Question #2
-- select a preferred question --
Answer:

Password Challenge Question #3
-- select a preferred question --
Answer:

To activate the Password Challenge Q & A, perform the following steps:

1. Select Password Challenge Q&A from the User Administration menu.
2. Select the question you want to use for each of the three challenge questions, enter the answer in the Answer field, and select Submit.

If you decide to change any of the questions at a later time, you must reset the other questions and answers. You can reuse any questions and answers. Like passwords, you should not share answers to these questions since these enable you to change your password.

4.4 Updating Your Profile

Each person with access to E-Verify has a user profile that includes his or her name, telephone number, fax number, and e-mail address. Users should update this information whenever necessary using the Change User Profile page.

Exhibit 4-3: Change User Profile Page

Enter User Profile Information

User ID: MRAA0986

Last Name: Doe *

First Name: John *

M.I.:

Phone Number: () - ext. *

Fax Number: () -

E-mail Address: *

To update your profile, perform the following steps:

1. Select Change Profile from the User Administration menu. The Change User Profile page will appear.
2. Add information or edit the fields as necessary. An asterisk (*) next to a field indicates that it is a required field.
3. Select Submit User Profile Changes. The Change User Profile Results page, which contains the confirmation message and your profile information, will appear.
4. Review the confirmation message to see whether the request for profile updates was successful. If the system was unable to process the user profile updates, the user should update his or her profile at a later time. If the second profile update attempt fails, contact the Technical Help Desk at 1-800-741-5023.

5. Site Administration (Program Administrators Only)

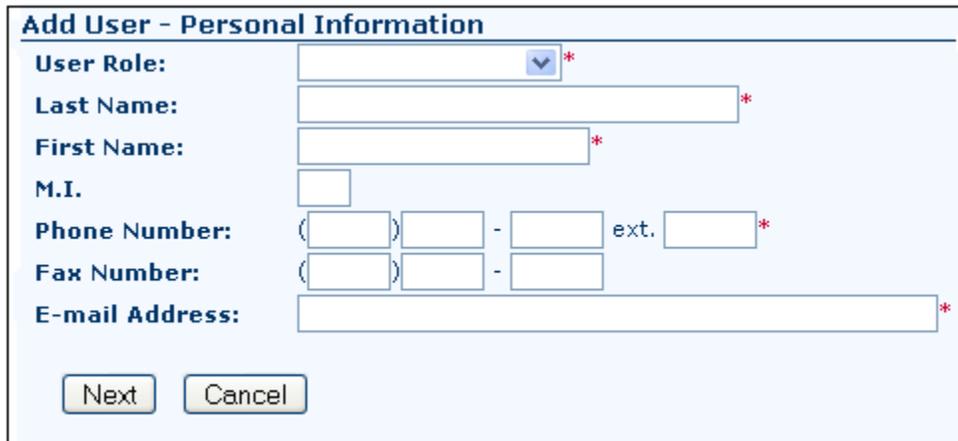
Program Administrators use the Site Administration menu to:

- Add General Users and other Program Administrators located at their site.
- Change or update their company's profile information.
- Terminate their company's access to E-Verify.

5.1 Adding a User Account

The Program Administrator may add E-Verify user accounts on the Add User – Personal Information page.

Exhibit 5-3: Add User Page with Personal Information Section



Add User - Personal Information

User Role: [dropdown] *

Last Name: [text] *

First Name: [text] *

M.I.: [text]

Phone Number: ([text]) [text] - [text] ext. [text] *

Fax Number: ([text]) [text] - [text]

E-mail Address: [text] *

[Next] [Cancel]

To enter a new user's information, perform the following steps:

1. Click the Add User button.
2. Enter the user's role, first and last name, telephone number and e-mail address, and optional fax number in the provided fields, then select Next.
 - The user roles relate to what information and functions users may access. They are:
 - General Users: Perform verification queries, view reports, and update their personal user profiles.
 - Program Administrators: Create user accounts at their sites for other Program Administrators and General Users, view reports, perform verification queries, update profile information, and unlock user accounts. New users must be located at the site with the Program Administrator.

E-Verify will generate a User ID for the new user, which will appear in the User ID field on the Add User – Enter Password page. You may either accept or change this User ID. This is the only opportunity you will have to modify the User ID.

The User ID must be exactly eight characters. The characters may be letters, numbers or a combination of both. The User ID is not case-sensitive.

3. Enter a temporary password in the Password and Retype Password fields. Create the password using the password requirements in Section 4.1.2. When the user logs into the system for the first time, he or she will be prompted to change the password.
4. Select Submit New User.

	IMPORTANT
	Each user at your site must have his or her own User ID and password. For security purposes, passwords must not be shared, posted or written down.

5.2 Viewing and Modifying User Accounts

The View Users option allows you to view and maintain user accounts, including deleting users, changing or updating user information, and resetting user passwords.

To search for a user, perform the following steps:

1. Select View Users from the Site Administration menu to access the Enter User Search Criteria page.

Exhibit 5-3: Enter User Search Criteria Page

Enter User Search Criteria

User Role: All Roles
 Program Administrators
 General Users

User Status: All
 Locked
 Password Change Required

User: [Dropdown menu]

Last Name: [Text input]

First Name: [Text input]

Phone Number: ([Area]) [Exchange] - [Extension] ext. [Number]

E-mail Address: [Text input]

2. To search by User ID, select the person's User ID from the User list.
3. To search by first or last name, type up to 30 alphabetic characters (hyphens and spaces allowed) or enter a partial name and use the percent (%) sign before or after as a wildcard character.

For example, to find all users whose name begins with "JU", enter "Ju%" in the First Name field. The search results will include users with names such as June, Juan and Juanita.

4. Select Display User Summary List, which will take you to the User Summary List page.

To view and modify a user's account, perform the following steps:

1. On the User Summary List page, select the User ID of the user for which you searched to open the user's View/Modify User Information page.

Exhibit 5-4: User Summary List page

You are viewing users 1-10 of 16

User Summary List									
User ID	Company	User Role	Last Name	First Name	Last Login Date	Status	Locked	Logged On	
AGEH0416	Verifications UAT Company	General User	Genesoni	Annie		Change Password	N	N	Delete
CDOR0151	Verifications UAT Company	General User	Dobbs	Charita	08/30/2007 04:18 PM	Change Password	N	N	Delete
DHIL1912	Verifications UAT Company	Program Administrator	Hill	Dave	09/29/2007 12:25 PM	Change Password	N	Y	Delete
DHIL7333	Verifications UAT Company	Program Administrator	Hill	Dave	03/31/2008 11:37 AM	Change Password	N	N	Delete
DPICPA44	Verifications UAT Company	Program Administrator	Picard	David	02/27/2008 08:23 AM	Current	N	Y	Delete
GFRA4749	Verifications UAT Company	Program Administrator	Francis	Greg	09/04/2007 10:59 AM	Change Password	N	N	Delete
GPEB1086	Verifications UAT Company	Program Administrator	Green	Rebecca	08/28/2007 03:30 PM	Change Password	N	Y	Delete
GWJ0616	Verifications UAT Company	Program Administrator	Higgins	Gail	09/10/2007 03:30 PM	Change Password	N	N	Delete
KBLE3191	Verifications UAT Company	Program Administrator	Bledsoe	Kelley	08/29/2007 01:45 PM	Change Password	N	N	Delete
LLOPPA44	Verifications UAT Company	Program Administrator	Rivera Lopez	Lara	03/31/2008 04:18 PM	Current	N	Y	Delete

Page 1 of 2. Go to

[Previous](#) [Next](#)

2. Modify the user's information in the View/Modify User Information fields provided and select Submit User Modifications.

Exhibit 5-5: Administer Users Page

View / Modify User Information

User ID: LLOPPA44

User Role: Program Administrator

Last Name:

First Name:

M.I.:

Phone Number: () - ext.

Fax Number: () -

E-mail Address:

Force Change Password:

Reset User Password

New Password:

Re-type New Password:

3. Reset a user's password by typing a temporary password into the New Password and Re-type New Password fields, then select Submit User Modifications.

5.3 Deleting User Accounts

If a user leaves the company or will no longer access E-Verify, a Program Administrator must delete the user's account.

To delete a user account, perform either of the following steps:

1. Select Delete in the row of the user's account you wish to delete on the User Summary List page (See Exhibit 5-4).
2. Select Delete User on the View/Modify User Information page (See Exhibit 5-5).

In both instances, the User Deletion Information page will open, which displays the information for the user whom you want to delete. Select Delete User to delete the user's account.

Exhibit 5-6: User Deletion Information Page

User Deletion Information	
User ID:	DKIS5159
User Role:	General User
Last Name:	Kistler
First Name:	David
M.I.:	M
Phone Number:	(202) 824 - 7929
Fax Number:	
E-mail Address:	dkistler@csc.com
User Status:	
<input type="button" value="Delete User"/> <input type="button" value="Cancel"/> <input type="button" value="Close"/>	

5.4 Maintaining Company Information

To update your company's information in E-Verify, perform the following steps:

1. Select Maintain Company from the Site Administration menu. The Company Information page will display the current information for your company.
2. To modify any section of the Company Information page, select View/Edit in the section you want to modify, i.e. Company Name and Physical Location, Points of Contact, NAICS Code, Total Hiring Sites and Total Points of Contact.
3. Make the required changes and select Submit.

Exhibit 5-7: Company Summary Screen

Company Information	
Company Name:	CSC Web-DABP Test Company View / Edit
Physical Location:	
Address 1:	2001 LSt NW
Address 2:	
City:	Washington
State:	DC
Zip Code:	22203
County:	DISTRICT OF COLUMBIA
Perform verifications for your company's employees:	No
Employer Identification Number:	5678
Total Number of Employees:	10 to 19
Corporate / Parent Company:	CSC Test Company - Corp Admin (CA)
Mailing Address:	
Address 1:	
Address 2:	
City:	
State:	
Zip Code:	
NAICS Code:	5419 - OTHER PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES View / Edit
Total Hiring Sites:	3 View / Edit
Total Points of Contact:	3 View / Edit

5.5 Requesting Termination from E-Verify Participation

	IMPORTANT
	If your company has more than one site using E-Verify and the entire company is requesting termination, each of the company's sites must go through this process.

To request termination of your company's participation in E-Verify, perform the following steps:

1. Select Terminate Company Participation from the Site Administration menu. The Terminate Company Participation page will open.

Exhibit 5-8: Request Termination Page

? Are you sure you want to request termination of your company's access to E-Verify?

Termination Request Information	
Company Name:	CSC Test Web-BP
Termination Request Date:	08/05/2008
Termination Request Reason:	<input style="width: 90%;" type="text"/>
<div style="display: flex; justify-content: space-around; margin-top: 10px;"> Request Termination Cancel </div>	

2. Type the reason for termination in the Termination Request Reason field.
3. Select Request Termination.

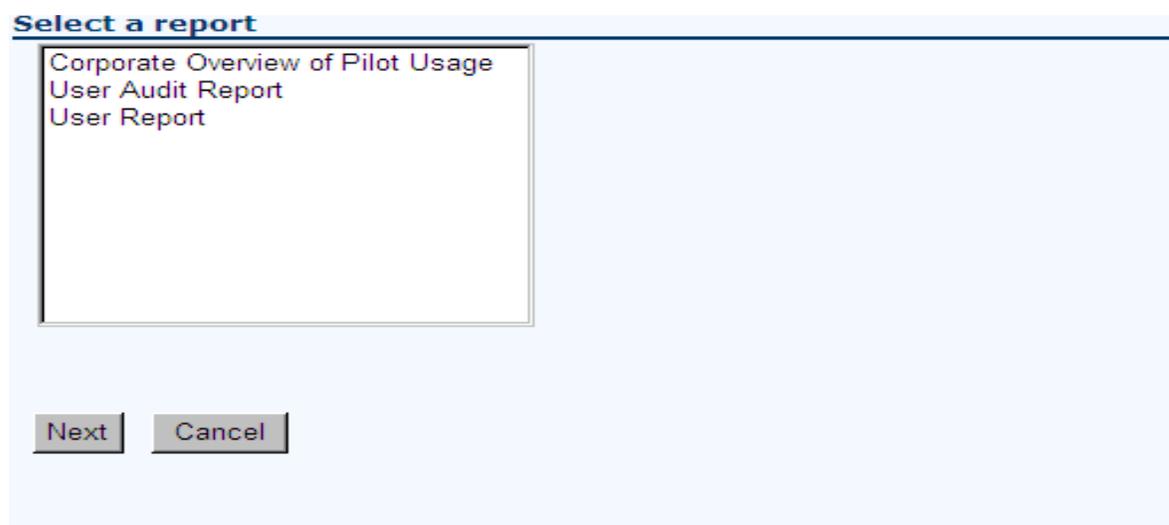
A message will appear informing you that the E-Verify office will be notified of your site's request to terminate its participation in the program.

6. Reports

Employers may use the Reports menu to generate and view reports, as well as print and save reports.

There are three types of reports that may be generated:

Exhibit 6-1: Request Termination Page



Select a report

- Corporate Overview of Pilot Usage
- User Audit Report
- User Report

Corporate Overview -This report displays the number of cases initiated by your company within a fiscal year. If your company has not initiated any queries during the fiscal year, they will still appear on the report with zero totals
This report is available to Corporate Administrators and Program Administrators.

User Audit Report- The User Audio Report provides general data on cases. The summary includes the case verification number, the date the case was initiated, the social security number, alien number, I-94 number, last name, first name, initial verification eligibility, additional verification eligibility, third-step eligibility, and employer resolution code

User Report-This report displays a detailed list of your company's users that access E-Verify.

6.1 Generating, Printing and Saving Reports

You can choose from a selection of predefined reports and set parameters for the generation of those reports.

To generate a report, perform the following steps:

1. Select View Reports from the Reports menu. The Report Selection page will appear.
2. Select the appropriate report from the list and view the description if necessary; the description will appear on the lower half of the page.
3. Select Next. The Report Parameter Data Entry page will appear with fields for the parameters and a Run Report button.
4. Enter the parameters for the selected report. Refer to the table on the previous page(s) for the list of appropriate parameters.



Enter Report Parameters

Report: User Report

Description: This report displays a detailed list of your company's users that access Web-BP.

Report Format: PDF Excel

User Role:

5. Select Run Report. The report will appear as an Adobe Portable Document Format (PDF) file.
6. Select Print to print the report.
7. Select Save to save the report.

Glossary

A

Acceptable Documents for Verifying Identity and Employment Eligibility
Documents designated for determining employment eligibility under the Immigration & Nationality Act (INA) are listed in the Handbook for Employers (M 274), Part Eight, page 22.

The list has been modified since the publication of the Handbook. List A now includes only the following: (1) an Unexpired/Expired United States Passport; (2) an Alien Registration Receipt Card with a photograph or Permanent Resident Card (Form I-551); (3) an Unexpired Foreign Passport with a Temporary I-551 stamp or attached Form I-94 indicating unexpired employment authorization; and (4) an Unexpired Employment Authorization Document (EAD) issued by the Department of Homeland Security which contains a photograph (Form I-766).

List B and C are unchanged from those stated in the Handbook, but list B documents presented to an Employer participating in the E-Verify Program must contain a photograph.

Admission Number or I-94 Number

An 11-digit number that is found on the Arrival-Departure Record (Form I-94).

Alien (Non-citizen)

Any person who is not a citizen or national of the United States.

Alien File (A-File)

The history file containing data and documentation pertaining to an individual non-citizen. An A-File is created when any one of several Department of Homeland Security actions occur, for example, application for permanent resident status.

Alien Registration Number ("A" Number)/Alien ID Number/or Alien Number)

A unique 7-, 8- or 9-digit number assigned to a non-citizen at the time his or her A-File is created.

Alien Registration Receipt Card, Form I-151

This card was introduced in 1946 and issued to lawful permanent residents. Through 18 years of various revisions, it remained primarily green in color causing it to become known as a "green card." As of March 20, 1996, the Form I-151 is no longer acceptable as evidence of lawful permanent resident status. If a non-citizen is in possession of a Form I-151, it does not revoke his or her lawful permanent resident status; however, the document itself is expired and the applicant should be referred to the Department of Homeland Security for a replacement card.

Alien Status Verification Index (ASVI)

A Department of Homeland Security database accessed by benefit issuing agencies, licensing agencies, other entities and Employers to verify non-citizen immigration and employment eligibility status. As of June 2004, ASVI has been replaced by the Customer Processing System (CPS).

Anti-discrimination Notice

The Anti-discrimination Notice is published by the Office of Special Counsel for Immigration-Related Unfair Employment Practices, Department of Justice, and provides information to employees concerning discrimination in the workplace. The E-Verify Memorandum of Understanding requires participating Employers to display both the English and Spanish versions of the notice in a prominent place that is clearly visible to prospective employees.

Arrival/Departure Record (Form I-94)

A document issued to non-citizens when admitted into the United States. Some of these forms are stamped to indicate work authorized status. The Form I-94 contains an 11-digit Admission Number, which may be used as part of the Primary Query verification process if the non-citizen employee does not have an Alien Registration Number.

Asylee

A non-citizen already in the United States or at a port of entry, who is granted asylum in the United States, based on race, religion, nationality, or membership in a particular social group or political opinion. This status is covered by Section 208 of the Immigration and Nationality Act (INA).

Asylum

Asylum may be granted to a person who is unable or unwilling to return to his or her country of nationality, because they fear persecution.

B

C

Case in Continuance

This response is given if the Social Security Administration or the Department of Homeland Security needs more than 10 federal government workdays to resolve a case. The employee continues to work until a definitive answer is provided in E-Verify from the Social Security Administration or the Department of Homeland Security.

Case Verification Number

The Case Verification Number is a unique number returned by the E-Verify system. Employers participating in the E-Verify Program are required to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

Client company

An individual or company that hires a Designated Agent to perform E-Verify inquiries.

Corporate Administrator

This user type can only view reports for the site where they are physically located. They can also update their personal user profile.

Could Not Be Determined

An Employer would select “could not be determined” when they are unable to determine whether there was a photographic match/non-match based on a comparison of the document provided by the employee and the picture displayed by E-Verify upon query. As a result, these types of cases will automatically be processed as secondary verifications where the decision as to a photograph match/non-match will be made by DHS and will be final.

Customer Processing System

The Department of Homeland Security’s database accessed by benefit issuing agencies, licensing agencies, other entities, and Employers to verify immigration and employment eligibility status.

D

DHS Verification in Process

The response given, if the employee’s information matches the Social Security Administration (SSA) records but the Social Security Administration does not have employment eligibility information for the non-citizen employee. The system automatically forwards the case to the Department of Homeland Security for verification of employment eligibility. The Department of Homeland Security responds to most of these cases within 24 hours, but has up to 3 Federal Government workdays to respond. An Employer should check the system periodically for response.

Document Type

Type of document(s) presented by the newly hired employee to verify identity and employment eligibility.

Designated Agent

An individual or company that performs E-Verify inquiries for another organization(s).

E

Employee Not Terminated

A closure option used when the employee is not terminated after the Employer receives a SSA Final Nonconfirmation; DHS Employment Unauthorized; DHS No Show; or if the employee is not terminated after he or she does not contest a Social Security Administration or Department of Homeland Security Tentative Nonconfirmation response.

Employment Authorized

A response received from either the Social Security Administration or the Department of Homeland Security indicating the information provided by the Employer matched the information contained in the database(s) and work eligibility has been confirmed.

Employment Authorization Document (EAD) I-766

A document issued to non-citizens who are authorized to work temporarily in the United States. The document has been issued since January 1997.

Employment Eligibility Verification (Form I-9)

Every time an Employer hires any employee to perform labor or services in return for wages or other remuneration, the employee and the Employer must complete the Form I-9. This requirement applies to all employees hired after November 6, 1986.

E-Verify

E-Verify is a voluntary program (formerly known as the “Basic Pilot Program”) in which employment eligibility of all newly hired employees will be confirmed after the Employment Eligibility Verification (Form I-9) has been completed. This involves separate verification checks (if necessary) of databases maintained by the Social Security Administration and the Department of Homeland Security.

E-Verify Participation Notice

The E-Verify Notice informs prospective employees that a company is participating in the E-Verify Program. The Memorandum of Understanding (MOU) requires participating Employers to display both the English and Spanish versions of the notice in a prominent place that is clearly visible to prospective employees.

F

Final Nonconfirmation

If an employee's work eligibility cannot be confirmed, an Employer will receive a Final Nonconfirmation response from the Social Security Administration or the Department of Homeland Security. An Employer receiving a Final Nonconfirmation response may terminate the employment of the employee and shall not be civilly or criminally liable under any law for the termination, as long as the action was taken in good faith reliance of the information provided through the E-Verify system.

G

General Users

This user type performs verification queries, views reports, and has the capability to update a personal user profile.

Green Card

A commonly used term describing the Permanent Resident Card / Resident Alien Card (Form I-551). Many versions of the I-551 are not green in color.

H

Handbook for Employers (M 274)

Provides a step-by-step explanation of what an Employer must do to meet its responsibilities under the Employer Sanctions provision of the Immigration and Nationality Act (INA). It also explains the responsibilities and rights of employees in the hiring and verification process and provides expanded information about how to avoid employment discrimination based on citizenship or national origin.

Hire Date

The earliest the Employer may initiate a query is after an individual accepts an offer of employment and after the employee and Employer complete the Form I-9. The Employer must initiate the query no later than three business days after the newly hired employee starts work for pay.

I

Illegal Alien

A foreign national who (1) entered the United States without inspection or with fraudulent documentation or (2) who, after entering legally as a non-immigrant, violated status and remained in the United States without authorization.

Immigrant

A non-citizen who has been lawfully granted the privilege of residing and working permanently in the United States.

Immigration and Nationality Act of 1952 (INA)

The Act (INA), which, along with other immigration laws, treaties, and conventions of the United States, relates to the immigration, temporary admission, naturalization, and removal of non-citizens.

Immigration Reform and Control Act of 1986 (IRCA)

Public Law 99-603 (Act of 11/6/86), which was passed in order to control and deter illegal immigration to the United States. Its major provisions stipulate legalization of undocumented non-citizens who had been continuously unlawfully present since 1982, legalization of certain agricultural workers, and sanctions for Employers who knowingly hire undocumented workers, and increased enforcement of U.S. borders.

Immigration Status

The legal status conferred on a non-citizen by immigration law.

Immigration Status Verifier (ISV)

A Department of Homeland Security employee who has the responsibility for verifying immigration and employment eligibility status for SAVE customers.

Immigrant Visa

A document, issued by a United States Department of State consulate or embassy abroad, which authorizes a non-citizen to apply for admission as an immigrant to the United States. This document does not grant work authorization.

Initial Query

The first step of the automated employment verification process.

Initial Verification

An automated query of the Social Security Administration and if necessary the Department of Homeland Security databases. Results will either verify employment eligibility or require additional verification, which is conducted through the E-Verify system.

Invalid Query

A resolution option for a duplicate query or incorrect data input.

J

K

L

Lawful Permanent Resident

A non-citizen who has been lawfully granted the privilege of residing and working permanently in the United States.

M

Memorandum of Understanding

A Memorandum of Understanding (MOU) is a legal document describing a bilateral or multilateral agreement between parties. It constitutes a legally binding contract when properly executed (e.g., signed) by all the parties.

N

Non-Immigrant

A non-citizen who enters the United States temporarily for a specific period of time and purpose. This category includes foreign government officials, visitors for business and pleasure, students and temporary workers.

No Show

A response received when the employee did not contact the Department of Homeland Security to resolve his or her case and 10 Federal Government workdays have passed since the date of referral. The No Show response is considered a Final Nonconfirmation.

Notice to Employee of Tentative Nonconfirmation

This is a computer generated notice given to an employee after a Tentative Nonconfirmation response has been received from the Social Security Administration or the Department of Homeland Security. If an employee contests the Tentative Nonconfirmation response, he or she must contact the appropriate Government Agency to resolve the discrepancy to continue employment. An employee has eight (8) Federal Government workdays to resolve his or her case.

O

P

Parolee

A non-citizen applying for admission to the United States may be paroled into the United States under emergency conditions or when the non-citizen's entry is determined to be in the public interest. Parolee status is covered by Section 212 of the INA.

Passport

Any travel document issued by competent authority showing the bearer's origin, identity, and nationality, if any, which is valid for the entry of the bearer into a foreign country. If this document is used for Form I-9 purposes, it must be unexpired with either an I-551 stamp or an attached Form I-94 indicating unexpired employment authorization.

Password

Each person performing verification queries should have his or her own password. The password provided to a new user is temporary and should be changed. A password must be between 8 and 14 characters and include three of the following four characteristics: an upper case letter, a lower case letter, a number and a special character (i.e. ! @ \$ % * () < > ? : ; { } + - ~). A user will be required to change his or her password every 90 days and will be prompted by the system to do so.

Permanent Resident or Legal Permanent Resident

A non-citizen who has been lawfully granted the privilege of residing and working permanently in the United States.

Permanent Resident Card, Form I-551, DEC 1997

Issued by the former INS after December 1997, this card is the current version given to Permanent Resident Aliens. The document is valid for 10 years. In this version of the I-551, the card title was changed from Resident Alien to Permanent Resident Card.

Photo Screening Tool

During the verification query, Employers match the photographs on certain documents provided by new employees when completing the Form I-9 with the photograph that appears in the records of U.S. Citizenship and Immigration Services (USCIS). The photo screening tool is triggered only when a new hire produces a Permanent Resident Card ("Green Card" (I-551) or an Employment Authorization Card (I-766) for their I-9 documentation.

Photo Match

The photograph on the employee's document matches the photograph supplied by E-Verify. The photograph transmitted by E-Verify should be the same (identical) photograph that appears on an employee's USCIS-issued document, Employers should be able to determine whether or not the photographs do match.

Photo Non-match

The photograph on the employee's document does not match the photograph supplied by E-Verify. The photograph transmitted by E-Verify should be the same (identical) photograph that appears on an employee's USCIS-issued document. If the Employer determines that it does not, a DHS tentative non-confirmation is issued and the employee is given the opportunity to contest.

Point of Contact

Someone in your company who can be contacted on E-Verify policy issues. This person may or may not be 1 of the 3 user types.

Primary Verification (Initial Query)

The first step of the electronic verification process.

Program Administrator

This user type is responsible for creating user accounts at their site for Corporate Administrators and General Users. They have the capability to view reports, perform queries, update account information and unlock user accounts.

Q

R

Referral Notice

An employee contesting a Tentative Nonconfirmation response from the Social Security Administration or the Department of Homeland Security is provided with the appropriate agency referral notice instructing him or her to contact the Government within 8 Federal Government workdays from the date of referral to resolve any discrepancy in his or her record.

Refugee

Any person who is outside their country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution. Unlike asylees, refugees apply for and receive this status prior to entry into the United States. This status is covered by Section 207 of the Immigration and Nationality Act.

Request Additional Verification

If the information returned from the Department of Homeland Security database is different from the information provided by the employee on the Form I-9, this feature provides the Employer an option to provide additional information on the employee's case to the Department of Homeland Security requiring a further search of the case.

Resident Alien Card, Form I-551, AUG 1989

This card was introduced in August 1989 and was the first Resident Alien Card to contain an expiration date. The card was issued to both conditional and lawful permanent residents. Valid only for a limited period of time – 2 years from the date of admission/adjustment for conditional permanent residents and 10 years from issuance for lawful permanent residents. The expiration date indicates when the card expires and must be renewed. It does not indicate that the non-citizen's status expires. The expiration date is stated on the front of the card. This version is rose-colored with a blue logo. It was modified in January 1992 when a white box was added behind the fingerprint.

Resident Alien Card, Form I-551, JAN 1977

This card was introduced in January 1977 and phased in over a period of time. Although this card is no longer issued, it is valid indefinitely. In addition to the photograph, the I-551 will contain the bearer's signature and photograph. This card was issued to lawful permanent residents.

Resolve Case

This feature allows the user to select the appropriate option to resolve (close) all cases queried through the E-Verify Program.

Resolved Authorized

A resolution option for the cases where an Employment Authorization response is received.

Resolved Unauthorized/Terminated

A resolution option if a Social Security Administration or Department of Homeland Security Final Nonconfirmation or No Show response is received, or if the employee does not contest a Social Security Administration or Department of Homeland Security Tentative Nonconfirmation response, and is terminated.

S

Self Terminated

A resolution option if the employee has quit or been terminated for reasons unrelated to employment eligibility status while the verification query is in process.

SSA Referral

After an employee is advised of a Tentative Nonconfirmation and signed the Notice to Employee of Tentative Nonconfirmation the employee is referred to the Social Security Administration to resolve their case.

SSA Resubmittal

After an employee is referred to SSA and visits one of its local offices and 24 hours have passed since they returned the referral letter to the Employer, the user must resubmit the case through E-Verify to receive a final response.

If the employee does not visit an SSA office, or does not return the stamped and signed referral letter to the Employer, the Employer should resubmit the case after 10 Federal government workdays from the date of referral.

Social Security Administration

A Federal Government agency that administers a national program of contributory social insurance whereby employees, Employers, and the self-employed pay contributions that are pooled in special trust funds. The Social Security Administration and the Department of Homeland Security are jointly conducting the E-Verify Program.

Systematic Alien Verification for Entitlements (SAVE) Program

The SAVE Program is responsible for administering Department of Homeland Security verification programs involving customer access to the CPS database. The SAVE Branch administers the SAVE Program itself, which enables federal, state, and local benefit-issuing agencies to obtain immigration status information needed in order to determine applicants' eligibility for many public benefits.

T

Tentative Nonconfirmation

The employee information was compared to Government records and could not be confirmed. This does not mean that the employee is not work authorized, or that the information provided was incorrect. The employee must contact either the Social Security Administration or the Department of Homeland Security to resolve the discrepancy in order to continue employment.

U

U.S. Passport

Document issued by the Department of State to United States Citizens and Nationals.

User ID

Each person performing verification queries should have his or her own User ID. The User ID is a system generated ID with letters and numbers ID, which the Program Administrator can accept or change when adding a new user. The User ID must be 8 characters and may be letters, numbers, or a combination of both. A User ID is not case sensitive.

V

Verification Division

The Verification Division is responsible for administering Department of Homeland Security verification programs involving customer access to the CPS database. The Verification Division administers the SAVE Program itself, which enables federal, state, and local benefit-issuing agencies to obtain immigration status information needed in order to determine applicants' eligibility for many public benefits. In addition, the SAVE program conducts the E-Verify program that enables Employers to quickly and easily verify the work authorization of their newly hired employees.

W

X

Y

Z

SSA Appendix

To locate your local Social Security office using the Internet, perform the following steps:

At your Internet address bar, type: www.ssa.gov or www.socialsecurity.gov and press Enter or select Go.



On the left side of the page, select: Find a Social Security office.



This presents the Local Office Search web page.

Enter the new hire's five-digit ZIP Code in the box provided.

Select Locate.



You can bypass the first two steps and go directly to this Local Office Search page, enter the following web address:

<https://s044a90.ssa.gov/apps6z/FOLO/fo001.jsp>

In certain cities (Brooklyn, N.Y.; Queens, N.Y.; Las Vegas, Nev.; Orlando, Fla.; or Phoenix, Ariz., new hires that needs to contact the SSA must go to the Social Security Card Center rather than the Local Office.

A reference to the Social Security Card Center is included on the Local Office Search Results page under 'Directions to Our Office'.

IMPORTANT	
	There will not be a map for the Card Center address; there is only a map for the local Social Security office. The exception is Phoenix - their Card Centers are located in the same building as their local offices.



This is part of the North Las Vegas, Nev., Social Security Office web page.

Below is a list of the six Social Security Card Centers and the local areas that they serve.

Arizona

North Phoenix Card Center
 16241 N. Tatum Blvd., Suite B
 Phoenix, AZ 85032

The North Phoenix Card Center is located next to the North Phoenix Social Security Office and serves the residents of northern Phoenix and northern Maricopa County.

Downtown Phoenix Card Center
 250 N. 7th Ave., Suite 200
 Phoenix, AZ 85007

The Downtown Phoenix Card Center is located in the same building as the new Downtown Social Security Office and serves the residents of southern Phoenix, Apache Junction, and the southern portions of Maricopa County.

Florida

Orlando Card Center
 5520 Gatlin Ave., Suite 102
 Orlando, FL 32812

The Orlando Card Center is located in the same building as the Orlando Field Office and serves the residents of Orlando, Kissimmee, and Longwood.

Nevada

Las Vegas Card Center
 1250 S. Buffalo Drive
 Las Vegas, NV 89117

The Las Vegas Card Center (LVCC) is located in the same building as the Las Vegas Social Security office and it serves the residents of Las Vegas and Clark County. Lincoln County residents and residents of Mesquite, Logandale, Overton, or Moapa may go to the LVCC or contact the local office serving their area.

New York
Brooklyn Social Security Card Center
625 Fulton St., 6th Floor
Brooklyn, NY 11201

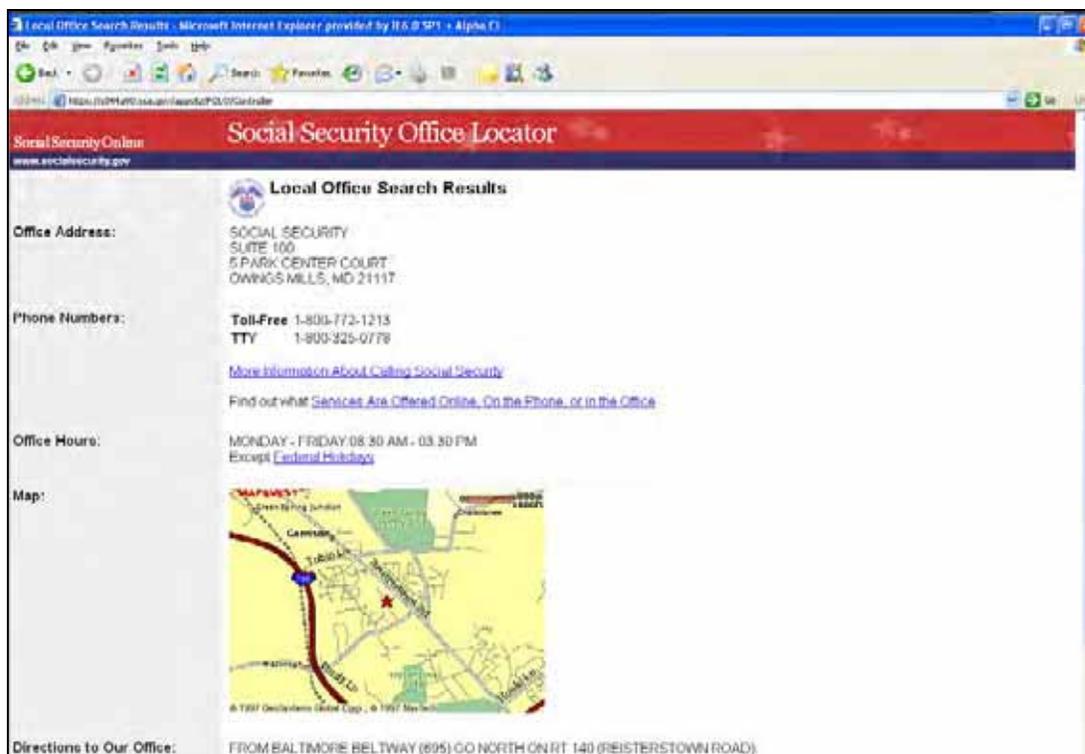
The Brooklyn Social Security Card Center (BSSCC) serves the people who live or receive mail in Brooklyn.

Queens Social Security Card Center
155-10 Jamaica Ave., 2nd Floor
Jamaica, NY 11432

The Queens Social Security Card Center (QSSCC) serves the people who reside or have a mailing address in Queens. However, if the individual prefers he/she may conduct Social Security Card business with the Brooklyn Social Security Card Center (BSSCC).

If the new hire needs to go to a card center, please provide the new hire with the address of the card center.

This presents the Local Office Search Results page which has the address, telephone number, office hours, and map of the SSA office closest to the new hire's home.



IMPORTANT: There will not be a map for the Card Center address; there is only a map for the local Social Security office.

Exhibit B

THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION

MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the agreement between the Social Security Administration (SSA), the Department of Homeland Security (DHS) and _____ the State Employment Agency (Agency) regarding the AGENCY's participation in the E-Verify Program (E-Verify). E-Verify is a Federal program that confirms a person's employment eligibility after the Employment Eligibility Verification Form (Form I-9) has been completed.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note).

Authority for the AGENCY to verify employment authorization of individuals referred for employment, and certify eligibility to employers in lieu of the employer verifying eligibility, is found in Section 274A(a)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1324a(a)(5) and Section 274a.6 of Title 8, Code of Federal Regulations (C.F.R.). The AGENCY certifies that it is a State employment agency (e.g. State Workforce Agency) as defined in 8 C.F.R. § 274a.1 ("any State government unit designated to cooperate with the United States Employment Service in the operation of the public employment service system").

Authority for the AGENCY to expend funds for participation in this program is found in the Wagner-Peyser Act (29 U.S.C. §§ 49 et seq.) and the Department of Labor regulations promulgated thereunder.

The purpose of this MOU is to provide the AGENCY with the means through E-Verify to verify the information provided through the Form I-9 process by workers to be referred by the AGENCY to any employer. For the purpose of this MOU, these workers will be referred to as "referred workers." The AGENCY will verify referred workers using the procedures provided by 8 C.F.R. § 274a.6 and this MOU.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF THE SSA

1. Upon completion of the Form I-9, and provided the AGENCY complies with the requirements of this MOU, SSA agrees to provide the AGENCY with available information that allows the AGENCY to confirm the accuracy of Social Security Numbers provided by referred workers and the employment authorization of such workers who are U.S. citizens.

2. The SSA agrees to provide to the AGENCY appropriate assistance with operational problems that may arise during the AGENCY's participation in the E-Verify program. The SSA agrees to provide the AGENCY with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.

3. The SSA agrees to safeguard the information provided by the AGENCY through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by the SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for referred workers who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY

1. Upon completion of the Form I-9 and after SSA verifies the accuracy of SSA records through E-Verify, DHS agrees to provide the AGENCY access to selected data on aliens from DHS's database to enable the AGENCY to conduct:

- Automated verification checks on referred workers by electronic means, and
- Photo verification checks (when available) on alien referred workers.

2. DHS agrees to provide to the AGENCY appropriate assistance with operational problems that may arise during the AGENCY's participation in the E-Verify program. DHS agrees to provide the AGENCY with names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to provide to the AGENCY a manual (the E-Verify User Manual) containing instructions on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide the AGENCY with a notice that must be given to referred workers, which informs the referred workers that the AGENCY participates in E-Verify. DHS also will provide the AGENCY with an anti-discrimination notice that must be given to the referred worker.

5. DHS agrees to provide the AGENCY with a notice that must be provided by the AGENCY to each employer to whom the AGENCY refers a referred worker. The notice will inform the employer that the AGENCY has completed the Form I-9 employment eligibility verification process for the referred worker; that the AGENCY's referral may serve as evidence that the employer has complied with the verification requirements of section 274A of the INA for up to 21 business days pending receipt of AGENCY certification, as provided by 8 C.F.R. § 274a.6(c); that the AGENCY is participating in the E-Verify program; that verification of employment eligibility may or may not have been completed by the AGENCY at the time of referral; that the employer is subject to anti-discrimination requirements in its employment of the referred worker and may not

take any adverse action against the referred worker based on the fact that the AGENCY may not have completed the E-Verify process at the time of referral; and that the AGENCY will follow up with the employer by providing the certification described in 8 C.F.R. § 274a.6(c)(1) within 21 days and/or further information on the referred worker's verification status.

6. DHS agrees to issue the AGENCY a user identification number and password that permits the AGENCY to verify information provided by alien referred workers with DHS's database.

7. DHS agrees to safeguard the information provided to DHS by the AGENCY, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility.

8. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of referred workers' employment eligibility within 3 Federal Government work days of the initial inquiry.

9. DHS agrees to establish a means of secondary verification (including updating DHS records as may be necessary) for referred workers who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of such workers' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE STATE EMPLOYMENT AGENCY

1. The AGENCY agrees to provide to each referred worker the DHS-supplied notice concerning the AGENCY's participation in E-Verify, and the notice concerning protections from unlawful discrimination.

2. The AGENCY agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the AGENCY representatives to be contacted regarding E-Verify.

3. The AGENCY agrees to become familiar with and comply with the terms and procedures of the E-Verify User Manual. Including but not limited to, any supplemental information pertaining to verification by an AGENCY.

4. The AGENCY agrees that any AGENCY representative who will perform employment verification queries will complete the E-Verify tutorial before that individual initiates any queries.

A. The AGENCY agrees that all AGENCY representatives will take any refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.

B. Failure to complete a refresher tutorial will preclude the AGENCY from continued use of the program.

5. The AGENCY agrees that each AGENCY representative who will perform employment verification queries must have his or her own user ID and password.

6. For each referred worker, the AGENCY agrees to comply with established Form I-9 procedures for state employment agencies that choose to verify identity and employment eligibility for individuals referred for employment, as provided in 8 C.F.R. § 274a.6, with two exceptions:

- If a job candidate presents a "List B" identity document, the AGENCY agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity).
- If a job candidate presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the AGENCY agrees to make a photocopy of the document and to retain the photocopy with the job candidate's Form I-9. The AGENCY will use the photocopy to verify the photo and to assist the Department with its review of photo non-matches that are contested by job candidates. Note that job candidates retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the Photo Screening Tool.

7. The AGENCY understands that participation in E-Verify does not exempt the AGENCY from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to referred workers, or from other requirements of applicable regulations or laws, except for the following modified requirements applicable by reason of the AGENCY's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the AGENCY has not violated Sections 274A(a)(1)(A) or 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (INA) with respect to the referral of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of E-Verify; (3) the AGENCY is subject to a rebuttable presumption that it has knowingly referred an unauthorized alien in violation of Section 101(a)(15)(H)(ii)(a) if the AGENCY refers any referred worker after receiving a final nonconfirmation; and (4) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

8. The AGENCY agrees to initiate E-Verify verification procedures prior to any referral of a referred worker (but after both Sections 1 and 2 of the Form I-9 have been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual. The AGENCY is prohibited from initiating verification procedures before the referred worker has completed the Form I-9. In all cases, the AGENCY must use the SSA verification procedures first, and use DHS verification procedures and Photo Screening Tool only after the SSA verification response has been given.

9. The AGENCY agrees not to use E-Verify procedures for screening of non-job applicants, support for any unlawful employment practice, or any other use not authorized by this MOU.

- The AGENCY must use E-Verify for all referred workers and agrees that it will not verify only certain such workers selectively.
- The AGENCY agrees not to use E-Verify procedures for re-verification of employment eligibility.
- The AGENCY agrees not to use E-Verify for any individuals referred for any employment before the date this MOU is in effect.
- The AGENCY understands that if the AGENCY uses E-Verify procedures for any purpose other than as authorized by this MOU, the AGENCY may be subject to appropriate legal

action and the immediate termination of its access to SSA and DHS information pursuant to this MOU.

- The AGENCY agrees that it will not delay the referral of a referred worker or take other adverse action because of the receipt of a tentative nonconfirmation that is challenged by the worker.

10. The AGENCY understands that the obligation to verify under this MOU applies to referred workers. There is no authority or obligation to verify any individual who is not a referred worker. The AGENCY may not refer any individual unless the individual's Form I-9 process has been completed pursuant to 8 C.F.R. § 274a.6 and the E-Verify verification procedures initiated. The AGENCY agrees that it will not deny any referral to any individual because of the need to complete the verification process pursuant to this MOU.

11. The AGENCY agrees to follow appropriate procedures (see Article III.B. below) regarding tentative nonconfirmations, including promptly notifying referred workers of the finding, providing written instructions to such workers, allowing such workers to contest the finding, and not taking adverse action against such workers if they choose to contest the finding. Further, when referred workers contest a tentative nonconfirmation based upon a photo non-match, the AGENCY is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

12. The AGENCY agrees not to take any adverse action against a referred worker (including, but not limited to, declining to refer such worker or delaying the referral) based upon the job candidate's employment eligibility status while SSA or DHS is processing the verification request unless the AGENCY obtains knowledge (as defined in 8 C.F.R. § 274a.1(1)) that the referred worker is not work authorized. The AGENCY understands that an initial inability of the SSA or DHS automated verification to verify work authorization, a tentative nonconfirmation, or the finding of a photo non-match, does not mean, and should not be interpreted as, an indication that the referred worker is not work authorized. In any of the cases listed above, the referred worker must be provided the opportunity to contest the finding, and if he or she does so, may not suffer any adverse employment or potential employment consequences until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the referred worker does not choose to contest a tentative nonconfirmation or a photo non-match, then the AGENCY can find that such worker is not work authorized and take the appropriate action, including but not limited to, declining to issue or revoking the certification provided under 8 C.F.R. § 274a.6(c), and notifying the worker's employer.

13. The AGENCY agrees to comply with Section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in Section 274B(a)(3) of the INA, because of his or her citizenship status. The AGENCY understands that such illegal practices may include, for example, use of E-Verify on some, but not all, referred workers, refusing to refer for hire referred workers because they appear or sound "foreign", delaying a referral until a tentative nonconfirmation is wholly resolved, and termination of the referral process based upon tentative nonconfirmations. Any violation of the unfair immigration-related employment practices provisions of the INA could subject the AGENCY to civil penalties pursuant to Section 274B of the INA and the termination of its participation in E-Verify. If the AGENCY has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-7688 or 1-800-237-2515 (TDD).

14. The AGENCY agrees to record the case verification number on the referred worker's Form I-9 or to print the screen containing the case verification number and attach it to the worker's Form I-9.

15. The AGENCY agrees that it will use the information it receives from the SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of referred workers, after completion of the Form I-9. The AGENCY agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the AGENCY who are authorized to perform the AGENCY's responsibilities under this MOU.

16. The AGENCY acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

17. The AGENCY agrees to make employment and E-Verify related records available to DHS and the SSA, or their designated agents or designees, and allow DHS and SSA, or their authorized agents or designees, to make periodic visits to the AGENCY for the purpose of reviewing E-Verify-related records, i.e., Forms I-9, SSA Transaction Records, DHS verification records, and certification forms described in 8 C.F.R. § 274a.6(d), which were created during the AGENCY's participation in the E-Verify Program. In addition, for the purpose of evaluating E-Verify, the AGENCY agrees to allow DHS and SSA or their authorized agents or designees, to interview it regarding its experience with E-Verify, and to interview job candidates and hired employees concerning their experience with E-Verify. Failure to comply with the terms of this paragraph may lead DHS to terminate the AGENCY's access to E-Verify.

18. The AGENCY is authorized and encouraged to seek the cooperation and assistance of the employer of any referred worker in fulfilling the obligations of this MOU, including, but not limited to, seeking the assistance of the employer in locating workers for the purpose of providing notice of a tentative nonconfirmation and information on how to resolve it; providing the employer with information on the E-Verify process and anti-discrimination obligations; and advising the employer of any final nonconfirmation. The AGENCY understands, however, that it is expressly the AGENCY's obligation to comply with this MOU regardless of any action or inaction of an employer or other third party. If a AGENCY has reason to believe that an employer is unwilling to hire a referred worker because of the AGENCY's receipt of a tentative nonconfirmation, the AGENCY may raise such concerns with the Office of Special Counsel for Immigration-Related Unfair Employment Practices in the Civil Rights Division of the U.S. Department of Justice by calling 1-800-255-7688.

19. The AGENCY agrees to provide the DHS-supplied notice to each employer to whom the AGENCY refers a referred worker.

20. The AGENCY agrees that it will give immediate notice in writing to the employer of a referred worker if the worker is the subject of a final nonconfirmation, and will revoke any certification described in 8 C.F.R. § 274a.6 that has been previously provided to the employer.

ARTICLE III

REFERRAL OF INDIVIDUALS TO THE SSA AND THE DEPARTMENT OF HOMELAND SECURITY

A. REFERRAL TO THE SSA

1. If the AGENCY receives a tentative nonconfirmation issued by SSA, the AGENCY must print the E-Verify tentative nonconfirmation notice and promptly provide it to the referred worker so that the worker may determine whether he or she will contest the tentative nonconfirmation.
2. The AGENCY will refer referred workers to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the AGENCY records the case verification number, reviews the input to detect any transaction errors, and determines that the worker wishes to contest the tentative nonconfirmation. The AGENCY will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The AGENCY will determine whether the referred worker contests the tentative nonconfirmation as soon as possible after the AGENCY receives it.
3. If the employee contests an SSA tentative nonconfirmation, the AGENCY will promptly provide the referred worker with the E-Verify SSA referral letter and instruct the job candidate to visit an SSA office to resolve the discrepancy within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the AGENCY within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
4. The AGENCY agrees not to ask the referred worker to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO THE DEPARTMENT OF HOMELAND SECURITY

1. If the AGENCY receives a tentative nonconfirmation issued by DHS, the AGENCY must print the E-Verify tentative nonconfirmation notice and promptly provide it to the referred worker so that the worker may determine whether he or she will contest the tentative nonconfirmation.
2. If the AGENCY finds a photo non-match for an alien who provides a document for which the automated system has transmitted a photo, the AGENCY must print the E-Verify photo non-match tentative nonconfirmation notice and provide it to the referred worker so that the worker may determine whether he or she will contest the finding.
3. The AGENCY agrees to refer individuals to DHS only when the referred worker chooses to contest a tentative nonconfirmation received from the DHS automated verification process or when the AGENCY issues a tentative nonconfirmation based upon a photo non-match. The AGENCY will determine whether the worker contests the tentative nonconfirmation as soon as possible after the AGENCY receives it.
4. If the referred worker contests a tentative nonconfirmation issued by DHS, the AGENCY will promptly provide the worker with the E-Verify DHS referral letter and instruct the worker to contact the Department through its toll-free hotline listed on the referral letter within 8 Federal Government work days.

5. If the referred worker contests a tentative nonconfirmation based upon a photo non-match, the AGENCY will promptly provide the worker with the E-Verify referral letter to DHS. DHS will electronically transmit the result of the referral to the AGENCY within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

6. The AGENCY agrees that if a referred worker contests a tentative nonconfirmation based upon a photo non-match, the AGENCY will send a copy of the worker's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (furnished and paid for by DHS).

7. The AGENCY understands that if it cannot determine whether there is a photo match/non-match, the AGENCY is required to forward the referred worker's documentation to DHS by scanning and uploading, or by sending the document as described in the preceding paragraph, and resolving the case as specified by the Immigration Services Verifier at DHS who will determine the photo match or non-match.

ARTICLE IV

SERVICE PROVISIONS

The SSA and DHS will not charge the AGENCY for verification services performed under this MOU. The AGENCY is responsible for providing equipment needed to make inquiries. To access the E-Verify System, AGENCY will need a personal computer with Internet access.

ARTICLE V

PARTIES

1. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train the AGENCY on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify manual. Even without changes to E-Verify, DHS reserves the right to require the AGENCY to take mandatory refresher tutorials.

2. Termination by any party shall terminate the MOU as to all parties. The SSA or DHS may terminate this MOU without prior notice if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the AGENCY, or a failure on the part of the AGENCY to comply with established procedures or legal requirements. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine.

3. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the AGENCY, its agents, officers, or employees.

4. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the AGENCY and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the AGENCY.

5. The AGENCY understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA).

6. The foregoing constitutes the full agreement on this subject among the SSA, DHS, and the SWA. This agreement is not intended to displace or modify any agreement between SSA and DHS regarding reimbursement to SSA for E-Verify-related work.

7. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the AGENCY, SSA and DHS, respectively. The SSA has agreed that DHS's signature to the MOU shall also constitute SSA's agreement to its terms and conditions.

Please only sign the AGENCY's Section of the signature page. You must provide a telephone number and valid email address in the event we need to contact you. If you have any questions, contact E-Verify at: 888-464-4218.

State Employment Agency

Name (Please type or print)

Title

Signature

Date

Telephone Number

E-mail Address

Department of Homeland Security – Verification Division

Name (Please type or print)

Title

Signature

Date



INFORMATION REQUIRED FOR E-VERIFY REGISTRATION

Information relating to your Agency	
Agency Name:	_____
Agency Physical Address:	_____
(This is the address of the agency that is completing this form)	_____
County or Parish:	_____
Employer Identification Number:	_____
(This number is issued by the IRS. You can obtain this number from your payroll office)	
North American Industry Classification Systems Code:	561 [you do not need to complete this field]
Estimated Number of Referred Workers per year:	_____
Anticipated number of sites that will be using E-Verify for your state:	_____

Information relating to the Program Administrator(s) for your agency	
A Program Administrator has the ability to create user accounts, perform verifications, view reports, update account information, and unlock user accounts. Additional Program Administrators can be added after registration.	

Program Administrator	
(name, telephone number and email address are required for successful registration)	
Name:	_____
Telephone Number:	_____ Fax Number: _____
Email Address:	_____

Program Administrator	
(name, telephone number and email address are required for successful registration)	
Name:	_____
Telephone Number:	_____ Fax Number: _____
Email Address:	_____

Program Administrator	
(name, telephone number and email address are required for successful registration)	
Name:	_____
Telephone Number:	_____ Fax Number: _____
Email Address:	_____

Exhibit C

**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**THE SOCIAL SECURITY ADMINISTRATION'S
IMPLEMENTATION OF THE E-VERIFY
PROGRAM FOR NEW HIRES**

January 2010

A-03-09-29154

AUDIT REPORT



Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.



SOCIAL SECURITY

MEMORANDUM

Date: January 6, 2010

Refer To:

To: The Commissioner

From: Inspector General

Subject: The Social Security Administration's Implementation of the E-Verify Program for New Hires (A-03-09-29154)

OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) use of the E-Verify program for new hires.

BACKGROUND

E-Verify is a Department of Homeland Security (DHS) program that allows participating employers to determine whether newly hired employees are authorized to work in the United States.¹ SSA supports DHS in operating and administering this program. Employers must register with DHS to access E-Verify. Once registered, participating employers can electronically verify employee information taken from the *Employment Eligibility Verification* (Form I-9) against about 455 million records in SSA's Numident² and more than 80 million records in DHS' immigration databases to verify the employment eligibility of both citizen and non-citizen new hires.

The E-Verify program will provide one of the following responses stating that employment eligibility is authorized or employment eligibility is given tentative nonconfirmation (TNC).

- Employment Authorized—The data input by the employer matched the information in SSA's and DHS' databases, and the new hire is authorized to work in the United States.

¹ Authority for the E-Verify program is found in Title IV, Subtitle A, of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, as amended (8 U.S.C. § 1324a note).

² The Numident is a record of identifying information (such as name, date of birth [DoB], date of death, mother's maiden name, etc.) provided by the applicant on his or her *Application for a Social Security Number* (Form SS-5) for an original Social Security number (SSN) and subsequent applications for replacement SSN cards. Each record is housed in the Numident master file.

- SSA TNC—The data input by the employer did not match information in SSA's Numident. If the employee chooses to contest, he or she has 8 Federal workdays to visit a local SSA field office to present documentation required to update or correct the Numident record.
- DHS TNC—The data input by the employer for a noncitizen did not match the information in DHS' immigration records and/or the DHS record shows the new hire is not authorized to work. If the employee chooses to contest, he or she has 8 Federal workdays to contact DHS.³

Memorandum of Understanding

Participating employers must sign an E-Verify Memorandum of Understanding (MoU) that sets forth the points of agreement between DHS, SSA, and the employer regarding the employer's participation in the E-Verify program. In addition, the MoU explains certain features of the E-Verify program and explains the specific responsibilities of DHS, SSA, and the employer. Included under the employer responsibilities are the following requirements.

- The employer agrees to initiate E-Verify procedures for new hires within 3 employer business days *after* each employee has been hired (but *after* both sections 1 and 2 of the Form I-9 have been completed)⁴ and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. The employer is prohibited from initiating verification procedures before the employee has been hired and before the Form I-9 has been completed.
- The employer agrees not to use E-Verify for pre-employment screening of applicants, in support of any unlawful employment practice, or for any other use not authorized by the MoU. Employers must use E-Verify for all new hires, unless an employer is a Federal contractor that qualifies for certain exceptions set forth in the MoU.⁵
- The employer will not verify selectively and will not verify employees hired before the effective date of the MoU. The employer understands that if the employer uses E-Verify procedures for any purpose other than as authorized by the MoU, the employer may be subject to appropriate legal action and termination of its access to E-Verify pursuant to the MoU.

³ For a detailed description of the E-Verify program and some of its new enhancements, see Appendix B.

⁴ See Appendix D for a copy of the Form I-9.

⁵ As of September 8, 2009, Federal contractors were required to use E-Verify to confirm that employees assigned to Federal contracts are allowed to work legally in the United States. Executive Order 13465—Amending Executive Order 12989, as amended, June 2008, 73 FR 33285.

Office of Management and Budget

In August 2007, the Office of Management and Budget (OMB) mandated that all Federal agencies and departments begin verifying their new hires through E-Verify starting no later than October 1, 2007.⁶ According to OMB, the Government has an opportunity to lead by example by using E-Verify to confirm the employment eligibility of its workers. Further, E-Verify not only helps U.S. employers maintain a legal workforce and protect jobs for authorized U.S. workers, it improves the accuracy of wage and tax reporting. To comply with the OMB requirement, SSA registered to use E-Verify beginning in September 2007. As of April 2009, SSA had 172 registered users in SSA Headquarters and its 10 regional offices.

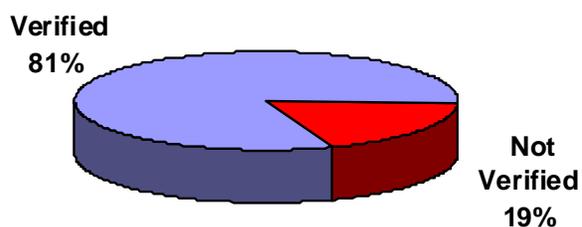
SCOPE AND METHODOLOGY

SSA's Human Resource Management Information System (HRMIS)⁷ showed that for Fiscal Year (FY) 2008 through March 31, 2009, SSA hired 9,311 new employees. To determine whether SSA verified the employment eligibility of these new hires, we obtained the E-Verify transactions SSA submitted from October 1, 2007 to April 30, 2009. See Appendix C for more details about our scope and methodology.

RESULTS OF REVIEW

SSA did not always use the E-Verify program as intended. Specifically, we found that of the 9,311 new employees hired in FYs 2008 and 2009,

Figure 1: Verification of SSA New Hires



- E-Verify was not used to confirm the employment eligibility of 1,767 (19 percent) new hires; 44 of these new hires would have received an SSA TNC response or been referred to DHS had SSA verified them through E-Verify, and
- E-Verify was used to confirm the employment eligibility of 7,544 (81 percent) new hires.

⁶ OMB Memorandum M-07-21, *Verifying the Employment Eligibility of Federal Employees*, August 10, 2007.

⁷ HRMIS is an electronic personnel database that contains information regarding SSA employees and their employment history. It contains information on employees, positions, training, and awards.

In addition, we determined that SSA did not always comply with the requirements of the E-Verify MoU. Specifically, we found that SSA had verified the employment eligibility of 26 existing employees because they had applied for new positions in the Agency. In addition, SSA erroneously verified the employment eligibility of 31 volunteers who were not considered Federal employees for any purpose. Furthermore, we found SSA had verified the employment eligibility of at least 18 external candidates who had applied for jobs at SSA but were not hired. Thus, it appeared the Agency used E-Verify procedures for verifying these individuals prior to their hire date, which is prohibited.

Finally, while SSA verified the employment eligibility of 7,544 new hires, we found that about 3,658 (49 percent) did not appear to be verified timely. The E-Verify MoU requires that employers verify new hires within 3 business days from their date of hire. In analyzing the timeliness of the verifications, we used 7 calendar days (5 business days) as a benchmark to account for the mailing of the Form I-9. Based on the 7 calendar days, we determined that 25 percent of the new hires was verified from 1 to 202 days before the date of hire,⁸ and 24 percent was verified from 8 to 522 days after the date of hire (see Table 1 below).

Table 1: Number of Days Verified Through E-Verify Program

Range of Days Verified	Number of Records	Percent
Verified Before Hire Date		
31 to 202	84	1
9 to 30	1,050	14
1 to 8	740	10
Total	1,874	25
Verified on Time		
0 to 7	3,886	51
Verified After Hire Date		
8 to 30	1,308	17
31 to 100	361	5
101 to 522	115	2
Total	1,784	24
Grand Total	7,544	100

NEW HIRES VERIFIED USING E-VERIFY

Of the 9,311 employees hired in FYs 2008 and 2009, our review of E-Verify records showed SSA verified the employment eligibility of 7,544 (81 percent). The E-Verify program provided an immediate “employment authorized” response for 7,537 of the 7,544 new hires, indicating they were authorized to work in the United States. SSA initially received an SSA TNC response for the remaining seven new hires because the information entered by the employer did not match SSA’s Numident. We determined that five of the seven new hires had a name change but failed to notify SSA. As of

⁸ To assess the timeliness of the verifications, we used the employee’s date of entry because this was the first day that SSA staff would have reviewed and completed the Form I-9.

June 2009, the five new hires had resolved their SSA TNCs. One new hire received an SSA TNC response because it appeared the Numident record included an incorrect spelling of her last name. As of June 2009, the Numident had not been updated, and the SSA TNC had not been resolved. Finally, one new hire received an SSA TNC because her citizenship status showed she was not eligible to work. According to SSA staff, this individual failed to provide the proper work authorization documentation and was terminated in June 2008.

NEW HIRES NOT VERIFIED USING E-VERIFY

SSA did not use E-Verify to confirm the employment eligibility for 1,767 (19 percent) of the 9,311 new hires.⁹ According to the E-Verify MoU, an employer must use E-Verify for all new hires and should not verify selectively. Among the 1,767 new hires, were 1,172 new hires who did not have prior Federal employment, 541 new hires who previously worked for the Government, and 54 new hires who transferred from other Federal agencies with no break in Federal employment. According to SSA staff, transferees who have no break in Federal employment are not required to be verified through E-Verify. SSA relies on the former agency's favorable suitability determination for transferees to determine their eligibility to work, which is permitted in Executive Order 13488.¹⁰ According to SSA staff, the reciprocal recognition for transferees can eliminate the need for SSA to use E-Verify because the employee's employment eligibility should have been confirmed by the former agency. Furthermore, SSA staff stated that, although E-Verify is the Agency's primary resource for identity and work authorization of all new hires, the Agency can also verify work authorization by obtaining an Office of Personnel Management (OPM) background investigation and/or viewing the employee's Numident record.

We reviewed the Numident for the 1,767 new hires to confirm their eligibility to work in the United States. Our review revealed the following.

⁹ SSA hired the 1,767 new employees to fill 162 different positions in the Agency. The top five positions filled were Student Interns, Service Representatives, Claims Representatives, Benefit Authorizers, and Benefit Technical Examiners.

¹⁰ When agencies determine individuals' fitness to perform work as employees in the excepted service or as contractor employees, prior favorable fitness or suitability determinations should be granted reciprocal recognition, to the extent practicable. Agencies making fitness determinations shall grant reciprocal recognition to a prior favorable fitness or suitability determination when (i) the gaining agency uses criteria for making fitness determinations equivalent to suitability standards established by OPM; (ii) the prior favorable fitness or suitability determination was based on criteria equivalent to suitability standards established by OPM; and (iii) the individual has had no break in employment since the favorable determination was made. Executive Order 13488, *Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust*, January 2009, 74 FR 4111.

- For 1,723 new hires, the reported names, SSNs, and DoBs matched the Numident, and the new hires' citizenship status indicated they were eligible to work in the United States.¹¹ These new hires would have received an employment-authorized response had SSA used E-Verify to confirm their employment eligibility.
- For 39 new hires, the names, SSNs, and DoBs in HRMIS matched the Numident, but their citizenship status indicated they may not have been eligible to work in the United States.¹² It is possible these employees were eligible to work but had failed to report changes to their work authorization status to SSA after being issued their SSNs.¹³ They were assigned SSNs from 1963 to 2004 that indicated they were not eligible to work or were foreign-born individuals whose work authorization status was unknown. Had SSA used E-Verify to confirm their employment eligibility, either the Agency would have received an SSA TNC response or the case would have been referred to DHS to determine their eligibility to work. In addition, we found that 10 of the 39 new hires were transferees or former SSA employees. According to SSA staff, while E-Verify cannot be used to verify transferees, SSA has other processes to determine whether transferees are eligible to work. For example, as part of the process for issuing identification badges to employees as required by Homeland Security Presidential Directive (HSPD) 12,¹⁴ SSA reviews the Numident for all employees, including transferees, to verify their identity and eligibility to work.
- For three new hires, the last names in HRMIS did not match the Numident. It is possible either the new hires failed to notify SSA of a name change or SSA was notified but failed to update its records with the name change. These new hires would have received an SSA TNC response from E-Verify indicating their SSNs did not match SSA's Numident.

¹¹ For 16 new hires, the DoB did not match exactly. However, the DoB tolerances used by E-Verify would have resulted in a match response for these 16 new hires.

¹² For two new hires, the DoB did not match exactly, but the DoB tolerances used by E-Verify would have provided a match response. These two new hires would have received a no-match response based on their citizenship status.

¹³ We did not contact DHS to confirm the employment eligibility for the 39 employees. We relied on the information included in SSA's Numident file. Thus, their citizenship status may have changed since SSA assigned their SSNs.

¹⁴ OMB Memorandum M-05-24, Implementation of HSPD 12- *Policy for a Common Identification Standard for Federal Employees and Contractors*, August 5, 2005. HSPD-12 directs the implementation of a new standardized badging process, which is designed to enhance security, reduce identity fraud, and protect the personal privacy of those issued government identification. HSPD 12 requires that Federal agencies conduct background investigation, including Federal Bureau of Investigation fingerprint check for their employees. In addition, Federal employees must provide two forms of identification, one of which must include a photograph.

- For one new hire, the SSN in HRMIS was not assigned to the new hire. It is possible the incorrect SSN entered into HRMIS was the result of a transposition error on behalf of the Agency. We determined the employee's correct SSN was similar to the incorrect SSN entered into SSA's database. This employee would have received an SSA TNC response from E-Verify indicating that her SSN did not match SSA's Numident.
- For one new hire, the reported DoB in SSA's HRMIS did not match SSA's Numident. Our review showed there was a 10-year difference in the reported DoB and the DoB shown on the Numident. The DoB in HRMIS was January 7, 1975, while the DoB on the Numident was January 7, 1985. We discussed this case with SSA staff and they believe the disparity in the DoB occurred because of a typographical error. However, this error would have been discovered had the Agency used the E-Verify program.

VERIFICATION OF NON-SSA EMPLOYEES

We found SSA had verified the employment eligibility of 169 individuals who did not appear to be current SSA employees. These individuals were not included in SSA's human resources records nor did they have SSA wages posted to their earnings records.

A detailed review for 50 of the 169 individuals revealed the following.

- 31 individuals were SSA volunteers. Regional staff stated they occasionally use volunteers to assist with various SSA workloads. SSA accepts voluntary services from participants in student internship programs and certain federally funded vocational rehabilitation and/or training programs. The volunteers are not considered Federal employees for any purpose. However, they may perform SSA work, including duties that require limited access to sensitive information. As such, they are required to undergo the same personnel security and suitability screenings as employees who perform the same or similar duties. Our review showed that several regional offices erroneously used E-Verify to confirm the volunteers' identity and work eligibility status. According to the E-Verify MoU, E-Verify should be used to verify the work eligibility of employees. We believe SSA needs to provide clear guidance to staff reminding them that E-Verify should not be used to verify the work eligibility of volunteers because they are not Federal employees.
- 18 individuals were potential candidates for employment, but SSA did not hire them. As stated previously, the E-Verify program should only be used to verify new hires and cannot be used for any pre-employment screening of job applicants. Therefore, SSA should not have used E-Verify to determine their employment eligibility. SSA needs to remind personnel staff of the E-Verify requirements for verifying new hires.

- 1 individual was an SSA employee whose SSN was transposed. SSA discovered the mistake and resubmitted her information through E-Verify to confirm her eligibility to work.

VERIFICATION OF CURRENT SSA EMPLOYEES

Our review determined that in FYs 2008 and 2009, SSA verified the employment eligibility of 26 current SSA employees who had applied for new positions in the Agency. SSA's HRMIS showed these employees were hired from August 1975 to August 2007. The E-Verify program prohibits an employer from verifying the employment eligibility of its current workforce. According to the MoU, an employer must not verify employees who were hired before the effective date of the MoU. The effective date of SSA's MoU was September 2007. According to SSA staff, the 26 existing employees were verified because they were appointed to new positions in the Agency. We believe SSA needs to provide guidance to staff that clarifies when it is appropriate to verify a new employee to help ensure the Agency is adhering to the E-Verify MoU. The guidance should clearly define who is considered a new hire or an existing employee for the purpose of verification.

TIMELINESS OF VERIFICATIONS

Although SSA verified the employment eligibility of 3,886 (51 percent) of the 7,544 new hires within 7 calendar days, we determined the remaining 3,658 (49 percent) new hires were verified either before they were hired or at least 8 calendar days after they were hired, which is prohibited by the E-Verify MoU (see Table 1).¹⁵ The MoU requires that employers verify new hires within 3 business days after they are hired. In analyzing the timeliness of verifications, we allowed 7 calendar days (5 business days) as a benchmark to account for SSA's Servicing Personnel Offices receiving the Form I-9 from the hiring offices. Among the 3,658 new hires, we found the following.

- 1,874 (25 percent) new hires were verified 1 to 202 days before their date of hire, with a median of 10 days. For example, SSA verified a new employee on December 3, 2007, and HRMIS showed the employee was hired on June 22, 2008. Therefore, SSA verified the employee about 202 days before her date of hire. We contacted regional staff and determined this occurred because the individual was brought on as a volunteer in December 2007 and verified through the E-Verify program at that time. The individual was not classified as an SSA employee until June 2008 when she was hired as a student intern under the Student Temporary Employment Program. In another example, SSA verified an employee on April 14, 2008, and HRMIS showed the employee was not hired until July 20, 2008. Therefore, SSA verified the employee about 97 days before his hire date. We discussed this case with SSA staff and learned the individual had initially accepted SSA's job offer, completed section 1 of the Form I-9, mailed the Form to SSA, and

¹⁵ To assess the timeliness of the verifications, we used the employee's date of entry because this was the first day that SSA staff would have reviewed and completed the Form I-9.

was verified through the E-Verify program at that time. However, the individual subsequently declined the job offer and never reported for duty. This individual later applied and was hired for another position at SSA on July 20, 2008. The E-Verify MoU prohibits an employer from initiating verification procedures before an employee has been hired and both sections of the Form I-9 have been completed. According to the Form I-9, the employee must complete section 1 at the time of employment, and the employer must complete section 2 after they have examined the evidence of identity and employment authorization.¹⁶ Verifying an employee before his date of hire could be perceived as pre-screening, which is prohibited by the MoU.¹⁷

- 1,784 (24 percent) new hires were verified 8 to 522 days after their date of hire, with a median of 17 days. For example, SSA verified an employee on April 16, 2009, but HRMIS showed the employee's date of hire was November 11, 2007 indicating SSA had verified the employee about 522 days after her date of hire. According to SSA staff, the Agency did not always meet the 3-day requirement because of the volume of new hires who had to be entered into E-verify. In addition, the Agency had other competing priorities (for example, conducting background checks and processing payroll transactions) that delayed verifying the new hires.

CONCLUSION AND RECOMMENDATIONS

In FYs 2008 and 2009, SSA (1) did not verify the employment eligibility for about 19 percent of its new hires; (2) did not verify about 49 percent of new hires within 7 calendar days after the new hires' date of hire; and (3) verified the employment eligibility of 26 existing SSA employees, 31 volunteers, and at least 18 job candidates, which was not in accordance with the E-Verify MoU.

We believe by not using E-Verify to confirm the employment eligibility of all its new hires, SSA increases the risk of hiring individuals who are not eligible to work in the United States. Further, we believe SSA needs to set an example for Federal agencies when using E-Verify by making sure all new hires are verified to help maintain a legal workforce, and improve the accuracy of wage and tax reporting. In addition, the Agency needs to ensure it complies with all the E-Verify requirements related to existing employees and job candidates.

¹⁶ An example of the Form I-9 is included in Appendix D.

¹⁷ It should be noted that in July 2009, DHS changed its timeframe rules for verifying the employment eligibility of new hires. Per DHS, the earliest an employer may initiate a query is after an individual accepts an offer of employment and both the employee and employer have completed the Form I-9. In addition, the employer must initiate the query no later than the end of 3 business days after the new hire's actual start date.

Accordingly, we recommend SSA:

1. Ensure the 1,713 new hires discussed in the report are verified through the E-Verify program to confirm their employment eligibility and ensure that SSA has complied with the E-Verify MoU.
2. Establish guidance that reminds staff to follow the E-Verify MoU regarding (1) verifying "all new hires," (2) conducting verification queries within 3 business days after a new employee has reported for duty and both sections of the Form I-9 have been completed, and (3) prohibiting the verification of existing SSA employees and job candidates.
3. Provide written guidance to staff reminding them that E-Verify should not be used to verify the work eligibility of volunteers.
4. Resolve the SSA TNC response and update the Numident record for the one individual whose last name was misspelled on the Numident.

AGENCY COMMENTS

SSA agreed with our recommendations. The full text of the Agency's comments is included in Appendix E.



Patrick P. O'Carroll, Jr.

Appendices

[APPENDIX A](#) – Acronyms

[APPENDIX B](#) – Description of the E-Verify Program

[APPENDIX C](#) – Scope and Methodology

[APPENDIX D](#) – Employment Eligibility Verification (Form I-9)

[APPENDIX E](#) – Agency Comments

[APPENDIX F](#) – OIG Contacts and Staff Acknowledgments

Acronyms

DHS	Department of Homeland Security
DMV	Department of Motor Vehicles
DoB	Date of Birth
FR	Federal Register
FY	Fiscal Year
HRMIS	Human Resource Management Information System
HSPD	Homeland Security Presidential Directive
MoU	Memorandum of Understanding
OMB	Office of Management and Budget
OPM	Office of Personnel Management
Pub. L. No.	Public Law Number
SEVIS	Student and Exchange Visitors Information System
SSA	Social Security Administration
SSN	Social Security Number
TNC	Tentative Nonconfirmation
U.S.C.	United States Code

Forms

Form I-9	Employment Eligibility Verification
Form SS-5	Application for a Social Security Number

Description of the E-Verify Program

E-Verify, formerly known as the Basic Pilot/Employment Eligibility Verification, is a Department of Homeland Security (DHS) program whereby participating employers verify whether newly hired employees are authorized to work in the United States.¹ The Social Security Administration (SSA) supports DHS in operating this program. Employers must register with DHS to access E-Verify. Participating employers input information about the new hire, including his/her name, date of birth (DoB), and Social Security number (SSN), as well as whether the new hire claims to be a U.S. citizen or work-authorized noncitizen (for noncitizens, the DHS-issued alien or admission number is also entered) into the E-Verify program.

The information the employer submits via E-Verify is sent to SSA to verify the name, SSN, and DoB against SSA's Numident² records. SSA also provides DHS an indication of U.S. citizenship, as recorded in SSA's records. DHS confirms the current employment-authorization for non-citizens. The E-Verify program will provide one of the following responses stating that employment eligibility is authorized or employment eligibility is given tentative nonconfirmation (TNC).

- **Employment Authorized**—The data input by the employer matched the information in SSA's and DHS' databases, and the new hire is authorized to work in the United States.
- **SSA TNC**—The data input by the employer did not match information in SSA's Numident. If the employee chooses to contest, he or she has 8 Federal workdays to visit a local SSA field office to present documentation required to update or correct the Numident record.
- **DHS TNC**—The data input by the employer for a noncitizen did not match the information in DHS' immigration records and/or the DHS record shows the new hire is not authorized to work. If the employee chooses to contest, he or she has 8 Federal workdays to contact DHS.

¹ Authority for the E-Verify program is found in Title IV, Subtitle A, of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, as amended (8 U.S.C. § 1324a note).

² The Numident is a record of identifying information (such as, name, DoB, date of death, mother's maiden name, etc.) provided by the applicant on his or her *Application for a Social Security Number* (Form SS-5) for an original SSN and subsequent applications for replacement SSN cards. Each record is housed in the Numident Master File.

As of the end of Fiscal Year 2009, about 156,000 employers, representing about 605,000 locations, were enrolled to use E-Verify. These employers submitted approximately 8.5 million queries during this period.

NEW ENHANCEMENTS TO E-VERIFY

According to DHS officials,³ DHS, in cooperation with SSA, has made several enhancements to E-Verify to improve accuracy rates, ensure E-Verify is fast and easy to use, and ensure efficient and effective verification. Some of the enhancements are discussed below.

Past Program Enhancements

- In September 2007, DHS instituted an automatic flag notice that allows employers to double check the data they entered into the system for those queries that are about to result in a mismatch. The change was to help reduce the number of mismatches that occur because of data entry errors.
- In May 2008, the E-Verify program added the Integrated Border Inspection System that provides real-time arrival and departure information for non-citizens to its databases to prevent mismatches that previously resulted from delays in data entry for persons entering the United States through ports of entry.
- In February 2009, DHS began incorporating passport data into E-Verify to help verify citizenship status information in the event of a mismatch with SSA for citizens who present a United States passport during the Form I-9 process.

Future Program Enhancements

DHS plans to make the following enhancements in FY 2010.

- Incorporate the Student and Exchange Visitors Information System (SEVIS) data into E-Verify to improve E-Verify's ability to automatically verify international students and exchange visitors. By incorporating SEVIS nonimmigrant student visa data into the automatic initial E-Verify check, the number of students and exchange visitors who receive initial mismatches and then have to contest the initial result is expected to reduce.

³ *Interior Enforcement of Immigration Laws: Eliminating Employer Demand for Illegal Immigrants as part of Comprehensive Immigration Reform*, Testimony of Gerri Ratliff, Deputy Associate Director of the National Security and Records Verification Directorate, United States Citizenship and Immigration Services, DHS, before the Senate Committee on the Judiciary Subcommittee on Immigration, Refugee and Border Security, July 21, 2009.

- Expand the types of documents available to the E-Verify system to provide photograph confirmation. Currently, only DHS-issued identity documents are displayed in the photograph tool, but DHS is seeking to expand the types of photographs available in this functionality. This would prevent one possible avenue of identity theft currently used to “game” the system.
- Initiate a State-based Department of Motor Vehicles (DMV) data exchange that would incorporate driver’s license photographs into the photograph tool. This would represent a significant enhancement to the system since new hires most often present a driver’s license for Form I-9 purposes. To date, no State has agreed to add its driver’s license data to the photograph tool. As a first step, DHS plans to add a function to the system that will allow employers to query by driver’s license number. This will confirm the driver’s license number provided by the individual on the Form I-9 and his or her name match in the state DMV’s driver’s license system. This functionality would be available to any state that chooses to participate.
- Enable individuals to choose to “lock” and “unlock” SSNs for E-Verify purposes.⁴ DHS is aware that identity fraud is a serious concern in the United States and is especially concerned with how this practice affects E-Verify and thus the new enhancement should help detect and determine fraud.
- Examine the best ways to validate the legitimacy of employers using the system, the individual registrants applying to use the system, and those using the system after the enrollment phase. Improving the registration portion of the E-Verify program will help ensure that E-Verify has accurate and complete information on those employers using the program.

⁴ Under the DHS proposal, numberholders who have been victims of identity theft would have the option of contacting DHS and requesting their SSN be “locked” within the E-Verify program.

Scope and Methodology

To accomplish our objective, we:

- Reviewed applicable Federal laws, Social Security Administration (SSA) policies and procedures, and the E-Verify User Manual related to the E-Verify program.
- Reviewed the Memorandum of Understanding (MoU) between the Department of Homeland Security (DHS) and the employer that enumerates the specific responsibilities of DHS, SSA, and the employer with respect to the E-Verify program.
- Obtained and reviewed a data extract from SSA's Human Resource Management Information System of 9,311 SSA employees hired from Fiscal Year 2008 through March 31, 2009.
- Obtained and reviewed a data extract of approximately 141,000 former and current SSA employees who were included in the Mainframe Time and Attendance System as of January 2009.
- Obtained and reviewed a data extract of approximately 8,600 SSA employees who were verified through the E-Verify program between October 1, 2007 and April 30, 2009.
- Reviewed the Numident File for the 1,767 new hires who were not verified through E-Verify to confirm the identity and eligibility to work.
- Held discussions with regional staff to determine why new hires were not always verified, existing employees were verified, and new hires were not verified timely.

We found data used for this audit were sufficiently reliable to meet our audit objectives. The entity responsible for the maintenance of the E-Verify program is the Office of Personnel under the Deputy Commissioner for Human Resources. Our work was conducted at the Philadelphia Audit Division, Philadelphia, Pennsylvania, between May and August 2009. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Employment Eligibility Verification (Form I-9)

OMB No. 1615-0047; Expires 06/30/09

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last		First	Middle Initial	Maiden Name
Address (Street Name and Number)			Apt. #	Date of Birth (month/day/year)
City		State	Zip Code	Social Security #
<p>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</p>		<p>I attest, under penalty of perjury, that I am (check one of the following):</p> <input type="checkbox"/> A citizen of the United States <input type="checkbox"/> A noncitizen national of the United States (see instructions) <input type="checkbox"/> A lawful permanent resident (Alien #) _____ <input type="checkbox"/> An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - month/day/year) _____		
Employee's Signature		Date (month/day/year)		

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: _____	OR	_____	_____	_____
Issuing authority: _____		_____	_____	_____
Document #: _____		_____	_____	_____
Expiration Date (if any): _____		_____	_____	_____
Document #: _____		_____	_____	_____
Expiration Date (if any): _____		_____	_____	_____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)	
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.		
Document Title: _____	Document #: _____	Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
--	-----------------------

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: December 30, 2009 **Refer To:** S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: Margaret J. Tittel /s/
Acting Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "The Social Security Administration's Implementation of the E-Verify Program for New Hires" (A-03-09-29154)--INFORMATION

Thank you for the opportunity to review and comment on the draft report. We appreciate OIG's efforts in conducting this review. Attached is our response to the report recommendations.

Please let me know if we can be of further assistance. Please direct staff inquiries to Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Attachment

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, “THE SOCIAL SECURITY ADMINISTRATION’S IMPLEMENTATION OF THE E-VERIFY PROGRAM FOR NEW HIRES” (A-03-09-29154)

We reviewed the draft report and our responses to the specific recommendations are below.

Recommendation 1

Ensure the 1,713 new hires discussed in the report are verified through the E-Verify program to confirm their employment eligibility, and ensure that we have complied with the E-Verify policy.

Comment

We agree that we should verify new hires through E-Verify. In reviewing the 1,713 names OIG identified, we found a number of employees who did not meet the E-Verify criteria. We would like to work with OIG to determine which of the employees it identified meet the E-Verify criteria.

Recommendation 2

Establish guidance that reminds staff to follow E-Verify policy regarding: 1) verifying “all new hires;” 2) conducting verification queries within 3 business days after a new employee has reported for duty and both sections of the Form I-9 have been completed; and 3) prohibiting the verification of existing SSA employees and job candidates.

Comment

We agree. We recently held a meeting with our regions to discuss the E-Verify policy and related instructions. In addition, we are developing guidance to assist staff in following the E-Verify policy and related instructions. We plan to release the guidance by the end of March 2010.

Recommendation 3

Provide written guidance to staff reminding them that E-Verify should not be used to verify the work eligibility of volunteers.

Comment

We agree. We are developing guidance to assist staff in following the E-Verify policy and related instructions. We plan to release the guidance by the end of March 2010.

Recommendation 4

Resolve the SSA Tentative Non-confirmation response and update the Numident record for the one individual whose last name was misspelled on the Numident.

Comment

We agree. We will take the necessary actions to resolve the Tentative Non-confirmation and update the Numident.

OIG Contacts and Staff Acknowledgments

OIG Contacts

Cylinda McCloud-Keal, Director, Philadelphia Audit Division

Acknowledgments

In addition to those named above:

Frank Trzaska, Senior Auditor

Richard Devers, IT Specialist

For additional copies of this report, please visit our web site at www.socialsecurity.gov/oig or contact the Office of the Inspector General's Public Affairs Staff Assistant at (410) 965-4518. Refer to Common Identification Number A-03-09-29154.

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Social Security Advisory Board

Overview of the Office of the Inspector General

The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

Office of Investigations

OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Office of the Counsel to the Inspector General

OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

Office of External Relations

OER manages OIG's external and public affairs programs, and serves as the principal advisor on news releases and in providing information to the various news reporting services. OER develops OIG's media and public information policies, directs OIG's external and public affairs programs, and serves as the primary contact for those seeking information about OIG. OER prepares OIG publications, speeches, and presentations to internal and external organizations, and responds to Congressional correspondence.

Office of Technology and Resource Management

OTRM supports OIG by providing information management and systems security. OTRM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, OTRM is the focal point for OIG's strategic planning function, and the development and monitoring of performance measures. In addition, OTRM receives and assigns for action allegations of criminal and administrative violations of Social Security laws, identifies fugitives receiving benefit payments from SSA, and provides technological assistance to investigations.

Exhibit D

GAO

Testimony before the Subcommittee on
Social Security, Committee on Ways and
Means, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Thursday, June 7, 2007

EMPLOYMENT VERIFICATION

Challenges Exist in Implementing a Mandatory Electronic Verification System

Statement of Richard M. Stana, Director
Homeland Security and Justice Issues





Highlights of [GAO-07-924T](#), a testimony before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives

Why GAO Did This Study

The opportunity for employment is one of the most powerful magnets attracting illegal immigration to the United States. The Immigration Reform and Control Act of 1986 established an employment eligibility verification process, but immigration experts state that a more reliable verification system is needed. In 1996, the former U.S. Immigration and Naturalization Service, now within the Department of Homeland Security (DHS), and the Social Security Administration (SSA) began operating a voluntary pilot program, called the Employment Eligibility Verification (EEV) program, to provide participating employers with a means for electronically verifying employees' work eligibility. Congress is considering various immigration reform proposals, some of which would require all employers to electronically verify the work authorization status of their employees at the time of hire. In this testimony GAO provides observations on the EEV system's capacity, data reliability, ability to detect fraudulent documents and identity theft, and vulnerability to employer fraud as well as challenges to making the program mandatory for all employers. This testimony is based on our previous work regarding the employment eligibility verification process and updated information obtained from DHS and SSA.

www.gao.gov/cgi-bin/getrpt?GAO-07-924T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

EMPLOYMENT VERIFICATION

Challenges Exist in Implementing a Mandatory Electronic Verification System

What GAO Found

A mandatory EEV program would substantially increase the number of employers using the system. As of May 2007, about 17,000 employers have registered to use the current voluntary EEV program, about half of which are active users. If participation in EEV were made mandatory, the approximately 5.9 million employers in the United States may be required to participate. Requiring all employers to use EEV would substantially increase the demands on DHS and SSA resources. DHS estimated that increasing the capacity of EEV could cost it \$70 million annually for program management and \$300 million to \$400 million annually for compliance activities and staff. SSA officials estimated that expansion of the EEV program through this fiscal year would cost \$5 million to \$6 million and noted that the cost of mandatory EEV would be much higher and driven by increased workload of its field office staff that would be responsible for resolving queries that SSA cannot immediately confirm.

DHS and SSA are exploring options to reduce delays in the EEV process. The majority of EEV queries entered by employers—about 92 percent—confirm within seconds that the employee is work authorized. About 7 percent of the queries cannot be immediately confirmed by SSA, and about 1 percent cannot be immediately confirmed by DHS. Resolving these nonconfirmations can take several days, or in a few cases even weeks. DHS and SSA are considering options for improving the system's ability to perform additional automated checks to immediately confirm work authorization, which may be important should EEV be mandatory.

EEV may help reduce document fraud, but it cannot yet fully address identity fraud issues, for example, when employees present borrowed or stolen genuine documents. The current EEV program is piloting a photograph screening tool, whereby an employer can more easily identify fraudulent documentation. DHS expects to expand the use of this tool to all participating employers by September 2007. Although mandatory EEV and the associated use of the photograph screening tool offer some remedy, limiting the number of acceptable work authorization documents and making them more secure would help to more fully address identity fraud.

The EEV program is vulnerable to employer fraud, such as entering the same identity information to authorize multiple workers. EEV is also vulnerable to employer misuse that adversely affects employees, such as employers limiting work assignments or pay while employees are undergoing the verification process. DHS is establishing a new Compliance and Monitoring program to help reduce employer fraud and misuse by, for example, identifying patterns in employer compliance with program requirements. Information suggesting employers' fraud or misuse of the system could be useful to other DHS components in targeting limited worksite enforcement resources and promoting employer compliance with employment laws.

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here today to participate in this hearing on electronic employment verification. As we and others have reported in the past, the opportunity for employment is one of the most powerful magnets attracting unauthorized immigrants to the United States. To help address this issue, in 1986 Congress passed the Immigration Reform and Control Act (IRCA),¹ which made it illegal for individuals and entities to knowingly hire, continue to employ, or recruit or refer for a fee unauthorized workers. The act established a two-pronged approach for helping to limit the employment of unauthorized workers: (1) an employment verification process through which employers verify all newly hired employees' work eligibility and (2) a sanctions program for fining employers who do not comply with the act.²

Following the passage of IRCA, the U.S. Commission on Immigration Reform and various immigration experts indicated a number of problems with the implementation of immigration policies and concluded that deterring illegal immigration requires, among other things, strategies that focus on disrupting the ability of illegal immigrants to gain employment through a more reliable employment eligibility verification process. In particular, the commission report and other studies found that the single most important step that could be taken to reduce unlawful migration is the development of a more effective system for verifying work authorization. In the over 20 years since passage of IRCA, the employment eligibility verification process has remained largely unchanged. The House and Senate are considering legislation to reform immigration laws and strengthen electronic employment verification. Some of this legislation includes proposals that would require implementing a mandatory, functional electronic employment verification program for all employers before other immigration-related reforms could be initiated. Currently, the

¹Pub. L. No. 99-603, 8 U.S.C. § 1324a.

²IRCA provided for sanctions against employers who do not follow the employment verification (Form I-9) process. Employers who fail to properly complete, retain, or present for inspection a Form I-9 may face civil or administrative fines ranging from \$110 to \$1,100 for each employee for whom the form was not properly completed, retained, or presented. Employers who knowingly hire or continue to employ unauthorized aliens may be fined from \$275 to \$11,000 for each employee, depending on whether the violation is a first or subsequent offense. Employers who engage in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens are subject to criminal penalties consisting of fines up to \$3,000 per unauthorized employee and up to 6 months' imprisonment for the entire pattern or practice.

U.S. Citizenship and Immigration Services (USCIS) administers, and Social Security Administration (SSA) supports, a voluntary electronic employment verification program, called the Employment Eligibility Verification (EEV) program.

My testimony today is an update of our prior work regarding employment verification and worksite enforcement. Specifically, I will discuss our observations on the current electronic employment verification program and challenges to making the program mandatory for all employers.

In preparing this testimony, we reviewed our past work on employment verification and worksite enforcement efforts.³ We analyzed updated information provided by U.S. Immigration and Customs Enforcement (ICE), USCIS, and SSA officials on steps they are taking to address weaknesses identified in our prior work, as well as challenges their agencies may face if an electronic employment verification program were made mandatory. We examined regulations, guidance, and other studies on the employment verification process. We also analyzed a report on the results of an independent evaluation of the electronic employment eligibility verification program, then known as the Basic Pilot program, conducted by the Institute for Survey Research at Temple University and Westat in June 2004.⁴ Furthermore, we received updated data on employer use of the current electronic employment eligibility verification system. We reviewed these data for accuracy and completeness and determined that these data were sufficiently reliable for the purposes of our review. We conducted the work reflected in this statement from September 2004 through July 2005 and updated this information in May and June 2007 in accordance with generally accepted government auditing standards.

Summary

A mandatory EEV would necessitate an increased capacity at both USCIS and SSA to accommodate the estimated 5.9 million employers in the

³GAO, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, [GAO-05-813](#) (Washington, D.C.: Aug. 31, 2005).

⁴Institute for Survey Research and Westat, *Findings of the Basic Pilot Program Evaluation* (Washington, D.C.: June 2004).

United States.⁵ As of May 2007, about 17,000 employers have registered for the EEV program, about half of which are active users. USCIS has estimated that a mandatory EEV could cost USCIS \$70 million annually for program management and \$300 million to \$400 million annually for compliance activities and staff, depending on the method for implementing the program. The costs associated with other programmatic and system enhancements are currently unknown. SSA is currently refining its estimates and was not yet able to provide estimates for the cost of a mandatory EEV. According to SSA officials, the cost of a mandatory EEV would be driven by the field offices' increased workload required to resolve queries that SSA cannot immediately confirm.

USCIS and SSA are exploring options to reduce delays in the EEV process. According to USCIS, the majority of EEV queries entered by employers—about 92 percent—confirm within seconds that the employee is authorized to work. About 7 percent of the queries cannot be immediately confirmed by SSA, and about 1 percent cannot be immediately confirmed by USCIS. With regard to the SSA-issued tentative nonconfirmations,⁶ USCIS and SSA officials told us that the majority occur because employees' citizenship or other information, such as name changes, is not up to date in the SSA database. Resolving some DHS nonconfirmations can take several days, or in a few cases even weeks. USCIS and SSA are examining ways to improve the system's ability to use additional automated checks to immediately confirm work authorization.

EEV may help reduce document fraud, but it cannot yet fully address identity fraud issues, for example, when employees present borrowed or stolen genuine documents. The current EEV program is piloting a photograph screening tool, whereby an employer can more easily identify fraudulent documentation. This tool is currently being used by over 70 employers, and USCIS expects to expand the use of the tool to all

⁵In 2004, the most recent year for which data are available, there were approximately 5.9 million firms in the United States. A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control. Under EEV, one employer may have multiple worksites that use the system. For example, a hotel chain could have multiple individual hotels using EEV. This hotel chain would represent one employer using the pilot program.

⁶In general, in cases when the EEV system cannot confirm an employee's work authorization status through the initial automatic check, the system issues the employer either an SSA or a DHS tentative nonconfirmation of the employee's work authorization status, which requires the employee to resolve any data inaccuracies if he or she is able or chooses to do so.

participating employers by the end of summer 2007. Although mandatory EEV and the associated use of the photograph screening tool offer some remedy, further actions, such as limiting the number of acceptable work authorization documents and making them more secure, may be required to more fully address identity fraud.

EEV is vulnerable to employer fraud that diminishes its effectiveness and misuse that adversely affects employees. ICE officials stated that EEV program data could indicate cases in which employers may be fraudulently using the system and therefore would help the agency better target its limited worksite enforcement resources toward those employers. EEV is also vulnerable to employer misuse that adversely affects employees, such as limiting work assignments or pay while employees are undergoing the verification process. USCIS is establishing a new Compliance and Monitoring program to help reduce employer fraud and misuse by, for example, identifying patterns in employer compliance with program requirements. Information suggesting employers' fraud or misuse of the system could be useful to other DHS components in targeting limited worksite enforcement resources and promoting employer compliance with employment laws.

Background

In 1986, IRCA established the employment verification process based on employers' review of documents presented by employees to prove identity and work eligibility. On the Form I-9, employees must attest that they are U.S. citizens, lawfully admitted permanent residents, or aliens authorized to work in the United States. Employers must then certify that they have reviewed the documents presented by their employees to establish identity and work eligibility and that the documents appear genuine and relate to the individual presenting them. In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent. Employers generally are deemed in compliance with IRCA if they have followed the Form I-9 process in good faith, including when an unauthorized alien presents fraudulent documents that appear genuine. Following the passage of IRCA in 1986, employees could present 29 different documents to establish their identity and/or work eligibility. In a 1997 interim rule, the former U.S. Immigration and

Naturalization Service (INS) reduced the number of acceptable work eligibility documents from 29 to 27.⁷

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)⁸ of 1996 required the former INS and SSA to operate three voluntary pilot programs to test electronic means for employers to verify an employee's eligibility to work, one of which was the Basic Pilot Program.⁹ The Basic Pilot Program was designed to test whether pilot verification procedures could improve the existing employment verification process by reducing (1) false claims of U.S. citizenship and document fraud, (2) discrimination against employees, (3) violations of civil liberties and privacy, and (4) the burden on employers to verify employees' work eligibility.

In 2007, USCIS renamed the Basic Pilot Program the Employment Eligibility Verification (EEV) program. EEV provides participating employers with an electronic method to verify their employees' work eligibility. Employers may participate voluntarily in EEV, but are still required to complete Forms I-9 for all newly hired employees in accordance with IRCA. After completing the forms, these employers query EEV's automated system by entering employee information provided on the forms, such as name and Social Security number, into the EEV Web site within 3 working days of the employees' hire date. The program then electronically matches that information against information in SSA's NUMIDENT database and, for noncitizens, DHS databases to determine whether the employee is eligible to work. EEV electronically notifies employers whether their employees' work authorization was confirmed. Those queries that the DHS automated check cannot confirm are referred to DHS immigration status verifiers, who check employee information

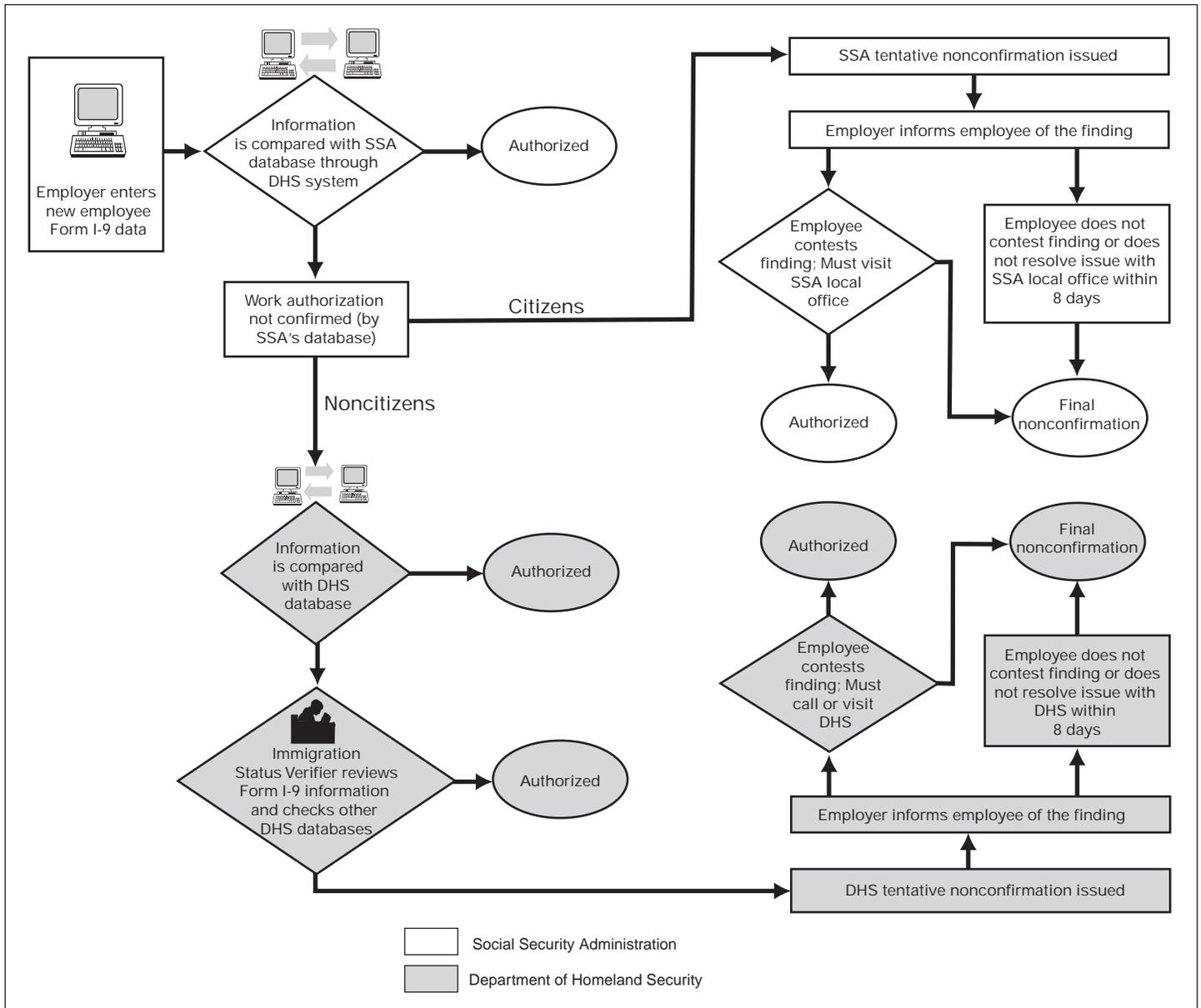
⁷Eight of these documents establish both identity and employment eligibility (e.g., U.S. passport or permanent resident card); 12 documents establish identity only (e.g., driver's license); and 7 documents establish employment eligibility only (e.g., Social Security card).

⁸U.S.C. 1324a(b). IIRIRA was enacted within a larger piece of legislation, the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009.

⁹The other two pilot programs mandated by IIRIRA—the Citizen Attestation Verification Pilot Program and the Machine-Readable Document Pilot Program—were discontinued in 2003 due to technical difficulties and unintended consequences identified in evaluations of the programs. See Institute for Survey Research and Westat, *Findings of the Citizen Attestation Verification Pilot Program Evaluation* (Washington, D.C.: April 2003) and Institute for Survey Research and Westat, *Findings of the Machine-Readable Document Pilot Program Evaluation* (Washington, D.C.: May 2003).

against information in other DHS databases. The EEV process is shown in figure 1.

Figure 1: Electronic Employment Verification Program Verification Process



Source: GAO analysis based on USCIS information.

In cases when EEV cannot confirm an employee's work authorization status either through the automatic check or the check by an immigration status verifier, the system issues the employer a tentative nonconfirmation

of the employee's work authorization status. In this case, the employers must notify the affected employees of the finding, and the employees have the right to contest their tentative nonconfirmations by contacting SSA or USCIS to resolve any inaccuracies in their records within 8 days. During this time, employers may not take any adverse actions against those employees, such as limiting their work assignments or pay. After 10 days, employers are required to either immediately terminate the employment or notify DHS of the continued employment of workers who do not successfully contest the tentative nonconfirmation and those who the pilot program finds are not work-authorized.

The EEV program is a part of USCIS's Systematic Alien Verification for Entitlements Program, which provides a variety of verification services for federal, state, and local government agencies. USCIS estimates that there are more than 150,000 federal, state, and local agency users that verify immigration status through the Systematic Alien Verification for Entitlements Program. SSA also operates various verification services. Among these are the Employee Verification Service (EVS) and the Web-based SSN Verification Service (SSNVS), which can be used to provide verification that employees' names and Social Security numbers match SSA's records. These services, designed to ensure accurate employer wage reporting, are offered free of charge. Employer use is voluntary, and the services are not widely used.

Mandatory EEV Would Require an Increase in Capacity at USCIS and SSA

Mandatory electronic employment verification would substantially increase the number of employers using the EEV system, which would place greater demands on USCIS and SSA resources. As of May 2007, about 17,000 employers have registered to use the program, 8,863 of which were active users,¹⁰ and USCIS has estimated that employer registration is expected to greatly increase by the end of fiscal year 2007. If participation in the EEV program were made mandatory, the program may have to accommodate all of the estimated 5.9 million employers in the United States. USCIS officials estimate that to meet a December 2008 implementation date, this could require about of 30,000 employers to register with the system per day. The mandatory use EEV can affect the capacity of the system because of the increased number of employer queries.

¹⁰Active users are those employers who have run at least one query in fiscal year 2007.

USCIS has estimated that a mandatory EEV could cost USCIS \$70 million annually for program management and \$300 million to \$400 million annually for compliance activities and staff. The costs associated with other programmatic and system enhancements are currently unknown. According to USCIS, cost estimates will rise if the number of queries rises, although officials noted that the estimates may depend on the method for implementing a mandatory program. SSA officials told us they have estimated that expansion of the EEV program to levels predicted by the end of fiscal year 2007 would cost \$5 to \$6 million, but SSA was not yet able to provide us estimates for the cost of a mandatory EEV. According to SSA officials, the cost of a mandatory EEV would be driven by the increased workload of its field office staff due to resolving SSA tentative nonconfirmations.¹¹

A mandatory EEV would require an increase in the number of USCIS and SSA staff to operate the program. For example, USCIS had 13 headquarters staff members in 2005 to run the program and 38 immigration status verifiers available for secondary verification.¹² USCIS plans to increase staff levels to 255 to manage a mandatory program, which includes increasing the number of immigration status verifiers who conduct secondary verifications.¹³ USCIS officials expressed concern about the difficulty in hiring these staff due to lengthy hiring processes, which may include government background checks. In addition, according to SSA officials, a mandatory EEV program would require additional staff at SSA field offices to accommodate an increase in the number of individuals visiting SSA field offices to resolve tentative nonconfirmations. According to SSA officials, the number of new staff required would depend on both the legislative requirements for implementing mandatory EEV and the effectiveness of efforts USCIS has under way to decrease the need for individuals to visit SSA field offices. For this reason, SSA officials

¹¹In general, in cases when the EEV system cannot confirm an employee's work authorization status through the initial automatic check, the system issues the employer a tentative nonconfirmation of the employee's work authorization status.

¹²Thirty-eight immigration status verifiers were available for completing secondary verifications. According to USCIS, at any one time about 3 to 5 immigration status verifiers work to resolve tentative nonconfirmations. The other immigration status verifiers work on other verification programs, such as the Systematic Alien Verification for Entitlements Program.

¹³USCIS officials noted that this does not include staff for monitoring and compliance functions.

told us they have not yet estimated how many additional staff they would need for a mandatory EEV.

USCIS and SSA Are Exploring Options to Reduce Delays in the EEV Process

In prior work, we reported that secondary verifications lengthen the time needed to complete the employment verification process. The majority of EEV queries entered by employers—about 92 percent—confirm within seconds that the employee is authorized to work. About 7 percent of the queries are not confirmed by the initial automated check and result in SSA-issued tentative nonconfirmations, while about 1 percent result in DHS-issued tentative nonconfirmations. With regard to the SSA-issued tentative nonconfirmations, USCIS and SSA officials told us that the majority occur because employees' citizenship status or other information, such as name changes, is not up to date in the SSA database. SSA does not update records unless an individual requests the update in person and submits the required evidence to support the change in its records. USCIS officials stated that, for example, when aliens become naturalized citizens, their citizenship status is often not updated in the SSA database. In addition, individuals who have changed their names for various reasons, such as marriage, without notifying SSA in person may also be issued an SSA tentative nonconfirmation. According to SSA officials, although SSA instructs individuals to report any changes in name, citizenship, or immigration status, many do not do so. When these individuals' information is queried through EEV, a tentative nonconfirmation would be issued, requiring them to go to an SSA field office to show proof of the change and to correct their records in SSA's database.

USCIS and SSA are exploring some options to improve the efficiency of the verification process. For example, USCIS is exploring ways to automatically check for naturalized citizens' work authorization using DHS databases before the EEV system issues a tentative nonconfirmation. Furthermore, USCIS is planning to provide naturalized citizens with the option, on a voluntary basis, to provide their Alien Number or Naturalization Certification Number so that employers can query that information through the EEV system before referring the employees to SSA to resolve tentative nonconfirmations.¹⁴ SSA is also coordinating with USCIS to develop an automated secondary verification capability, which may reduce the need for employers to take additional steps after the

¹⁴According to USCIS, providing these data to employers would be voluntary to help ensure that naturalized citizens are not subject to discrimination.

employee resolves the SSA tentative nonconfirmation.¹⁵ USCIS and SSA officials told us that the agencies are planning to provide SSA field office staff with access to the EEV system so that field office staff can resolve the SSA tentative nonconfirmation directly in the system at the time the employee's record is updated at the field office. According to SSA officials, the automated secondary verification capability is tentatively scheduled to be implemented by October 2007. While these steps may help improve the efficiency of the verification process, including eliminating some SSA tentative nonconfirmations, they will not entirely eliminate the need for some individuals to visit SSA field offices to update records when individuals' status or other information changes.

USCIS and SSA officials noted that because the current EEV program is voluntary, the percentage of individuals who are referred to SSA field offices to resolve tentative nonconfirmations may not accurately indicate the number of individuals who would be required to do so under a mandatory program. SSA and USCIS officials expressed concern about the effect on SSA field offices' workload of the number of individuals who would be required to physically visit a field office if EEV were made mandatory.

EEV May Help Reduce Employee Document Fraud, but Cannot Yet Fully Address Identity Fraud Issues

In our prior work, we reported that EEV enhances the ability of participating employers to reliably verify their employees' work eligibility and assists participating employers with identification of false documents used to obtain employment.¹⁶ If newly hired employees present false information, EEV would not confirm the employees' work eligibility because their information, such as a false name or social security number, would not match SSA and DHS database information. However, the current EEV program is limited in its ability to help employers detect identity fraud, such as cases in which an individual presents borrowed or stolen genuine documents.

USCIS has taken steps to reduce fraud associated with the use of documents containing valid information on which another photograph has been substituted for the document's original photograph. In March 2007, USCIS began piloting a photograph screening tool as an addition to the

¹⁵Currently, once an individual resolves the reason for the SSA tentative nonconfirmation, the employer must then re-query the EEV system in order to finalize the verification.

¹⁶[GAO-05-813](#)

current EEV system. According to USCIS officials, the photograph screening tool is intended to allow an employer to verify the authenticity of a Lawful Permanent Resident card (green card) or Employment Authorization Document that contain photographs of the document holder by comparing individuals' photographs on the documents presented during the I-9 process to those maintained in DHS databases. As of May 2007, about 70 employers have been participating during the pilot phase of the photograph screening tool, and EEV has processed about 400 queries through the tool. USCIS expects to expand the program to all employers participating in EEV by the end of summer 2007.

The use of the photograph screening tool is currently limited because newly hired citizens and noncitizens presenting forms of documentation other than green cards or Employment Authorization Documents to verify work eligibility are not subject to the tool. Expansion of the pilot photograph screening tool would require incorporating other forms of documentation with related databases. In addition, efforts to expand the tool are still in the initial planning stages. For example, according to USCIS officials, USCIS and the Department of State have begun exploring ways to include visa and U.S. passport documents in the tool, but these agencies have not yet reached agreement regarding the use of these documents. USCIS is also exploring a possible pilot program with state Departments of Motor Vehicles.

In prior work we reported that although not specifically or comprehensively quantifiable, the prevalence of identity fraud seemed to be increasing, a development that may affect employers' ability to reliably verify employment eligibility in a mandatory EEV program. The large number and variety of acceptable work authorization documents—27 under the current employment verification process—along with inherent vulnerabilities to counterfeiting of some of these documents, may complicate efforts to address identity fraud. Although mandatory EEV and the associated use of the photograph screening tool offers some remedy, further actions, such as reducing the number of acceptable work eligibility documents and making them more secure, may be required to more fully address identity fraud.

While Most Employers Complied with EEV Procedures, the Program Is Vulnerable to Employer Fraud That Diminishes Its Effectiveness and Misuse That Adversely Affects Employees

EEV is vulnerable to acts of employer fraud, such as entering the same identity information to authorize multiple workers. Although ICE has no direct role in monitoring employer use of EEV and does not have direct access to program information, which is maintained by USCIS, ICE officials told us that program data could indicate cases in which employers may be fraudulently using the system and therefore would help the agency better target its limited worksite enforcement resources toward those employers. ICE officials noted that, in a few cases, they have requested and received EEV data from USCIS on specific employers who participate in the program and are under ICE investigation. USCIS is planning to use its newly created Compliance and Monitoring program to refer information on employers who may be fraudulently using the EEV system, although USCIS and ICE are still determining what information is appropriate to share.

Employees queried through EEV may be adversely affected if employers violate program obligations designed to protect the employees, by taking actions such as limiting work assignments or pay while employees are undergoing the verification process. The 2004 Temple University Institute for Survey Research and Westat evaluation of EEV concluded that the majority of employers surveyed appeared to be in compliance with EEV procedures. However, the evaluation and our prior review found evidence of some noncompliance with these procedures. In 2005, we reported that EEV provided a variety of reports that could help USCIS determine whether employers followed program requirements, but that USCIS lacked sufficient staff to do so. Since then, USCIS has added staff to its verification office and created a Compliance and Monitoring program to review employers' use of the EEV system. However, while USCIS has hired directors for these functions, the program is not yet fully staffed. According to USCIS officials, USCIS is still in the process of determining how this program will carry out compliance and monitoring functions, but its activities may include sampling employer usage data for evidence of noncompliant practices, such as identifying employers who do not appear to refer employees contesting tentative nonconfirmations to SSA or USCIS. USCIS estimates that the Compliance and Monitoring program will be sufficiently staffed to begin identifying employer noncompliance by late summer 2007.

USCIS's newly created Compliance and Monitoring program could help ICE better target its worksite enforcement efforts by indicating cases of employers' egregious misuse of the system. Currently, there is no formal mechanism for sharing compliance data between USCIS and ICE. ICE officials noted that proactive reduction of illegal employment through the

use of functional, mandatory EEV may help reduce the need for and better focus worksite enforcement efforts. Moreover, these officials told us that mandatory use of an automated system like EEV could limit the ability of employers who knowingly hired unauthorized workers to claim that the workers presented false documents to obtain employment, which could assist ICE agents in proving employer violations of IRCA.

Concluding Observations

Although efforts to reduce the employment of unauthorized workers in the United States necessitate a strong employment eligibility verification process and a credible worksite enforcement program and other immigration reforms may be dependent on it, a number of challenges face its successful implementation. The EEV program shows promise for enhancing the employment verification process and reducing document fraud if implemented on a much larger scale, and USCIS and SSA have undertaken a number of steps to address many of the weaknesses we identified in the EEV program. USCIS has also spent the last several years planning for an expanded or mandatory program, and has made progress in several areas, but it is unclear at this time the extent to which USCIS's efforts will be successful under mandatory EEV. It is clear, however, that a mandatory EEV system will require a substantial investment in staff and other resources, at least in the near term, in both agencies. There are also issues, such as identity fraud and intentional misuse, that will remain a challenge to the system. Implementing an EEV system to ensure that all individuals working in this country are doing so legally and that undue burdens are not placed on employers or employees will not be an easy task within the timelines suggested in reform proposals.

This concludes my prepared statement. I would be pleased to answer any questions you and the subcommittee members may have.

GAO Contact and Staff Acknowledgements

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Exhibit E

FINDINGS OF THE WEB BASIC PILOT EVALUATION

September 2007

Report Submitted to:

U.S. Department of Homeland Security
Washington, DC

Prepared by:

Westat
Rockville, Maryland

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EXECUTIVE SUMMARY

A. BACKGROUND

1. INTRODUCTION

This report summarizes the findings of the evaluation of the Web Basic Pilot program,¹ a modified version of the Basic Pilot program – one of the three pilot programs originally mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). These pilot programs were developed to test alternative types of electronic verification systems before considering the desirability and nature of implementing any larger scale employment verification programs. On the basis of findings from prior evaluations, the pilot programs other than the Basic Pilot were terminated. The current Basic Pilot program, referred to in this report as the Web Basic Pilot, incorporates a number of recommended enhancements from the evaluations of the initial pilot programs.

The report's goals are as follows:

- Determine whether the Web Basic Pilot has resulted in the improvements in the automated employment verification process that it was designed to address;
- Determine whether any unexpected problems arose in the process of implementing the new version of the Web Basic Pilot program; and
- Investigate further some general questions about automated employment verification programs that were not fully answered in the previous evaluations of the IIRIRA employment pilot programs.

This report includes information from Federal employees and contractors, Web Basic Pilot employers, employees who initially received tentative nonconfirmations from the Web Basic Pilot, employers that have terminated using the system, and employers that signed up for the program but had not used it within at least 3 months of signing up. It also includes analyses of secondary data, including analyses using the transaction database generated by the Web Basic Pilot program during the verification process.

2. LEGISLATIVE HISTORY

Verification of employee identity and employment authorization became a workplace standard as a result of the Immigration Reform and Control Act of 1986 (IRCA), to accompany implementation of sanctions against employers who knowingly hired

¹ Recently, the name for the Web Basic Pilot has been changed to E-Verify. However, it was known as the Basic Pilot program during most of the time that the evaluation took place and many users still think of it as the Basic Pilot. To avoid unnecessary confusion, this report refers to the current program as the Web Basic Pilot and to the earlier, modem-based program as the original Basic Pilot program. References to the Basic Pilot program apply to both programs.

unauthorized workers. A related provision was also enacted that protected employees from employer discrimination based on national origin or citizenship status.

Because of concerns about how the IRCA policies might be implemented, Congress required monitoring of the programs and a series of General Accounting Office (GAO)² and Executive Branch reports on their impacts. These reports found that the new provisions had led to unintended consequences, including employer confusion and proliferation of fraudulent documents. GAO found in its 1990 report that employer sanctions had also led to a pattern of discriminatory employer practices.

Recommendations ensued to improve the verification process by increasing employer education, reducing the number of documents acceptable for verification purposes, and making the documents that could be used in the verification process more secure.

Congress also provided for the testing of alternative verification systems that might be more effective than the system provided in IRCA. The pilot programs implemented used similar procedures and the same Immigration and Naturalization Service (INS) database as the INS Systematic Alien Verification for Entitlements (SAVE) Program, which verifies the status of noncitizen applicants for certain Federal and State benefit and licensing programs.

In 1994, the Commission on Immigration Reform called for the Social Security Administration (SSA) and INS to institute a national registry combining both agencies' data for use in electronic employment verification. Although SSA and INS determined that this specific recommendation was not practical at that time, they did find it possible to test electronic verification for all newly hired employees using each agency's data separately for a small number of pilot employers. This approach to verification formed the basis for the three IIRIRA employment pilot programs. Of those pilot programs, after testing and evaluation, only the Basic Pilot program was continued. This program began in November 1997 and continued in its original PC/modem format until July 2005.

3. DESCRIPTION OF THE WEB BASIC PILOT

The Web Basic Pilot is a voluntary national program first made available to employers in June 2004. In July 2005, the original version of the Basic Pilot was terminated, making the Web Basic Pilot the only U.S. Citizenship and Immigration Services (USCIS) electronic employment verification program available to employers.

After registering for the Web Basic Pilot, signing a Memorandum of Understanding (MOU) with USCIS and SSA, and completing required on-line training, participating employers should complete a USCIS Form I-9 and perform electronic verification of every newly hired employee. To verify a newly hired employee, the employer submits information (Social Security number, name, date of birth, citizenship or alien status, and, if relevant, Alien number) from the Form I-9 to SSA over a secure connection to the Internet. This information goes first to SSA and then, for noncitizens, to USCIS.

² Now the Government Accountability Office.

If the SSA database does not match the employee information entered, SSA issues a tentative nonconfirmation finding. If the person claims to be a U.S. citizen and the information submitted matches the SSA information, the employer is instantaneously notified that the employee is work-authorized.

If the employee claims to be a noncitizen and the SSA database information matches the employee information, the employee information is sent to USCIS electronically. If the employee information matches USCIS information and indicates that the person is authorized to work in the United States, the employer is instantaneously notified that the employee is work-authorized. If the USCIS electronic check does not confirm work authorization, an Immigration Status Verifier (ISV) checks additional information available in USCIS databases to verify work authorization and provides an electronic response to the employer, usually within 24 hours. If the ISV cannot confirm work authorization, USCIS issues a tentative nonconfirmation finding.

When a tentative nonconfirmation is issued, employers are required to inform affected employees in writing of the finding and the right to contest the finding. If any discrepancies with SSA or USCIS records are straightened out, the employees are found to be work-authorized. When employees do not contest tentative nonconfirmations or fail to contact SSA or USCIS within 10 Federal working days, the Web Basic Pilot system issues final nonconfirmation findings and, to comply with the law, employers are expected to terminate the workers' employment.

The Web Basic Pilot differs from the original Basic Pilot program in the following ways:

- The Web Basic Pilot uses the Internet to register new employers, provide users with training in how to use the system, and communicate with employers.
- The training materials have been redesigned, and employer staff are now required to pass a Mastery Test on the material presented in the training module before being permitted to use the system.
- New edit checks have been added to the system to decrease the number of employer input errors.

The Web Basic Pilot is not a static system; the Federal government has made changes to the system since its introduction in June 2004 and continues to make and plan for additional enhancements. For example, USCIS is currently running a pilot program designed to increase the Web Basic Pilot's potential to detect identity fraud through the use of photographs. If this proves to be useful and is implemented for all employers, it would significantly affect the current program and would need additional evaluation to determine its effect.³

³ Evaluation of this pilot program is beyond the scope of the current evaluation.

4. WEB BASIC PILOT EVALUATION QUESTIONS

The goals, objectives, and resulting research questions of the Web Basic Pilot evaluation reflect, in large part, the goals and objectives of the earlier evaluations:

- How well did the Federal government implement modifications to the original Basic Pilot program in developing the Web Basic Pilot program?
 - Were the modifications to the original Basic Pilot that were designed to better meet employer needs reflected in increased employer satisfaction?
 - Were the modifications to the original Basic Pilot that were designed to reduce employer confusion and noncompliance with pilot requirements effective in increasing employer compliance?
- Is the Web Basic Pilot effective in meeting pilot program goals?
 - Does the Web Basic Pilot reduce employment of unauthorized workers?
 - Does the Web Basic Pilot reduce discrimination?
 - Does the Web Basic Pilot protect employee civil liberties and privacy?
 - Does the Web Basic Pilot prevent undue burden on employers?

B. RESEARCH METHODS FOR THE WEB BASIC PILOT EVALUATION

1. EVALUATION APPROACHES

Prior to the first IIRIRA pilot evaluation, a series of meetings was held at which congressional and Federal administrators, employers, representatives of immigrant advocacy groups, and other stakeholders contributed their views on the major issues facing the pilot programs. Because of the complexity of these issues, the evaluations have used multiple approaches to obtain the information needed to answer the evaluation questions. The current evaluation of the Web Basic Pilot is more limited in scope than the original Basic Pilot evaluation. However, like the original evaluation, it uses several approaches. The evaluation components are as follows:

- Web surveys of 1,030 employers that had signed MOUs at least 1 year earlier and had used the system in specified months prior to the survey, 402 employers that had signed an MOU in November or December 2006 and had submitted one or more cases in March 2007, and 70 small employers that used the Web Basic Pilot in the first quarter of 2007.
- Analysis of Web Basic Pilot system transaction data entered by employers and the Federal government, supplemented by additional information from SSA records. In addition to the full transaction database, the evaluation used information extracted from the full database for those employers transmitting cases in each of

the 6-month periods from October 2004 through March 2007. This longitudinal database enabled the evaluation team to conduct analyses unaffected by changes in the composition of employers participating over time.

- Case studies, including on-site in-person interviews with five employers, record reviews for 376 of their employees that the transaction database indicated had received tentative nonconfirmation findings, and in-person interviews with 79 of these employees.
- Unstructured interviews with 18 employers that had either formally terminated use of the Web Basic Pilot or had signed an MOU but never used the system.
- System testing to determine the ease of use of the Web Basic Pilot from the employer's perspective.
- Meetings with Federal program officials knowledgeable about and experienced with the pilot programs.

Key findings from the multiple approaches were cross-checked to determine their consistency and, where possible, the reasons for any differences.

2. DATA LIMITATIONS

Survey data are always subject to inaccuracies due to a variety of factors, such as respondent inability to understand questions or provide accurate answers for one reason or another; the surveys of Web Basic Pilot employers are, of course, subject to these limitations. The case study component of the evaluation and the interviews with non-users were designed to give a more in-depth understanding of the program than can be obtained from structured interviews alone rather than to be statistically representative of all employers. Information from small employers completing the Web survey and information from interviews with non-users also cannot be considered statistically representative.

Information obtained directly from the transaction database is based on all 3.5 million cases (defined as a single hiring of a specific individual by a specific employer) on that database for the period of June 2004 through March 2007 or on specific subgroups of these cases (such as all foreign-born U.S. citizens or all noncitizens). The longitudinal transaction database includes information for close to 1 million transactions for the 544 employers that transmitted cases for each 6-month period between October 2004 and March 2007. Although sampling errors are not an issue for these databases, they are subject to other types of error, resulting, for example, from data input errors or errors made in the process of cleaning the transaction database.

In some situations, it was not possible to obtain direct measures of key variables of interest. Where possible, the evaluation uses model-based estimates of these variables or uses indicators that can be considered indirect measures of the variables. For example, the erroneous tentative nonconfirmation rate for all work-authorized workers verified

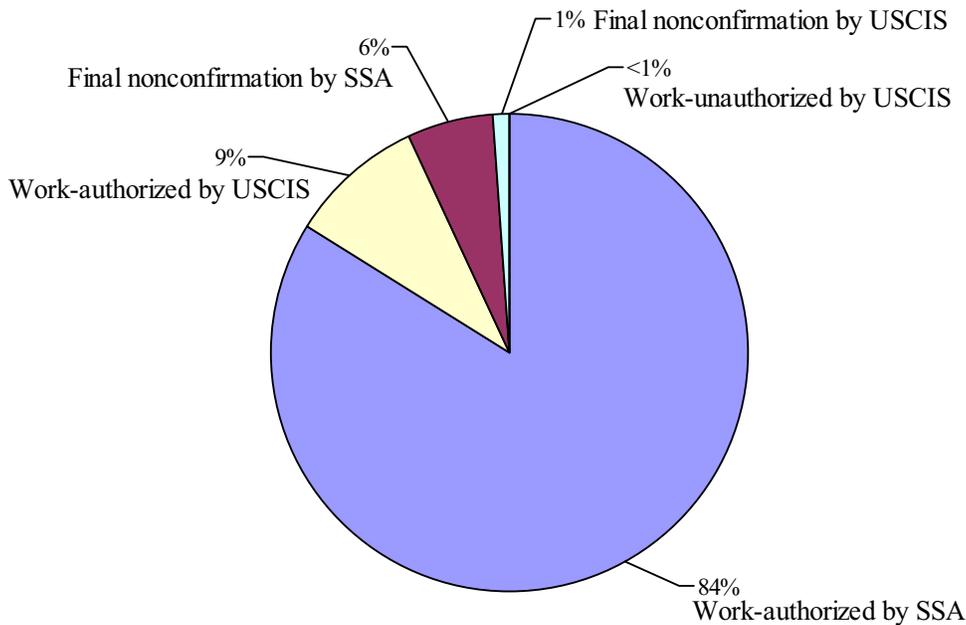
cannot be measured directly, since the evaluation team has no way to determine accurately which employees are work-authorized. Instead, the erroneous tentative nonconfirmation rate for employees found to be work-authorized at any stage of the verification process is used as an indicator of the desired rate, even though this rate is lower than the desired rate. Model-based estimates and indicators should be viewed as rough estimates of information that cannot be directly measured.

C. WAS THE WEB BASIC PILOT PROGRAM IMPLEMENTATION CONSISTENT WITH STAKEHOLDER EXPECTATIONS?

1. BACKGROUND

To answer the process evaluation questions in this section, it is necessary to have an understanding of what the system outcomes were. Exhibit 1 shows the frequency of the case outcomes from June 2004 through March 2007. During this time, employers made almost 3.5 million verification attempts, 84 percent of which were for workers verified by SSA as being work-authorized. Another 9 percent of the cases were verified by USCIS as being individuals authorized to work. Seven percent of all verification attempts were never resolved (labeled “Final nonconfirmation by SSA” or “Final nonconfirmation by USCIS”). For these cases, tentative nonconfirmation responses from SSA or USCIS were not contested, either because the employees decided not to contest or because their employers did not follow the proper notification procedures. In addition, about 0.2 percent (7,636 cases) were found by USCIS to be unauthorized to work in the United States.

Exhibit 1: Overall Finding of Outcomes from the Web Basic Pilot Program



SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

2. HOW WELL DID THE FEDERAL GOVERNMENT DESIGN AND IMPLEMENT THE WEB BASIC PILOT?

The key implementation findings related to the Federal government's design and implementation of the Web Basic Pilot program are as follows:

- The Web Basic Pilot instantly verified the work-authorization status of employees more frequently than did the original Basic Pilot program. From June 2004 through March 2007, 92 percent of cases were initially found to be work-authorized, compared to 79 percent in the original Basic Pilot.⁴
- The accuracy of the USCIS database used for verification has improved substantially since the start of the Basic Pilot program. However, further improvements are needed, especially if the Web Basic Pilot becomes a mandated national program – improvements that USCIS personnel report are currently underway. Most importantly, the database used for verification is still not sufficiently up to date to meet the IIRIRA requirement for accurate verification, especially for naturalized citizens. USCIS and SSA accommodate this problem by providing for a manual review of these cases. This review is time consuming and can result in discrimination against work-authorized foreign-born persons during the period that the verification is ongoing, if employers do not follow procedures designed to protect employee rights.
- Although the Web Basic Pilot software includes a number of new editing features designed to reduce employer data entry errors, there is opportunity for further improvements in the edit checks and in encouraging employers to double-check their data entry prior to submitting data to the system. However, it must be recognized that employee and employer data entry errors cannot be completely eliminated, and the program must address the best way of handling such errors when they do occur.
- The technical changes made in the Web Basic Pilot appear to have reduced employer burden and improved employer satisfaction. Employers expressed satisfaction with many aspects of the new features of the Web Basic Pilot. For example, almost all employers reported that the on-line registration process was easy to complete and that the on-line tutorial adequately prepared them to use the system. Furthermore, a large majority of the long-term employers surveyed (88 percent) that have had experience with both the original Basic Pilot and the Web Basic Pilot reported that the benefits of the Web Basic Pilot verification system are greater than those of the original Basic Pilot.
- Although the number of employers using the pilot program and the number of transactions transmitted to the system have increased since the original Basic Pilot evaluation, most U.S. employers have not volunteered to use the pilot program

⁴ These percentages differ from data reported by USCIS because cases closed in error and other queries identified as duplicates have been deleted.

and some that have signed up for it have never used it, placing limitations on its effectiveness in preventing unauthorized employment on a national basis.

- Most employers using the Web Basic Pilot found it to be an effective and reliable tool for employment verification and indicated that the Web Basic Pilot was not burdensome. However, a few employers reported experiencing some difficulties with the Web Basic Pilot, such as unavailability of the system during certain times, problems accessing the system, or training new staff to do verifications using the system.
- Some employers believe that they lose their training investment as a result of electronic employment verification through the Web Basic Pilot process, because they are not allowed to take adverse actions against employees while the employees are contesting the tentative nonconfirmation finding or because they have to terminate employees whose work authorization cannot be confirmed.
- Some employers have terminated their use of the Basic Pilot system or have not used it after signing the MOU because of the burden they perceive to be imposed by the program.

3. IS ELECTRONIC EMPLOYMENT VERIFICATION THROUGH THE WEB BASIC PILOT WORKING BETTER THAN WHEN THE ORIGINAL BASIC PILOT EVALUATION WAS CONDUCTED?

Major findings about how well the Web Basic Pilot is working compared to the original Basic Pilot include the following:

- As expected, the Web Basic Pilot was considerably less expensive for employers to set up and operate than the original Basic Pilot program.
- Training materials and requirements to pass the tutorial were also improved from those in the original Basic Pilot. However, additional changes to the tutorial could potentially further improve its effectiveness.

4. HAVE EMPLOYERS GENERALLY COMPLIED WITH WEB BASIC PILOT REQUIREMENTS?

Major findings about employer compliance with the Web Basic Pilot include the following:

- The Web Basic Pilot changes appear to have increased employer compliance with program procedures compared to the original Basic Pilot program. However, the rate of employer noncompliance is still substantial, which decreases the ability of the program to reduce unauthorized employment and diminishes the effectiveness of safeguards designed to protect the rights of work-authorized employees who obtain erroneous tentative nonconfirmations. Since work-authorized foreign-born employees are more likely than U.S.-born employees to receive tentative

nonconfirmation erroneously, the result is increased discrimination against foreign-born employees. The more serious types of noncompliance include the following:

- Not all employers followed Web Basic Pilot procedures with respect to training employees on the Web Basic Pilot system, increasing the likelihood of more serious forms of noncompliance with pilot procedures. This occurs when staff responsible for verifications circumvent the tutorial by assuming another employee's user identification information.
- Some employers used the Web Basic Pilot to screen job applicants. This activity is prohibited by statute, at least in part due to a concern that employers would fail to hire employees receiving erroneous tentative nonconfirmations, thereby discriminating against foreign-born employees. However, some employers that prescreen do allow job applicants the opportunity to contest tentative nonconfirmations, partially mitigating the seriousness of prescreening.⁵
- Employers do not always follow the legal requirement to promptly terminate the employment of employees receiving final nonconfirmation findings.
- Some employers did not notify employees of tentative nonconfirmation findings at all, did not notify employees in writing, or did not explain the process adequately to their employees, thereby making it difficult or impossible for employees to contest the finding and denying them their rights.
- Some employers encouraged employees they believed not to be work-authorized to say they would contest a tentative nonconfirmation so they could extend the length of time they worked.
- There was evidence that a small number of Web Basic Pilot employers discouraged employees with tentative nonconfirmations from contesting, which may result in work-authorized employees unfairly losing their jobs.
- Some employers took prohibited adverse actions against employees while they were contesting tentative nonconfirmation findings. These actions included restricting work assignments, delaying training, reducing pay, or requiring them to work longer hours or in poor conditions. In the case of employers screening job applicants, delays in hiring may occur.
- Employers did not consistently post the Web Basic Pilot notice, as required, in an area where it is likely to be noticed by job applicants.

⁵ Even when job applicants are notified of their rights to appeal, applicants wishing to contest tentative nonconfirmations may well experience consequences during the contesting period if they are not permitted to work during this time, while other applicants are hired immediately.

- It was not unusual for employers to fail to adhere to some procedural requirements, such as the requirement to enter closure codes. While this had little direct impact on employees, it dilutes the effectiveness of the transaction data for evaluation and monitoring purposes.

D. DID THE WEB BASIC PILOT ACHIEVE ITS PRIMARY POLICY GOALS?

1. BACKGROUND

To understand the policy implications of the Web Basic Pilot program, it is helpful to understand the program's expected effects on unauthorized employment and discrimination from the viewpoint of the IIRIRA pilot program designers.

a. UNAUTHORIZED EMPLOYMENT

The Web Basic Pilot is designed to be more effective than the paper Form I-9 process in deterring unauthorized employment. For instance, it detects counterfeit fraud in which the employee's documents contain fictitious information. However, the current Web Basic Pilot cannot substantially improve employers' ability to detect fraud when borrowed or stolen documents with information that could reasonably appear to be related to the worker presenting them are used to prove work authorization nor when employers do not check work-authorization documents carefully, either by design or because of lax procedures. It also cannot detect counterfeit documents that contain information about work-authorized persons.⁶ Thus, the Web Basic Pilot program should decrease the ease with which noncitizens without work authorization can obtain employment but as currently designed will not eliminate the employment of such workers.

b. DISCRIMINATION

In this document, discrimination is defined as adverse treatment of individuals based on group identity. In employment, discrimination refers to differential treatment based on characteristics, such as citizenship or ethnicity, that are unrelated to productivity or performance. Discrimination can occur because employers intentionally treat members of a group protected by law differently than others. However, it can also occur unintentionally if employers' actions have a disparate impact on protected group members.

Compared to the Basic Pilot program, the Web Basic Pilot could potentially result in less discrimination associated with tentative nonconfirmations issued to work-authorized employees because of improvements in the tutorial and information resources available over the Web that are designed to ensure that employers understand their responsibilities. Furthermore, the edit checks included in the system should reduce data entry errors that would have otherwise led to tentative nonconfirmations, decreasing the rate of erroneous tentative nonconfirmations.

⁶ USCIS is currently running a pilot Photo Screening Tool designed to increase the Web Basic Pilot's potential to detect counterfeit documents that contain valid information about work-authorized persons.

2. WHAT HAS THE IMPACT OF THE WEB BASIC PILOT PROGRAM BEEN ON THE EMPLOYMENT OF UNAUTHORIZED WORKERS?

The major evaluation findings about the impact of the Web Basic Pilot on unauthorized employment are as follows:

- The evaluation team estimates that approximately 5 percent of employees verified through the Web Basic Pilot program in the first half of fiscal year (FY) 2007 were employees without work authorization who were either found to be not work-authorized or received a final nonconfirmation. When the employment of these employees is terminated, as required by law, the employment of employees without work authorization at participating employers is reduced.
- The fact that most employers do not currently use the Web Basic Pilot program diminishes the effectiveness of the program because employees found to be without work authorization can seek employment with non-pilot employers. Currently, it is estimated that no more than 4 percent of newly hired workers are being verified with the system.

3. IS THE WEB BASIC PILOT PROGRAM PROTECTING AGAINST VERIFICATION-RELATED DISCRIMINATION?

The major evaluation findings about the impact of the Web Basic Pilot on verification-related discrimination are as follows:

- Although most Web Basic Pilot users reported that the Web Basic Pilot made them neither more nor less willing to hire immigrants, the percentage of employers that said they were more willing to hire immigrants was greater than the percentage saying it made them less willing, presumably leading to a net decrease in hiring discrimination against immigrants.
- As anticipated by immigrant rights advocates, foreign-born work-authorized employees are more likely to receive tentative nonconfirmations than are U.S.-born employees, thereby subjecting a greater percentage of foreign-born work-authorized employees to potential harm arising from the Web Basic Pilot process. For U.S.-born employees authorized at some point during the verification process, 0.1 percent received tentative nonconfirmations prior to verification; for foreign-born employees, the rate was 3.0 percent.
- Foreign-born U.S. citizens are considerably more likely to receive erroneous tentative nonconfirmations than are work-authorized foreign-born persons who have not become U.S. citizens. Among foreign-born employees verified by the Web Basic Pilot in October 2006 through March 2007, the percentage of ever-authorized employees found to be work-authorized after a tentative nonconfirmation was 1.4 percent for noncitizens compared to 9.8 percent for

naturalized citizens.⁷ Reducing the erroneous tentative nonconfirmation rate for naturalized citizens will take considerable time and will require better data collection and data sharing between SSA, USCIS, and the U.S. Department of State than is currently the case.

- Tentative nonconfirmations have negative consequences for work-authorized employees for two reasons. First, there are very real costs and burdens associated with adverse actions that some employers take against employees receiving tentative nonconfirmations, even though such adverse actions are prohibited by statute. Second, there are burdens such as lost pay associated with visiting an SSA office and, generally to a lesser extent, contacting USCIS.

4. HOW WELL IS THE WEB BASIC PILOT PROGRAM DOING IN SAFEGUARDING PRIVACY?

The major evaluation findings about the impact of the Web Basic Pilot on privacy are as follows:

- There is little increased risk of misuse of Web Basic Pilot information by Federal employees.
- One possible weakness of the system is that under current procedures employers joining the Web Basic Pilot are not verified against any type of listing of employers; therefore, anyone wanting access to the system could pose as an employer and get access to the system by signing an MOU. While there is no evidence that this has happened, SSA experience with the Social Security Number Verification Service program, which permits employers to verify the validity of their employees' Social Security numbers, suggests that it is a very real possibility, particularly as more employers join the program.
- Employers did not consistently convey information about Web Basic Pilot tentative nonconfirmations to employees in a private setting.

5. DOES THE WEB BASIC PILOT PROGRAM AVOID UNDUE EMPLOYER BURDEN?

The majority of employers reported that they spent \$100 or less in initial set-up costs for the Web Basic Pilot and a similar amount annually for operating the system. These costs

⁷ These figures underestimate the total erroneous tentative nonconfirmation rates because tentative nonconfirmations for work-authorized workers who do not contest the tentative nonconfirmation are not included, since there is not an easy way to identify these workers. Using a model-based estimate for the percentage of final nonconfirmation cases that would have been found work-authorized if all final nonconfirmation cases had been resolved, the erroneous tentative nonconfirmation rate for all workers was estimated to be 0.81 percent compared to the erroneous tentative nonconfirmation rate for ever-authorized employees of 0.53 percent for October 2006 to March 2007. Unfortunately, there is no available information on the place of birth and citizenship status for many of the persons with tentative nonconfirmations, making it difficult to estimate the percentage not work-authorized by place of birth and citizenship status.

were considerably below those for the original Basic Pilot. Furthermore, as discussed above, most employers were satisfied with the program and reported that the benefits of using the Web Basic Pilot outweighed its disadvantages.

E. WHAT HAVE BEEN THE IMPACTS OF CHANGES TO THE WEB BASIC PILOT SINCE ITS INCEPTION?

1. BACKGROUND

The Web Basic Pilot Program is not a static system. SSA and USCIS have made a number of changes to the program between its inception in June 2004 and the present time. Other changes in the program have occurred because of factors outside the program itself. It is, therefore, of interest to examine trends in the Web Basic Pilot program and its outcomes since its implementation in June 2004.

2. PROGRAM USAGE

The Web Basic Pilot has grown dramatically since its inception. The number of employers transmitting cases grew from 1,533 during the first half of FY2005 to 5,689 in the first half of FY2007. The percentage of verifications has grown even more rapidly, reaching over 1 million by the first half of FY2007. However, no more than 4 percent of newly hired U.S. workers were verified using the Web Basic Pilot during the first half of FY2005.

3. CHARACTERISTICS OF EMPLOYERS USING THE PROGRAM AND PERSONS BEING VERIFIED

Generally, the employers using the Web Basic Pilot are now more similar to their national counterparts in terms of industry, size, geographic location, and percentage of immigrants than at the beginning of the Web Basic Pilot program. Similarly, the characteristics of persons being verified are more similar. One significant exception to this rule is that the percentage of employers in employment services and the percentage of workers verified by employers providing employment services have become increasingly different from the national numbers. In the first half of FY2007, 50 percent of verifications were done by employers engaged in employment services compared to 3.1 percent of newly hired workers. During this same period, the percentage of employers engaged in employment services rose from 24.7 percent in the first part of FY2005 to 35.5 in the first half of FY2007.

4. CHANGES IN DATA ACCURACY

On October 21, 2005, procedures for verifying noncitizens in the Web Basic Pilot Program were changed. Under these changed procedures, all noncitizen cases are referred to USCIS if the information on their name and date of birth is consistent with the Social Security number in SSA's records. Prior to the change, SSA was able to confirm work authorization for noncitizens when their records indicated that the noncitizen had permanent work authorization. These changes appear to have resulted in a desired

increase in the Basic Pilot's ability to detect employees without work authorization but also led to an undesired increase in the erroneous tentative nonconfirmation rate for noncitizens.

The overall erroneous tentative nonconfirmation rate for ever-authorized employees has declined. However, large differences in the error rates for U.S.-born and foreign-born employees remain. Furthermore, foreign-born citizens are more likely than noncitizens to have erroneous tentative nonconfirmations.

Similarly, the overall percentage of cases authorized automatically has increased over time. Yet, there are significantly different rates between noncitizen cases and citizen cases. On average, 96 percent of employees attesting to being U.S. citizens were found to be work-authorized automatically, while, on average, 72 percent of cases in which the employee attested to being a lawful permanent resident and 63 percent of cases in which the employee attested to being an alien authorized to work were authorized automatically.

Although the trend for the percentage of workers authorized automatically has been increasing and the trend for the erroneous tentative nonconfirmation rate has been decreasing since the inception of the program, a substantial part of this change appears to be attributable to changes in the characteristics of employees being verified. Examination of differences between the workers verified in the Web Basic Pilot program and the characteristics of newly hired workers nationally indicates that employees currently being verified have become considerably more like newly hired workers nationally. This suggests that future changes in the characteristics of workers verified will not result in further significant improvements in the trends in workers authorized automatically and erroneous tentative nonconfirmations without continuing programmatic improvements.

5. CHANGES IN EMPLOYER SATISFACTION AND COMPLIANCE

The data from the employer surveys indicated that satisfaction and compliance levels were lower among recently enrolled users than among long-term users. It appears that at least part of these differences can be attributed to the changing characteristics of employers signing up for the Web Basic Pilot program. As the program expands and Web Basic Pilot employers become increasingly like the national population of employers, it appears likely that these downward trends in satisfaction and compliance will continue unless counteracted by other program changes.

F. RECOMMENDATIONS FOR IMPROVING THE WEB BASIC PILOT PROGRAM

Recommendations for improving the Web Basic Pilot are divided into categories, and the primary recommendations for each category are presented below.

Address the high tentative nonconfirmation rate for foreign-born U.S. citizens by:

- Improving the interface between USCIS and SSA databases to more easily share information on naturalized citizens already on the USCIS databases, as well as information about new citizens in the future.
- Collecting Social Security numbers for all persons at the time they apply for naturalization, including children who derive citizenship from their parents' naturalization.
- Obtaining citizenship information from the U.S. Department of State's Passport Agency when it first documents that a foreign-born person has derived U.S. citizenship.
- Updating USCIS electronic records to reflect U.S. citizenship status by inputting pre-1996 naturalization and citizenship information, as well as Social Security numbers available in retired paper Alien files, and then sharing the information with SSA.
- Modifying the tentative nonconfirmation procedures to allow employees receiving initial SSA tentative nonconfirmations because their citizenship status could not be verified to provide their prior Alien numbers so that USCIS records can be checked.
- Implementing outreach efforts to encourage naturalized citizens to notify SSA of their change in citizenship status.

Continue exploration of ways to decrease identity fraud by:

- Determining how photographs, fingerprints, or other biometric checks can be incorporated into the Web Basic Pilot system for *all* employees.
- Balancing an improved ability to deter unauthorized employment against the potentially undesirable impacts of such a program, including increased discrimination and privacy violations.

Consider legislative changes to:

- Extend the time to enter information for new employees.
- Modify procedures related to prescreening by implementing one of the following options:
 - Allowing prescreening;
 - Defining "hire" to mean job offer (or offer and acceptance) and allowing employers to delay the start of work until after verification is completed; or

- *Requiring* employers to delay the start of work until after verification is completed.
- Alter the Web Basic Pilot program to expedite the tentative nonconfirmation process when Social Security numbers likely to be fraudulent are identified.
- Permit employers to verify employees with documents that are expected to expire shortly.

Make the following system changes:

- Institute a process through which tentative nonconfirmations resulting from SSA mismatches are controlled through an automated SSA system similar to that used by USCIS.
- Further automate the USCIS verification process by:
 - Automating as much as possible the work done by ISVs to manually check databases other than the Verification Information System at the second stage; and
 - Modifying software used to generate case lists for ISVs to delete duplicate cases, to the extent feasible.
- Modify the transaction database to capture additional information needed for evaluation and monitoring, such as information about appeals of final nonconfirmations and additional information about the case referral process.
- Modify the algorithm USCIS uses in matching its records to records input by the employer to be consistent with SSA's criteria and move toward a database that can be indexed by Social Security number as well as Alien number.
- Routinely "clean" the transaction database to obtain more meaningful reports for management information and monitoring purposes.

Investigate the following procedural changes:

- To reduce employee burden, consider revising SSA's procedures that require in-person visits to resolve tentative nonconfirmations.
- Continue working on the development and implementation of guidelines that provide specific timeframes for notifying employees of tentative nonconfirmations and for terminating employees subsequent to final nonconfirmation or unauthorized findings.
- Continue implementing plans for a strong monitoring and compliance program to determine whether employers are adhering to Web Basic Pilot procedures. These plans should include using the transaction database to identify employers that are

not properly following Basic Pilot procedures. For example, an unusually large number of queries, given the size, industry, and location of the employer, may indicate that the employer is prescreening job applicants.

- Undertake an outreach program to inform employees of their rights and continue outreach to employers.

Make changes to the tutorial and to employer and employee materials:

- Make employee documents available in multiple languages and as accessible as possible to employees with limited reading skills. In addition to having experts examine the documents and suggest ways to modify them, focus groups or other forms of usability testing should be conducted to ensure the readability of these documents.
- Make additional changes to the tutorial to further improve its effectiveness. For example, periodic retesting and, if needed, refresher training should be used to ensure that the material has not been forgotten and to discourage the observed practice of assuming another user's name and password to avoid the tutorial and Mastery Test. Training modules should also be developed for staff other than system users and administrators, to help prevent violations of program procedures that are the responsibility of staff other than system users.
- Modify the training materials and tutorial to clarify issues, such as the definition of a "new hire," that confused some of the case study employers. USCIS should make usability testing with employers a standard practice before implementing system changes to those aspects of the Web Basic Pilot system used by employers, to ensure that materials are clear to those who will be completing the training and using the system.
- Continue efforts to integrate employers' human resources systems and the Web Basic Pilot system, to minimize duplicate data entry by employers. For instance, the Basic Pilot could be modified to permit employers to include employee identification numbers in their query and to have that identifier returned to them with the case findings.

Conduct additional evaluation research:

- Carefully review and ensure independent evaluation of major procedural changes prior to implementation, based on existing data or a pilot program.
- Continue general Web Basic Pilot evaluation activities, as the program continues to evolve rapidly and not all consequences of modifying the program can be anticipated.

CHAPTER I. BACKGROUND

A. INTRODUCTION

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted in September 1996, authorized the creation of three small-scale pilot programs to test the feasibility and desirability of electronically verifying the work-authorization status of newly hired employees. Two of these pilot programs have been terminated; however, the third pilot program, referred to as the Basic Pilot, has been expanded in scope and extended until November 2008 by the Basic Pilot Program Extension and Expansion Act of 2003 (Pub. Law 108-156). In June 2004, a Web version of the Basic Pilot program (the Web Basic Pilot) was implemented, incorporating many improvements growing out of experiences with the original Basic Pilot program and evaluations of the pilot programs.

This report presents the results of analyses of data collected for the evaluation of the Web Basic Pilot program.¹ It presents information on how well the program has been implemented and also on the program's success in meeting its goals. Finally, this report discusses changes since the implementation of the Web Basic Pilot program and makes recommendations for future program enhancements. The report's goals are to:

- Determine whether the Web Basic Pilot has resulted in the improvements in the automated employment verification process that it was designed to address;
- Determine whether any unexpected problems arose in the process of implementing the new version of the Basic Pilot program; and
- Investigate further some general questions about automated employment verification programs that were not fully answered in the previous evaluations of the IIRIRA employment pilot programs.

This report includes information recently collected from Federal employees and contractors, Web Basic Pilot employers, employees verified by the Web Basic Pilot, secondary data collected in conjunction with operating the program, and Federal sources providing data about the nation's employers and employees. It also draws heavily on the results of the original Basic Pilot evaluation that were reported in the *INS Basic Pilot Evaluation Summary Report* (January 2002)² and on subsequent evaluation activities related to the IIRIRA pilot programs. This report expands upon and replaces the Interim Report to the U.S. Citizenship and Immigration Service (USCIS) that was dated December 2006.

¹ The name for the Web Basic Pilot recently changed to E-Verify. It was known as the Basic Pilot program during the time the evaluation took place, and many users still think of it as the Basic Pilot. To avoid confusion, this report refers to the current program as the Web Basic Pilot, and the earlier, modem-based program as the original Basic Pilot program. References to the Basic Pilot program apply to both programs.

² For a copy of this report or the Supplemental Materials, go to <http://www.uscis.gov>, select "About USCIS" (at the top of the page), and then select "Reports and Studies" on the left hand side of the page.

B. LEGISLATIVE BACKGROUND

1. ENACTMENT OF EMPLOYER SANCTIONS AND WORKSITE VERIFICATION

Congress passed employer sanctions legislation in late 1986 as part of the Immigration Reform and Control Act (IRCA) of 1986. This legislation made it unlawful for U.S. employers to hire or continue to employ workers without authorization to work in the United States. IRCA was passed in response to increases in undocumented immigration and recommendations by a series of congressional and Executive Branch task forces and commissions – ranging from the small, bilateral Special Study Group on Illegal Immigrants from Mexico (1973) to the blue-ribbon Select Commission on Immigration and Refugee Policy (1981).

From the outset, employer sanctions legislation was controversial. Concerns about the legislation included whether it would be effective in reducing unauthorized employment, given the difficulty in verifying identity and work authorization, and whether the process would result in increased discrimination against work-authorized persons who appeared or sounded foreign. Additional concerns were expressed about the potential for privacy violations and whether it would be unduly burdensome for employers, employees, and the Federal government. Many of the groups studying these issues recommended ways of administering employer sanctions and accompanying work-authorization verification that would minimize fraud and employer burden, protect privacy, and be nondiscriminatory.

2. EMPLOYMENT VERIFICATION AND CIVIL RIGHTS PROTECTIONS

In addition to instituting employer sanctions, IRCA prohibited discrimination on the basis of national origin or citizenship status. A new agency, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, was established in the Department of Justice to enforce this provision.

IRCA also required that the Immigration and Naturalization Service (INS) develop and implement an employment verification system for all newly hired employees.³ The universal employment verification system specified in IRCA is a paper-based system (implemented by INS as Form I-9) that requires all newly hired employees to attest to being a U.S. citizen or national, a lawful permanent resident, or other work-authorized noncitizen. The system also requires employees to present documentation establishing their identity and work authorization. Employers are required to examine this documentation and attest that it appears to be genuine and to relate to the employee. See Appendix A for a copy of Form I-9 and lists of acceptable documents.

Acknowledging that there were likely to be better verification systems than the one specified in IRCA, Congress authorized the Executive Branch to develop demonstration

³ The IIRIRA pilot programs and the original evaluations of them were conducted under the auspices of INS within the Department of Justice. On March 1, 2003, parts of INS were incorporated into USCIS within the Department of Homeland Security (DHS). In this report, reference will be made to INS when discussing events that occurred prior to March 1. Reference to USCIS or DHS will be made when talking about the present and the future.

tests of alternative employment verification systems. Such systems had to be reliable, secure, and limited to use for employment eligibility verification and could not include the use of a national identity document. Specific additional requirements were levied before such a system could be implemented.

IRCA also required INS to establish a program to verify the immigration status of noncitizens for certain benefit and entitlement programs. The established program, known as Systematic Alien Verification for Entitlements (SAVE), includes an automated match of applicant information against a special extract of the INS database created for this purpose.

3. GOVERNMENT REPORTS RELATED TO EMPLOYER SANCTIONS AND WORKSITE VERIFICATION

Because of the concern over unintended impacts, many prominent groups studied the implementation of employer sanctions. One major concern was that the widespread availability of fraudulent documents made it easy for undocumented workers to convince employers that they were authorized to work. This situation limited the potential effectiveness of IRCA. Other concerns focused on whether work-authorized employees would experience discrimination or incur violations of their privacy rights.

Most prominent among such studies are the three IRCA-mandated reports by the General Accounting Office (GAO). In its second report to Congress in November 1988, GAO reported that the greatest threats to document security appeared to be the Social Security card and the INS Alien Registration Card, the so-called “green card” issued to permanent residents. At the time of that study, some 17 valid versions of the green card were in use, most of which were easily counterfeited.

In its final report to Congress in 1990, GAO found that the implementation of employer sanctions had resulted in a widespread pattern of discrimination against work-authorized employees. GAO noted that employers’ uncertainty over the sheer number of documents and the ease of counterfeiting documents used in the verification process contributed to the pattern of discrimination it found. Instead of repealing employer sanctions, GAO recommended mitigating confusion by increasing employer education and reducing the number of acceptable documents, making them more secure, and requiring all members of the workforce to use the more secure documents.⁴ GAO also summarized the pros and cons of alternative verification procedures.

The GAO findings triggered further inquiry on possible employment verification systems, documentary requirements, and the discriminatory and other possible negative impacts of employer sanctions and employment verification. These studies were undertaken by a wide range of Federal government agencies, States and localities with sizeable foreign-born populations, and private organizations such as the Urban Institute

⁴ By recommending that this provision apply to all members of the workforce, GAO meant that counterfeit-resistant documents should not be issued only prospectively. If such an alternative were accepted, the document would be reissued to all persons then holding it, as well as to all future applicants.

and RAND. Although some studies called for the repeal of employer sanctions, others found that the problems could largely be remedied by simplifying and clarifying the Form I-9 employment verification system. Some commentators considered a single secure identifier, such as a prevalidated driver's license/nondriver identification card, as the means of verifying work authorization to be an attractive option worth testing on a pilot or demonstration project basis.

In November 1988, the Social Security Administration (SSA) issued another IRCA-mandated report, *A Social Security Number Validation System: Feasibility, Costs, and Privacy Considerations*. This report found that although a system to verify Social Security numbers with SSA by telephone, for instance, is technically feasible, it has limited utility in deterring unauthorized employment. Although the system would identify never-issued numbers, cards issued for nonwork purposes, and numbers issued to persons who were deceased, it could not ensure that the bearer of the card was the person to whom it had been issued. The report instead proposed a system based on State-issued driver's licenses and nondriver identification cards, where identity could be better established.

SSA noted in its report that some 26 States were already validating birth certificate information for driver's license applicants and that SSA could increase the security of information for States by prevalidating Social Security numbers electronically, a process already included by 29 States as a part of their license requirements. SSA noted that driver's licenses generally include photographs and physical descriptions of the bearer and are reissued every few years, thus enhancing their likeness to the bearer and the document's overall integrity. Such a system, SSA argued, would not only establish a card linking the Social Security number with a photograph and other identifying data, it would reduce the agency's workload and costs significantly by eliminating the need to verify Social Security numbers for employers every time a person is hired.

Because State-issued driver's licenses, nondriver identification cards, and birth certificates were frequently used to document identity and U.S. citizenship in the employment verification process, in 1989 Congress mandated that the Attorney General review State initiatives to reduce the fraudulent production, issuance, and use of these documents.⁵ In response to this mandate, in November 1992 INS issued its *Report on the Security of State-Issued Documents*.

The report found the security of the State driver's licensing processes to be generally far superior to that for birth certificates. INS reported that States were "generally using secure paper stock, lamination, and related security features to prevent counterfeiting and alteration" of driver's licenses.⁶ Moreover, the report found that States were incrementally applying technology to make driver's licenses more fraud-resistant and that changes to licenses were typically implemented simultaneously on a statewide basis, thus reducing the number of versions of valid cards in circulation at a time.

⁵ Section 5 of the Nursing Relief Act of 1989, Pub. Law 101-238.

⁶ U.S. Immigration and Naturalization Service. (1992). *Report on the Security of State-Issued Documents*. Washington, DC.

However, the report found that time and funding limitations affected the security of the issuance process. For instance, it reported that Department of Motor Vehicles personnel had limited time and training to determine the authenticity of the documents presented as proof of identity in the licensing process. Thus, unauthorized workers could use counterfeit documents (often referred to as breeder documents) to obtain driver's licenses.

The Immigration Act of 1990 established the Commission on Immigration Reform, which continued the study of employment verification. In 1994, the Commission recommended testing a national registry-type system under which all newly hired workers, citizen and noncitizen alike, would be electronically verified for employment authorization through a unified database comprised of SSA and INS information. It recommended that the President test and evaluate a series of pilot programs using different approaches to provide information needed to assess the advantages, disadvantages, and costs of these approaches; the availability and quality of data; and the impacts on civil rights and liberties. Suggested approaches included a more secure Social Security card, a counterfeit-resistant driver's license, and a telephone/electronic verification system.

Legislative debate ensued to consider the Commission's recommendations and to gain greater control over undocumented immigration. Although the design of the SSA and INS databases precluded easy development of the single national registry database the Commission recommended, the two agencies believed they could develop a small-scale voluntary pilot program using separate checks of their databases. After considering a number of comprehensive immigration reform bills that included electronic employment verification programs, Congress passed IIRIRA, which provided for small-scale testing, evaluation, and reporting on three voluntary pilot programs before a national system would be considered. Testing on a pilot basis was considered important because of the limitations of Federal data for verification purposes, the potential for workplace discrimination and privacy violations, and practical logistical considerations about larger scale implementation.

The Basic Pilot Extension Act of 2001, passed in January 2002, extended the authorization of the Basic Pilot program for an additional 2 years. The Basic Pilot Program Extension and Expansion Act of 2003 further extended the authorization for the Basic Pilot program until November 2008. At the same time, it authorized making the program available to employers in all 50 States on a voluntary basis. It also required a report to Congress to determine whether problems identified by earlier evaluations had been resolved.

During the time this report was being written, several bills that would expand the Basic Pilot program and make it mandatory, for at least some employers and employees, have been proposed. They differ in terms of which employers and employees would be included and also in their timetables for implementation. Exhibit I-1 summarizes the relevant laws and their corresponding actions.

Exhibit I-1: Relevant Laws and Their Corresponding Actions

Year	Law	Action
1986	Immigration Reform and Control Act (IRCA)	Established employer sanctions and employee verification and prohibited workplace discrimination on the basis of national origin or citizenship
1990	Immigration Act of 1990	Established the Commission on Immigration Reform, which subsequently recommended increased electronic verification of all newly hired employees
1996	Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)	Provided for testing, evaluation, and reporting of three voluntary pilot programs involving electronic verification
2002	Basic Pilot Extension Act of 2001	Extended the authorization of the Basic Pilot program for an additional 2 years
2003	Basic Pilot Program Extension and Expansion Act of 2003	Expanded the Basic Pilot program to all 50 States and extended its authorization until November 2008

C. IMPLEMENTATION OF ELECTRONIC VERIFICATION PILOTS PRIOR TO THE WEB BASIC PILOT

1. SETTING THE COURSE THROUGH EARLY PILOT PROGRAMS

The early pilot studies described below were precursors to the IIRIRA pilots and helped create the basic verification procedures, limitations, and safeguards that are currently in use in the pilot programs. The pilots used electronic verification procedures and the SAVE database, called the Alien Status Verification Index (ASVI),⁷ developed earlier for this purpose. The ASVI was an extract updated nightly from the INS Central Index System and the Nonimmigrant Information System. At the time it was adopted for the first pilot, the ASVI had already been used by benefit agencies. These pilots did not reduce employer paperwork because the pilot processes were implemented in addition to Form I-9 requirements.

The Telephone Verification System (TVS) Pilot demonstrated the feasibility of verifying the work-authorization status of noncitizen employees by telephone. The TVS was implemented in 1992 for nine volunteer employers located in the five States with the largest estimated populations of undocumented immigrants (California, Florida, Illinois, New York, and Texas). All participating employers signed a Memorandum of Understanding (MOU) describing the responsibilities of the employers and INS under the program.⁸ Only employees who attested to being noncitizens on INS Form I-9 were electronically verified in this pilot. The TVS demonstrated the feasibility of telephone verification of employees' work-authorization status using point-of-sale devices.

⁷ The ASVI is now called the Verification Information System (VIS).

⁸ See the Supplemental Materials for a copy of the current MOU signed by employers and USCIS.

The Telephone Verification Pilot, Phase II (TVP), tested the impact of noncitizen verification in a defined geographic area. Based on the apparent success of the TVS, INS initiated the TVP in 1995. Participation in the TVP was limited to employers in a limited geographic area in the Los Angeles area. A total of 238 employers volunteered for this pilot, which tested the impact of a pilot in a relatively concentrated geographic area. Participating employers conducted primary verification for newly hired noncitizens using a personal computer (PC) and modem to access the INS database. If secondary verifications were necessary, employers sent copies of employees' immigration documents to INS for further verification. When INS could not determine employees' work-authorization status, the employees were encouraged to visit an INS office within 30 days to resolve the discrepancy.

The Employment Verification Pilot (EVP) tested the verification of the work-authorization status of noncitizens in different environments. The EVP, begun in 1996, expanded upon the TVP by including more than 1,000 employers of varying size and industrial classification throughout the United States. This pilot's strength was that it was tested in many different environments. Additionally, INS automated the formerly paper secondary verification process in the EVP to expedite this portion of the verification process.

The Joint Employment Verification Pilot (JEVP) was the first joint pilot between SSA and INS to verify all newly hired employees. This two-step SSA-INS pilot was developed in response to the Commission on Immigration Reform's recommendation for a national registry system. It departed from the earlier pilot programs by electronically verifying the work-authorization status of all newly hired employees, using both the SSA and INS databases. All newly hired employees were verified through SSA by telephone. When a check of SSA data could not confirm the current work-authorization status of employees attesting to being work-authorized noncitizens, a further check was made through INS using a PC and modem. The two agencies initiated this joint pilot in the Chicago area in July 1997 with 38 employers.

2. THE ORIGINAL IIRIRA PILOTS

As noted above, at the time that the early INS pilots were being tested there was renewed discussion of the desirability of possible modifications of the Form I-9 procedures. In addition to the feasibility of electronic verification, these discussions considered such possibilities as restricting the types of identity and work-authorization documents and improving document security. Civil rights groups, however, remained concerned about the further testing of electronic employment verification systems, the impact of such systems on workplace discrimination, moving to single identity documents, and privacy. IIRIRA, enacted in September 1996, attempted to address these views and the need to test rather than implement a national system when it authorized three pilots: the Basic Pilot, the Citizen Attestation Verification Pilot (CAVP), and the Machine-Readable Document Pilot (MRDP). These pilot programs, as initially authorized and implemented, are summarized in Exhibit I-2.

Exhibit I-2: IIRIRA Pilots as Initially Implemented

Year	IIRIRA Pilot	Location	Location Rationale	Method
1997	Basic Pilot	CA, FL, IL, NY, TX	States with highest undocumented immigration	Electronic verification for both citizens and newly hired noncitizens
1999	Citizen Attestation Verification Pilot (CAVP)	AZ, MD, MA, MI, VA	States not in Basic Pilot but having sizeable undocumented immigrant populations and reasonably secure State-issued identification documents	Electronic verification for newly hired noncitizens only
1999	Machine-Readable Document Pilot (MRDP)	IA	State with machine-readable name, date of birth, and Social Security number on driver's license	Electronic verification for citizens and noncitizens through machine-readable driver's license/nondriver identification card if presented to employer; otherwise, like the Basic Pilot

The Basic Pilot verifies all newly hired employees through SSA and, if necessary, DHS databases. IIRIRA called for the Basic Pilot to be conducted in at least five of the States with the largest estimated populations of undocumented immigrants; California, Florida, Illinois, New York, and Texas were chosen. Nebraska was added in March 1999, and the program was made available to employers in all 50 States and the District of Columbia in 2003. The Basic Pilot, launched in November 1997, was similar to the earlier J EVP. Like J EVP employers, Basic Pilot employers electronically verified the status of all newly hired employees, first with SSA and then, if necessary, separately with USCIS. However, the Form I-9 documentation requirements imposed by IIRIRA are more stringent than those of the J EVP in that they require employees to present an identity document with a photograph.

The first evaluation of the Basic Pilot, reported in June 2002 (*Findings of the Basic Pilot Program Evaluation*), found that the majority of participating employers accepted it as an effective, reliable tool for employment verification. Similarly, the evaluation found that employees had few complaints about the program. However, the evaluation also found evidence of discrimination and privacy violations that were exacerbated by inaccuracies in the Federal databases and the failure of many employers to follow proper procedures outlined in the MOU they had signed.

The Basic Pilot Program Extension and Expansion Act of 2003 (Pub. Law 108-156), a Federal Register notice published on December, 20, 2004, extended the Basic Pilot to November 2008, expanded the Basic Pilot program to all 50 States, and announced that the new Web version of the Basic Pilot would become the sole program in July 2005.

The CAVP required electronic verification only for noncitizens. IIRIRA mandated that this pilot be implemented in at least five States identified as having counterfeit-resistant driver's licenses and nondriver identification cards. The five States selected for the CAVP were Arizona, Maryland, Massachusetts, Michigan, and Virginia. Under the CAVP, which began in May 1999, participating employers electronically verified the work authorization of newly hired employees who attested on Form I-9 to being work-

authorized noncitizens. Employers did not electronically verify the work-authorization status of persons who attested to U.S. citizenship, who were also subject to less stringent document requirements.

The evaluation of the CAVP indicated that while it was less costly than the Basic Pilot program, it was also much less effective in preventing the employment of individuals without work authorization, close to half of whom were falsely attesting to U.S. citizenship. Moreover, the CAVP was found to be more discriminatory than the Basic Pilot program. Since the cost savings were not large, the independent evaluation recommended that the CAVP be discontinued as soon as possible. The CAVP program was terminated in June 2003.

The MRDP was designed to test card swiping technology. The MRDP was identical in most respects to the Basic Pilot program. The primary difference between these two pilots was in the way that employers input and transmitted the employee data that were verified electronically by SSA and INS. In the Basic Pilot program, the employer manually enters all information into a PC. In the MRDP program, the employer was required to input employee information using an MRDP card reader capable of reading information contained in a magnetic stripe on driver's licenses and State-issued nondriver identification cards, if such a document was proffered. If the case had to be referred to INS, the employer was prompted to enter the additional information needed to match employee information against the INS database.

The MRDP was intended to test the feasibility of automating the process of querying the Federal databases in much the same way that stores verify charges for purchases against a credit card company database. This process was seen as potentially less burdensome for employers and also less prone to data entry errors that are inevitable with the manual entry of data.

The MRDP was initiated in June 1999 in Iowa. The restriction of this program to Iowa was necessary because INS determined that Iowa was the only State that issued secure licenses and nondriver identification cards containing Social Security numbers in a machine-readable form. It was expected that when employees presented Iowa licenses and nondriver identification cards, the employer would input employee information by swiping the card through the reader. Since not all employees provided an Iowa driver's license or nondriver identification card, the MRDP also allowed for the employer to input the information manually using Basic Pilot procedures.

During the time the MRDP was in operation, Iowa changed its licensing procedures so that Social Security numbers were no longer required for the driver's license number. This resulted in a system that was no longer consistent with the original criteria for participating in the program. During the time that the system was in place, some employers also expressed practical concerns about using the card reader, citing the impracticality of swiping the driver's license when the verification process was not necessarily conducted in close proximity to where employees provided documentation for the Form I-9. Given these practical problems and the recommendation of the evaluation, the MRDP was also terminated in favor of the Basic Pilot program in May 2003.

D. GOALS AND OBJECTIVES OF THE EVALUATIONS SPECIFIED IN IIRIRA

The IIRIRA legislation required evaluation of the pilot programs implemented. The goals and objectives underlying these evaluations of the IIRIRA pilot programs were articulated, in part, in the legislation. They also reflected input from numerous stakeholder groups interested in the electronic verification of employees. Section 405 of IIRIRA required that the Secretary of Homeland Security submit reports on these programs to the House and Senate Judiciary Committees. These reports had the following purposes:

- To assess the benefits and costs of the pilot programs and the degree to which they assist in the enforcement of employer sanctions;
- To assess the degree of fraudulent attestation of U.S. citizenship; and
- To make recommendations on whether the pilot program should be continued or modified.

The Executive Branch and the many nongovernmental groups interested in employment verification viewed independent evaluation as an essential part of the implementation of the employment verification pilots. In mid-1997, DHS selected two firms – Westat, an employee-owned research corporation located in Rockville, Maryland, and the Institute for Survey Research at Temple University – to conduct an independent evaluation of each of the three IIRIRA pilot programs.

Many groups interested and/or involved in the IIRIRA pilot programs agreed that these evaluations should consider a variety of issues related to the impact of electronic verification of work authorization in the workplace. The programs were to be evaluated against the existing paper Form I-9 process.

The main research questions posed in the IIRIRA pilot evaluations conducted to date ask whether the pilots perform the following:

- Operate as their designers intended (i.e., were they properly implemented);
- Reduce employment of unauthorized workers;
- Reduce discrimination;
- Protect employee civil liberties and privacy; and
- Prevent undue burden on employers.

E. THE WEB BASIC PILOT

1. INTRODUCTION

The Web Basic Pilot program is an enhancement of the original Basic Pilot program that uses the Web for interfacing between employers and the automated verification system. Even though this report refers to it as the Web Basic Pilot program, it is not a new pilot program but a version of the Basic Pilot program instituted under IIRIRA. Like the original Basic Pilot program, it verifies all newly hired employees through SSA and, if necessary, DHS databases.

The Web Basic Pilot was first offered to employers as an alternative to the PC-based version of the pilot in June 2004. In July 2005, the Federal government discontinued support of the original Basic Pilot program, so no employers are currently using the original Basic Pilot program. To switch to the new program, employers had to sign a new MOU.

The major differences between the Web Basic Pilot and the original Basic Pilot program are as follows:

- In the Web Basic Pilot, communication between employers and the verification system is conducted over the Web rather than by a modem connection.
- Employers no longer need to install software on their computers to use the program.
- The training materials have been redesigned for the Web, and employer staff are now required to pass a test on the material presented in the training module before being permitted to use the system.
- New edit checks have been added to the system to decrease the number of employer input errors.

The Web Basic Pilot is not a static system; the Federal government has made changes to the system since its introduction in June 2004, often in response to evaluation findings, and continues to plan for additional enhancements. For example, USCIS is currently running a pilot test, the Photo Screening Tool, designed to increase the Web Basic Pilot's potential to detect identity fraud through the use of photographs. If the Photo Screening Tool proves to be useful and is implemented for all employers, it would significantly impact the current program and would need additional evaluation to determine its effect.⁹

⁹ Evaluation of this pilot program is outside the scope of the current evaluation. A priori, the program is likely to decrease unauthorized employment compared to the current system. However, given that noncitizens are the only ones initially asked to present secure documentation, it is also likely to increase discrimination. There is also a burden on the employer associated with finding and inputting the card number, which is not on the Form I-9, and photocopying the documents checked through the system. Thus, it is important that any evaluation look at the tradeoffs between these likely effects.

At the current time, USCIS is planning on mandating that all employers participating in the Web Basic Pilot program use the Photo Screening Tool, starting in the fall of 2007.

The remainder of Section E describes the primary features of the Web Basic Pilot, as it existed at the time this report was prepared.

2. BECOMING A WEB BASIC PILOT PROGRAM EMPLOYER

The first step toward using the Web Basic Pilot system is to register on-line to use the program. During this registration process, the employer prints out a copy of an MOU (see the Supplemental Materials), agreeing to adhere to Basic Pilot requirements.

Once the employer has signed and submitted the MOU electronically,¹⁰ the program administrator must complete an on-line tutorial and pass a Mastery Test before being granted access to the verification system or being able to register additional users. Likewise, any recently enrolled users must complete the tutorial and pass the Mastery Test before their user names and passwords will grant them access to the verification system. The tutorial covers both how to use the on-line verification system and also the employer's responsibilities under the program, including the need to post a notice of participation in the Web Basic Pilot where job applicants can see it and the proper ways of handling possible verification outcomes.

The Mastery Test consists of 21 multiple-choice and true/false questions about the requirements and correct procedures for using the Web Basic Pilot. Users must answer 15 questions correctly (71 percent) to pass the test. Once the Mastery Test has been successfully completed, the employee is granted access to the verification system.

3. DESCRIPTION OF THE WEB BASIC PILOT VERIFICATION PROCESS

a. PAPER FORM I-9 VERIFICATION PROCESS

The starting point for the Web Basic Pilot verification process is the existing paper Form I-9 verification process used by all employers, including those *not* enrolled in the Web Basic Pilot. When employees are hired, they are required to complete Part 1 of the Employment Eligibility Verification Form (Form I-9) and provide the employer with documentation of their identity and work-authorization status. Depending on the employee's status, a wide variety of documents are acceptable for these purposes (see Appendix A).

In Section 1 of Form I-9, the employee records personal information, attests to citizenship status, and signs the form. The employer completes Section 2 of the form, recording the type of documents presented as proof of identity and work authorization and any document expiration dates. After reviewing the documents presented by the employee, the employer records the date of hire. The employer also signs the Form I-9 to certify having examined the documents presented by the employee and having found

¹⁰ This process recently changed so that the system now accepts electronic signatures rather than requiring the employer to mail or fax a hard copy of the MOU.

them to appear valid and to belong to the person presenting them. Under the Form I-9 process, the verification responsibility rests solely with the employer. Depending on the employer's familiarity with various immigration and other documents and with the detection of fraudulent employment eligibility documents, an employee without work authorization may or may not be denied employment under this system.

b. WEB BASIC PILOT VERIFICATION PROCESS

The automated verification process in the Web Basic Pilot begins when employers input the Form I-9 information into the computer system. The Form I-9 data entered include the employee's name, date of birth, and Social Security number; citizenship status; Alien or Nonimmigrant Admission Number; the type of document(s) presented with the Form I-9; and any document expiration dates.

Employers participating in the pilot then submit this information electronically to the Federal government over the Internet. The government then determines whether the employees are work-authorized by electronically comparing the employer information with the appropriate government databases.

Immediately after the employer submits information, the SSA database is automatically checked against the employer-input information. If there is a match and the SSA database indicates that the person is a U.S. citizen, the employer is immediately notified that the employee is authorized to work. In this situation, no further effort on the part of Federal staff, employees, or employers is required other than the requirement that employers close these cases and retain the verification information in their files.

If the SSA database does not match the employee information input by the employer, SSA issues a tentative nonconfirmation. If the SSA database information matches the employee information and the employee is identified as a noncitizen on the Form I-9, the Form I-9 information is forwarded to USCIS to determine whether the employee is work-authorized.¹¹

If the employee information input by the employer for a case forwarded from SSA to USCIS matches the USCIS Verification Information System (VIS)¹² database and confirms work authorization, the employer is immediately notified that the employee is work-authorized. If the match does not result in a confirmation of work authorization, a "case in continuance" result is issued to the employer, and the case is automatically sent to an Immigration Status Verifier (ISV). The ISV searches other electronic information available at USCIS and, if necessary, examines hard-copy records to determine whether work-authorization status can be confirmed. USCIS reports that this process typically takes less than a day from receipt of the electronic information to a decision being made on whether USCIS can confirm work-authorization status without requiring employee

¹¹ Prior to October 21, 2005, SSA also notified employers that the employee was work-authorized if the person claimed to be a noncitizen and the SSA database indicated that the employee was a legal permanent resident, refugee, or asylee.

¹² VIS replaced the ASVI database previously used for verifying queries.

action. If the ISV can confirm work-authorization status, the work-authorization finding is issued. If the ISV does not have sufficient information to confirm work-authorization status, a tentative nonconfirmation is issued.

The electronic match of the Form I-9 information to the Federal databases usually results in an instantaneous response that employees are “employment authorized.” Employers are then required to record the verification number and result on the Form I-9, or print a copy of the transaction record and retain it with the Form I-9.

When the SSA or USCIS records are not sufficient to verify that the employee is work-authorized, the pilot system issues “tentative nonconfirmation” findings. At that point, employers are required to provide affected employees with system-generated written notification of the findings and their right to contest the findings, if they wish to do so. Employees are required to indicate whether they wish to contest tentative nonconfirmation findings.

When employees say they wish to contest tentative nonconfirmations, employers are instructed to (1) provide them with a written referral to SSA or USCIS, as appropriate, to correct the discrepancy and (2) record the referral date on the Web Basic Pilot database. The Web Basic Pilot system provides a referral form that explains the employee’s rights and responsibilities during the resolution period. Employees must contact SSA or USCIS within the allotted period of 8 Federal working days from the date of referral. While the case is being contested, employers may not take adverse actions against employees based on the issuance of the tentative nonconfirmation.

If employees say they do not wish to contest the finding, or if they say they want to contest but do not follow through by correcting the discrepancy in their records with SSA or USCIS, their cases are classified as final nonconfirmation cases. The employer is then supposed to terminate the employment of those employees who receive final nonconfirmations.

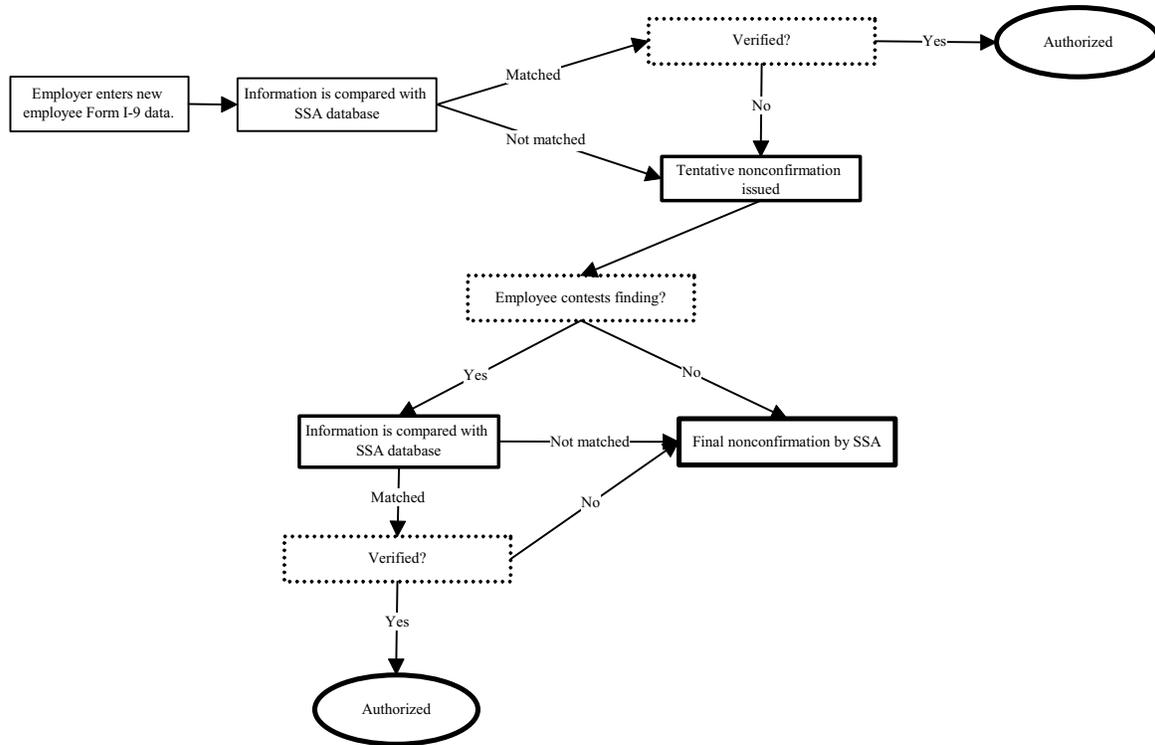
For SSA tentative nonconfirmations: If employees go to an SSA office and straighten out their records within the designated time (8 Federal working days), employers are required to reverify the employees through the Web Basic Pilot system. Normally, the employee will be instantaneously verified. If the employer resubmits the case after the 10 Federal working days allowed for final processing of the case and the employee has not successfully resolved the case, the system will return a final nonconfirmation finding. To comply with the law, employers then must terminate their employment, unless SSA calls the employer to say the case is in continuance (for instance, to request verification of a birth certificate from a State).

For USCIS tentative nonconfirmations: If employees contact USCIS by fax, by telephone, or in person to straighten out their records within 8 Federal working days, USCIS will determine whether the employee is work-authorized and will input the finding into the Web Basic Pilot database. If employees do not contact USCIS and

provide the required information within 8 Federal working days, the Web Basic Pilot system returns a final nonconfirmation finding after 10 Federal working days.¹³

The major steps of the Web Basic Pilot verification process are illustrated in Exhibits I-3 and I-4.¹⁴ The procedures described were current at the time this report was written.

Exhibit I-3: Verification Process for Persons Attesting to Being U.S. Citizens on Form I-9

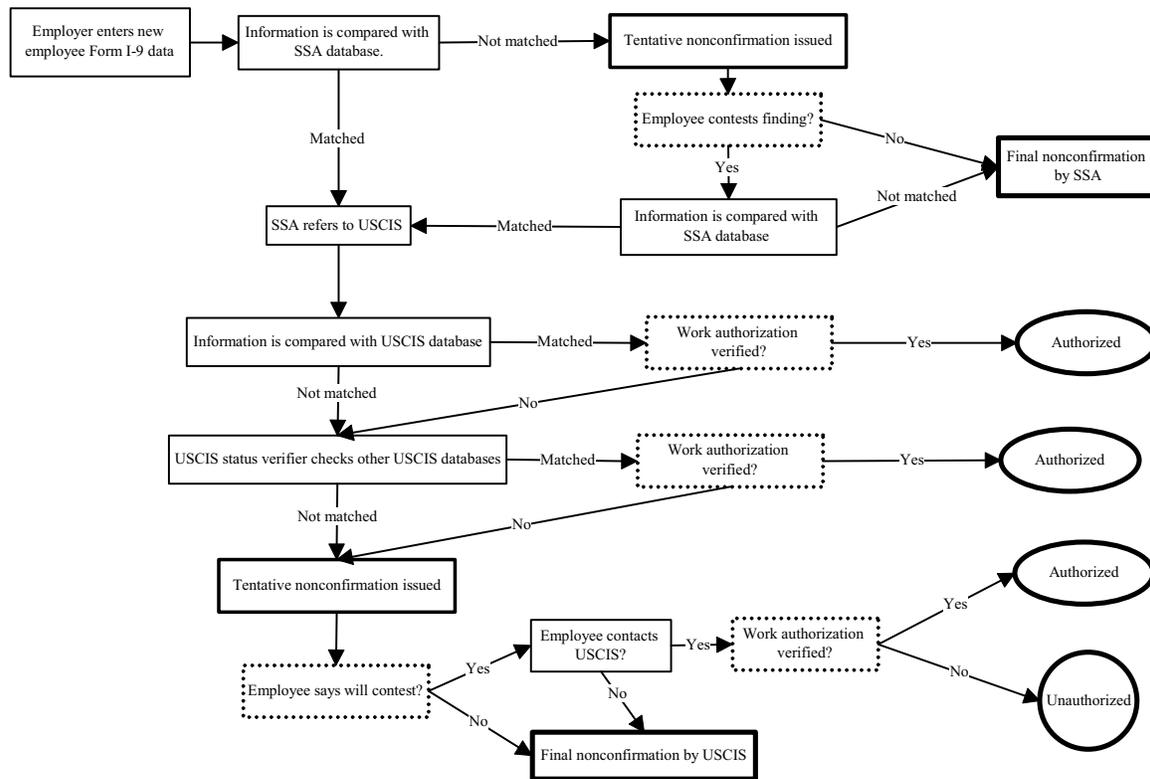


NOTE: This is the process in effect on June 1, 2007.

¹³ Although employees are given 8 Federal working days to resolve tentative nonconfirmations, in accordance with the IIRIRA legislation, employees who contact USCIS prior to the issuance of the final nonconfirmation finding may be able to resolve their cases.

¹⁴ The process described assumes that employers follow the Basic Pilot procedures.

Exhibit I-4: Verification Process for Persons Attesting to Being Noncitizens on Form I-9



NOTE: This is the process in effect on June 1, 2007.

c TYPES OF EMPLOYERS USING THE WEB BASIC PILOT

One important point that must be kept in mind in evaluating the Web Basic Pilot program is that these employers and their employees are not necessarily representative of all employers. For example, the initial implementation of the program in a limited number of States has had an impact on the regional distribution of employers. Likewise, the voluntary nature of the program has meant that the characteristics of participants are likely to be affected by factors that impact the perceived usefulness of the program. Chapter V includes descriptions of the differences between the Web Basic Pilot employers and all employers in the United States, along with a discussion of trends.

F. RESEARCH QUESTIONS TO BE DISCUSSED IN THE REPORT

The Basic Pilot Program Extension and Expansion Act of 2003 did not explicitly require additional evaluation of the Basic Pilot program. However, USCIS decided that independent evaluation was critical to informing the proper implementation of a national electronic employment verification program anticipated in a number of administrative and legislative initiatives. The earlier evaluations of the IIRIRA pilot programs were not considered adequate for this purpose in light of the numerous modifications of the

original Basic Pilot program incorporated into the Web Basic Pilot and the increasing number of employers participating in the program.

The goals, objectives, and resulting research questions of the Web Basic Pilot evaluation reflect, in large part, the goals and objectives of the earlier evaluations: (1) Does the pilot operate as the designers intended (i.e., was it properly implemented)? (2) Does the pilot reduce employment of unauthorized workers? (3) Does the pilot reduce discrimination? (4) Does the pilot protect employee civil liberties and privacy? (5) Does the pilot prevent undue burden on employers? However, this report builds on the preceding work. It emphasizes understanding the impacts of changes made to the Basic Pilot system since the original evaluation of the Basic Pilot program and also emphasizes increasing understanding of research questions that could not be fully answered in the evaluation work to date. Since the Web Basic Pilot has changed between its inception in June 2004 and the present, the report also examines the questions of how this program has evolved during this time and the impacts of these changes on the program outcomes. The major research questions addressed in this report are described below.

1. HOW WELL WAS THE WEB BASIC PILOT PROGRAM IMPLEMENTED?

The first question, addressed in Chapter III of this report, is to determine how well the Web Basic Pilot program has been implemented. This process evaluation is critical to ensure understanding of whether any problems observed in the outcome evaluation may be attributed to weaknesses in program implementation that may be correctable in the future. Furthermore, issues arising in the process evaluation may indicate underlying problems that may interfere with the long-term success of the program. For example, unrealistic employer requirements may foster noncompliance with not just the specific unrealistic requirements but other requirements as well.

Making the Basic Pilot system more user friendly and less burdensome from an employer perspective was a goal of many of the modifications of the original Basic Pilot program that were incorporated into the Web Basic Pilot program. An important component of understanding Web Basic Pilot implementation is determining whether the changes did result in increased employer satisfaction with the Web Basic Pilot compared to the original Basic Pilot system.

Similarly, changes to the tutorial and other training materials and edit checks added to the Web Basic Pilot software were designed to reduce employer noncompliance associated with confusion over the pilot requirements. Chapter III, therefore, discusses whether these changes were effective in increasing employer compliance with the requirements.

Understanding employer satisfaction and compliance with the Web Basic Pilot program also has implications for the policy questions addressed in Chapter IV of the report. For example, the ability of the program to decrease unauthorized employment is clearly a function of program usage; as long as the employment verification program remains voluntary, employer satisfaction will strongly affect program usage. The material in Chapter III, therefore, lays the groundwork for much of the discussion in Chapter IV.

2. IS THE WEB BASIC PILOT EFFECTIVE IN MEETING PILOT PROGRAM GOALS?

The second broad research question is addressed in Chapter IV. The same goals that governed the previous IIRIRA employment verification pilot evaluations are relevant for assessing the Web Basic Pilot program. These goals are to create a system that will decrease unauthorized employment while protecting against discrimination, safeguarding privacy, and avoiding undue employer burden. The previous evaluations indicated that the pilot programs did an adequate job of safeguarding privacy, subsequent to the implementation of modifications recommended by the original Basic Pilot evaluation. This report, therefore, focuses primarily on the three pilot goals that were not clearly met (decreasing unauthorized employment, avoiding increased discrimination, and avoiding undue employer burden) in the earlier pilot programs. However, since there were major changes to the pilot software and operating procedures during implementation of the Web Basic Pilot program, this report also addresses the question of whether the Web Basic Pilot adequately safeguards privacy.

3. HAVE RECENT CHANGES TO THE WEB BASIC PILOT HAD A POSITIVE IMPACT ON THE PROGRAM?

There have been a number of changes in the Web Basic Pilot program since its inception in June 2004. Chapter V, therefore, examines trends in a number of characteristics of employers and the workers they verify. Based on this information, some likely impacts of future changes are also discussed.

G. SUMMARY

In sum, this report focuses on three broad but related evaluation questions:

- Was the Web Basic Pilot program implementation consistent with stakeholder expectations?
- Did the Web Basic Pilot program achieve its primary policy goals?
- Have recent changes in the Web Basic Pilot program increased its effectiveness in meeting pilot goals?

The final chapter makes a number of recommendations for further changes to the program.

CHAPTER II. RESEARCH METHODS

A. INTRODUCTION

The evaluation team for the Web Basic Pilot adopted a multimodal approach to data collection. Sources included the following:

- Web surveys of employers using the Web Basic Pilot program;
- Case studies, including interviews with establishment representatives, record reviews, and interviews with employees who received tentative nonconfirmations;
- Informal interviews with employers that had either terminated use of the Web Basic Pilot or had signed a Memorandum of Understanding (MOU) in the last quarter of 2006 but had not used the system as of March 2007;
- Analyses of the Web Basic Pilot transaction database and other secondary data;
- Meetings with Federal officials and their contractors; and
- System testing.

Standard research procedures were used in this study to assure the quality of the data. Quality control procedures were implemented to ensure data accuracy. These procedures included training of data collection and data processing staff and data cleaning based on consistency and range checks.

B. EVALUATION METHODS

Given the complex nature of an evaluation design that uses multiple data sources, it is important to understand the relationships among the data sources, their uses, and the data collection instruments. This section describes the different approaches used for the Web Basic Pilot evaluation.

1. QUANTITATIVE METHODS

The quantitative methods used for the evaluation included Web surveys of long-term users, recently enrolled employers, and small employers, as well as analyses of secondary data (the transaction database, employee registration data, and Federal data sources). Each of these approaches is described below.

a. WEB SURVEYS OF EMPLOYERS

As part of the evaluation, Web surveys of employers were conducted with three different populations: long-term users, recently enrolled users, and small employers. These surveys are discussed in this section.

i. WEB SURVEY OF LONG-TERM USERS

(a) Sample Selection

The sample of employers for the Web survey of long-term users consisted of all employers meeting the following criteria:

- The employer had signed an MOU before April 1, 2005;
- The employer had not notified the U.S. Citizenship and Immigration Service (USCIS) by March 2006 that it wished to terminate enrollment in the Web Basic Pilot;
- The employer transmitted at least one case in August or September 2005; and
- The employer transmitted at least one case in February or March 2006.

The employers that participated in the case studies and case study pre-test were excluded from the employer Web survey.

(b) Selection of Questions for the Survey

Many of the questions asked in the survey of long-term users were adapted directly from the Active Basic Pilot employer mail survey (conducted in February 2000 as part of the first independent evaluation) to permit direct comparisons of the two pilots. The following modifications were made to the Basic Pilot program survey instrument to make it useful for the Web Basic Pilot program:

- Deletion of questions irrelevant to the Web Basic Pilot program (e.g., “From the time this establishment first received materials needed to install the Basic Pilot system, how long was it before the system was installed?”);
- Deletion or modification of questions found not to be useful in the Basic Pilot program analyses (e.g., the question “During the past 2 years, has this establishment been found guilty of any of the following by a Federal or State agency: employment discrimination, pollution of the environment, violation of OSHA or labor standards?” was deleted);
- Addition of relevant questions from the Citizen Attestation Verification Pilot (CAVP) survey (conducted in 2001) and the Machine-Readable Document Pilot (MRDP) surveys (conducted in 2001 and 2002) that were added or modified as a result of experiences with the original Basic Pilot employer surveys, which were the first surveys administered;
- Addition of key questions from the on-site Basic Pilot survey (conducted in 2000) and the on-site MRDP survey (conducted in 2002) that could be adapted for use in a self-administered survey;

- Addition of questions to obtain information about some of the unique features of the Web Basic Pilot program; and
- Addition of a set of questions targeted to employers that participated in both the original Basic Pilot program and the Web Basic Pilot program, to determine what they perceived to be the strengths and weaknesses of the Web Basic Pilot program compared to the Basic Pilot program.

(c) Pre-testing of the Draft Survey

The initial draft of the Web survey was pre-tested with a small group of employers to verify that the questions were clear and that the survey did not take an excessive amount of time to complete. The research team conducted an on-line focus group using WebEx, a Web hosting service for integrated teleconferencing. The survey was modified based on input from the focus group. A copy of the final Web survey and the advance letter used with the survey are available on-line in the Supplemental Materials.¹

(d) Creation and Testing of the Web Survey

Programming staff created an on-line version of the Web survey. The process used to develop the Web application was an iterative one. Research staff provided specifications for the survey. After programmers had created and tested the draft instrument, research staff tested the survey and requested changes to its appearance and functionality. Programmers made and tested the requested changes, which were tested again by research staff. This process continued until both programming and research staff approved the survey for use.

The following is a list of the features of the on-line survey:

- It made use of logins, passwords, and Secure Sockets Layer (SSL) to ensure limited access and data security.
- Programmable conditional and skip logics were built in. Respondents were automatically navigated to the correct location in the survey based on their responses.
- Validations and edits were designed to alert respondents to missed questions or inconsistent responses.
- Respondents were able to save and close the survey and then return to the next unanswered question at any time before the survey was completed.
- Different response formats such as “select one” and “select all” were allowed. Questions were formatted with all the standard input controls (i.e., drop-down boxes, text areas, text boxes, radio buttons, and check boxes).

¹ For a copy of this report or the Supplemental Materials, go to <http://www.uscis.gov>, select “About USCIS” (at the top of the page), and then select “Reports and Studies” on the left hand side of the page.

- Respondents were able to navigate back through the survey and change prior responses without data loss.
- Downloadable versions of the on-line survey were available to respondents in both PDF and MS Word format.
- When respondents completed the survey, they were offered the opportunity to print a copy of their responses. This printed copy also informed them which questions were part of a skip pattern, as well as which ones had not been answered.
- A receipt control module was built into the system to provide the evaluation team with information on response rates and other survey statuses.

(e) Staff Training

The evaluation team provided thorough training to the telephone center and data entry staff who worked on the employer survey. For the telephone staff (who obtained correct e-mail addresses, reminded respondents that their questionnaires had not been completed, answered respondent questions, and conducted refusal conversion), this training included an explanation of the purpose of the survey, review and explanation of calling duties, and role-playing scenarios. For data entry staff who used the management system, training consisted of an explanation of the purpose of the survey, review of result codes and edits, and practice inputting data into the management system.

(f) Data Collection

The initial contact with employers was through an e-mail from Westat that requested that recipients either confirm that they were the correct contact person or provide information on who should be contacted. The e-mail included an attached letter from the USCIS Director of Research and Evaluation on agency letterhead; the letter explained the survey, reminded participants of their responsibility to cooperate with the evaluation as stated in the MOU they had signed, informed them that Westat would be conducting the survey, and stressed the confidential nature of their participation.

When e-mails bounced back as undeliverable, an e-mail was sent to the alternative contact person if one was listed on the file. If there was no alternative contact person, or if the e-mail to the alternative contact person also proved to be undeliverable, the employer was called to ascertain the correct contact person.

When the initial e-mail did not elicit a response, a reminder e-mail was sent. When necessary, this was followed by a telephone call to the contact person. Once a confirmed contact person had been identified, Westat sent an e-mail containing the information necessary to log into the system and complete the survey.

If the survey had not been completed within approximately 2 weeks of the initial login e-mail, Westat sent a reminder e-mail to the employer. Approximately 2 weeks later a

second e-mail reminder was sent. Sample members who still had not responded 1 week later were reminded by telephone.

A hard-copy version of the survey was made available to respondents for downloading. To minimize mode effects, submission of the survey in hard copy was not encouraged; however, this alternative was available if the telephone center staff believed it necessary to secure a response during the nonresponse calling process. In fact, no hard-copy surveys were received, and all surveys were completed on-line.

Data collection took place during a 3-month period starting in April 2006.

(g) Weighting and Nonresponse Adjustment

Since all employers meeting specified criteria were included in the sample, no weighting was necessary to adjust for differential sampling probabilities. No adjustments were made for nonresponse, because the response rate for the survey was 86 percent and experience with prior employer surveys has indicated that nonresponse adjustments have trivial effects on the final estimates.

(h) Database Construction

The initial database file from the employer survey was generated directly from the Web application. Employer-level variables from the transaction database, such as the number of verification queries and the number of tentative nonconfirmations, were then added to the file created by the Web application. Programmers created an extract from this file containing variables for which comparable data existed on both the original and Web Basic Pilot surveys. A comparable extract was created from the original Basic Pilot, and the two files were merged to facilitate comparisons of the original Basic Pilot and Web Basic Pilot results.

ii. WEB SURVEY OF RECENTLY ENROLLED EMPLOYERS

In addition to the long-term user survey, a smaller survey was conducted with employers that had signed MOUs too late to be included in the original employer survey. The purpose of this survey was to obtain information that will permit an understanding of the perspectives of this group, which differs from long-term users on both the length of time since they enrolled in the program and the recency of the survey.

(a) Sample Selection

The sample for the Web survey of recently enrolled employers consisted of all employers meeting the following criteria:

- The employer signed an MOU in November or December 2006;
- The employer transmitted at least one case in March 2007; and

- The employer had not notified USCIS that it wished to terminate enrollment in the Web Basic Pilot.

(b) Survey Design

The Web survey used for long-term users was also used for the survey of recently enrolled users.

(c) Staff Training

Where possible, telephone center and data entry staff who had worked on the survey of long-term users were also assigned to the survey of recently enrolled employers. New staff were trained using the same materials used for training the original data collection staff.

(d) Data Collection

Data collection procedures used with the survey of long-term users were telescoped for use with recently enrolled employers, to ensure timely completion of the survey. More specifically:

- The initial e-mail from Westat included both the attached letter from USCIS and the information necessary to log into the system and complete the survey.
- The length of time between contacts was shortened.

The data collection was conducted over a 4-week period in March and April 2007.

(e) Weighting and Nonresponse Adjustment

Since all employers meeting specified criteria were included in the sample, no weighting was necessary to adjust for differential sampling probabilities. No adjustments were made for nonresponse, because the response rate for the recently enrolled employers survey was 79 percent and experience with prior employer surveys has indicated that nonresponse adjustments have trivial effects on the final estimates.

(f) Database Construction

A data file for recently enrolled employers was constructed using the same techniques that were used in constructing the data file for the long-term user survey. The final file was merged with the file from the long-term user survey to facilitate comparisons between employers in the two surveys.

iii. WEB SURVEY OF SMALL EMPLOYERS

In addition to surveying long-term and recently enrolled users, a survey of small employers using the Web Basic Pilot was conducted. The purpose of this survey was to learn more about these employers because they would be expected to constitute a much

higher percentage of all employers in a mandatory employment verification program than in the current Web Basic Pilot.

(a) Sample Selection

The evaluation team selected a non-random sample of 70 small employers meeting the following criteria:

- The employer had 99 or fewer employees;
- At the time of registration, the employer indicated that it had only one site;
- The employer was not a designated agent;
- The employer was not an employment agency or a temporary help agency;
- The employer had not notified USCIS that it wished to terminate enrollment in the Web Basic Pilot; and
- The employer transmitted at least one case in the first quarter of calendar year 2007.

The original intent had been to select all employers meeting these criteria; however, because incorrect information on the data file was not detected until data collection had started, a number of employers meeting the selection criteria were not on the sampling frame.² Because of this problem, the analysts have treated the results of the survey as case study data.

(b) Survey Design

The Web survey used for long-term users was also used for the survey of small employers, except that the final open-ended question, which asked employers for opinions about how to improve the Basic Pilot program, was modified slightly to emphasize that their opinions as small employers were desired.³ Because the survey was essentially the same as the long-term user survey, no additional pre-testing was conducted.

² The initial data file contained incorrect data for the number of sites. In no case did this data problem result in selected cases being ineligible for the sample; however, it is not known whether there were systematic differences between the employers incorrectly excluded from the sample and those in the sample.

³ The original question on the long-term user survey was, "What additional comments or suggestions for improvement do you have regarding the Web Basic Pilot program?" On the survey of small employers, the question was, "What additional comments or suggestions for improvement do you, as a smaller employer, have regarding the Web Basic Pilot program? For example, does the program meet the needs of smaller establishments, or are there any parts of the Web Basic Pilot program that you find particularly challenging?"

(c) *Data Collection*

The Web survey of small employers was conducted at the same time as the Web survey of recently enrolled users, so that data collection, including staff training, was the same for the two surveys.

(d) *Weighting and Nonresponse Adjustment*

Among selected employers, the response rate was 74 percent. Because the analysts had decided to treat the results as case study data, no weighting was performed.

(e) *Database Construction*

The data file for small employers was constructed using the same techniques that were used in constructing the data files for other employer Web surveys.

b. ANALYSIS OF SECONDARY DATA

i. WEB BASIC PILOT TRANSACTION DATABASE

(a) *Main Analytic Database*

The transaction database provides information on employer use of the Web Basic Pilot program and verification outcomes. Westat constructed a transaction database of all cases submitted to the Web Basic Pilot from the start of the program in June 2004 through March 2007. Since this database was designed to address Department of Homeland Security (DHS) and Social Security Administration (SSA) program goals rather than for analytic purposes, the transaction database required complex file manipulation and cleaning before it could be used for analysis.⁴

The transaction data were subjected to extensive cleaning routines to delete cases that were transmitted in error (e.g., when the employer realized that a typographical error had been made or when the same case was transmitted more than once) and to correct situations in which it appeared that the employer had improperly resubmitted cases to SSA as if they were new cases. Although not all errors can be detected by such cleaning programs, the resulting database is a truer reflection of actual case processing than the original database was.⁵

Data from employer files provided by the contractor responsible for the Web Basic Pilot data system were merged with information from the transaction database. Since the transaction databases created for analysis are censuses of all the employee records for the designated time periods, analyses based on the transaction database are not subject to sampling error. However, there is nonsampling error. For example, in constructing the

⁴ See Appendix B for a description of this process.

⁵ The uncleaned transaction database is useful in that it reflects how employers used the system and will be helpful in monitoring and compliance activities.

transaction databases, it was sometimes necessary for staff members to make informed determinations of how to treat duplicate or unmatched cases. As in any case involving human judgment, mistakes may have occurred.

(b) Longitudinal Database

In addition to developing the main database, the evaluation team constructed a longitudinal transaction database to examine trends in system outcomes for employers that had transmitted cases in every 6-month period from October 2004 through March 2007. This database was extracted from the main database. The restriction of the database to employers with transactions throughout this period was imposed so that trends attributable to types of employers using the system were not confused with trends in the system itself. Examining these trends in addition to the trends in cross-sectional statistics provides two different perspectives on the question of changes in data accuracy. A total of 970,446 records for 544 employers were included in the final longitudinal transaction database.

ii. EMPLOYER REGISTRATION DATA

At the time that employers register for the Web Basic Pilot program, they provide basic information about their characteristics, including industry, number of employees, location, and number of sites. The database was cleaned of obvious errors, such as employers that were identified as test employers. It is subject to measurement error.

iii. FEDERAL DATA SOURCES

To determine how Web Basic Pilot employers and the workers they verify differ from national employers and the nation, several Federal databases were used in the evaluation. Data sources used include the Bureau of Labor Statistics' Job Openings and Labor Turnover Survey, the Department of Labor (<http://www.bls.gov/jlt/home.htm#data>), the Current Population Survey (<http://www.census.gov/cps/>), and the U.S. Census County Business Patterns 2005 (www.census.gov/csd/susb/usst04.xls). Although these data are believed to provide valid indicators of the nation's employers and labor force characteristics, these sources do not always collect data that are directly comparable with the data available for the Web Basic Pilot program. For example, the definition of "employer" used in the Web Basic Pilot differs from the definitions of "establishment" and "firm" used by the Department of Labor. Because of these differences, it is necessary to use the comparative data cautiously.

2. QUALITATIVE METHODS

This section discusses the two primary qualitative data collection activities in the evaluation – the case studies and the informal interviews with non-users.

a. CASE STUDIES

i. OVERVIEW

The site visit component of the case studies consisted of the following elements:

- Interviews with establishment employees responsible for the verification process;
- Observation of the establishment's verification process;
- Examination of employee records related to the verification process; and
- Interviews with employees.

ii. SAMPLE SELECTION AND RECRUITMENT

(a) Establishment Sample

A purposive sample of five employers was selected for the case study. Only employers with a relatively large number of tentative nonconfirmations were considered eligible for the study, to ensure that a sufficiently large number of employees would be available for interviewing. For the sake of efficiency, only employers located near several other eligible employers were approached for inclusion. To ensure some diversity among respondents, no more than two employers were selected from a given locale, and an attempt was made to find employers from different types of industries.⁶

The employers selected for participation in the case study were sent an initial e-mail requesting their participation, with an attached letter from USCIS endorsing the study and asking for their cooperation (see the Supplemental Materials). Because of the complex nature of the case study, all follow-up was conducted by telephone.

A total of 18 employers received an e-mail requesting their participation in the case study portion of the evaluation. Eight of these employers either refused to participate or failed to return telephone calls. Recruitment efforts were discontinued after the desired number of five employers had agreed to participate.

(b) Sample of Employee Records

The record review did include quantitative analyses. Of the 376 records reviewed, data from 364 record review forms were included in the analyses. To clean the record review database, research staff removed all cases where the employee files were missing and all cases where the record review form had been completed for the incorrect case number. As a result, 12 records were not included in the analyses. Basic descriptive statistics were used to summarize the results of these reviews.

⁶ To protect the confidentiality of the case study interviewees, detailed information about the selected employers is not provided.

(c) *Employee Sample*

The employee sample for each employer consisted of a purposive sample of up to 100 employees whose records on the transaction database indicated that they had received tentative nonconfirmations. Selection of employees for the initial employee sample was based on the recency of the cases and the case outcome (SSA final nonconfirmation, verified by SSA at second stage, USCIS final nonconfirmation, USCIS unauthorized, and USCIS third-stage authorization). The goal was to have sample sizes within each outcome category that were proportionate to the overall number of cases with that outcome at each employer. For example, if 50 percent of tentative nonconfirmation cases for a case study employer were SSA final nonconfirmation cases, the goal was to complete 50 percent of the employee interviews with employees who had received SSA final nonconfirmations.

This initial list of employees constituted the employee sample for the record review portion of the case study. The interviewers were instructed to select employees from this list for in-person interviews. Criteria for selection included case outcome and the amount of information available for locating the employee. The interviewers also gave preference to employees who they believed were likely to speak either English or Spanish, since interviewers proficient in other languages were not used in the study and interviewing through an interpreter is somewhat problematic. Interviewers were also instructed to give preference to employees who had puzzling records. Within these limitations, the interviewers were free to select employees based on the ease with which they could locate them. For example, it made sense to try to interview employees who lived close to one another in a single trip.

The goal was to complete 20 employee interviews for each employer, for a total sample of 100 employees. A total of 79 employees were interviewed from approximately 150 attempted interviews. Given the nature of the sample and the interview procedures, calculation of a formal response rate is not appropriate. On the basis of additional information obtained during the site visits, the research team decided that 14 of these employees had been erroneously classified as tentative nonconfirmation cases; one additional employee was not knowledgeable about the tentative nonconfirmation finding or the contesting process because his mother had resolved the finding for him. Thus, the total sample of tentative nonconfirmation recipients with completed interviews was 64.⁷

iii. INSTRUMENT DESIGN AND DEVELOPMENT

(a) *Initial Design*

Three instruments were prepared for use in the case study portion of the study. These instruments consisted of an employer interview protocol, an employee interview protocol, and a record review form. In keeping with the ethnographic nature of the case studies,

⁷ Reasons for misclassification included employer errors in coding cases that had not been identified during cleaning of the transaction database and a misunderstanding of the meaning of one of the transaction codes on Westat's part. The latter error was corrected before the transaction database analyses described in this report.

interviewers were given a great deal of leeway in what questions they asked both employees and employers within the frameworks established by the written materials.

Development of the instrument for use with *employers* started with a review of the employer on-site surveys used in earlier evaluations. Modifications were made in light of the research goals of this study, previous experiences with the employer on-site interviews, and the less-structured interviewing instruments being used for this study.

Development of the instrument for use with *employees* started with a review of the employee surveys used in earlier evaluations. Modifications were made in light of the research goals of this study, previous experiences with the employee interviews, and the less-structured interviewing instruments being used for this study. Since the research team did not plan to make comparisons between the employees interviewed in the case studies and those previously interviewed, there was no attempt to maintain consistency between the new instrument and those used in earlier evaluations.

Once drafts of the employer and employee interview protocols were completed, an on-line focus group was conducted to further inform the case study. The goals of this focus group were to ascertain what procedures employers would be comfortable with and what types of activities they would recommend that the interviewers undertake to understand the hiring and verification processes at their establishments. The protocols were modified in response to the focus group.

A record review form was designed to obtain as much information as possible about the experiences of each employee during the tentative nonconfirmation process and was also used to capture any locating information available in the record (see the Supplemental Materials). These forms were individualized for each employee on the list. They contained information necessary to verify that the correct employee's record had been provided by the employer, and they included information about the case from the transaction database. The form permitted interviewers to indicate whether the information in the employee's record was consistent with the information on the transaction database and, if not, provided space for them to describe any discrepancies, including missing documents.

(b) Pre-test of Instruments

Because the instruments developed for the case study differed substantially from previously used instruments, they were pre-tested. Site visits were made to two establishments. At each site, the Web Basic Pilot contact person was interviewed, record review forms were completed for several employees who had received tentative nonconfirmations, and two employees were interviewed. Two staff members conducted each of these site visits. One member of the interview team was an evaluation team member and the second was the interviewer supervisor selected for the site visits. The interviewer supervisor was responsible for conducting and writing up the interview. The evaluation team member observed, in order to identify and correct any deficiencies in the initial drafts of the instruments that might interfere with achieving the evaluation's research goals. Both members were responsible for identifying any problems with the

protocols or the record review form. All of the instruments were revised, as needed, in light of the pre-test prior to the actual site visits. (See the Supplemental Materials for copies of the materials used in the pretest.)

iv. INTERVIEWER SELECTION, TRAINING, AND MONITORING

Ethnographic observations and interviews must be conducted by highly educated and experienced interviewers who have been intensively trained. Accordingly, the evaluation team selected experienced interviewers known to the interviewer supervisor. Two of the selected interviewers were bilingual in English and Spanish.

The selected interviewers had an intensive 4-day training session. This training session started with an in-depth explanation of the evaluation goals and methodology, concentrating on the site visit stage of the study. This introduction to the evaluation also included an overview of the Web Basic Pilot program, and each interviewer completed the Web Basic Pilot on-line tutorial and passed the Mastery Test. The interview guides and observational protocols were carefully reviewed with the interviewers, and role-playing exercises gave them an opportunity to practice the interviewing techniques they would use. The interviewers also had opportunities to practice using the record review form.

During the data collection period, interviewers were monitored in several ways. First, they had weekly conference calls with their supervisors to discuss productivity, problems finding employees, and contact strategies for maximizing response rates. Supervisors thoroughly reviewed all employer and employee case summaries as they were completed by each interviewer and provided feedback. Supervisors also provided additional feedback and discussed problems and strategies through e-mail with interviewers.

v. DATA COLLECTION

The site visits were conducted from the last week of May through July 2006. The first step in the site visit consisted of an interview with the primary contact person for the Web Basic Pilot program. The contact person also identified and invited other establishment staff members involved in the Web Basic Pilot process to participate in the interview. The contact person(s) was asked questions about the verification process at the establishment. Once the interviewing of establishment staff was completed, the interviewers observed as much of the verification process as feasible. They also determined whether the pilot notice was displayed in a prominent place that was clearly visible to prospective employees, as required by the pilot program.

During the initial site visit, the interviewers also reviewed the employment verification-related records⁸ of the employees identified for the record review stage of the case study during the initial establishment visit. Of the 451 records identified for review, 376

⁸ Records consisted of Employment Eligibility Verification forms (Forms I-9) for the employee, as well as any attached photocopies of documents presented, Basic Pilot transaction records, and copies of any notices of the employee's intent to contest a tentative nonconfirmation finding.

(83 percent) were reviewed. The remaining records were not reviewed for several reasons, including the following:

- Some employers retained some employee records for only short periods of time.
- Some employees were never officially hired by the company.
- Some records could not be located.
- Some records were duplicates (the transaction database contained duplicates because of data entry errors that were not detected during the cleaning process).

Subsequent visits to the establishment were made, if needed, to complete the record review, to clarify information obtained during the record review or employee interviews, and/or to interview employees still working for the establishment, if the employer was willing to cooperate by providing a suitable interviewing environment.

Initial locating of employees was done by a locating service on the basis of name and Social Security number. This service provided contact information for 262 of the 451 employees selected for record review and possible interview. During the record review, interviewers recorded available information from the Form I-9 and any other address sources, such as copies of driver's licenses presented as proof of identity and included in the employees' Form I-9 files. Finally, while interviewers were in the field, they attempted to trace employees by talking to neighbors or landlords when feasible.

Once the employees had been located, the evaluation team mailed them an introductory letter that described the purpose of the interview, established the interview's legitimacy, guaranteed confidentiality, and provided the names of evaluation staff who could answer questions about the interview. Within 2 weeks of the introductory letter mailing, interviewers began to contact employees. To facilitate introduction at the door, interviewers wore an identification badge and handed out the study brochure to the person answering the door. To encourage participation, respondents who completed the interview were offered a \$25 incentive.

Most interviews were conducted in the sampled employees' homes, at the case study establishment, or in person at another agreed-upon site. A small number of interviews were conducted over the telephone because the employee lived in an area that the interviewer was not comfortable visiting and an alternative location could not be identified for the interview. An in-person interview was chosen because of the complexity of some of the questions, the need to show examples of the I-9 and other forms, the low education level of a significant proportion of employees, and the limited English proficiency of some employees in the sample. Bilingual interviewers conducted the interviews with Spanish-speaking respondents whenever possible. During the in-person interview, a trained interviewer asked employees about their experience in applying for the job with the Web Basic Pilot employer, how their paperwork was processed, and how any problems encountered during employment verification were resolved. The employees' demographic characteristics were also collected. The data

collection followed procedures and management structures designed to ensure the highest quality data.

b. INTERVIEWS WITH NON-USERS

i. OVERVIEW

There were not sufficient funds available to do a systematic quantitative study of employers that did not use the Web Basic Pilot. However, it was possible to conduct a few informal interviews with non-users to obtain some insights into why they were not using the Basic Pilot system. The non-users selected had either formally terminated their participation in the Web Basic Pilot program or had signed up for the program but had never used it. No attempt was made to interview the much larger group of employers that had never signed up for the Web Basic Pilot program, nor was there an attempt to interview employers that had not formally terminated but had not recently submitted cases to the Web Basic Pilot.⁹

ii. SAMPLE SELECTION

Two lists of non-users were generated for potential interviews. One group of non-users consisted of employers that had formally terminated their participation in the Web Basic Pilot program, and the second group consisted of employers that had signed up for the program in December 2006 or earlier but had never used the system. Purposive samples were selected from these lists. For both samples, the following were taken into account:

- Employment and temporary help agencies and designated agents were excluded from the samples because their unique needs would require separate protocols, and there were not adequate resources to conduct interviews with more than two groups.
- The recency of the action (i.e., termination date for the sample of employers that had terminated and the MOU date for those never using the system) was taken into consideration, with a preference given to employers that had recently terminated or had signed the MOU relatively recently.
- The sampling process took into account the desire to interview employers with diverse size, location, and industry characteristics, among those meeting the minimum criteria.
- For the sample of employers that had terminated use of the system, employers that gave USCIS vague reasons for terminating were given preference over those giving clearer answers. For the remaining employers, selection was based on a desire to obtain interviews with employers expressing a variety of reasons for termination.

⁹ There is no easy way to differentiate employers that have not recently hired any employees from those employers that have decided not to use the system without formally terminating their participation.

- For the sample of employers that had never used the system, preference was given to employers particularly likely to use the system based on their size and industry code (i.e., larger employers and those in industries that have a relatively high percentage of users among employers signing up for the program).

Using the preceding criteria, 20 employers within each group were selected in order to provide a sufficiently large number of employers for inclusion in the final sample.

iii. INSTRUMENT DESIGN

Separate interview protocols were developed to guide the interviews for each group (see the Supplemental Materials). Because of time and cost concerns, these instruments were not pre-tested.

iv. DATA COLLECTION

Two members of the evaluation team conducted telephone interviews with nine non-users in each of the two groups. Because these researchers were already very familiar with the Web Basic Pilot, it was not necessary to provide training and the researchers were better able to follow up on issues of interest to the evaluation, even if these were not articulated in the protocol.

c. DISCUSSIONS WITH FEDERAL OFFICIALS AND CONTRACTORS

During the original Basic Pilot evaluation, the evaluation team interviewed 15 senior officials and contractors from SSA and the Immigration and Naturalization Service (INS) and other offices within the Department of Justice that had responsibility for designing and/or implementing the pilot programs. The information captured in those interviews represents the informed opinions of individuals who had experience with the pilot programs and with electronic verification systems. For the Web Basic Pilot, the project director had additional discussions with Federal and contractor staff to obtain updated financial and programmatic information for the evaluation. The project director also attended several meetings of Federal staff on issues related to this report.

d. SYSTEM TESTING

The evaluation team tested the Web Basic Pilot system by registering for the Web Basic Pilot as an employer, registering system users, completing the tutorial and Mastery Test, and using the system to verify employment eligibility. System testers reviewed the instructional and informational content provided by the system, including the MOU, the tutorial screens, mouse-over text, and other on-line resources. They tested the functionality and usability of each feature of the on-line program. Tests were also performed to determine how tolerant the system was in matching employees' names and dates of birth (e.g., whether the system accepted typographical errors or nicknames). No attempt was made to "hack" into the system database.

C. MEASUREMENT AND DATA ANALYSIS

1. MEASUREMENT

a. SCALES

Most of the quantitative variables used in analyzing the data in this report were measured in a straightforward fashion. These include continuous variables, such as the number of cases the employer transmitted in the preceding 6 months, and categorical variables, such as whether the employer agreed with the statement “Contesting a tentative nonconfirmation is not encouraged because the process requires too much time.” When there were too few cases in some of the categories of a categorical variable to permit meaningful analysis, adjacent ordered cells were combined (e.g., “agree” and “strongly agree”).

For this report, employer satisfaction and employer compliance are the only variables measured with a scale derived using advanced statistical techniques. To systematically assess the employers’ overall satisfaction and compliance levels with the pilots, item response theory methodology was used to construct two scales. The satisfaction scale is a modification of the scale used in an earlier evaluation report that integrated information from the three Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) evaluations, based on questions used in that study that are also available in the Web Basic Pilot survey. The compliance scale was constructed for the current evaluation. To construct the scales, a mixed-method approach was applied using both theory-driven and data-driven analysis to explore the item-scale relationship. The theory-driven model grouped the items relevant to each underlying construct and used these groupings to guide the analysis. The items¹⁰ used in the satisfaction scale are as follows:

- Burdensome: Indirect costs for setting up the system;
- Burdensome: Indirect costs for maintaining the system;
- How useful the manual was;
- Tentative nonconfirmation: Providing assistance is an excessive burden on staff;
- Tentative nonconfirmation: Burden because there are so many of them;
- Pilot experience: At this time, the number of employees hired is too great to enter on a timely basis;
- Procedure: The tasks required by the pilot overburden staff;
- Procedure: It is impossible to fulfill the employer obligations required;

¹⁰ See the Supplemental Materials for the Web Basic Pilot survey with complete question wording.

- Overall, the pilot is an effective tool for employment verification;
- Any difficulties with the pilot after setup; and
- Benefits of the system outweigh disadvantages.

The items used in the compliance scale are as follows:

- How user friendly the system is;
- It is easy to make errors when entering employee information;
- Frequent technical assistance is needed from the help desk;
- Number of employees hired is so great, employer can't make verification deadline;
- Software is so cumbersome, employer can't make verification deadline;
- Any difficulties using the system;
- Employer uses program for new employees who claim to be noncitizens;
- Employer uses program for new employees who claim to be citizens;
- Employer uses program for job applicants;
- Employer uses program for employees working prior to start of the program;
- Employer has received nonconfirmation due to data entry error;
- Employer closes cases with data entry errors as Invalid Queries;
- Employer enters revised case with corrected information as a new case;
- Employee told about a tentative nonconfirmation decided to contest;
- Employee told about a tentative nonconfirmation decided to quit;
- Employer never told employee about a tentative nonconfirmation because employee was no longer working there;
- Employer never told employee about a tentative nonconfirmation even though employee is still working there;
- Employer decided not to hire employee without telling employee about tentative nonconfirmation;

- Employer decided to fire employee without telling employee about tentative nonconfirmation;
- Contesting tentative nonconfirmation is not encouraged because it takes too much time;
- Providing assistance to employees who contest is an excessive burden;
- Contesting is not encouraged because employment authorization rarely results;
- Establishing authorization became burdensome because of so many tentative nonconfirmations;
- Work assignments are restricted until employment authorization is confirmed;
- Pay is reduced until employment authorization is confirmed;
- Training was delayed;
- Employee was informed privately;
- Written notification was given;
- In-person notification was given;
- Employees do not return when tentative nonconfirmation is issued; and
- Employees are unable to contest tentative nonconfirmation.

b. WORK-AUTHORIZATION MODEL

One limitation of outcome estimates from the transaction database is that the sizeable number of final nonconfirmation cases includes both persons without work authorization who are unlikely to contest tentative nonconfirmations and work-authorized employees who do not contest for a variety of reasons. Work-authorized employees might not contest because they were not clearly informed of the tentative nonconfirmation or because they decided to leave the job for reasons unrelated to the tentative nonconfirmation finding. The programmatic implications of final nonconfirmation cases associated with work-authorized employees and those associated with employees without work authorization are critical. Since the termination of employees without work authorization is a program goal, final nonconfirmations of these employees indicate that the program is working properly. On the other hand, the receipt of final nonconfirmations by work-authorized employees indicates a programmatic failing, since these employees may lose jobs or be subject to other adverse consequences.

Unfortunately, it is not easy to estimate quantitatively what percentage of final nonconfirmation cases are associated with work-authorized employees. The evaluation team has, therefore, developed a model to estimate the percentage of work-authorized

employees among those receiving final nonconfirmations.¹¹ This estimate is based on the following assumptions:

- The percentage of work-authorized employees during the first half of fiscal year 2007 who successfully contested an SSA tentative nonconfirmation was 61 percent and the percentage who successfully contested a USCIS tentative nonconfirmation was 81 percent. These rates are the midpoints between 100 percent and the highest observed rate for subgroups of employees with different reasons for receiving tentative nonconfirmations among cases resolved by SSA or USCIS.
- The final work-authorization findings for employees contesting tentative nonconfirmations are correct.
- When a tentative nonconfirmation finding is issued, employer and employee behavior may be influenced by whether it is an SSA or USCIS tentative nonconfirmation, but their behavior is not dependent upon the reason for the tentative nonconfirmation.

Two important caveats must be noted: (1) To the extent that these assumptions are not correct, the estimates are likely to be inaccurate; and (2) no estimate is made for the number of non-work-authorized persons who are found by the Web Basic Pilot to be work-authorized because they committed identity fraud.

c. INDICATORS

To assist in understanding the results of the evaluation, the following indicators were developed:

- **Erroneous tentative nonconfirmation rate for ever-authorized employees.** This rate consists of the percentage of employees found to be work-authorized at any point in the verification process who received a tentative nonconfirmation prior to receiving a work-authorized finding. This measure should be viewed as only an approximation of the “true” erroneous tentative nonconfirmation rate for all employees. It is limited by the following:
 - Some work-authorized employees do not contest tentative nonconfirmation findings because they choose not to do so or because their employers do not provide them with the information they need to contest. These cases are not counted in either the numerator or the denominator of the erroneous tentative nonconfirmation rate for ever-authorized employees. Because of this exclusion, the erroneous tentative nonconfirmation rate for ever-authorized employees is lower than the erroneous tentative nonconfirmation rate for all employees. The model-based estimate of the percentage of employees receiving final nonconfirmations provides some information on the likely

¹¹ See Appendix C for more detailed information on the model.

extent of this underestimate. For October 2006 through March 2007, the estimate of the erroneous tentative nonconfirmation rate, including work-authorized employees who received final nonconfirmations, was approximately 0.81 percent, compared to an erroneous tentative nonconfirmation rate for ever-authorized employees of 0.53 percent. Thus, the estimated erroneous tentative nonconfirmation rate for all employees is approximately 1.5 times that for ever-authorized employees.

- The erroneous tentative nonconfirmation rate for ever-authorized employees does not correct for the fact that there are employees who are not work-authorized among those found to be work-authorized. Ideally, these employees should not be included in the calculation. If this correction could be made, it would increase the estimate of the erroneous tentative nonconfirmation rate. If, for example, 5 percent of cases found to be work-authorized were actually not work-authorized, the erroneous tentative nonconfirmation rate for ever-authorized work-authorized persons would have been 0.56 instead of 0.53 percent.

Although not perfect, the percentage of ever-authorized employees found to be work-authorized after a tentative nonconfirmation is the best indicator of the erroneous tentative nonconfirmation rate that could be easily calculated with available data for many of the groups of interest.¹² Unfortunately, the evaluation team was unable to develop a comparable indicator of the *erroneous work-authorization rate* (i.e., the percentage of verifications of persons without work authorization who were found to be work-authorized). While the results of the process whereby employees contest erroneous tentative nonconfirmations can be used to inform the estimated erroneous tentative nonconfirmation rate, there are no comparable follow-up procedures for invalid findings of work authorization.

- **Ratio of new employees verified by the Basic Pilot program to newly hired employees nationally.** The indicator of Basic Pilot coverage used in this report is calculated by dividing the number of employees verified by the Basic Pilot program by the number of newly hired employees in the country (estimated from the Job Openings and Labor Turnover Survey) for the same time period. Since there is evidence that some employers are screening job applicants,¹³ this indicator overestimates the percentage of new employees verified by the Basic Pilot program.

Readers familiar with earlier IIRIRA evaluation reports may remember that the percentage of establishments enrolled in the program was used as a measure of employer usage of the program. This has been discontinued because changes in

¹² In particular, it is difficult to use the model-based procedures to estimate the total erroneous tentative nonconfirmation rate for the place of birth/citizenship groups.

¹³ See Chapter III for a discussion of this issue.

the definition of “employer” used in the Web Basic Pilot program preclude meaningful estimation of the number of establishments enrolled in the program.¹⁴

- **Mean absolute differences between the Web Basic Pilot and the nation.** These differences are used to indicate how similar pilot employers and the workers they verify are to the entire U.S. population. These measures should be considered rough indicators, especially when comparing differences between various characteristics, because they are sensitive to the somewhat arbitrary categories used for comparisons.

2. DATA ANALYSIS

a. QUANTITATIVE ANALYSES

Most of the quantitative analyses described in this report consisted of simple descriptive statistics (e.g., means and frequencies). For example, such statistics were used to summarize the responses of employers that used both the Web Basic Pilot program and the original Basic Pilot program to questions about their perceptions of the differences between the programs. Even though the employer samples (other than the sample of small employers) consisted of all employers meeting specified criteria, tests of significance were performed. This is a conservative approach, tantamount to assuming that random factors affected which employers signed up for the program. In comparing responses of employer groups (e.g., long-term and recent users), tests of significance (t-tests, ANOVA, and Chi-square tests) were used.

The evaluation team used the following statistical techniques for multivariate analysis: linear regression, logistic regression, and hierarchical linear modeling. Because the audience for this report is expected to include readers with little statistical background, details of the multivariate results are presented in Appendix D rather than in the text. However, only descriptive statistics that are consistent with the multivariate results are presented.

All of the regression analyses followed the same basic set of procedures. First, the evaluation team performed a series of bivariate analyses between the dependent variable and variables expected to be associated with the dependent variables. The purpose of these analyses was to reduce the number of variables included in the multivariate analysis to a reasonable number (i.e., to simplify the model) and to identify whether any of the independent variables should be transformed by logarithmic or other mathematical functions. Second, variables that were highly correlated with each other were identified to

¹⁴ According to USCIS verification staff, the number of employers published by the program is the number of employers that have signed an MOU to use the program. However, MOUs may be signed either at the company level or the establishment level when there are multiple establishments associated with a given company. Recent changes in question wording clarify that USCIS is asking about the number of sites for which the user is verifying, which could reasonably be interpreted as the number of establishments covered by the program. However, for employers that signed up in the past it is unclear whether the number of sites is equal to the number of the employer’s sites or the number of sites for which verification is being conducted.

avoid multicollinearity problems. Although stepwise multiple regression was used to help identify the combination of variables that best predict the dependent variable, alternative models were tested. The alternative model was selected when it was easier to interpret in light of the bivariate results and when the theoretical expectations fit almost as well as the model selected by stepwise regression.

b. QUALITATIVE DATA

Most of the information collected from the case studies was descriptive in nature. The information from these interviews was captured in descriptive summaries of each of the case studies. These summaries highlighted information relevant to understanding discrimination against employees, especially information about the impacts of tentative nonconfirmations on employees and evidence of whether employers were following Web Basic Pilot procedures designed to minimize the negative impacts of tentative nonconfirmations. A synopsis of the individual employer summaries was then prepared and is included in Appendix E.

Qualitative information was also obtained from open-ended questions in the employer surveys and the telephone interviews with non-users. These were used primarily to provide descriptive information and specific employer suggestions.

D. LIMITATIONS IN INTERPRETING EVALUATION RESULTS

As in every study, the data sources used in this evaluation have limitations. Special care should be exercised when interpreting the results from this study, for several reasons.

Pilot establishments account for only a small proportion of all establishments in the United States. Moreover, establishments registering for the Web Basic Pilot differ significantly from employers not enrolled in the program. More specifically, pilot participants tend to be larger than most establishments, have higher proportions of foreign-born employees, and be more concentrated in certain industries and locations.¹⁵ Therefore, the results of this study represent only those establishments that participated in the program or, in the case of the non-user interviews, signed up to use the program.

It is also important to understand that pilot establishments volunteered to participate. The generally favorable attitudes expressed by volunteers may differ from the attitudes of employers that are less willing to participate. Voluntary participation limits the generalization of study results to employers beyond those establishments that used the system.

As in all data collection efforts, some employers did not respond to the Web surveys. In this situation, it is possible that the respondents differ systematically from the nonrespondents. To the extent that this is true, data must be interpreted with this potential source of bias in mind.

¹⁵ See Chapter I for a discussion of the differences between pilot and non-pilot employers.

To determine how Web Basic Pilot establishments and the workers they verify differ from the nation as a whole, the evaluation team used several Federal sources. Although these data should be considered valid, they are not always strictly comparable to the Web Basic Pilot data because of differences in how questions are asked and/or differences in population definitions. It is, therefore, important to view these comparisons as approximate.

Finally, the qualitative data collection techniques used in the case studies and the non-user interviews were not designed to collect rigorous data. Although these data collection efforts provide insights into the Web Basic Pilot program, they cannot be generalized statistically even to the population of all employers in the program.

CHAPTER III. WAS THE WEB BASIC PILOT PROGRAM IMPLEMENTATION CONSISTENT WITH STAKEHOLDER EXPECTATIONS?

A. BACKGROUND

1. INTRODUCTION

The first step in a program evaluation is usually to determine whether the program has been implemented as intended, since deviations from the original design highlight areas where the program design might need modification to be effective. Scrutinizing program operations also helps to identify the extent to which the intended results may not have occurred because of implementation issues or program design. This chapter focuses on whether the Federal government and the employers that agreed to use the program have performed their respective roles in implementing the Web Basic Pilot program.

2. DATA LIMITATIONS

Many of the employer findings in this chapter are based on data obtained from employers that responded to the Web survey of long-term users of the Web Basic Pilot. Since the population for the employer surveys included all employers meeting specified criteria, it can be argued that sampling error is not an issue for these surveys; however, to be conservative, tests of significance are performed to determine whether random factors affecting which employers sign up for the program account for employer differences.¹ Like all surveys, the employer surveys are also subject to nonsampling errors, such as nonresponse bias and measurement error.

Information obtained directly from the Web Basic Pilot transaction database for June 2004 through March 2007 is based on almost 3.5 million cases. This is an extremely large sample and constitutes the population of cases submitted during this time. Although sampling error is not a concern, the possibility of measurement error exists because the U.S. Citizenship and Immigration Services (USCIS) and Social Security Administration (SSA) data provided from employer verification transactions contained some errors due, for example, to employer input errors. Although the data were cleaned, it is not possible to rectify all errors.

Information from Federal data sources is believed to provide valid indicators of the nation's employers and labor force characteristics; however, these sources do not always collect data that are directly comparable with the data available for the Web Basic Pilot program. For example, the definition of "employer" used in the Web Basic Pilot differs from the definitions of "establishment" and "firm" used by the Department of Labor. Because of these differences, it is necessary to use the comparative data cautiously.

¹ See Chapter II for additional information on the methodology of the evaluation.

Information from the five case study employers, the 376 employee verification-related records reviewed, and the 64 employees interviewed who had received tentative nonconfirmations cannot be considered to be representative of all employers or employees who received tentative nonconfirmations. The case study is designed to provide more in-depth insights into the Web Basic Pilot than can be obtained solely using more structured methodologies, but it should not be generalized to a larger population using statistical methodologies.

Similarly, the telephone interviews with non-users were not designed to be statistically representative of all non-users. The survey of small employers and telephone interviews with non-users also do not constitute randomly selected samples and, therefore, need to be interpreted with caution.

3. SYSTEM OUTCOMES

a. INTRODUCTION

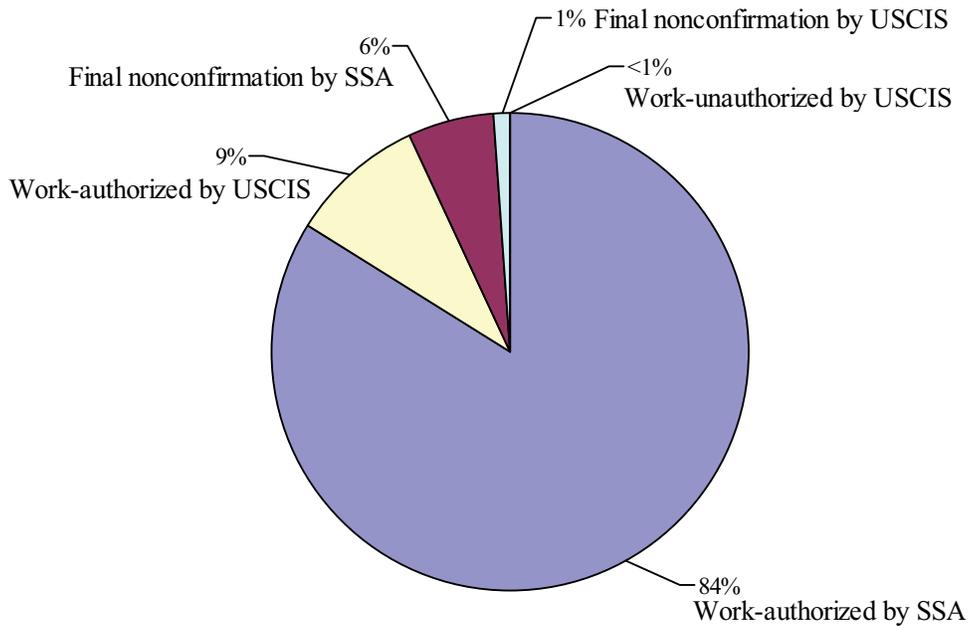
To answer the process evaluation questions in this chapter, it is necessary to have an understanding of what the system outcomes were during the period being evaluated. These outcomes are described here and then referred to later in the report, as relevant to understanding the findings.

Exhibit III-1 provides summary information about system outcomes between the start of the Web Basic Pilot program, in June 2004, and March 2007. During this period, employers made almost 3.5 million verification attempts. Eighty-four percent of the verification attempts submitted to SSA and 9 percent submitted to USCIS were verified as being individuals authorized to work. Seven percent of all verification attempts were never resolved (labeled “Final nonconfirmation by SSA” or “Final nonconfirmation by USCIS”). For these cases, the employees did not contest a tentative nonconfirmation response from SSA or USCIS, either because they decided not to contest or because their employers did not follow the proper notification procedures. In addition, about 0.2 percent (or 7,636 cases) were found by USCIS to be unauthorized to work in the United States.

More detailed information about case processing is contained in Exhibits III-2 and III-5. These exhibits examine separately cases for employees who claimed to be U.S. citizens on their Form I-9s and those who claimed to be work-authorized noncitizens. Because the case processing procedures changed on October 21, 2005, the detailed exhibits are based on data for October 21, 2005, through March 2007.²

² See Chapter V for a description of the processes used prior to October 21, 2005, and a discussion of the impacts of the changed procedure.

Exhibit III-1: Overall Finding of Outcomes from the Web Basic Pilot Program



SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

b. CASE OUTCOMES FOR PERSONS ATTESTING TO BEING U.S. CITIZENS

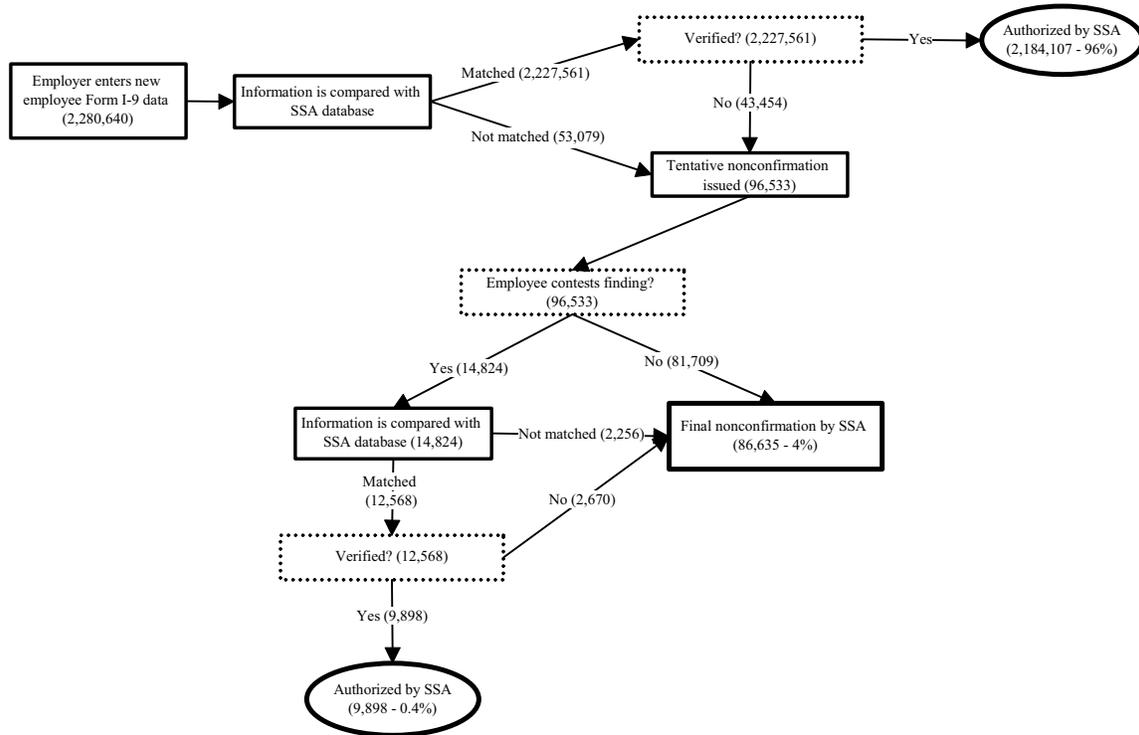
In the 18-month period from October 21, 2005, through March 2007, employers used the Web Basic Pilot to make approximately 2.3 million verification attempts³ for persons claiming to be U.S. citizens on the Form I-9. The outcomes of these verification attempts are displayed in Exhibit III-2. As illustrated, 96 percent of these cases were confirmed as work-authorized by SSA at the first verification attempt. Approximately 97,000 (4 percent) of the cases received tentative nonconfirmations.

Among U.S. citizens who received tentative nonconfirmations, approximately 10 percent (9,900) contested and were found to be work-authorized. This group of cases constituted less than 0.5 percent of all transactions for persons attesting to being U.S. citizens.

In approximately 86,600 cases (4 percent of all transactions for persons attesting to being U.S. citizens), SSA was unable to confirm the individual's work authorization during its automated matching processes and issued a final nonconfirmation.

³ These estimates are based on transaction data that have been "cleaned" (e.g., by eliminating cases the employer closed as "Invalid Queries"). Additional information on the cleaning process is presented in Appendix B.

Exhibit III-2: Verification Process for Persons Claiming to Be U.S. Citizens on Form I-9



SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

The original inconclusive findings were not followed to completion for a variety of reasons. For instance, the transaction database records indicate that 81,700 of the final nonconfirmation cases (94 percent) were ones in which employers did not indicate that they had referred the case to SSA. In some of these cases, the employees were informed of problems but decided not to contest the findings because they had falsely attested to being U.S. citizens or for other reasons. In other cases, the employer did not inform the employee of the outcome or did not provide all the information needed to contest the outcome in a way the employee could understand. In still other cases, the employer failed to enter sufficient information into the Web Basic Pilot system for the evaluation team to identify the case as a resolved SSA case rather than a final nonconfirmation.

In the remaining 4,900 cases (6 percent) receiving an SSA final nonconfirmation, the transaction database indicates that the case was referred to SSA but there is no evidence that the employee contested the case. This includes employees who told their employers they would contest but did not do so, either because they were not U.S. citizens or for other reasons. For example, at one case study employer, many employees were instructed to mark “contest” on the Tentative Nonconfirmation Notice so they could work longer, even if they were not work-authorized.⁴ Of the 20 employees interviewed from this

⁴ For a copy of this report or the Supplemental Materials, go to <http://www.uscis.gov>, select “About USCIS” (at the top of the page), and then select “Reports and Studies” on the left hand side of the page.

employer, most reported that they had marked the contest line on the notice but only 4 actually intended to go through with the contesting process.

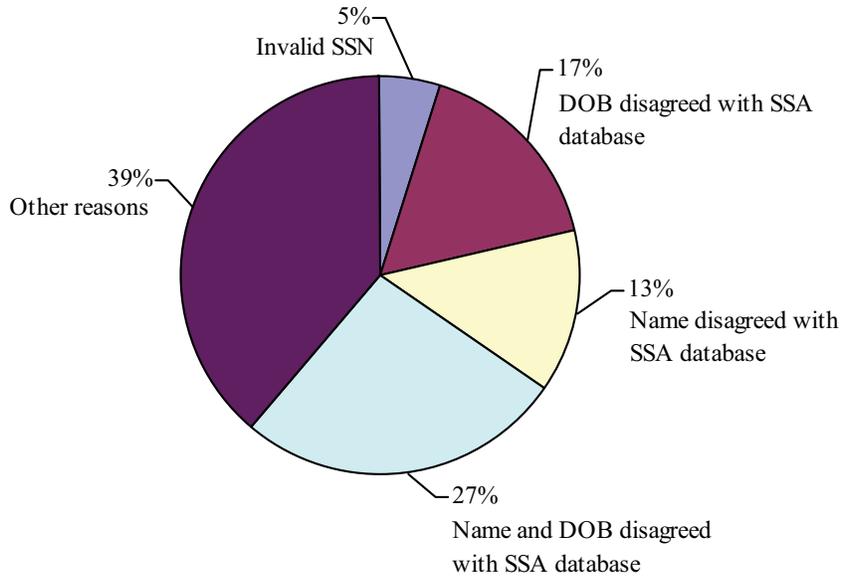
The final nonconfirmation cases referred to SSA, but not resolved also include employees who resolved their cases by going to SSA but whose employers failed to resubmit their cases, as required by the Web Basic Pilot. For example, one case study employer reportedly re-entered employees as new cases when they returned from SSA or USCIS with additional documentation or further proof of work authorization, thereby creating multiple cases in the Web Basic Pilot for many employees.

If an employee was not immediately confirmed as work-authorized, the system captured the reason for the tentative nonconfirmation (Exhibit III-3). Among these tentative nonconfirmation cases for employees attesting to being U.S. citizens between October 21, 2005, and March 2007:

- Five percent (4,071 cases) had an invalid Social Security number (SSN) when compared to SSA data.
- Thirty percent of tentative nonconfirmations (25,757) occurred because either the date of birth (DOB) or the name disagreed with the SSA data (17 percent and 13 percent, respectively).
- In 27 percent (23,251) of the cases, both name and date of birth disagreed with the SSA database.
- The remaining 39 percent of nonconfirmations occurred for other reasons (e.g., Social Security number, name, and date of birth were matched, but citizenship status could not be confirmed).

As Exhibit III-4 shows, employers closed 20 percent of final nonconfirmation cases as “self-terminated,” which is the code they are supposed to use when employees terminate their employment. The reason for self-termination may be directly related to the receipt of a tentative nonconfirmation; however, the code does not specify the reason for self-termination, so the reason may be unconnected to the Web Basic Pilot process. Another 24 percent of cases were coded as having been resolved as unauthorized/terminated. These are presumably employees believed to be unauthorized because they failed to contest the tentative nonconfirmation. Another 19 percent were closed for “other” reasons. It is difficult to interpret what is actually happening to employees receiving final nonconfirmations because employers do not appear to understand the case closure codes and failed to input codes for 37 percent of cases in which the employee attested to being a U.S. citizen.

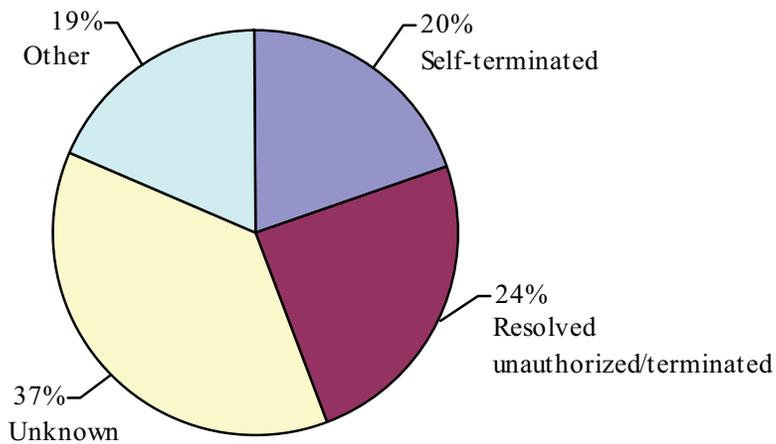
Exhibit III-3: Percentage of SSA Final Nonconfirmation Cases by Reason, for Persons Attesting to Being U.S. Citizens



NOTE: Details do not add to total because of rounding.

SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

Exhibit III-4: Percentage of SSA Final Nonconfirmation Cases by Employer Closure Code, for Persons Attesting to Being U.S. Citizens

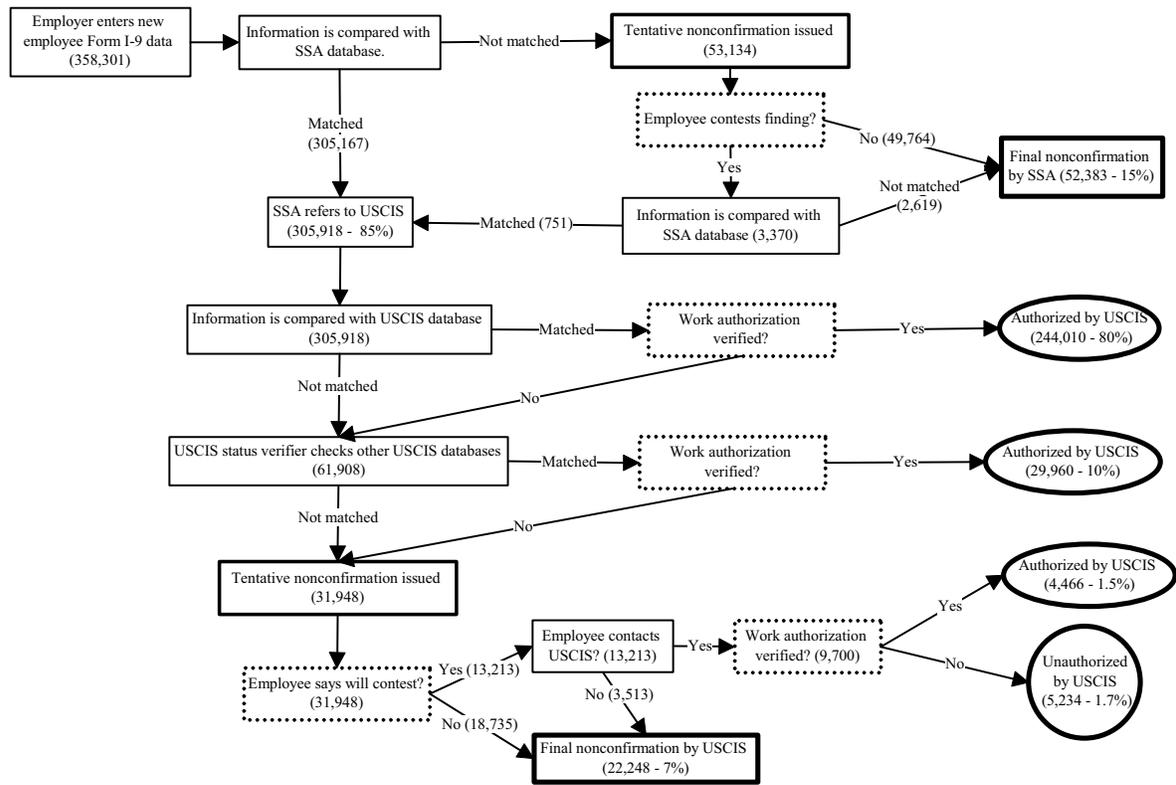


SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

c CASE OUTCOMES FOR PERSONS ATTESTING TO BEING NONCITIZENS

From October 21, 2005, through March 2007, employers submitted cases for approximately 358,000 persons claiming to be work-authorized noncitizens on their Form I-9s. The outcomes of these verification attempts are displayed in Exhibit III-5. In 15 percent (52,383) of these cases, the information about name, Social Security number, and/or date of birth on the SSA database did not match the information that the employer submitted and SSA issued a tentative nonconfirmation that later became a final nonconfirmation.

Exhibit III-5: Verification Process for Persons Attesting to Being Noncitizens on Form I-9



NOTE: Percentages refer to the percentage of cases referred to USCIS.

SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

Approximately 306,000 cases (85 percent) in which the employee attested to being a noncitizen were forwarded to USCIS after SSA confirmed that the Form I-9 identifying information matched the SSA information. The SSA finding usually was made instantaneously; however, in 751 of these referred cases, the finding was made after a resolved tentative nonconfirmation.

Since SSA cannot make a determination of work authorization for noncitizens, it is possible for noncitizens to resolve a tentative nonconfirmation with SSA and then receive a tentative nonconfirmation from USCIS.⁵ During the 18-month period from October 21, 2005, through March 20, 2007, there were 521 cases in which SSA resolved a tentative nonconfirmation after a noncitizen contested it (not shown on Exhibit III-5). Twenty of these cases received tentative nonconfirmations from USCIS in addition to SSA.⁶ In 15 of these 20 cases, the employee resolved the USCIS tentative nonconfirmation as well as the SSA tentative nonconfirmation. The other five cases received final nonconfirmation outcomes from USCIS. Thus, while it is unusual for an employee to receive tentative nonconfirmations from both SSA and USCIS, this situation does occur.

The employer-submitted information for noncitizen cases forwarded to USCIS is electronically matched against the USCIS database. Of cases referred to USCIS, 244,010 (80 percent) were confirmed as work-authorized at the first attempt. An additional 12 percent were confirmed as work-authorized after two or more attempts.

d REASONS FOR TENTATIVE NONCONFIRMATIONS OF NONCITIZENS

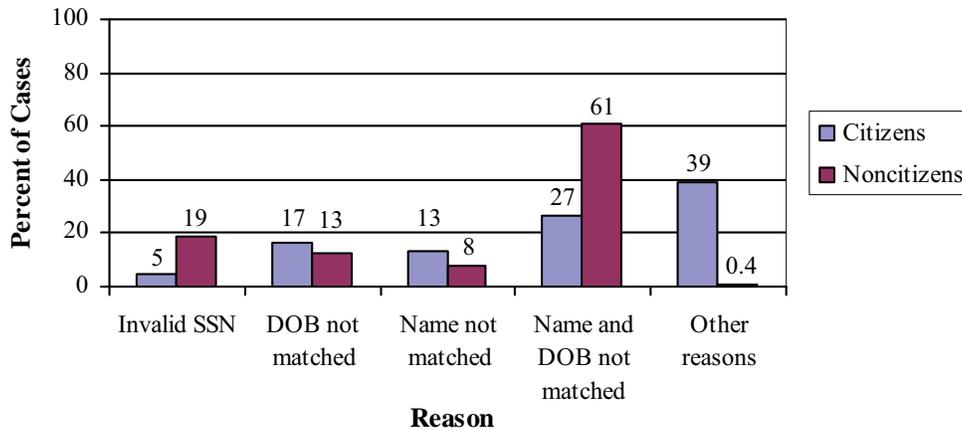
Among the SSA final nonconfirmation cases for noncitizens, 19 percent had invalid Social Security numbers and 20 percent had an invalid date of birth and/or name (Exhibit III-6). In 61 percent of these cases, both name and date of birth disagreed with the SSA database. Fewer than 1 percent received final nonconfirmations for other reasons.

The distribution of reasons for SSA tentative nonconfirmations is quite different for noncitizens than for citizens. Although the greatest difference is in the “other reasons” category, the distribution of reasons for the remaining cases also differs dramatically between citizens and noncitizens. Citizens are less likely than noncitizens to have invalid Social Security numbers or be found not to match on both name and date of birth. These two categories are presumably more likely to be associated with fraudulent attestation of work authorization than are cases in which either the date of birth or the name provided by the employee does not match SSA data. The low percentage of noncitizen cases in the “other” category is presumably due to the fact that SSA sends noncitizen cases to USCIS for confirmation of work-authorization status when their submitted information is consistent with information on the SSA database. Among U.S. citizens in the “other reasons” category, the most common reason for a tentative nonconfirmation was a nonmatching citizenship status.

⁵ Prior to October 21, 2005, SSA was permitted to make a final decision about the work authorization of legal permanent residents and other noncitizens with permanent work authorization. SSA could not, however, make a final decision for other noncitizens. See Chapter V for additional information about this change.

⁶ In 462 cases, USCIS confirmed the employee automatically, and in another 39 the employee was found to be work-authorized after an Immigration Status Verifier (ISV) examined the case during the second-stage verification process.

Exhibit III-6: Percentage of SSA Final Nonconfirmation Cases, by Reason for Tentative Nonconfirmation and Citizenship Status Attested to on Form I-9

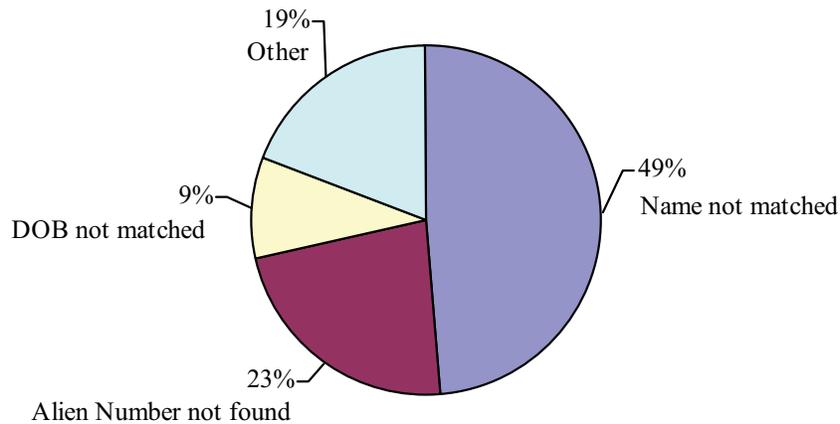


NOTE: Details may not add to total because of rounding.

SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

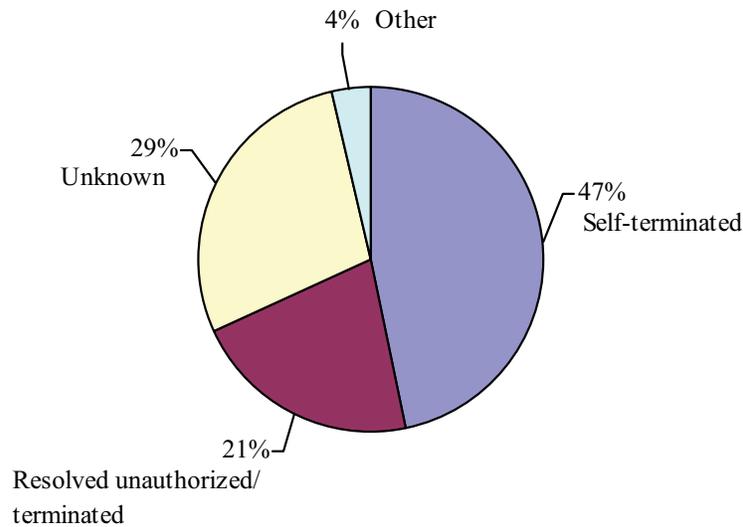
As Exhibit III-7 shows, the most common reasons why USCIS final nonconfirmation cases received tentative nonconfirmations were name not matched (49 percent), Alien Number not found (23 percent), date of birth not matched (9 percent), and other reasons (19 percent). Based on case closure codes, 47 percent of the final nonconfirmation cases were closed as “self-terminated,” 21 percent were closed as “resolved unauthorized/terminated,” and 4 percent were closed for other reasons (Exhibit III-8). Twenty-nine percent of USCIS final nonconfirmations were cases without closure codes.

Exhibit III-7: Percentage of USCIS Final Nonconfirmation Cases Among Employees Attesting to Being Noncitizens, by Reason for Tentative Nonconfirmation



SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

Exhibit III-8: Percentage of USCIS Final Nonconfirmation Cases Among Employees Attesting to Being Noncitizens, by Employer Closure Code



NOTE: Details do not add to total because of rounding.

SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

B. HOW WELL DID THE FEDERAL GOVERNMENT DESIGN AND IMPLEMENT THE WEB BASIC PILOT?

1. INTRODUCTION

Section B focuses on how well SSA and USCIS performed their roles in designing and implementing the Web Basic Pilot.⁷ Several approaches to this task are used. First, in Section B.2 information from the transaction database is used to determine the extent to which the system is being used. This information is important in understanding the ability of the program to achieve its goals, because the Web Basic Pilot program cannot contribute to a reduction in unauthorized employment if employers do not use it.

Section B.3 examines the question of whether the system provided employers with appropriate and timely information about the work-authorization status of employees, and Section B.4 examines system accuracy. These are important questions because if the Web Basic Pilot does not detect fraudulent claims of work authorization, it is likely to be ineffective in reducing unauthorized employment. At the same time, if there are large numbers of erroneous tentative nonconfirmations, Web Basic Pilot costs for employers, employees, and the Federal government will be unacceptably high.

⁷ USCIS has the primary responsibility for designing, implementing, and operating the pilot programs mandated under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). SSA's responsibilities were largely limited to providing data for the initial verification process and any necessary follow-up with employees receiving SSA tentative nonconfirmations.

Since many of the modifications to the original Basic Pilot program that were implemented in the Web Basic Pilot program were made in response to employer suggestions on ways the program could be improved, Section B.5 examines employer satisfaction with the program. This information was obtained, in large part, from the Web survey of long-term users conducted between April and August 2006. Where feasible, the Web Basic Pilot is also compared with the original Basic Pilot program, since a major goal of the Web Basic Pilot is to make the system easier for employers to use. These comparisons are accomplished in two ways: (1) by analyzing responses to questions about the relative merits of the programs, which were asked of employers that have used both versions of the program; and (2) by comparing results from the current evaluation with those of the original Basic Pilot program evaluation. The remainder of this chapter emphasizes comparisons between the survey of long-term Web Basic Pilot users and the original Basic Pilot employer surveys, because these two surveys were both limited to employers that had used the system for at least a year before the survey was conducted.

Information from the case studies is used in this section to provide a more in-depth understanding of employers' perceptions of the Web Basic Pilot.

2. WEB BASIC PILOT USAGE

One key aspect of the process evaluation is program usage. Usage data includes information both on whether employers are signing up for the program and the extent to which those that have signed up are actually using it. It should be noted that mandating the use of electronic employment verification would presumably greatly increase the use of the Web Basic Pilot. However, restrictions on the full utilization of the Web Basic Pilot by employers currently signed up may well point to potential problems in the implementation of a mandatory national system.

The number of cases submitted to the Web Basic Pilot program is much greater now than in the past. From June 2004 through March 2007 (34 months), employers verified approximately 3.5 million new employees.⁸ This is in contrast to the approximately 364,000 employee verifications conducted from November 1997 through December 1999 (26 months), when the first evaluation was conducted.

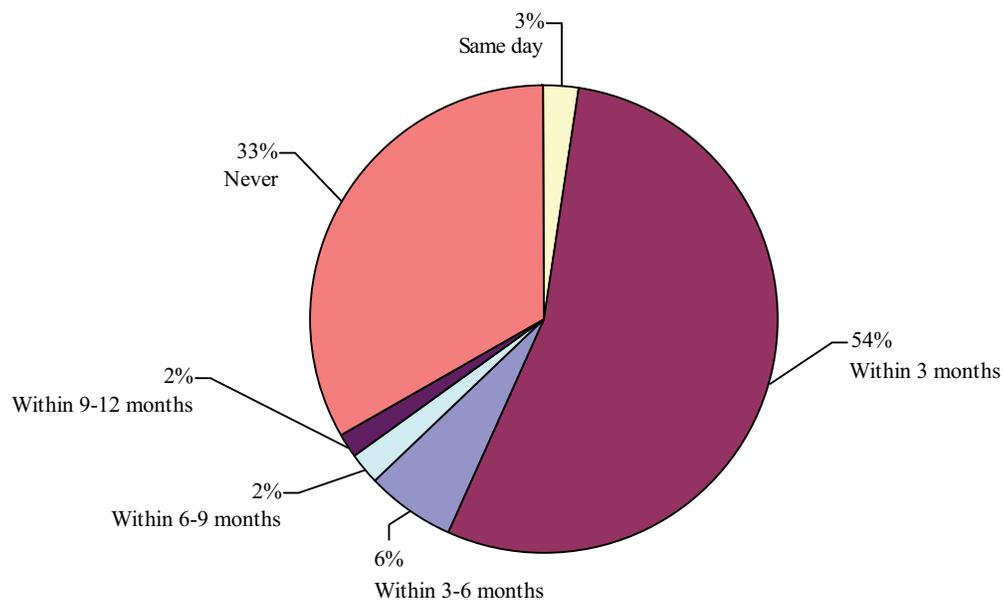
Most newly hired employees are not verified electronically. In the 6 months ending in March 2007, there were 1.1 million verification requests – approximately 4 percent of the

⁸ USCIS reports that as of March 30, 2007, 15,746 employers and 70,368 sites had been registered. As discussed in Chapter II, the definition of employers and the number of sites have changed since the start of the program, preventing an accurate comparison of the number of employers registered over time. However, there is no question that there are currently many more employers enrolled than there were in July 1999, when an estimated 1,189 employers had signed up for the program.

estimated 29 million new employees hired during that time.⁹ The corresponding ratio for the original Basic Pilot was well under 1 percent.¹⁰

Web Basic Pilot employers were more likely than original Basic Pilot employers to start verifying cases within 3 months of signing up for the program. Exhibit III-9 shows the length of time between the signing of the Memorandum of Understanding (MOU) and when the employer first transmitted a case to the system. This analysis includes only employers that signed the MOU at least 1 year before construction of the transaction database for the evaluation. This exhibit shows that 57 percent of employers started using the Web Basic Pilot within 3 months of signing the MOU. This is a major improvement compared to the 38 percent of establishments that had used the original Basic Pilot system within 3 months of signing the MOU. This finding was expected, because the Web system should be much easier to set up than the PC-based original Basic Pilot, for which employers reported significant problems and delays in set-up.

Exhibit III-9: Length of Time Between Signing of the MOU and First Verification for All Web Basic Pilot Employers



NOTE: Based on all employers that signed the MOU on or before March 31, 2006.

SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

⁹ Estimated from the Job Openings and Labor Turnover Survey (JOLTS) and Business Patterns 2004, collected by the Department of Labor, Bureau of Labor Statistics. Since some employers prescreen potential employees, this percentage overestimates the percentage of new employees verified with the Web Basic Pilot. See Chapter II for additional information on this indicator.

¹⁰ A precise estimate of this ratio cannot be made for the original Basic Pilot program, because the necessary JOLTS data are not available. However, it can be approximated by assuming that the number of newly hired employees in 1997 through 1999 was similar to that observed in 2000.

The evaluation team speculated that the difference in how long it took for original Basic Pilot and Web Basic Pilot employers to start the program might at least partially reflect the fact that many of the Web Basic Pilot employers had had experience with the Basic Pilot program and may therefore have been more likely to use the Web Basic Pilot quickly. Exhibit III-10 compares information on the length of time between the signing of the MOU and the first verification for long-term user survey respondents reporting that they had also used the original Basic Pilot program and those that had not. As expected, employers that had used the original Basic Pilot program were more likely than more recent users to start using the Web Basic Pilot system within 3 months of signing up (92 percent versus 85 percent, respectively).¹¹

Exhibit III-10: Length of Time Between Signing of the MOU and First Verification for Employers in the Long-Term User Survey, by Whether the Employer Had Used the Original Basic Pilot Program

Date of First Verification	All Employers in Long-Term User Survey		Participated in Original Basic Pilot			
	Number	Percent	No		Yes	
			Number	Percent	Number	Percent
Same day	41	4.0	21	4.4	20	3.6
≤ 3 months	873	84.8	385	80.4	488	88.6
3-6 months	71	6.9	46	9.6	25	4.5
6-9 months	33	3.2	20	4.2	13	2.4
9-12 months	9	0.9	7	1.5	2	0.4
> 12 months	3	0.3	0	0.0	3	0.5
Total	1,030	100.0	479	100.0	551	100.0

NOTE: There are no cases in the “never” category, because these employers were not included in the long-term user survey.

SOURCE: Web Basic Pilot Transaction Database and Employer Survey of Long-Term Users: June 2004-March 2007

3. DID THE WEB BASIC PILOT PROVIDE EMPLOYERS WITH ACCURATE AND TIMELY INFORMATION ABOUT THE WORK-AUTHORIZATION STATUS OF EMPLOYEES?

Another process evaluation question is whether the system is providing employers with accurate information about the work-authorization status of employees and doing so in a timely manner.

The Web Basic Pilot instantly verified the work-authorization status of most employees. The Web Basic Pilot instantly confirmed the work-authorization status of 3.2 million (92 percent) of the 3.5 million cases electronically processed between its inception in June 2004 and March 2007. An additional 1 percent of cases (37,000) were verified as being work-authorized after initial review by a USCIS ISV without a tentative

¹¹ Information on whether employers are continuing from the original Basic Pilot program was not captured on the employer database associated with the transaction database; therefore, the evaluation team can only do a breakdown for those employers in the survey of long-term Web Basic Pilot users, which, by definition, excludes those employers that had never used the system.

nonconfirmation being issued. According to the transaction database, 91 percent of these second-stage verification cases were resolved within 1 day of case submission, and almost all cases were verified by the fourth calendar day. Many of the cases that were not quickly resolved were cases in which employees were not work-authorized.

The percentage of cases automatically found to be work-authorized was considerably higher for the Web Basic Pilot than for the original Basic Pilot program. In the original Basic Pilot, 79 percent of cases were automatically found to be work-authorized by either SSA or INS, compared to 92 percent in the Web Basic Pilot.¹²

As Exhibit III-11 shows, the total percentage of cases found to be work-authorized was also higher in the Web Basic Pilot than in the original Basic Pilot program. The original Basic Pilot provided a final status of work-authorized for 87 percent of all processed cases (74 percent of all cases were found by SSA to be work-authorized, and 13 percent were USCIS work-authorization cases). For the Web Basic Pilot, 93 percent of all cases verified were eventually found to be work-authorized (84 percent by SSA and another 9 percent by USCIS). This improvement is presumably due at least in part to improvements in the SSA and USCIS databases. However, it is also likely that the expansion of the Basic Pilot program to all States has resulted in its being adopted by employers less likely to hire workers without work authorization.¹³

The Web Basic Pilot did not capture the specific number of unauthorized workers among unresolved cases. Seven percent of all cases submitted for verification were never resolved (i.e., they were labeled “Final nonconfirmation by SSA” or “Final nonconfirmation by USCIS”). In many of these cases, the employee decided not to contest a tentative nonconfirmation response from SSA or USCIS, because he or she was not work-authorized. However, in some of these cases employees undoubtedly failed to contest for some other reason (e.g., they quit their jobs for reasons unrelated to the program or the employer never informed them of the tentative nonconfirmation). Additionally, the case study indicates that, in some cases, employers do not correctly record the employee’s decision to contest in the Web Basic Pilot.

4. DID THE WEB BASIC PILOT MEET THE IIRIRA REQUIREMENTS FOR DATA ACCURACY?

The accuracy of the USCIS database used for verification has improved substantially since the start of the Basic Pilot program. However, further improvements are needed, especially if the Web Basic Pilot becomes a mandated national program. IRIRA states that “the... [legacy] Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy

¹² These rates are not strictly comparable because of some differences in the cleaning routines used with the original Basic Pilot and Web Basic Pilot databases. However, there is no reason to believe that this has had a major effect on the estimates of case outcomes.

¹³ This issue is explored in more depth in Chapter V.

and shall provide a process for the prompt correction of erroneous information...” (Section 404(g)). USCIS officials reported that although major improvements in the

Exhibit III-11: Comparison of Outcomes from the Original Basic Pilot and Web Basic Pilot Programs

Outcome	Original Basic Pilot (November 1997- December 1999)	Web Basic Pilot (October 2004- March 2007)
Total transactions	364,987	3,480,655
SSA portion of transactions	86%	89%
USCIS portion of transactions	14%	11%
SSA outcomes	364,987	3,480,655
Initial work-authorized	70%	84%
Work-authorized after 2 or more attempts	4%	0%
Final nonconfirmation	12%	5%
Referred to USCIS	14%	11%
USCIS outcomes	52,347	364,293
Initial work-authorized	61%	79%
Work-authorized at second attempt	29%	10%
Work-authorized at third attempt	2%	1%
Not work-authorized	0%	7%
Final nonconfirmation	8%	3%
Indicators		
Percentage of all cases verified automatically	79%	92%
Erroneous tentative nonconfirmation rate for employees work-authorized by Basic Pilot	4.8%	0.6%

NOTE: Details do not add to total because of rounding.

SOURCES: Original Basic Pilot and Web Basic Pilot Transaction Databases

timeliness and accuracy of the USCIS databases have been made, the database used for verification is still not always up to date. USCIS staff believe that data accuracy will be improved in the future through more expeditious access to data sources and by USCIS business and systems transformation efforts currently underway.¹⁴

The erroneous tentative nonconfirmation rate for employees found to be work-authorized at any time during the Web Basic Pilot process in the first half of fiscal year 2007 was less than 1 percent (0.53 percent); the estimated erroneous tentative nonconfirmation rate for all cases sent to the Web Basic Pilot in this timeframe was 0.81 percent.¹⁵ Although the erroneous tentative nonconfirmation rates for all employees are fairly low, they are much higher for foreign-born citizens than for U.S.-born employees and noncitizens. (The erroneous tentative nonconfirmation rate for ever-authorized foreign-born citizens between October 2004 and 2007 is approximately 10 percent.¹⁶)

¹⁴ See Chapter V for a discussion of the changes in accuracy since the start of the Web Basic Pilot.

¹⁵ See Chapter II for an explanation of how these estimates were calculated.

¹⁶ See Chapter IV for additional discussion of the disparate rates based on birth and citizenship status.

Unlike the original Basic Pilot, the Web Basic Pilot software includes a number of editing features designed to reduce data entry errors. The original Basic Pilot did not include any edit checks to identify even the most obvious data entry errors (e.g., an employee with a birthdate in the future or entry of a date that is clearly invalid). As recommended in earlier evaluations, the Web Basic Pilot has incorporated a number of edit features. When improper entries are made into fields on the verification screen, a red error marker appears next to the field. If the employer attempts to submit uncorrected entries, the system provides an error message requiring that the entry be corrected before verification, as in the following situations:

- A hyphenated last name will receive the error message: “Required Last Name must be between 1 and 40 alphabetic characters. Numbers and special characters are not allowed. Spaces, hyphens, and quotes are not allowed.”
- A Social Security number formatted as 123-456-789 will receive the error message: “Required Social Security number must be of the format ‘nnn-nn-nnnn’, ‘nnn nn nnnn’, or ‘nnnnnnnnn’.”
- A hire date entry of 7/18/1800 will receive two error messages: “Required Hire Date must be greater than or equal to Date of Birth” and “Required Hire Date must be between 11/01/1997 and [current date].”¹⁷
- A birthdate entry of 23/5/1982 will receive the error message: “Required Date of Birth must be a valid date in the format of MM/DD/YYYY. The date must be less than or equal to the date [current date].” A similar error message appears if an invalid date has been entered into the hire date field.

Although these changes are expected to reduce employer input errors, 6 percent of cases originally submitted to the system between June 2004 and March 2007 were closed in error by employers. Another 1 percent appear to be cases that the employer should have closed in error but failed to do so.¹⁸

These checks represent significant improvements over the original Basic Pilot. However, there is room for further improvements in the edit checks. For example:

- If a birthdate is mistakenly entered as 7/18/1800, no error message appears for an out-of-range entry.

¹⁷ The system currently precludes such an entry; however, it could be modified to allow this and help detect cases in which the hire date occurs after the verification date.

¹⁸ This information is based on the results of cleaning routines applied to the original transaction database used to create the analysis database on which this report is based. Additional information about the cleaning procedures is contained in Appendix B.

- The edit checks should at least require a “soft edit” when the employee’s age is calculated to be below a specified cut-off age (e.g., 13).¹⁹
- The edit for the permissible hire date could be strengthened by using a soft edit that prohibits the entry of employees hired more than X (e.g., 30) days earlier and a reminder that the Web Basic Pilot program should not be used to verify employees other than those newly hired.²⁰

Note that edit checks cannot eliminate all data input errors. For example, data input software would not correct for inputting some errors in dates (e.g., 0508 rather than 0805). In fact, when long-term users were asked about the Web Basic Pilot computer system, 29 percent indicated that it is easy to make errors when entering employee information. It is possible that additional error checks could further decrease inaccuracies. However, there are clearly limits to the ability of error checks to catch employer input errors.

According to the employer survey respondents, 52 percent of long-term Web Basic Pilot users had received at least one tentative nonconfirmation finding that was due to data entry mistakes. Of those, 88 percent had had tentative nonconfirmations due to errors that they discovered themselves. Twenty-three percent reported that they had also had data entry errors discovered by SSA or USCIS, and 28 percent reported having had a case in which the employee found the error. Employers could do a better job of double-checking their data before submitting it to the Web Basic Pilot system, since tentative nonconfirmations due to data entry errors are potentially costly for employers, employees, and the Federal government. The Web Basic Pilot added a screen for the employer to verify the information entered before submitting it for verification. However, it appears that this additional step has not eliminated problems due to employer data entry errors.

5. WHAT WERE EMPLOYERS’ GENERAL VIEWS OF THE WEB BASIC PILOT DESIGNED AND IMPLEMENTED BY THE FEDERAL GOVERNMENT?

a. HOW SATISFIED ARE EMPLOYERS WITH THE WEB BASIC PILOT PROGRAM?

A number of the modifications to the original Basic Pilot that were implemented in the Web Basic Pilot were made to address problems identified by employers in earlier evaluations. For example, the change to Web access was in response to the problems and costs employers encountered in installing the original Basic Pilot software on their computers.

¹⁹ A “soft edit” warns the user to recheck the data but does not prevent entry of the data, as with a “hard edit.” Soft edits are appropriate when a situation is unlikely but not impossible (e.g., although a small child may receive income from modeling work, few small children work; therefore, most birthdate entries indicating a young child will be erroneous entries).

²⁰ If pending legislation requiring use of the Web Basic Pilot to verify existing employees is passed, this edit check would have to be deactivated.

Employers expressed satisfaction with many aspects of the Web Basic Pilot. Almost all Web Basic Pilot users (99 percent) reported that the on-line registration process was easy to complete, and most (87 percent) indicated that registration did not consume much of their time (Exhibit III-12). In addition, most employers reported that the on-line tutorial answered all of their questions about the on-line system (85 percent), adequately prepared them to use the system (96 percent), and was not hard to use (97 percent) and that the content was easy to understand (98 percent).

Exhibit III-12: Employers’ Opinions about Their Experiences with the Web Basic Pilot Registration and Start-up

Opinion	Strongly Agree (%)	Agree (%)	Disagree (%)	Strongly Disagree (%)
The on-line registration process was easy to complete	39.3	59.3	1.3	0.1
The on-line registration process was too time consuming	2.4	11.0	72.9	13.6
During the registration process, it was difficult to figure out the correct industry code to use	4.5	21.2	65.9	8.4
The content of the on-line tutorial was easy to understand	28.1	69.7	1.8	0.4
The on-line tutorial was hard to use	0.2	2.6	75.9	21.2
The tutorial adequately prepared us to use the on-line verification system	29.8	66.5	2.9	0.8
The tutorial answers all of our questions about using the on-line verification system	20.8	64.3	13.8	1.1
The tutorial takes too long to complete	3.8	17.8	67.9	10.5
It is a burden to have to pass the Mastery Test before being allowed to use the on-line verification system	2.7	13.1	64.9	19.3
It is important to have to pass the Mastery Test before being allowed to use the on-line verification system	42.8	49.2	7.0	1.0
It is easy for system users to obtain a lost or forgotten password from the system help desk	17.5	63.6	14.4	4.5
The available Web Basic Pilot system reports cover all of our reporting needs	20.4	70.6	7.5	1.6

NOTE: Details may not add to total because of rounding.

SOURCE: Web Basic Pilot Employer Survey of Long-Term Users

When long-term users were asked about the resources and features that are provided as part of the Web Basic Pilot system, more than 63 percent reported that the toll-free telephone number for the help desk, reports to monitor the status of employee cases, and the on-line tutorial were very helpful resources for completing the verification process (not shown in table).

The technical changes made in the Web Basic Pilot appear to have reduced employer burden and improved employer satisfaction. When Web Basic Pilot employers were asked what direct costs the establishment incurred in setting up the pilot system, computer hardware was cited by only 9 percent of long-term users, compared to 37 percent of employers that responded to the original Basic Pilot employer survey. Similarly, 15 percent of long-term Web Basic Pilot users reported computer maintenance as an annual direct cost, compared to 42 percent of employers in the original Basic Pilot survey.

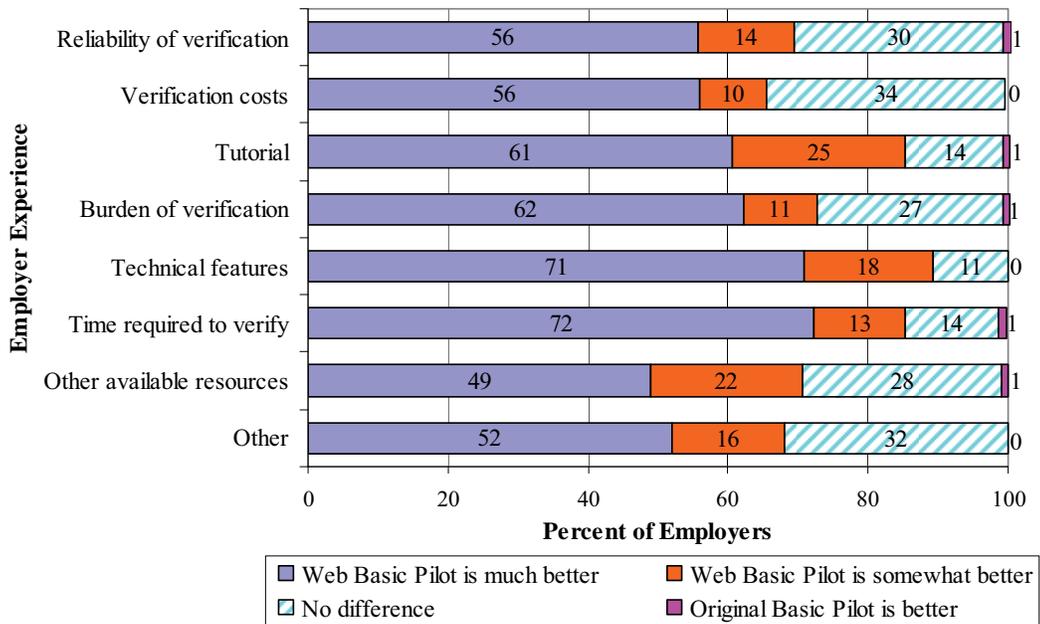
Another indication that the Web Basic Pilot handles the verification process more efficiently than the original Basic Pilot was that only 5 percent of Web Basic Pilot employers agreed or strongly agreed that establishing employment eligibility was a burden because there were so many tentative nonconfirmations, compared to 15 percent of original Basic Pilot employers surveyed. This decrease may be attributable, at least in part, to increased accuracy in SSA and USCIS databases rather than to programmatic changes.

Employers were more satisfied with the Web Basic Pilot than with the original Basic Pilot. A large majority of long-term Web Basic Pilot users who had also used the original Basic Pilot (88 percent) reported that the benefits of the Web Basic Pilot verification system are stronger. In addition, as shown in Exhibit III-13, more than 70 percent indicated that the Web Basic Pilot is much better on “the time required to verify” and “technical features” (i.e., ease of connecting to the government database). Sixty-two percent reported that the Web Basic Pilot entails much less burden for verification, compared to the original Basic Pilot. In addition, 61 percent suggested that the tutorial in the Web Basic Pilot was improved considerably over the original Basic Pilot. About 34 percent reported no difference in verification costs between the Web Basic Pilot and the original Basic Pilot, and 30 percent indicated that the reliability of verification is about the same between the two pilots.

Long-term Web Basic Pilot users were more likely than long-term original Basic Pilot users to express overall satisfaction with the Basic Pilot. Exhibit III-14 shows the normal distribution for the satisfaction scores. The effect size estimate of 0.4 (on a scale ranging from 0 to 1) suggests that there is a medium-sized difference between the satisfaction level with the Web Basic Pilot and the original Basic Pilot.

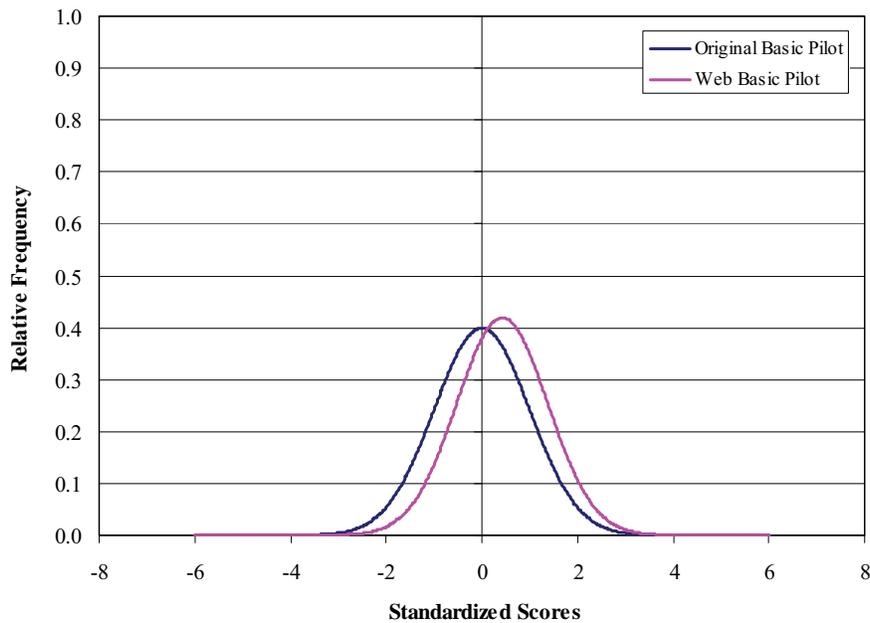
The difference in user satisfaction between the original Basic Pilot and the Web Basic Pilot may be explained, at least in part, by differences in employer characteristics. To determine whether employer characteristics can explain the observed difference in employer satisfaction, the evaluation team examined the differences in satisfaction between employers with similar characteristics in the original Basic Pilot and the Web Basic Pilot (Exhibit III-15). None of these differences were statistically significant. However, this may be due to the small sample sizes in many of the employer categories.

Exhibit III-13: Employers' Evaluation of the Web Basic Pilot in Comparison to the Original Basic Pilot



SOURCE: Web Basic Pilot Employer Survey of Long-Term Users

Exhibit III-14: Frequency Distributions of Scores for Employers' Satisfaction with the Web Basic Pilot and the Original Basic Pilot



NOTE: Standardized scores were calculated by setting the mean score for the original Basic Pilot program to 0 with a standard deviation of 1.

SOURCE: Web Basic Pilot Survey of Long-Term Users and Original Basic Pilot Survey of Active Users

Exhibit III-15: Comparison of Mean Satisfaction Score, by Employer Characteristics

Employer Characteristic	Original Basic Pilot		Web Basic Pilot Long-Term Users	
	Number of Cases	Mean	Number of Cases	Mean
Size				
< 100 employees	301	486.5	182	497.0
100-500 employees	421	488.1	444	492.7
> 500 employees	273	510.5	403	510.0
Percentage of immigrant employees				
< 5%	155	512.4	23	501.7
6-40%	310	490.2	403	497.7
> 40%	370	495.5	582	500.5
Industry				
Agriculture, forestry, fishing, hunting	22	503.6	41	476.6
Mining, utilities, construction	17	502.4	49	540.1
Animal food manufacturing	215	500.9	188	495.9
Other food/beverage/tobacco manufacturing	N/A	N/A	69	486.0
Other manufacturing	175	475.8	138	492.7
Wholesale/retail trade	70	513.0	43	507.1
Professional/scientific/technical/education/arts	N/A	N/A	50	509.5
Employment services	136	509.5	106	517.1
Public administration/social services	168	485.0	114	496.7
Accommodation/food services	N/A	N/A	192	502.6
Other industries	15	500.5	39	483.8
Region				
California	402	506.0	159	500.4
Arizona/Texas	195	481.2	144	501.7
Northeast	139	495.7	125	490.4
Northern/West	169	488.3	207	497.6
Midwest	182	495.8	186	502.6
Southern	126	511.0	142	501.6
Florida	71	498.6	66	514.5

NOTE: Industry codes were defined slightly differently for the original Basic Pilot. Satisfaction was measured using an item response theory scale score standardized to a mean of 500 and a standard deviation of 100. N/A = not available.

SOURCES: Original Basic Pilot Employer Surveys, Web Basic Pilot Employer Survey of Long-Term Users, and Web Basic Pilot Employer Registration Data

The evaluation of the original Basic Pilot program found that several employer characteristics were associated with satisfaction. Employers in southern States and those who had low maintenance costs reported greater satisfaction. However, a similar analysis for the Web Basic Pilot program indicated that only one employer characteristic predicted higher satisfaction: Larger employers were more likely to have a high satisfaction level.²¹

The case studies provided additional information for understanding employer satisfaction with the Web Basic Pilot. The five case study employers ranged from being somewhat satisfied to being very satisfied with the Web Basic Pilot program. These employers reported very few difficulties with the on-line system itself. None of the employers encountered any problems with registering for the Web Basic Pilot program or any ongoing technical problems. Furthermore, although they were not directly asked which they preferred, none of the three case study employers that had used the original Basic Pilot indicated that they liked the original program better.

Not surprisingly, employers that never used the Web Basic Pilot or used the system but terminated use appear to be less satisfied than Web Basic Pilot users. As of March 31, 2007, approximately 4 percent of employers that had signed up for the Web Basic Pilot Program had informed USCIS that they were terminating their use of the program.²² Telephone interviews with a small number of these employers identified a variety of reasons for termination, including the cost of hiring employees to replace those found to be unauthorized; the cost of training employees found to be unauthorized; frustration with inaccuracies in the Federal data, which led to employees having to go to SSA field offices; the extra time and paperwork required by the program; little perceived benefit compared to the Form I-9 process; difficulties in meeting the 3-day requirement for submitting cases to the Web Basic Pilot Program; a belief that the program did not provide the employer and employee with sufficient information when a tentative nonconfirmation was issued; distance from the nearest SSA field office, which made it difficult for employees to resolve tentative nonconfirmations; and dissatisfaction with the fact that Basic Pilot participants had been identified to Congress and the White House.

Of the nine employers interviewed because they had not used the Web Basic Pilot Program after 3 months, four said they planned to use it but had not had the opportunity to complete the tutorial and Mastery Test. Other non-users in this group expressed dissatisfactions similar to those identified by employers that had terminated their use of the system. These dissatisfactions included the program's being too time-consuming and the time requirements being difficult to follow. Other problems identified by this group were language problems, making it difficult to explain to employees what they needed to do to resolve a tentative nonconfirmation; difficulty in accessing Spanish versions of Web Basic Pilot documents; slowness in response times; an excessive amount of time required to complete the tutorial and Mastery Test; and insufficient personnel time to use

²¹ ANOVA indicated that the difference between employers in the mining, utilities, or construction industries and other employers was close to significantly different ($p = 0.065$).

²² Thirty-eight percent of terminations took place within 30 days after signing the MOU, 13 percent of terminations occurred between 31 and 90 days after signing the MOU, and the remaining 49 percent of terminations happened 91 days after signing the MOU.

the system. Two of these employers found the registration process difficult. One employer had a problem in loading the Mastery Test that the help desk was unable to resolve after several contacts. Another employer had trouble retrieving forms from the Resource area of the Web site. One employer signed up for the program because it was required for a contract the company was seeking. When the employer did not win the contract, it was felt that the program was “not at all appropriate” to the company because all new employees were personally recommended by current employees.

Employers that terminated their use of the program or never used it expressed satisfaction with some aspects of the program, including the tutorial and Mastery Test. All nine employers that had terminated their use of the program thought that the Web Basic Pilot on-line tutorial was well-done, informative, easy to understand, and user friendly and that the Mastery Test was a useful training tool. Some of them also expressed satisfaction with how the program operated. Employers that terminated their use of the program because they were not satisfied reported that the system had potential and that it was an easy, accessible program. Among employers that had not used the program, four gave positive feedback on the tutorial and some had positive things to say about the Mastery Test.

b. WHAT DID EMPLOYERS PERCEIVE AS ADVANTAGES AND DISADVANTAGES OF THE WEB BASIC PILOT?

This section examines the responses of Web survey and case study employers to questions about the advantages and disadvantages of the Web Basic Pilot, including experiences with the system registration and start-up process, resources and features of the system, and system navigation.

Most employers found the Web Basic Pilot to be an effective and reliable tool for employment verification. When employers were asked to rate their experiences with the Web Basic Pilot, 91 percent of long-term users agreed or strongly agreed that it is an effective tool for employment verification (Exhibit III-16). This is slightly less than the 96 percent of original Basic Pilot employers that rated that system as an effective tool. Additionally, 88 percent of long-term Web Basic Pilot users agreed or strongly agreed that it reduces the chances of getting a mismatched SSA earnings letter.

Employers generally indicated that the Web Basic Pilot was not burdensome. The vast majority of Web Basic Pilot employers (96 percent of long-term users) disagreed or strongly disagreed that the tasks required by the system overburden their staff (Exhibit III-16). This was a slight improvement over the 92 percent of original Basic Pilot employers providing these responses. Furthermore, 70 percent of long-term users found the system navigation and data entry features of the Web Basic Pilot very user friendly, and an additional 29 percent indicated that these aspects of the pilot were somewhat user friendly (data not shown).

Exhibit III-16: Employers’ Opinions about Their Experiences with the Web Basic Pilot

Opinion	Strongly Disagree (%)	Disagree (%)	Agree (%)	Strongly Agree (%)
The tasks required by the verification system overburden the staff	39.0	56.8	2.6	1.7
It is impossible to fulfill all the employer obligations required by the Web Basic Pilot verification process	39.9	55.3	3.0	1.8
Overall, the Web Basic Pilot is an effective tool for employment verification	6.5	2.9	28.6	62.0
It reduces the chances of getting a mismatched SSA earnings letter	6.6	5.8	34.6	53.0

NOTE: Details may not add to total because of rounding.

SOURCE: Web Basic Pilot Employer Survey of Long-Term Users

The general enthusiasm employers expressed in the Web survey was also reflected by most of the case study employers. For example, one case study employer reported a high level of confidence in the Web Basic Pilot and called the system efficient and precise. Another employer stated that the benefits of using the system greatly outweigh the costs of maintaining it. However, as discussed above, these users do not appear to reflect the opinions of employers that terminated their use of the system or had not used it after 3 months.

Although the improvements made to the original Basic Pilot and the benefits of the Web Basic Pilot were stressed by most employers, some employers reported experiencing some difficulties with the Web Basic Pilot. Eleven percent of long-term Web Basic Pilot users that responded to the employer surveys encountered difficulties using the program. Some problems encountered were system unavailability during certain times (13 percent), accessing the system (12 percent), and training new staff to perform verifications using the system (12 percent). Employers also identified problems related to passwords and cases involving tentative nonconfirmations. Exhibit III-17 provides some examples of problems that employers reported in the employer surveys.

Some employers expressed frustration with their interactions with SSA and USCIS in relation to the Web Basic Pilot. Some employers commented that local SSA representatives were not familiar with the Web Basic Pilot program and did not return their calls, were unable to answer questions, and sometimes made mistakes that resulted in final nonconfirmation findings for employees. In addition, several employees commented that there was a lack of coordination between SSA and USCIS in terms of ensuring that both agencies had up-to-date records on immigrants. A few employers also requested that the program require faster turnaround times for both SSA and USCIS.

Exhibit III-17: Examples of Employer-Reported Difficulties with the Web Basic Pilot

Constantly having to get my password reset; after resolving a case, it will not let me use the back button to get back to the logout menu.

Forgetting passwords and then being locked out, and having to wait until a new password can be issued.

Having to check back for tentative nonconfirmations is a burden. An e-mail should be sent when a result comes through. Also, it is very difficult for employees to find a way to reach USCIS if they are referred to them.

Legal questions in regards to being in compliance with the laws set forth. Some of the questions are just not answered in the handbook or on-line.

Meeting the requirements of the tentative nonconfirmation letters and waiting periods.

Not able to open tentative nonconfirmation cases to edit if an error was inputted. Forced to re-enter the entire verification on-line and then go back to the invalid query and resolve it.

Occasionally someone with a good authorization card does not initially pass the Basic Pilot but does at a later date. System sometimes doesn't have current information.

Program only verifies first seven letters of the last name and the first letter of the first name. Also, if a verification needs INS (sic) verification the program does not update the status as indicated.

Sometimes it shows nonconfirmation. Our employee goes to SSA or USCIS. They say they match but still the program says nonconfirmation.

We have encountered difficulties when staff have questions in regard to unique situations – sometimes help desk personnel do not know the answers.

When immigration is still being checked, the system never alerts us that there has been either the approval or the denial.

With the verification itself, especially for new employees on a specific visa type, refugees and employees who have obtained U.S. citizenship.

Final nonconfirmation with SSA. The SSA office is not educated on the Basic Pilot program, and they do not go out of their way to help.

Problems logging in on first time, had to reset passwords a couple of times.

Students on J-1 and F-1 visas do not have specific end dates on their I-94, which makes it difficult to enter an end date.

When doing an initial verification on one employee, the system put additional verifications and case numbers on the same person in the system at once.

Getting I-9s from field to corporate within 3 days.

Management found it too cumbersome to wait 10 days to resolve tentative nonconfirmations because it took a toll on the hiring process when new hires were found unauthorized and the hiring process had to be started again.

Large training costs for employees who were found to be unauthorized at the end of the 10-day timeframe for contesting.

Exhibit III-17: Examples of Employer-Reported Difficulties with the Web Basic Pilot (Continued)

Everyone was being sent to SSA. The system needs to be based on more accurate information.

There was no benefit to using the program since only one or two employees received tentative nonconfirmations.

Management personnel felt that the Web Basic Pilot did not provide the employer and employee with sufficient information when a tentative nonconfirmation was issued. They understood the need to respect employee privacy, but felt that additional information about the problem would help employers better communicate with the employee.

The closest SSA office was 50 miles away, making the process a “hassle” for both the employer and employees.

Management personnel were very unhappy that participating employers had been identified to Congress and the White House.

Did not receive satisfactory responses from the help desk about how to handle temporary instructors at a university who required payment but did not have to complete the usual HR paperwork.

Problems accessing Spanish versions of Web Basic Pilot documents.

Expected the response times in the Web Basic Pilot to be much quicker.

The tutorial and Mastery Test were too long and the program itself was too complicated.

The company generally did not hire “high risk” employees, and all new employees were personal recommendations of current employees. New employees also had extensive background checks by a private firm.

The registration process was difficult; the process was very complicated and had too many steps.

It was difficult to find the correct Web site, and upon reaching the site it was not user friendly.

SOURCE: Web Basic Pilot Employer Survey of Long-Term Users, Interviews with Employers That Terminated, and Interviews with Non-users

Some employers believe that they lose their training investment as a result of electronic employment verification through the Web Basic Pilot process. IIRIRA requires employers to wait up to a total of 10 Federal working days for employees to contest their cases and for SSA or USCIS to issue a final case finding. The Web Basic Pilot prohibits employers from dismissing or withholding training from these employees during this period. One case study employer found this process disadvantageous because the company had to invest in hiring and training employees without certainty that they would be able to continue employment. This employer reported a higher turnover rate as a result of using the Web Basic Pilot, as well as significant costs associated with providing training, safety equipment, and handbooks to so many employees who were ultimately lost because of final nonconfirmation findings.

C. IS THE TENTATIVE NONCONFIRMATION NOTIFICATION PROCESS WELL-DESIGNED TO ENSURE THAT EMPLOYEES UNDERSTAND THEIR RIGHTS AND RESPONSIBILITIES?

1. BACKGROUND

Employers are supposed to print out and give employees a notice of an SSA or USCIS tentative nonconfirmation, as appropriate. If the employee decides to contest the finding, the employer is supposed to print out a referral letter telling the employee how to contest.

2. FINDINGS

Employee notices are not available in languages other than English or Spanish. The Office of Special Counsel for Unfair Immigration-Related Employment Practices in the U.S. Department of Justice has received calls from employees who are unable to understand the employee notices because they are available only in English and Spanish. USCIS staff report that they are working on expanding the number of languages in which the notices are available.

The employee notices are not written at a literacy level that is appropriate for employees, especially those who have limited English skills. The Office of Special Counsel has indicated that the language used in these notices and letters cannot be understood easily by many employees. When one of the notices was evaluated using MS Word's readability capability, the notice received a Flesch-Kincaid Grade Level score of 12.0. The suggested readability level "for most standard documents" is a grade level from 7.0 to 8.0. Given that a disproportionate number of tentative nonconfirmations are received by foreign-born workers, it would be reasonable to set the readability level for documents at an even lower grade level than for "standard documents."²³

D HAVE CHANGES DESIGNED TO INCREASE EMPLOYER UNDERSTANDING OF THE WEB BASIC PILOT REQUIREMENTS INCREASED EMPLOYER COMPLIANCE?

1. INTRODUCTION

Training materials and requirements for passing the tutorial were improved. In implementing the Web Basic Pilot, modifications were made to the original Basic Pilot to increase employer compliance with pilot program requirements. The primary modifications were enhancements to the training materials available to employers, including a mandatory on-line tutorial and the requirement that employers pass a Mastery Test on pilot procedures prior to using the system. These changes were consistent with prior evaluation recommendations.

²³ This score should be viewed as a rough measure of readability; revisions of the notices and letters should be evaluated by experts.

This section explores the extent to which employers complied with the Web Basic Pilot requirements and, where possible, compares the compliance of Web Basic Pilot and original Basic Pilot employers. Most of the analysis is based on employers' self-reported behavior. Even though employers were given assurances that the information they provided would be kept confidential, it is possible that employers not adhering to required procedures underreported such behavior. The case study provides some insights into this possibility. Although respondents generally appeared to be candid in their responses, it was clear that, at least for some large employers, the central office respondent was not aware of what was happening in the field locations where the procedures were actually implemented.

2. TRAINING IMPROVEMENTS

System testing verified that a recently enrolled user had to view all screens of the tutorial and pass the Mastery Test to obtain access to the system. However, when a user received an "incorrect answer" response on the Mastery Test, it was possible to use the browser's back button to access the previous screen and submit a different answer until the correct answer had been selected. Thus, a recently enrolled user might pass the test without understanding the correct procedures. In addition, users who passed the Mastery Test were not provided with the correct responses to any questions they answered incorrectly.

These additional changes to the tutorial could potentially further improve its effectiveness:

- The program could further improve employers' understanding of the Web Basic Pilot processes by providing and explaining answers to any questions answered incorrectly.
- Periodic retesting and, if needed, refresher training could help to ensure that the material is not forgotten and would help to prevent recently enrolled users from assuming the identity of approved users without passing the Mastery Test.
- Training modules for staff other than direct users (e.g., human resources managers) could help prevent procedural violations that might be the responsibility of supervisors and managers who do not actually input information into the Web Basic Pilot system. For example, managers need to be aware that they may not take adverse actions against employees while the employee is resolving a tentative nonconfirmation.

3. DID EMPLOYERS FOLLOW THE TRAINING PROCEDURES IMPLEMENTED FOR THE WEB BASIC PILOT?

Not all employers followed the procedures for training employees on the Web Basic Pilot system. When asked how many staff had completed the on-line tutorial, 84 percent of long-term Web Basic Pilot users indicated that all staff currently using the system for verification had completed the tutorial. These percentages were not 100 percent because it is possible for staff members who have not completed the tutorial to use the user name

and password of a coworker who has completed the tutorial. On the employer survey, some users commented that they were not aware of any tutorial or Mastery Test, and others stated that their supervisors had never instructed them to complete the tutorial and Mastery Test. Only 1 percent of long-term users indicated that no current system users had completed the tutorial.

4. DID EMPLOYERS USE THE DATABASE TO VERIFY ALL NEWLY HIRED WORKERS AND ONLY NEWLY HIRED WORKERS?

A majority of employers that used the Web Basic Pilot reported that they used it to verify all of their newly hired employees. The majority of employers that were long-term users of the Web Basic Pilot (85 percent) reported that they used the Web Basic Pilot to verify all new employees, including employees who claimed to be U.S. citizens or noncitizens. All five case study employers also indicated that they used the Web Basic Pilot for all new employees.

Some employers used the Web Basic Pilot to screen job applicants. When asked for whom they used the Web Basic Pilot to verify work authorization, 16 percent of employers in the Web survey of long-term users reported that they used the Web Basic Pilot for job applicants. In addition, almost one-third (31 percent) said they used the Web Basic Pilot to verify work authorization before an employee's first day of paid work; several of these employers stated specifically that the Web Basic Pilot was used at the time of application. This second finding suggests that even though some employers may be using the system correctly to verify newly hired employees, they might not allow these employees to start work if they are not confirmed as authorized to work. This could mean that employees who receive tentative nonconfirmation responses have a delayed start to their employment compared to other employees.²⁴

Two case study employers used the system to screen job applicants before hiring them. Neither employer's staff gave any indication that they were aware of their misuse of the system. In fact, one employer's staff indicated that the only time they were not able to follow proper procedures was when they had to have employees start working before they had time to enter employee information into the Web Basic Pilot. This same employer expressed the opinion that all employers should be required to use the system to prescreen job applicants. Employee interviews at these two employers revealed that neither employer followed a consistent hiring and verification process, but it was clear that employees at both sites were sometimes screened before being allowed to work.

Employers that screened job applicants often notified applicants who received tentative nonconfirmations, providing them with an opportunity to resolve problems and be hired after resolving the tentative nonconfirmation. One reason for prohibiting verification of job applicants is the concern that employers will deny employment to applicants without giving them an opportunity to contest tentative nonconfirmation findings. However, at least some employers that verify prior to hiring do notify job

²⁴ The evaluation did not obtain information on the time between being hired and starting work, making it difficult to determine the impact of tentative nonconfirmations on the lag.

applicants of tentative nonconfirmation findings. Although such procedures should not result in employees being denied work without an opportunity to contest their tentative nonconfirmation findings, they may result in employees having a delayed start date and a resultant loss in wages.

Among the 16 percent of long-term Web Basic Pilot users that said they used the system to screen job applicants, very few (3 percent) reported that they did not usually notify employees of tentative nonconfirmation findings. The majority of these employers (84 percent) said they notified applicants on the same day that they received the finding.

Of the two case study employers that screened job applicants after determining that the workers had the requisite job skills, one employer immediately notified most applicants who received tentative nonconfirmation findings and instructed them to go to SSA or USCIS to correct the problem with their paperwork. Most work-authorized applicants who were interviewed from this employer resolved the issues with their records, returned to the employer, and were hired; however, these employees lost wages while resolving their cases.

The second case study employer that screened job applicants did not tell most applicants about problems with their paperwork. However, several applicants were hired regardless of tentative nonconfirmation findings and were never told of problems with their paperwork.

Many of the employers that screened job applicants were personnel or temporary help agencies. Of the long-term users that reported using the Web Basic Pilot to screen job applicants, 37 percent were personnel or temporary help agencies. A temporary help agency may consider the employee to be hired at the time the employee is deemed to be acceptable for job referral. A representative from one staffing agency commented that everyone who meets the agency's hiring criteria and completes a Form I-9 is considered an employee and is verified at that time, regardless of when or if the employee receives paid work. There were no personnel or temporary help agencies among the case study employers.²⁵

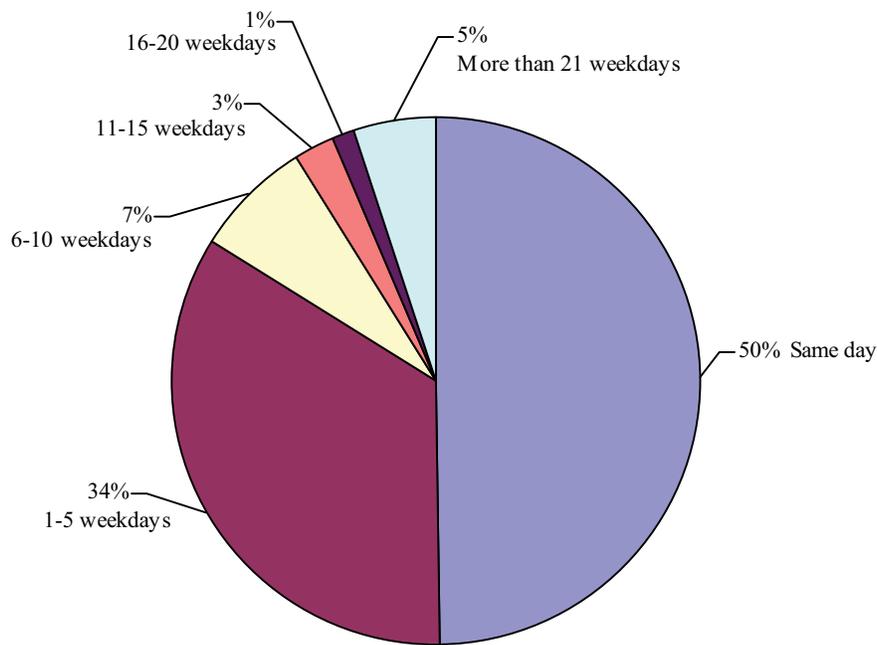
Employers could not always verify new employees' information with the Web Basic Pilot within 3 days of the hire date. Although most employers (72 percent of long-term users) reported that they used the system within the specified timeframe, the case studies revealed some difficulties in adhering to this requirement. Of the three case study employers that correctly used the system to verify only newly hired employees, two employers frequently had trouble entering employees' information within 3 days of their hire dates. Both were large employers whose employees were hired at various departments or work sites. As a result, the hiring paperwork (including application packages, I-9 forms, and photocopied documents) frequently did not arrive at the human resources office in time for staff to enter each new employee's information into the Web Basic Pilot system within 3 days of their hire. Both employers strongly recommended

²⁵ Personnel and temporary help agencies were excluded from the case study because procedures for these employers are more difficult to articulate. Future data collection efforts should include these employers.

extending this timeframe. Respondents to the long-term user survey also commented that it was difficult to meet this 3-day timeframe.

As shown in Exhibit III-18, information from the transaction database confirms that employers generally input employee information into the Web Basic Pilot system promptly: Fifty percent of cases were entered on the date the employee was hired, and another 34 percent were entered within 5 weekdays of hire. An additional 11 percent of the transactions were for employees who had been 6 to 20 weekdays before the transaction was submitted and 5 percent were for employees who had been hired more than 21 weekdays before the transaction was entered into the Web Basic Pilot.

Exhibit III-18: Weekdays Between Hire Date and Initial System Entry Date



SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

The record review part of the case study also showed that, among the five case study employers, an average of 6 calendar days elapsed between employees' hire dates and case initiated dates. All of these findings must be interpreted with caution, however, since the record review also indicated that not all hire dates entered into the Web Basic Pilot system were accurate.²⁶ At case study employers, only 73 percent of the 364 records reviewed confirmed that the hire dates captured in the transaction database matched the hire dates stated on the employees' I-9 forms.

²⁶ These discrepancies in hire dates were undoubtedly due, in part, to the fact that the system does not allow the employer to input a future hire date for employees being prescreened – and, of course, the employer is unlikely to know the exact hire data for the prescreened cases.

Very few employers used the Web Basic Pilot to verify employees who had been hired before the employer enrolled in the Web Basic Pilot. Only 5 percent of long-term users reported that they used the system to verify the work authorization of employees who worked at the establishment prior to the institution of the Web Basic Pilot program. Furthermore, the transaction database information also indicates that a limited amount of verification of existing employees is occurring; 5 percent of cases were entered more than 30 days after hire. There was no evidence that any of the five case study employers used the Web Basic Pilot system to verify employees hired before the employer started using the system.

5. DID EMPLOYERS TERMINATE THE EMPLOYMENT OF THOSE EMPLOYEES WHO RECEIVED FINAL NONCONFIRMATIONS OR UNAUTHORIZED FINDINGS?

Employers do not always follow the legal requirement to promptly terminate the employment of employees receiving final nonconfirmations. Three case study employers reported proper procedures for terminating employees who were not work-authorized or otherwise decided not to contest a tentative nonconfirmation finding. However, one of the three employers expressed confusion over situations where employees who have contested the tentative nonconfirmation findings with SSA still receive final nonconfirmations from the system. The employer reported that since these employees had received “letters indicating that the Social Security numbers were valid” from the local SSA office, the employer relied on the letter rather than the Web Basic Pilot finding. The employer felt that this discrepancy was a problem with the system that needed to be addressed by SSA and USCIS. A few employers also indicated on the employer surveys that they do not know what to do when employees have resolved issues with SSA but their cases receive final nonconfirmation responses when resubmitted through the system. It is possible that employers are sometimes trying to resubmit the cases too soon after the employees visited SSA (employers are required to wait 24 hours before resubmitting the cases).²⁷ Automatic responses from SSA would rectify this problem.²⁸

At two of the case study employers, terminations were often delayed because the human resources staff relied on department staff to implement the termination. Employee interviews revealed that supervisors at one of the establishments frequently manipulated the contesting process to prolong the time that unauthorized employees could continue to work for the employer. Supervisors frequently did not terminate employees when told to do so and often told human resources staff that they could not afford to lose a worker at that time. The record review analysis at this employer revealed that an average of 68 days elapsed between the date a new case was initiated and the date the case was closed. The

²⁷ SSA reports that although most cases are resolved and entered into NUMIDENT within 24 hours of the employee’s visit to the SSA office, there are situations for which the time lag may be greater. This can occur when an office is very busy and there is a longer than usual delay between obtaining information and inputting it into the system; in other cases, SSA procedures require the verification of certain types of employee-provided information with another agency, which can take several days or even weeks.

²⁸ At the time this report was written, SSA was planning to implement such a system (EV-STAR) on October 1, 2007.

two case study employers that used the system primarily to screen job applicants rarely encountered a time when they were supposed to terminate a working employee due to the tentative nonconfirmation process. Both employers said they would terminate any employees who were not work-authorized.

One of the employers that had opted not to use the Web Basic Pilot after signing up for it expressed the belief that employees who received tentative nonconfirmation findings had to be referred to SSA and could not be fired even if their problems were not resolved. This opinion presumably reflects a lack of understanding of what is required by the Basic Pilot program.

Some employers did not consistently follow up on tentative nonconfirmation findings. The two case study employers that prescreened employees sometimes ignored the tentative nonconfirmation findings and hired applicants without telling them about problems with their verification. The staff at one case study employer sometimes “ignored” tentative nonconfirmation findings if they did not think the tentative nonconfirmation findings were accurate.²⁹ A second employer reported confusion over the results provided by USCIS and was sometimes not sure whether an employee was authorized or not. Employee interviews revealed that this employer sometimes hired these employees without telling them of the tentative nonconfirmation findings.

6. DID EMPLOYERS PROVIDE JOB APPLICANTS AND EMPLOYEES WITH THE INFORMATION AND ASSISTANCE THEY NEEDED?

The Web Basic Pilot MOU requires employers to post Web Basic Pilot and right-to-work posters to alert job applicants to the program and their rights. The MOU also requires employers to provide employees with written notice of a tentative nonconfirmation and their right to contest it.

Employers did not consistently post the Web Basic Pilot notice in an area where it was likely to be noticed by job applicants.³⁰ Three case study employers displayed the Web Basic Pilot poster in their human resources offices; however, the application process occurred at the department level at two of these employers, so applicants would most likely not see the poster at the time of application. Two employers did not display the poster anywhere, but one of these employers did include a notice on its job postings informing applicants that the Web Basic Pilot system would be used to verify work authorization.

Some employers did not notify employees of tentative nonconfirmation findings at all or did not notify employees in writing. The tentative nonconfirmation notice provides employees with critical information about their right to contest the finding and the implications of not contesting. Employees deciding to contest are given a referral

²⁹ Although there was no clear evidence that this particular employer did this in a discriminatory manner, there is certainly room for a discriminatory application of a policy of ignoring some tentative nonconfirmation findings.

³⁰ Employers are required to print the poster from the resources section of the on-line system and post it.

notice that explains the procedures for resolving tentative nonconfirmation findings with SSA or USCIS.³¹ SSA and USCIS notices both explain that employers cannot take adverse actions while employees are contesting the tentative nonconfirmation.

Few employers (9 percent of long-term Web Basic Pilot users) reported that they at least sometimes do not provide written notification of tentative nonconfirmation findings (Exhibit III-19). This is lower than the 18 percent of employers that reported always providing written notification during the original Basic Pilot evaluation. Although not required, 94 percent of long-term Web Basic Pilot users said they always provide in-person notification of tentative nonconfirmation findings – somewhat more than the 81 percent reporting such notification during the original Basic Pilot evaluation. Three of the five case study employers provided written notification using the Tentative Nonconfirmation Notices provided by the system, and four of the five employers notified employees in person. The fifth employer did not regularly notify employees at all.

Exhibit III-19: Percentage of Employers Indicating That They Did Not Follow Web Basic Pilot Procedures

Procedure	Original Basic Pilot		Web Basic Pilot Survey of Long-Term Users	
	Number	Percent	Number	Percent
Number of employees hired so great, can't make deadline* (Percentage saying yes)	617	16.0	1,030	15.9
Software so cumbersome, can't make deadline (Percentage saying yes)	618	4.0	1,029	2.6
Contesting not encouraged, agree/strongly agree with either or both of the questions	483	13.7	961	6.6
Work assignment restricted* (Percentage agreeing or strongly agreeing)	453	28.4	888	21.6
Employee informed privately (Percentage saying never, sometimes, or often)	522	12.1	969	5.7
Written notification given* (Percentage saying never, sometimes, or often)	518	18.1	953	9.4

*Original Basic Pilot employers and Web Basic Pilot Employers differ significantly at 0.05 level.

SOURCE: Original Basic Pilot Employer Surveys, Web Basic Pilot Employer Survey of Long-Term Users

The case studies revealed that most but not all interviewed employees who had received a tentative nonconfirmation had been notified of a problem with their paperwork, either in writing or orally. In addition to the three employers that provided employees with written notice, another employer reported turning the computer monitor to show the applicant the screen indicating a tentative nonconfirmation finding. Although this latter procedure does not allow employees to study the tentative nonconfirmation notice or obtain assistance in understanding it from someone other than the employer, it is better than no notice at all.

³¹ Refer to the Supplemental Materials for copies of the referral forms.

The fifth case study employer rarely told applicants of a problem with their paperwork; when such notice was given, the employer did not provide the tentative nonconfirmation notice or any information about contesting.

Even though most employers notified employees of tentative nonconfirmation findings, they did not always explain the meaning of the tentative nonconfirmation or the employees' options. One case study employer printed the notices for employees to sign, but employees frequently indicated that they were just told to sign the paper “so they could work longer.”

There was evidence that a small number of Web Basic Pilot employers discouraged employees with tentative nonconfirmations from contesting. On the employer survey, only 7 percent of long-term users indicated that they did not encourage employees to contest tentative nonconfirmations because the process required too much time and/or because work authorization rarely results. This is significantly lower than the 14 percent of original Basic Pilot employers that did not encourage employees to contest for one or both of these reasons.

There was no evidence from the case studies that employers actively discouraged the contesting process, although, as noted, not all employers provided all employees with sufficient information to successfully contest their tentative nonconfirmation findings.

7. DID EMPLOYERS TAKE ADVERSE ACTIONS AGAINST EMPLOYEES RECEIVING TENTATIVE NONCONFIRMATIONS WHILE THEY WERE CONTESTING THE FINDING?

Some employers took adverse actions against employees while they were contesting tentative nonconfirmations. Results of the survey of long-term Web Basic Pilot users indicate that 22 percent of users restricted work assignments while employees were contesting a tentative nonconfirmation finding – significantly less than the 30 percent of original Basic Pilot employers that reported restricting work assignments. However, during the Web Basic Pilot evaluation, some employers also reported that they delayed training until after employment authorization was confirmed (16 percent), and a few employers reduced pay (2 percent). None of these practices are consistent with the Web Basic Pilot guidelines for employers.

The three case study employers that did not prescreen job applicants all allowed employees to continue working during the contesting process without any delay in training, reduction of pay, or limitation of work assignments. However, employees from one employer reported being taken advantage of by their supervisors. Most employees who reported mistreatment also said they were not authorized to work; however, one employee who was work-authorized said he received harsher treatment because the supervisor assumed he was an unauthorized worker. Employees reported that supervisors assumed that all employees who received tentative nonconfirmation findings were unauthorized workers and therefore required them to work longer hours and in poorer conditions.

One case study employer that screened job applicants did not hire, train, or provide uniforms to applicants who received tentative nonconfirmation findings, but the employer did have a process in place for applicants to contest the tentative nonconfirmation findings. Employees who successfully contested their findings and were eventually hired by the employer did not report being treated any differently from other employees after hiring.

The fifth employer was inconsistent in its practices but reported that it did not hire applicants with tentative nonconfirmation findings unless the finding was believed to be inaccurate.³² None of the interviewed employees reported any mistreatment from the employer.

8. DID EMPLOYERS FOLLOW OTHER WEB BASIC PILOT VERIFICATION PROCEDURES?

For the most part, employers filed copies of documents associated with the Web Basic Pilot process in employee files; however, there were some exceptions. The record review process that was part of the case studies found that nearly 100 percent of reviewed employee files contained I-9 forms and that 92 percent of reviewed employee files contained at least one copy of the Web Basic Pilot Case Details sheet. The three employers that followed correct procedures for printing and providing employees with copies of the tentative nonconfirmation notices also complied with the requirement to file this notice in the employees' records. Employers that did not use the notice obviously did not file copies with employee records. Nearly 100 percent of the files for employees who contested tentative nonconfirmation findings with SSA contained the SSA referral letter. However, only 80 percent of files for employees who contested tentative nonconfirmation findings with USCIS contained a USCIS referral letter. This lower percentage is attributable to one employer whose human resources staff provided employees with the toll-free USCIS telephone number without printing the referral letter. In fact, the USCIS telephone number is the only piece of information on the referral letter that is not provided on the tentative nonconfirmation notice.

Although the system does not specify an overall time requirement for resolving cases, there is discrepancy among employers in the average amount of time it takes to resolve tentative nonconfirmation cases. Although the Web Basic Pilot system specifies time limitations for certain steps within the Web Basic Pilot process, it does not provide time guidelines for all steps or the overall process. For example, there are no time requirements for how quickly employers must notify employees of tentative nonconfirmation findings, issue referral letters, or terminate unauthorized employees. Among the three case study employers that followed all required steps in the tentative

³² The employer asserted that this was primarily in the case of employees applying for white collar jobs and not based on whether the person appeared to be foreign born.

nonconfirmation process, the average time between the hire date and the case closure date ranged from 19 to 74 days.³³

Many employers did not comply with the Web Basic Pilot procedure of entering closure codes for all cases. Although the Web Basic Pilot procedures require that employers provide closure codes that explain why the tentative nonconfirmation results were unresolved, the Web Basic Pilot system does not force the user to enter such codes. For example, as mentioned earlier, employers failed to input closure codes in 37 percent of the cases where U.S. citizens received final nonconfirmations and in 28 percent of cases where USCIS final nonconfirmations were issued.

Only three case study employers made an effort to close all Web Basic Pilot cases with closure codes. A fourth employer was aware that it should be closing all cases but felt that the process was too time consuming. The fifth employer was unaware that it should be closing cases and did not know how to do so.

Although failure to input codes has little consequence for employees, it reduces available information about case outcomes and therefore impedes the evaluation and monitoring of the program. Although this issue has been raised in previous evaluation reports, it is much more critical now, because USCIS recently established a unit responsible for monitoring employer compliance that will make extensive use of the transaction data.

Employers often did not enter a referral date and therefore did not officially refer employees who received tentative nonconfirmation findings to SSA or USCIS through the on-line system. When employees inform employers that they will contest tentative nonconfirmation findings, employers are required to refer the case to SSA or USCIS through the Web Basic Pilot system. The referral date is automatically recorded in the system and becomes the starting date for the 10 Federal-working-day period for resolution of tentative nonconfirmations. Transaction database analyses indicate that employers referred only 15 percent of the 27,600 USCIS final nonconfirmation cases (4,166 cases). From the information on the transaction database, it is not clear what percentage of the tentative nonconfirmation cases without referral dates reflect employees who did not contest the finding, employers that did not properly inform employees about their tentative nonconfirmation findings, and employers that failed to refer cases through the system.³⁴ Only three of the five case study employers initiated referrals through the Web Basic Pilot system. One of the two employers that did not initiate referrals instructed employees to correct their verification problems with SSA or USCIS but did not follow the procedures set out for the referral.

Some employers may be manipulating data entry to increase the chances of a work-authorized outcome. One case study employer reported that when an applicant had

³³ Although, as noted, the statute does not specify all timeframes, it is assumed that Congress intended that cases be resolved in the 10 working days allotted or a reasonable extension of that time.

³⁴ These proportions cannot be determined because closure codes were not input to indicate the exit status of a substantial number of employees.

multiple last names (as is common in some cultures), the employer would frequently enter the applicant's name several times, in different configurations, to try to get a work-authorized response. This particular approach may be helpful in preventing erroneous tentative nonconfirmations; however, it is possible that such manipulation of the system may result in erroneous work-authorized responses. Furthermore, in the case of this particular employer, most of these repeat cases remained in the system as tentative nonconfirmation cases rather than being closed as invalid queries. Cleaning routines would identify some but not necessarily all of these cases, with the result that monitoring and evaluation statistics become less accurate than is desirable.

Some employers did not fully cooperate with the evaluation, as required by the MOU. As discussed in Chapter II, some employers participating in the Web Basic Pilot did not complete Web surveys or participate in case studies as required by the MOU. Although the reasons for non-participation were sometimes understandable (e.g., the primary user was on leave during the data collection period), in other cases this failure may indicate a more general lack of cooperation with MOU requirements.

E. WHAT RECOMMENDATIONS FOR IMPROVEMENTS TO THE WEB BASIC PILOT WERE MADE BY EMPLOYERS?

Based on their hands-on experience using the Web Basic Pilot in an employment setting, the Web survey and case study employers were in a position to recommend improvements to both the overall Web Basic Pilot process and the administrative features of the on-line system that would make the Web Basic Pilot more practical and user friendly for all employers. Their recommendations are summarized below.

- **Employers recommended that the 3-day timeframe for entering employees' information into the Web Basic Pilot system be lengthened.** Many employers challenged the practicality of the requirement that employee information be entered into the Web Basic Pilot within 3 working days of hire. This was especially true for large employers with multiple hiring departments.
- **Many employers recommended that prescreening be permitted.** Sixty-four percent of long-term users responding to the employer survey supported a change to allow the verification of job applicants, 22 percent opposed the change, and 14 percent had no opinion. Two case study employers and several survey respondents commented that the system should be used by all employers to prescreen applicants before they are hired or to verify hired employees before the first day of work.
- **Many employers would also like to use the system to verify employees who were hired before the employer started using the Web Basic Pilot program.** Fifty percent of long-term Web Basic Pilot users agreed that procedures should be changed to allow the verification of employees who were hired before the pilot was started, 25 percent opposed such a change, and 25 percent had no opinion.

- **Employers would appreciate more compatibility between the Web Basic Pilot system and their existing human resources systems.** Several employers in the long-term user survey recommended that the Web Basic Pilot allow for some employer personalization, such as allowing the employer to enter the company's own employee and department numbers into the system. Another employer suggested that the system allow employers to upload employee information into the Web Basic Pilot from an existing company database. Employers would also like to export reports to MS Excel or Word and to Adobe Acrobat. At least some of these capabilities exist, although employers may not be aware of them. USCIS is in the process of modifying the employer registration process to clarify these options.
- **Some employers made recommendations for streamlining the administrative processes for using the on-line system.** Several employers from both the case study and survey samples suggested that system navigation be simplified. Another employer recommended that the system alert the employer to which cases have received new resolutions from USCIS and require action (currently, the system alerts the employer only to the number of cases with new resolutions from USCIS).
- **Some employers expressed interest in having a flowchart of the verification process in the tutorial.** They believed this would help clarify the process for persons who are visually-oriented.
- **Employers did not favor limitations that would prevent them from entering new cases until older ones had been closed.** Sixty-seven percent of respondents to the long-term user survey were opposed to a modification that would prevent employers from entering new cases until they had input referral dates for all tentative nonconfirmation cases from 2 weeks earlier; 16 percent favored the change, and 17 percent had no opinion.
- **Employers reported difficulty with the process for having their passwords reset.** Many employers in the long-term user survey requested an easier system for retrieving forgotten passwords. Two case study employers found that calling the telephone number to have their passwords reset was time consuming, particularly when the office was closed and the employer had to wait until the next day to get a new password. Several employers recommended an after-hours telephone line or an e-mail system that could provide user names and passwords if the office is closed. USCIS implemented an automated system for emailing passwords to authorized users subsequent to the original Basic Pilot survey.
- **There was a request for help in understanding how to close cases.** Although this problem was not frequently mentioned, it is consistent with the overall finding of employer confusion about this part of the process.
- **An employer in a remote location suggested that some accommodation be made for employees who are far from SSA offices.** This particular employer

was located 50 miles from the nearest SSA office, which made it difficult for its employees to resolve tentative nonconfirmations.

- **There was a request that the help desk service be improved.** Several employers reported having problems that the help desk could not resolve.
- **An employer that had terminated use of the Web Basic Pilot wanted to be able to obtain more information from the system on the reason an employee received a tentative nonconfirmation.** This employer said that such information would make the process less confusing to the employer and the employee.
- **An employer that had terminated use of the Web Basic Pilot recommended that the information from SSA and USCIS be better coordinated, because too many authorized employees were receiving tentative nonconfirmations.** This recommendation may reflect the problems encountered by naturalized citizens.
- **An employer that had terminated use of the Web Basic Pilot thought that the 10-day timeframe for contesting was not acceptable.** The employer said that it resulted in large costs for the employer when employees were unauthorized and had to be replaced.

Of course, decisions about the advisability of implementing employer recommendations must be viewed in light of other goals of the system. For example, it is not clear how easily the recommendation for prescreening could be implemented while safeguarding employees' rights and guarding against discrimination.³⁵

F. SUMMARY

Features of the Web Basic Pilot have corrected a number of problems identified during the evaluation of the original Basic Pilot program completed in 2002. For example, the transmission of cases over the Web rather than installation of specialized software on dedicated computers solves some of the employer problems noted in the original Basic Pilot evaluation and reduces employer set-up time and costs. Edit checks now prevent some obvious data entry errors. Unless this safeguard is intentionally circumvented, employer staff are prevented from using the system before they have completed the tutorial and passed the Mastery Test, presumably resulting in more knowledgeable staff using the program. Furthermore, system outcomes indicate that accuracy has improved for both the SSA and USCIS databases. These changes have led to increases in employer satisfaction with the Basic Pilot and also appear to have resulted in greater compliance with Web Basic Pilot procedures. However, there continue to be issues that USCIS and SSA need to address, including increasing employer compliance, further increasing the user friendliness of the Web Basic Pilot, and revising employee materials to make them more easily understood.

³⁵ See Chapter VI for additional discussion of employer recommendations for changes in light of other program goals.

CHAPTER IV. DID THE WEB BASIC PILOT ACHIEVE ITS PRIMARY POLICY GOALS?

A. INTRODUCTION

The policy goals of the Web Basic Pilot, as articulated in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which originally authorized the Basic Pilot program, are to create a system that is effective in minimizing the employment of unauthorized workers while being nondiscriminatory, protective of privacy, and non-burdensome for employers. This chapter addresses each of these policy goals by providing background information and highlighting relevant findings from the evaluation. Where possible, the results of this evaluation are compared with findings from the original Basic Pilot evaluation in 2002.

B. DATA LIMITATIONS

Many of the employer findings in this chapter are based on data obtained from employers that responded to the Web survey of long-term users of the Web Basic Pilot. Since the population for this survey included all employers meeting specified criteria, it can be argued that sampling error is not an issue; however, to be conservative, tests of significance were performed to determine whether random factors affecting which employers sign up for the program account for employer differences.¹ Like all surveys, this survey is also subject to nonsampling errors, such as nonresponse bias and measurement error.

Information obtained directly from the transaction database is based on the 3.5 million employee cases on that database. This is a sufficiently large number of observations to provide precise estimates of verification outcomes. A number of analyses are based on subgroups of the transaction database cases, such as transactions that resulted in tentative nonconfirmations; fortunately, even these subgroup samples are fairly large. However, the possibility of measurement error exists, for example, because the U.S. Citizenship and Immigration Services (USCIS) and Social Security Administration (SSA) data contained some errors (due, for example, to employer input errors). Although the data used for this report were cleaned, it is not possible to rectify all errors.

Information from the five case study employers and their 64 employees who received tentative nonconfirmations cannot be considered representative of all employers or all employees with tentative nonconfirmations. These results provide more in-depth insights into the Web Basic Pilot than can be obtained using more structured methodologies but should not be generalized to a larger population using statistical methodologies. The designs of the small employer survey and the interviews with non-users also cannot be generalized to the larger populations of such employers.

¹ See Chapter II for more information on the methodology used in this report.

Model-based estimates have been generated for the numbers of employees who would have been found to be work-authorized if all Web Basic Pilot cases had been resolved. This approach requires simplifying assumptions that may not prove to be completely correct. These estimates should, therefore, not be viewed as precise.²

C. EMPLOYMENT OF UNAUTHORIZED WORKERS

1. BACKGROUND

In discussing the employment of persons without work authorization, it is important to understand that not all employees without work authorization entered the country illegally. In addition to illegal entrants, there are many persons in this country who entered legally but have overstayed their admission period. There are also persons, such as tourists, who are in the United States legally who are not authorized to work.

a. WAYS NONCITIZENS WITHOUT WORK AUTHORIZATION CAN OBTAIN EMPLOYMENT

As discussed in Chapter I, all newly hired employees should provide their employers with valid legal documents to prove their identity and to demonstrate that they are authorized to work in the United States; however, there are many noncitizens who are currently employed without work authorization. One of the primary goals of the Web Basic Pilot is to reduce the amount of such unauthorized employment. To understand the impact of the Web Basic Pilot program on the employment of unauthorized workers, it is useful to understand the methods commonly used to obtain employment among noncitizens who are not work-authorized. Specific methods include using counterfeit documents, using borrowed or stolen documents, obtaining valid identification documents by using fraudulent breeder documents,³ and looking for alternative employment where employers do not check documents. This section describes and discusses the expected impact of the Web Basic Pilot on these methods of obtaining unauthorized employment.

Using counterfeit documents. Individuals without work authorization sometimes obtain work by presenting counterfeit or altered documents. These documents are reported to be readily available for purchase in immigrant communities.⁴ Current employment

² See Chapter II and Appendix C for additional information on the model.

³ Breeder documents are documents (such as birth certificates) that are used to obtain official identification documents such as driver's licenses. This method may be used when breeder documents are easier to counterfeit than the identification documents issued.

⁴ For example, an online article by Lisa Myers and the NBC News Investigative Unit reports that "For about \$500 [in Juarez, Mexico], we could rent what is known as a look-alike document — a real 'green card' — with a photo of someone resembling our undercover producer. Because the document is authentic, it will pass inspection unless a customs officer notices the photo doesn't match the person....U.S. officials say so far this year, some 15,000 bogus documents have been confiscated along the southern border. There are no numbers on how many people actually entered the U.S. using fraudulent documents. ... There's also a problem on this side of the border. Near downtown Los Angeles, fake documents are sold openly." See *How easy is it to cross the U.S.-Mexico border? Fraudulent documents easy to obtain, NBC News investigation reveals* (June 20, 2007) (<http://www.msnbc.msn.com/id/19337264/>, downloaded August 30, 2007).

verification procedures require the employer to certify on the Form I-9 that the documents presented by the newly hired employee "...appear to be genuine."⁵ In this situation, the likelihood of employers detecting counterfeit documents depends on the quality of the documents, the employers' familiarity with immigration and other documents, and their expertise in detecting fraudulent documents. The U.S. Department of Homeland Security (DHS) expects employers to exercise reasonable diligence in reviewing documents but does not expect them to be experts or to question reasonable-appearing documents.

The Web Basic Pilot program adds the extra step of checking whether the information on the documents presented by newly hired employees is consistent with information in the SSA database and, for noncitizens, USCIS records. These checks are designed to assist employers in detecting counterfeit documents containing information about nonexistent persons. However, if the counterfeit documents are of reasonable quality and contain information about actual work-authorized persons, the Web Basic Pilot system will incorrectly confirm the bearer as work-authorized.

Borrowing, buying, or stealing valid documents or obtaining valid documents with fraudulent breeder documents. Unauthorized workers may obtain employment using valid documents belonging to another person or by obtaining such documents using fraudulent breeder documents. For example, individuals may borrow documents belonging to relatives or friends, use stolen documents, or purchase valid documents that may have been sold by the owner. To decrease the probability of this happening, employers are required to certify on the Form I-9 that the documents "...relate to the employee named..." However, the Web Basic Pilot system cannot identify these documents as fraudulent since they are, in fact, genuine. Employers can only rely on the extent to which the document information, such as a photograph, fingerprint, and/or signature, resembles the employee and matches any other documents presented in the verification process, as well as information on the employment application. At the time that this report was being written, USCIS was conducting a pilot program using a photo screening tool designed to help identify noncitizens using borrowed or stolen documents that have been altered. Evaluation of this pilot program is outside the scope of this report.⁶ However, this program will not prevent workers from obtaining identification documents by using fraudulent breeder documents. For example, workers may use birth certificates or other easily counterfeited documents to obtain a driver's license.

Finding alternative employment. Another way that unauthorized workers can obtain employment is to take jobs where employment verification is not rigorous, because the employer is either ignorant of or knowingly violating the law. Undocumented immigrants

⁵ Form I-9 is included in Appendix A.

⁶ This pilot program, if implemented on a larger scale, would, at least initially, apply only to a limited number of employees – those presenting "secure" photo identification issued by USCIS. Although there are plans for including photographs from additional types of identification if the program proves to be successful, it is not yet known how successful this effort will be.

who are self-employed⁷ are also able to avoid the employment verification system since they are not required to complete the Form I-9 for themselves. Other possible sources of alternative employment are the underground economy and criminal activities, neither of which is likely to require any type of document review. There is no reason to believe that the Web Basic Pilot or any employment verification system can prevent unauthorized employment when employers do not want to verify work authorization, unless there is strict monitoring and enforcement of the program requirements.

b. EXPECTED IMPACT OF THE WEB BASIC PILOT VERSUS THE FORM I-9 PAPER PROCESS IN REDUCING THE EMPLOYMENT OF NONCITIZENS WITHOUT WORK AUTHORIZATION

The Web Basic Pilot is designed to be more effective than the paper Form I-9 process in detecting counterfeit fraud in which the employee's documents contain information about nonexistent persons. However, the Web Basic Pilot is not expected to improve employers' ability to detect fraud when borrowed or stolen documents are used to prove work authorization, when fraudulent breeder documents are used to obtain valid documents, or when employers do not check work-authorization documents. It also cannot detect counterfeit documents that contain information about work-authorized persons. Thus, the Web Basic Pilot program should decrease the ease with which noncitizens without work authorization can obtain employment but will not eliminate the employment of such workers.

Even though the Web Basic Pilot cannot prevent all unauthorized employment, it should, theoretically, be able to reduce unauthorized employment in the following ways:

1. Employees without work authorization may decide not to apply to Web Basic Pilot employers, possibly making it harder for these employees to obtain work. The impact of this outcome on unauthorized employment depends upon the length of the additional period of unemployment while the person seeks work, as well as the length of employment subsequent to finding work. If, for example, the average person without work authorization had a 10 percent decrease in the number of weeks worked per year as a result of the program, there would be a 10 percent decrease in unauthorized employment at any point in time. Furthermore, it is reasonable to assume that the increased difficulty of finding employment for those who are not authorized to work is a function of the percentage of all new employees verified using the Web Basic Pilot. This percentage will, of course, increase as the number of employers using the program increases.
2. Employees without work authorization may receive a tentative nonconfirmation and quit upon being informed of the finding or tell the employer they will not contest and then have their employment terminated, as required by the Web Basic Pilot. In this situation, the employee can work during the time that the employer is waiting to input employee information (which is supposed to happen within 3

⁷ According to the Bureau of Labor Statistics, approximately 7 percent of all workers were self-employed in 2005 (<http://www.bls.gov/cps/labor2005/chart3-1.pdf>, downloaded September 12, 2007).

work days of hire). The impact of the tentative nonconfirmation on unauthorized employment is a function of both the time the employee worked and the time it took the employee to find a new job. For example, if an employee who would otherwise be continually employed repeatedly works for 3 work days and then searches for a new job for 3 work days, the employee is working for only 50 percent of the available work days. If this were the pattern for all employees, the result would presumably be a 50 percent reduction in unauthorized employment at any point in time. If some employees decide that working 50 percent of the time is not preferable to returning home (and/or if potential employees decide not to come to the United States because of this situation), there would be an even greater decrease in unauthorized employment.

3. Employees without work authorization may receive a tentative nonconfirmation, contest it, be found to be non-work-authorized, and have their employment terminated, as required by the program. Alternatively, they may tell their employer they plan to contest the tentative nonconfirmation and work during the allotted contesting period, but never undertake the steps necessary to contest the tentative nonconfirmation. In either of these situations, the employee can work during the time allowed for contesting the case (a total of 13 Federal working days, including the 3 days the employer is allotted to input the employee information and the 10 days the employee has to resolve the tentative nonconfirmation). Assuming again that employees go 3 days between jobs and that the same pattern exists for all employees who are not authorized to work, employees would be unemployed 19 percent of the time and unauthorized employment would be reduced by 19 percent at any point in time. The number of employees finding it preferable to return home or to not immigrate to this country would be much smaller under this scenario than the preceding one.

The above scenarios do not take into account ways that employees without work authorization and the persons who help them find employment may adapt their behavior in response to the Web Basic Pilot, especially if an expanded program modeled after the current Web Basic Pilot were to be implemented. Most importantly, as unauthorized workers learn more about how the Web Basic Pilot works, it is likely that they will more frequently obtain counterfeit, borrowed, or stolen documents with information about persons who are work-authorized or obtain such documents using fraudulent breeder documents. Of particular relevance to this discussion is the case study finding that a few unauthorized workers at one employer reported having incurred large costs to buy new Social Security cards or numbers in order to reapply to the same employer once they had been terminated.

Since fraudulent or stolen documents for work-authorized persons presumably cost more than counterfeit documents with information about nonexistent persons, the primary deterrent value of the program, in the long run, may well be to increase the cost of obtaining unauthorized employment, which, in turn, would presumably reduce unauthorized employment; however, the amount of such reduction cannot be easily specified.

In this section, the available evaluation information is used to provide insight into how the program is operating to reduce unauthorized employment within the context of the preceding discussion.

2. FINDINGS

a. DISCOURAGING EMPLOYEES FROM APPLYING TO WEB BASIC PILOT EMPLOYERS

It is not clear to what extent the Web Basic Pilot currently discourages potential employees without work authorization from applying to pilot employers. One case study employer reported receiving fewer applications from people who were not work-authorized because the employer's practice of verifying employment authorization had become well-known among the local population. However, another employer indicated that its use of the Web Basic Pilot had not discouraged unauthorized workers from applying. Even though the local population was aware that the employer was verifying work authorization, it was well-known that the employer allowed employees to work for several weeks or even months during the contesting process. None of the case study employers indicated that the program discouraged any authorized workers from applying for employment.

b. PROGRAM USAGE

As discussed above, the effectiveness of the Web Basic Pilot program is dependent upon how quickly employees can find employment if they quit or are fired because of the program. Therefore, to effectively decrease unauthorized employment the program must verify a high percentage of new employees. The evaluation team estimates that, in the first half of fiscal year 2007,⁸ no more than 4 percent of newly hired employees were verified using the Web Basic Pilot program, compared to less than 1 percent in the original Basic Pilot.

c. PROGRAM FINDINGS OF UNAUTHORIZED TO WORK OR FINAL NONCONFIRMATION

Some employees without work authorization are found to be unauthorized to work or obtain final nonconfirmations, leading to the termination of their employment.

As discussed in Chapter III, the Basic Pilot returned conclusive findings that only 7,636 employees were determined not to be work-authorized between June 2004 and March 2007. However, about 285,000 other verifications resulted in tentative nonconfirmations that were not properly contested and became final nonconfirmations.⁹ In some cases, employees receiving tentative nonconfirmations either were not notified by their employers or decided not to contest for reasons other than that they were not work-authorized. As indicated in the case study and in prior evaluation research, most of the

⁸ The ratio of the number of Web Basic Pilot verifications to the number of newly hired employees was 0.04 during this period; however, the fact that many employers are using the program to prescreen job applicants makes it likely that the percentage of newly hired employees verified is lower than this estimate.

⁹ These include tentative nonconfirmation cases that were never referred to either SSA or USCIS, in addition to cases in which the employer made the referral but the employee did not complete the process of contesting the tentative nonconfirmation.

tentative nonconfirmation cases that become final nonconfirmations are in fact for employees who were not work-authorized. However, some work-authorized employees do not contest the tentative nonconfirmation findings because they are given insufficient or incorrect information by the employer or for other reasons.

It is also likely that the estimated number of final nonconfirmations is somewhat biased upward, because of cases that appear to be final nonconfirmations but are actually technical errors that occur, for example, when employers receive written confirmation of work authorization from SSA but do not resubmit the case to SSA, as required by the Basic Pilot program. Since USCIS procedures require that Immigration Status Verifiers (ISVs) input their findings for contested cases, this is not usually an issue with cases that are resolved by USCIS. However, the Web Basic Pilot does not currently allow a USCIS final nonconfirmation to be overridden if an employee or employer requests further consideration of a case after the 10-day period has expired. If the employee was found to be work-authorized after the 10 days, these cases would have already been changed to final nonconfirmations on the transaction database and could not be changed by the ISV.¹⁰

Approximately 5 percent of the employees screened through the Web Basic Pilot in the first half of fiscal year 2007 were employees without work authorization who were either found not to be work-authorized or who received a final nonconfirmation. This estimate is based on a model and assumptions about the percentage of work-authorized employees informed of the tentative nonconfirmations and the percentage of employees informed who decide to contest the finding. Alternate assumptions about these two parameters provide estimates between 4.0 and 5.3 percent.¹¹

d. POSSIBLE FUTURE USE OF THE WEB BASIC PILOT TO FURTHER REDUCE THE EMPLOYMENT OF NONCITIZENS WITHOUT WORK AUTHORIZATION

The Web Basic Pilot transaction data could be used to identify cases in which some types of fraud are highly likely. For example, counterfeiters may make multiple copies of a Social Security card using the same Social Security number (SSN) or a “green card” with a particular Alien number (A-number). To the extent that it is possible to identify certain types of fraudulent cases, such as multiple uses of the same card numbers, with a high degree of certainty from transaction database information, it would be possible to incorporate this information into the Web Basic Pilot process for special handling. For example, these cases might be subject to an expedited secondary verification process so that these workers, most of whom are presumably not work-authorized, would have less time to work during the case resolution process. The advisability of expedited review procedures is heightened by the fact that some employers are actually encouraging workers without work authorization to say they will contest so they can work during the 10-day period allowed for resolving tentative nonconfirmations.

¹⁰ If USCIS is made aware of such cases, staff will notify the employer that an employee is work-authorized; however, the final outcome shows up as a final nonconfirmation in the system.

¹¹ See Chapter II for an explanation of how this estimate was made.

This section provides information on transaction database cases in which the same SSNs or A-numbers appear frequently, as a first step in identifying ways that the program might be modified to increase the probability of correctly detecting identity fraud.

Exhibit IV-1 summarizes the frequency of multiple SSNs in the Web Basic Pilot transaction database. Of the 3.5 million transactions entered from June 2004 through March 2007, approximately 744,000 transactions (21 percent) were for SSNs used multiple times. However, in most of these cases the SSNs appear on the transaction database only two or three times, which is not necessarily indicative of fraud. There were 20,999 verifications (0.6 percent of all verifications) involving SSNs that were used six or more times. Interestingly, 15,503 (74 percent) of verifications involving six or more uses of an SSN were for persons attesting to being U.S. citizens. Thus, it appears that a substantial amount of the fraud involving duplicate SSNs also involves fraudulent attestation of U.S. citizenship.

Exhibit IV-2 provides the Web Basic Pilot system outcomes for SSNs that were on the transaction database six or more times between June 2004 and March 2007. Of the 20,999 verifications made with SSNs used six or more times, 81.2 percent of employees were instantly found to be work-authorized by SSA and an additional 7.5 percent were instantly verified as work-authorized by USCIS, while only 9.7 percent received final nonconfirmations or were found to be unauthorized to work. Although at least some of the multiple-SSN cases found to be work-authorized were probably actually employees who were work-authorized, many of them may be cases involving identity fraud.

Similarly, 71,100 of the 560,600 transactions for noncitizens (14 percent) involved A-numbers that were used multiple times. Ninety-four percent of these transactions are on the transaction database two or three times. When the system outcomes were examined for A-numbers on the transaction database six or more times, 68 percent were found to be final nonconfirmations or employees who were unauthorized to work, while only 32 percent were for employees who were verified as work-authorized (Exhibit IV-3). It seems likely that in many of the cases involving multiple uses of A-numbers, employees were using counterfeit documents for nonexistent persons that were recognized as fraudulent by the system.

It is possible to develop algorithms that would identify likely fraud cases based on multiple uses of SSNs or A-numbers. Combining this multiple SSN or A-number information with additional information such as the demographic characteristics of the labor force near the employer and the industries in which multiple numbers are frequently used should further increase the usefulness of screening for likely fraud. The effectiveness of this methodology would also increase with the size of the program, since a greater number of cases processed would be expected to yield greater numbers of SSNs and A-numbers being used in patterns indicating fraudulent use.

**Exhibit IV-1: Frequency of SSN Duplicates on the Transaction Database, by
Citizenship Status on the Form I-9**

Number of Times SSN Was Listed	Number of Transactions		
	All	Citizens	Noncitizens
2	528,372	429,846	98,526
3	132,885	102,309	30,576
4	43,772	32,060	11,712
5	18,010	12,995	5,015
6	9,126	6,672	2,454
7	4,991	3,773	1,218
8	2,520	1,888	632
9	1,647	1,224	423
10	1,020	750	270
11	649	462	187
12	360	252	108
13	286	195	91
14	84	56	28
15	105	90	15
16	80	48	32
17	34	17	17
18	36	36	0
19	19	19	0
21	42	21	21
All transactions	3,480,655	2,974,107	506,548
Duplicate transactions involving SSNs used ≥ 2 times	744,038	592,713	151,325
Duplicate transactions as percent of all transactions	21.4	19.9	29.9
Duplicate transactions involving SSNs used ≥ 6 times	20,999	15,503	5,496
Duplicate transactions involving SSNs used ≥ 6 times as percent of all transactions	0.6	0.5	1.1

SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

Exhibit IV-2: Web Basic Pilot System Outcomes for SSNs on the Transaction Database Six or More Times

Outcome	Number	Percent
All outcomes, total	20,999	100.0
Initially work-authorized by SSA	17,056	81.2
Second-stage authorized by SSA	13	0.1
SSA final nonconfirmation	1,110	5.3
First-stage work-authorized by USCIS	1,565	7.5
Second-stage work-authorized by USCIS	311	1.5
Third-stage work-authorized by USCIS	20	0.1
USCIS final nonconfirmation	782	3.7
Work-unauthorized by USCIS	142	0.7

SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

Exhibit IV-3: Web Basic Pilot System Outcomes for A-Numbers on the Transaction Database Six or More Times

Outcome	Number	Percent
All outcomes, total	6,663	100.0
Initially work-authorized by SSA	662	9.9
Second-stage authorization by SSA	2	0.0
SSA final nonconfirmation	3,652	54.8
First-stage authorization by USCIS	893	13.4
Second-stage authorization by USCIS	299	4.5
Third-stage authorization by USCIS	277	4.2
USCIS final nonconfirmation	656	9.8
Work-unauthorized by USCIS	222	3.3

SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

D. PROTECTING AGAINST DISCRIMINATION AND ENSURING THE RIGHTS OF EMPLOYEES TO CONTEST TENTATIVE NONCONFIRMATIONS

1. BACKGROUND

One of the important provisions in the Memorandum of Understanding (MOU) is that employers should not discriminate “unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin, or in the case of an individual protected by law...because of his or her citizenship status.” However, this provision does not impose new restrictions on pilot employers; it simply reiterates laws applicable to all employers, which both pilot and non-pilot employers may violate to some degree. This section focuses on the issue of whether the Web Basic Pilot has had an impact on the level of discrimination against work-authorized foreign-born employees. Related issues such as determining the level of employment discrimination in the United States and any

discriminatory impact of the Form I-9 employment verification system are beyond the scope of this evaluation and are not discussed in this report.

Discrimination is defined in this document as adverse treatment of individuals based on group identity. In employment, discrimination refers to differential treatment based on characteristics, such as citizenship or ethnicity, that are unrelated to productivity or performance. Discriminating in any way on the basis of spoken accent, facial or racial characteristics, or surname is also illegal.¹² Discrimination can occur because employers intentionally treat members of a group protected by law differently than others. However, it can also occur unintentionally if employers' actions have a disparate impact on protected group members.

This report focuses on differences in the impacts of the Web Basic Pilot program on work-authorized foreign-born employees and U.S.-born employees. The implicit assumption is that foreign-born employees are more likely than U.S.-born employees to be subject to discrimination based on one or more of the following characteristics that might lead employers to question whether the employees have work authorization: citizenship, ethnic identity, spoken accent, or surname. This does not mean that all employees within the foreign-born category have traits that would lead employers to characterize them as belonging to one or more of the protected groups. It also does not mean that all U.S.-born employees are excluded from the protected groups. However, it is likely that there is a strong correlation between place of birth and being in one of the protected groups of interest. The evaluation team uses this approach because it is much easier to measure whether the employee was U.S.-born than to determine whether the employee has any of the other indicated characteristics.

Within the foreign-born category, the evaluation team has also examined differences between U.S. citizens and noncitizens. This distinction is made because previous evaluations have found that there are differences in the erroneous tentative nonconfirmation rates between these two groups that are likely to affect the disparate impact of discrimination.

Employment discrimination can occur at all stages of employment, including recruitment, hiring, placement, compensation, training, evaluation, disciplinary action, treatment on the job, and dismissal. Since the Web Basic Pilot procedures primarily affect recruitment, hiring, and the initial post-hiring period, this section of the report focuses on the effect of the Web Basic Pilot program during these initial stages of the process.

One goal of automated employment verification, as envisioned by the framers of IIRIRA, was to reduce discrimination introduced by the Form I-9 verification process; however, there has not been consensus among stakeholders about the potential impact of the IIRIRA pilot programs on discrimination. The General Accounting Office (GAO) and others had reported that the employment verification procedures specified by the Immigration Reform and Control Act of 1986 led to an increase in discrimination, in

¹² Brett, M.R. (1998). "Citizenship Discrimination." *Office Systems* 15(5): 50-51.

large part because employers were unsure of their ability to correctly identify individuals without work authorization.¹³ In this situation, some employers found it easier not to recruit and hire noncitizens and/or individuals who appeared to be foreign born. Giving employers a better employment verification tool should make them more comfortable with their ability to verify employees and, therefore, make them more likely to recruit and hire individuals who appear to be foreign born.

On the other hand, advocates for immigrant rights have pointed out that the degree of harm engendered by the IIRIRA pilot programs could be considerable, even if employers completely follow the procedures designed to protect employee rights. They contend that work-authorized individuals born outside of the United States are more likely than U.S.-born workers to need to straighten out their SSA and/or USCIS records, which could result in missed time at work or other inconveniences. Further, some work-authorized foreign-born employees may quit their jobs rather than contact USCIS because they are afraid that contacting USCIS may create immigration problems for them or a family member, or because they believe it is easier to find another job elsewhere than to contest their cases. Even greater harm to authorized workers is likely when employers fail to follow the pilot procedures designed to protect their rights.

Compared to the Basic Pilot program, the Web Basic Pilot could potentially reduce the discrimination associated with tentative nonconfirmations issued to work-authorized employees. Improvements in the tutorial and the availability of information over the Web help to ensure that employers understand their responsibilities. Furthermore, the edit checks included in the system should reduce data entry errors and thus decrease the rate of erroneous tentative nonconfirmations. Additionally, USCIS has taken several steps to improve the timeliness and accuracy of information in its databases.

Section 2 below first examines the question of whether the Web Basic Pilot increases employer willingness to recruit and hire foreign-born workers. Section 3 examines whether the Web Basic Pilot verification process leads to discrimination against work-authorized employees after they are hired.

Information in this section is based, in part, on employer behavior self-reported on the employer Web surveys. It also incorporates information from the case studies and from analyses of the transaction database. Comparison with the original Basic Pilot analyses provides information on whether the changes implemented in the Web Basic Pilot program and other related Federal actions have reduced the erroneous tentative nonconfirmation rate, which is a major underlying cause of discrimination associated with the original Basic Pilot program.

Although the following discussion focuses on the implications of the Web Basic Pilot for discrimination, it will also touch upon an issue that is closely related to discrimination – the rights of all work-authorized employees under the Web Basic Pilot. As discussed

¹³ General Accounting Office. (1990a). *Immigration Reform, Employer Sanctions and the Question of Discrimination* (GGD-90-62). Washington, DC.

below, employer failure to provide employees with an opportunity to contest tentative nonconfirmations is a major component of discrimination; it is also a concern in its own right, since both unprotected groups (including U.S.-born employees) and protected groups can be harmed by employer failure to follow procedures designed to protect their rights.

2. DID THE WEB BASIC PILOT MAKE EMPLOYERS MORE WILLING TO HIRE FOREIGN-BORN WORKERS?

A solid understanding of the impact of the Web Basic Pilot on employer willingness to hire foreign-born individuals would require a carefully controlled experiment using testers or resumes during the hiring process. Such an approach has not been considered feasible in the IIRIRA pilot program evaluations, for political and practical reasons. It is, therefore, necessary to rely upon employer self-reported behavior for information about this key question.

The evaluation team reworded questions used in previous evaluations about employer willingness to hire foreign-born individuals, with the hope of obtaining more complete information about this aspect of the evaluation.¹⁴ The first question asked in the employer Web survey was “Do you think that this establishment is more or less willing to hire immigrants now than it was prior to when it started using automated employment verification?” Unless the respondent checked “don’t know,” the next question was “Why do you think that this establishment is [more willing/less willing/neither more or less willing] to hire immigrants now than it was prior to using automated employment verification?”

Most users reported that the Web Basic Pilot made them neither more nor less willing to hire immigrants. However, when change was reported, it was almost always in the direction of making employers more willing to hire immigrants.

Approximately 62 percent of long-term users reported that the Web Basic Pilot neither increased nor decreased their willingness to hire immigrants. Many employers that reported this opinion said that all qualified applicants are given an equal chance for employment. Others indicated that the use of the Web Basic Pilot is a change in process, not a change in hiring practices. Another 19 percent of long-term users said that the Web Basic Pilot makes the establishment more willing to hire immigrants. The main reasons cited for this opinion are that the Web Basic Pilot is a valuable tool for employment verification; it provides security and confidence in hiring authorized workers; it offers immediate verification, which results in a more efficient process; and it decreases employer liability.

¹⁴ The original Basic Pilot survey asked “Do you think that the pilot programs make participating employers more or less willing to hire immigrants?” The follow-up question asking employers to clarify their response was not asked of employers that said the program had no effect. Rewording the question has the disadvantage of precluding the comparison of responses from the Web Basic Pilot and the original Basic Pilot; however, the evaluation team believed that the increased precision associated with asking the employers about their own behavior rather than employers generally outweighed the loss of comparability, especially since there is no a priori reason to expect that Web Basic Pilot employers would be more or less willing than original Basic Pilot employers to hire immigrants.

Only 4 percent of long-term users reported decreased willingness to hire immigrants. Furthermore, some employers that were “less willing” to hire immigrants appeared to misunderstand the question and were reporting that they were not willing to hire people who are not work-authorized. Some of the remaining employers indicating that they were less willing to hire immigrants feared that immigrants would not “pass” the Web Basic Pilot system. Other employers felt that following up on cases that were not immediately authorized created an increased burden on staff.

Since very few employers indicated a decreased willingness to hire immigrant employees and a substantial percentage said that they were more willing to hire such workers, it is reasonable to conclude that the net effect of the change is an increase in employers’ willingness to hire immigrant workers. This conclusion is consistent with the GAO premise that a better employment verification system is likely to make employers more comfortable in hiring immigrants.

3. WHAT IMPACT DID ERRONEOUS TENTATIVE NONCONFIRMATION FINDINGS HAVE ON DISCRIMINATION?

The impact of receiving an erroneous tentative nonconfirmation on discrimination can be viewed as the product of two factors – the degree to which specified groups differ in their tentative nonconfirmation rates and the size of the negative impact of receiving erroneous tentative nonconfirmations on those receiving them. If either of these factors is nonexistent, then discrimination can be said not to occur. In other words, if foreign-born individuals were no more likely than U.S.-born individuals to receive tentative nonconfirmations, the tentative nonconfirmation process would not result in inadvertent discrimination against foreign-born persons. Similarly, if there were no negative impacts of receiving erroneous tentative nonconfirmations, there would be no inadvertent discrimination. This section examines these two factors separately.

a. ARE WORK-AUTHORIZED FOREIGN-BORN WORKERS DISPROPORTIONATELY LIKELY TO RECEIVE TENTATIVE NONCONFIRMATIONS?

Ideally, the evaluation would compare the tentative nonconfirmation rates for work-authorized foreign-born and U.S.-born workers to identify any differences in the erroneous tentative nonconfirmation rates for these two employee groups. To estimate these rates, it is necessary to know the place of birth of persons receiving final nonconfirmations, some of whom are work-authorized. However, information about place of birth is not available for most of the persons receiving final nonconfirmations.¹⁵ Without this information, separate erroneous tentative nonconfirmation rates cannot be estimated for U.S.-born and foreign-born employees.¹⁶ This report, therefore, uses the tentative nonconfirmation rate among employees determined to be work-authorized at

¹⁵ The SSA information is available only when employer-input information about the employee matches information on the SSA database; however, many final nonconfirmation cases could not be matched.

¹⁶ These cases would have inaccurate SSA information because these employees have not informed SSA about changes in their citizenship status; however, the citizenship status of native-born U.S. citizens is assumed to remain the same over time, so this is not an issue for this population.

some point in the verification process as an indicator of the erroneous tentative nonconfirmation rates for the two groups.¹⁷

As anticipated by immigrant rights advocates, work-authorized foreign-born employees are more likely than U.S.-born employees to receive tentative nonconfirmations, thereby subjecting a greater percentage of work-authorized foreign-born employees to potential adverse actions arising from the Web Basic Pilot process. As seen in Exhibit IV-4, almost all of the U.S.-born employees (99.9 percent) found to be authorized by the Web Basic Pilot between June 2004 and March 2007 were verified without a tentative nonconfirmation. For all foreign-born employees, the comparable rate was 97.0 percent. The corresponding erroneous tentative nonconfirmation rate for employees who were eventually found to be work-authorized is approximately 30 times higher for foreign-born employees than for U.S.-born employees (0.1 percent versus 3.0 percent).

At least some of the difference between U.S.-born and foreign-born ever-authorized employees receiving tentative nonconfirmations is that noncitizens have their information verified against both the SSA and USCIS databases. Therefore, noncitizens have two opportunities to receive tentative nonconfirmations – one based on SSA’s checking whether the Form I-9 SSN is consistent with its information on date of birth and name and the other based on the USCIS check comparing the Form I-9 information for A-number against its information on date of birth and name, as well as its information on work authorization. Furthermore, some employers may make more mistakes when entering foreign-sounding names than in entering names with which they may be more familiar, causing more non-matches during the verification process for foreign-born employees.

Foreign-born U.S. citizens are considerably more likely to receive erroneous tentative nonconfirmations than are work-authorized foreign-born persons who have not become U.S. citizens.¹⁸ There are dramatic differences between the erroneous tentative nonconfirmation rates for foreign-born citizens and work-authorized noncitizens (9.8 percent of those foreign-born citizens who were eventually found to be work-authorized received a tentative nonconfirmation prior to being found work-authorized, compared to only 1.4 percent of work-authorized noncitizens) in the first half of fiscal year 2007.

Determining whether workers claiming to be U.S. citizens on the Form I-9 are, in fact, citizens is the responsibility of SSA. The Web Basic Pilot program returns a work-authorized finding for foreign-born persons claiming to be U.S. citizens if SSA records show that the person is a U.S. citizen or a noncitizen with permanent work-authorization

¹⁷ See Chapter II for additional discussion of this indicator.

¹⁸ The definition of foreign-born is “an individual who was born outside of the United States. An American citizen can be foreign-born, either because they were born abroad to at least one parent of U.S. citizenship or because they were naturalized or derived U.S. citizenship through their parents” (<http://www.uscis.gov/files/article/8%20Glossary.pdf>).

Exhibit IV-4: Percentage of Employees Found to Be Work-Authorized, by Web Basic Pilot Stage, Citizenship, and Birth Status

Verification Stage	U.S.- Born	Foreign-Born			All Employees
		Total	Citizens	Noncitizens	
Total number of transactions for ever-authorized employees	100.0	100.0	100.0	100.0	100.0
Total authorized without a tentative nonconfirmation	99.9	97.0	90.2	98.6	99.4
Total authorized automatically	99.9	90.6	89.6	90.6	98.3
Initial authorization by SSA	99.8	41.3	88.3	28.8	89.5
First-stage authorization by USCIS	0.1	49.4	1.3	61.9	8.8
Second-stage authorization by USCIS	0.0	6.4	0.5	8.0	1.1
Total authorized after a tentative nonconfirmation	0.1	3.0	9.8	1.4	0.6
Authorized by SSA after a tentative nonconfirmation	0.1	2.0	9.8	0.2	0.4
Authorized by USCIS after a tentative nonconfirmation	0.0	1.0	0.0	1.2	0.2

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007, and information provided by SSA

status.¹⁹ If the submitted SSN, name, and date of birth are consistent with SSA records, but SSA does not have information on citizenship and immigration status that permits finding the employee to be work-authorized, the Web Basic Pilot issues a finding of “Unable to confirm U.S. Citizenship.” Out-of-date citizenship and immigration status information in SSA records accounts for a relatively high percentage of erroneous tentative nonconfirmations among naturalized or derived citizens.

If USCIS had accurate electronic information for naturalized citizens and could retrieve that information based on the person’s SSN, the solution to the current problem would be an easy one: The Web Basic Pilot could forward cases that might relate to naturalized citizens to USCIS for verification when SSA information on citizenship and immigration status does not permit the verification of the employee as work-authorized. However, USCIS does not consistently have accurate information about current citizenship status on its database; when accurate information is available, it cannot always be accessed by SSN since USCIS uses the A-number as its primary identifier.

The inaccurate information at SSA reflects the fact that few people bother to update their citizenship/immigration status unless they are updating other information with SSA, such as a name change. The inaccurate information at USCIS arises from the fact that the former Immigration and Naturalization Service did not believe that it was authorized to maintain electronic records on naturalized citizens until that issue was clarified through legislation in 1996. Therefore, USCIS does not have electronic information on most persons naturalized before that time. Furthermore, USCIS records often do not reflect the U.S. citizenship status of persons who derived U.S. citizen status as children when one or both parents were naturalized. Even when USCIS has information on the citizenship status of naturalized citizens, it does not necessarily have their SSNs because the SSN has not always been a required field on the application for naturalization and is still not a required field for data entry. When SSN is lacking for naturalized citizens, their USCIS records can be accessed only by A-number; however, former A-numbers are not requested from naturalized U.S. citizens on the Form I-9, which is the basis for the information used in electronic verification. This practice reflects a policy decision made, when the Basic Pilot was first designed, to treat all citizens equally and not to reveal to employers which U.S. citizens are naturalized and which are native born. Furthermore, there is no requirement or expectation that naturalized citizens should know their former A-number.

Reducing the erroneous tentative nonconfirmation rate for foreign-born U.S. citizens will not be easy or fast. However, the evaluation team believes that there are several steps that can be taken to address this problem (as discussed in Chapter VI) that should be started

¹⁹ The erroneous tentative nonconfirmation rate would be even higher if a decision were made that persons claiming to be U.S. citizens with SSA records showing that they had permanent work-authorization status were not automatically verified by SSA as work-authorized.

expeditiously. USCIS and SSA are currently in the process of implementing some of these measures.²⁰

The difference between the tentative nonconfirmation rates for noncitizens and U.S.-born workers would have been much greater in the absence of second-stage verification by USCIS ISVs, who manually compare Web Basic Pilot cases against other USCIS records not in the Verification Information System. Of the cases going to USCIS, 8 percent were found to be work-authorized at the second stage.

b. WHAT IS THE IMPACT OF TENTATIVE NONCONFIRMATIONS ON EMPLOYEES?

As stated above, the extent of discrimination against foreign-born workers after hiring is a function of the employee impacts of receiving a tentative nonconfirmation. The smaller this impact is, the less the resulting discrimination. Furthermore, though not an explicit goal of the Basic Pilot program, protecting the rights of all work-authorized employees verified by the system is certainly important, even in the absence of discrimination.

There are two primary ways that receiving a tentative nonconfirmation may have a negative effect on an employee: (1) burdens associated with any adverse actions the employer may take against employees and (2) burdens associated with having to contact SSA and/or USCIS. These two factors are discussed separately in the following sections.

i. Employer Behavior

Employers are prohibited from taking any adverse actions against employees receiving tentative nonconfirmations during the time provided for resolving tentative nonconfirmations. Both the employer surveys and the case studies examined the extent to which employers followed this Web Basic Pilot requirement.

The primary modifications of the original Basic Pilot that were likely to increase employer compliance with the requirements of the pilot programs were enhancements to the training materials available to employers and the requirement that employers pass a Mastery Test on pilot procedures prior to using the system. As discussed in Chapter III, 84 percent of long-term users indicated that all staff currently using the system for verification had completed the tutorial. Only 1 percent indicated that no current system users had completed the tutorial.

Employers do not always adhere to Web Basic Pilot procedures specified in the MOU, thereby increasing the possibility that work-authorized employees receiving tentative nonconfirmations will suffer adverse consequences. As described in Chapter III, the evaluation points to a number of ways in which employers fail to follow MOU provisions designed to protect work-authorized employees. These infractions include using the Web Basic Pilot to verify job applicants or persons hired prior to the start of the Web Basic Pilot, failing to notify employees of tentative nonconfirmation findings, and

²⁰ In addition to its importance for verification of employment status, this information needs to be accurate for other purposes that are beyond the scope of this evaluation, such as for receipt of public benefits and licensing.

taking adverse actions such as reduction in pay or training during the time employees have to contest tentative nonconfirmation findings.

It is also highly likely that some employees were not aware of costs – financial or otherwise – incurred because of tentative nonconfirmation findings. This is particularly true when employers use the Web Basic Pilot to prescreen applicants for jobs, since employees are likely to be unaware of costs associated with tentative nonconfirmations if they are not offered jobs because of these findings. For example, one case study employer that prescreened job applicants did not hire some applicants and did not inform them of a tentative nonconfirmation finding, thereby preventing these persons from contesting the findings or correcting their paperwork. Employees may also be unaware of certain types of adverse actions their employer may have taken such as delaying their start of work, withholding training, or assigning them to work fewer hours while they are contesting tentative nonconfirmations.

ii. Employee Burdens of Resolving Tentative Nonconfirmations

Employees are the most knowledgeable respondents for determining the burdens of contacting SSA or USCIS to resolve erroneous tentative nonconfirmations. Even though the employees interviewed for this study are not representative of all employees, their experiences are illustrative of the types of impacts that the resolution of tentative nonconfirmation findings has on employees and they therefore provide some insight into the financial and non-financial costs of resolving tentative nonconfirmations.

Most case study employees who had received tentative nonconfirmations reported no costs associated with resolving the finding; however, some employees did incur tangible costs, and others may have incurred costs of which they were unaware.

Among the interviewed employees who had been notified of a tentative nonconfirmation finding, very few reported having any specific costs. Several employees interviewed at one employer were not allowed to start working until they had resolved the problem, but these employees did not provide an estimate of the cost of lost work.

Most of the 28 employees who went to an SSA office reported that they did not have to spend much time waiting or speaking with a representative. Three employees reported having to wait for approximately 2 hours, and two said the process took them all day. Another employee took the whole day off and lost that day's wages because he was not sure how long the process would take.

An estimated 3,000 (5 percent) of the 61,000 final nonconfirmation cases entered into the Web Basic Pilot system between October 2006 and March 2007 were employees who did not contest a tentative nonconfirmation but would have been found to be work-authorized if they had.²¹ Although some of these employees chose not to contest for reasons having

²¹ This estimate is made assuming that the percentage of work-authorized employees who contest tentative nonconfirmations is halfway between the minimum and maximum rates. The range of estimates for SSA findings was 22 percent to 100 percent, and the point estimate used was 61 percent. The corresponding range for USCIS was 69.5 percent to 100 percent, with a point estimate of 84.7 percent. Additional information on this methodology is provided in Appendix C.

nothing to do with the Basic Pilot program (e.g., they quit the job because they did not like the work) and some of these employees continued to work because their employers did not take action on the final nonconfirmation, it is likely that many of these employees were either not hired or were fired without being given an opportunity to contest.

E. SAFEGUARDING PRIVACY

1. BACKGROUND

One of the IIRIRA requirements for the Web Basic Pilot is that it should provide a verification system that protects the privacy and confidentiality of employees. The Web Basic Pilot system was, accordingly, designed to protect the confidentiality and privacy of employee information against unauthorized use at both the Federal and employer levels. These protections are in addition to the multiple barriers SSA and USCIS employ to prevent unauthorized external access to their systems. This section summarizes the evaluation findings related to data privacy and confidentiality.

The most recent IIRIRA pilot evaluations did not find significant evidence of problems in safeguarding employee privacy. However, using a Web interface constitutes a significant change in the way the Basic Pilot works that could, at least in theory, have an impact on employee privacy.

In addition to potential privacy problems due to system weaknesses, privacy problems may arise during the tentative nonconfirmation process if employers do not tell employees about tentative nonconfirmations in private. Employers should respect employee privacy by telling employees about tentative nonconfirmations and explaining the procedures for resolving them in private. This obvious safeguard was not reflected in either previous or current employer training materials, and it was, therefore, posited that little change would be observed in this behavior.

2. FINDINGS

a. FEDERAL SAFEGUARDS AGAINST PRIVACY VIOLATIONS

The safeguards described below are built into the Web Basic Pilot system to protect against possible security breaches.

- **Federal privacy responsibilities.** Federal government safeguards protect access to SSA and USCIS databases by limiting their use to authorized SSA and USCIS personnel and contractors. In addition, the Federal government processes queries only for authorized employers that have signed an MOU. These employers are identified through establishment access and user identification codes.
- **Passwords.** Each person using the system is expected to have an individual user identification number and password. The passwords must be changed every 45 days. The employer is required to notify USCIS and remove old user

identification numbers and passwords from the system when program users leave employment or no longer perform verifications as part of their job responsibilities.

There is little increased risk of misuse of Web Basic Pilot information by Federal employees. Use of the Web Basic Pilot increases the risk of improper disclosure or use at the Federal level only to the extent that it increases the number of Federal employees and contractors who have access to systems information. The security procedures that SSA and USCIS use to protect all of their databases continue to be in effect when their personnel and contractors use Web Basic Pilot data. These security procedures limit access and safeguard employee and employer information provided by Web Basic Pilot users.²²

One possible weakness of the system is that someone wishing to access it may pose as an employer or authorized user and obtain access by signing an MOU. Although there are no safeguards in place to prevent this misuse, USCIS and SSA are exploring ways to implement such safeguards as the system expands.

b. EMPLOYER BEHAVIOR DESIGNED TO PROTECT EMPLOYEE PRIVACY

Employers did not consistently convey information about Web Basic Pilot tentative nonconfirmations in a private setting. Employers may also violate employees' privacy by not being discreet in discussing verification problems with their employees. Almost all employers (94 percent of long-term users) reported that they always inform employees of tentative nonconfirmation findings in private, a result that is similar to the 88 percent of original Basic Pilot employers reporting this behavior. However, even though employers reported that employees were always notified in private, there were exceptions at each of the four case study employers where employees were regularly notified of tentative nonconfirmations. One employer sometimes notified a group of employees who had all received tentative nonconfirmation findings and were all participating in the same training session. The staff of another employer said they requested that the employees' supervisors also be present at "private" notification meetings (although only a few employees indicated that their supervisors were in fact present at the meeting). One employer sometimes told employees of a problem with their verification in a public location where other employees could hear. A few employees reported that the employer posted a list of employees who were "not authorized to work." Another employer sometimes told employees in a public place where other people were around but where only the employee could hear.

²² As is clear from recent cases in which Federal databases have been stolen, Federal safeguards are not always adequate to ensure privacy; however, given that the data in the databases used by the Web Basic Pilot are already available in other SSA and DHS databases, it is unlikely that the program substantially increases the likelihood of misuse of the system by Federal employees and contractors.

F. AVOIDING UNDUE EMPLOYER BURDEN

1. BACKGROUND

One of the stated goals of the IIRIRA pilot programs is to avoid unnecessary burden on employers. The Web Basic Pilot incorporates changes designed to make the system significantly easier and less costly for employers to use than the original Basic Pilot. The cost figures in this section must be viewed as estimates. The cost information provided by employers in the Web survey was sometimes based on actual records and sometimes on their best estimates.²³ Furthermore, approximately 40 percent of responding employers did not provide estimates of their costs.

2. FINDINGS

The majority of employers reported that they spent \$100 or less in initial set-up costs for the Web Basic Pilot and a similar amount annually to operate the system; however, some employers spent much more. Eighty-four percent of employers that used the Web Basic Pilot for more than a year reported spending \$100 or less for start-up costs, and 75 percent said they spent \$100 or less annually to operate the system. However, 4 percent of long-term users said they spent \$500 or more for start-up costs, and 11 percent spent \$500 or more annually for operating costs. Because of the high costs reported by a small minority of employers, the average (mean) costs were more than \$100 (\$125 for set-up and \$728 for maintenance).

The average reported set-up and maintenance costs for the Web Basic Pilot are considerably below the comparable figures for the original Basic Pilot program. While the original Basic Pilot employers reported that they spent an average of \$777 (\$916 in 2006 dollars) for set-up and \$1,800 (\$2,121 in 2006 dollars) annually for operating costs, the long-term Web Basic Pilot users estimated that they spent an average of approximately \$125 to set up the Web Basic Pilot and \$727 annually to operate the program.

In addition to examining employer costs, it is helpful to look at the factors that affect costs. This permits examination of the question of whether the differences between the Web Basic Pilot employers and original Basic Pilot employers are likely to be explained by differences in the types of employers participating in the programs and their employees. It also is useful for anticipating the potential impacts of the program on employers currently underrepresented in the Web Basic Pilot program.²⁴

The average costs to set up and maintain the Web Basic Pilot vary considerably depending on employer characteristics. The average set-up costs for employers in different industries ranged from \$61 (accommodation/food services industries) to \$405 (mining, utilities, or construction) (Exhibit IV-5). Average maintenance costs ranged

²³ See Chapter II for a discussion of this issue.

²⁴ See Chapter V for a further discussion of this issue.

Exhibit IV-5: Set-up and Maintenance Costs Reported by Web Basic Pilot Users, by Employer Characteristics

Employer Characteristic	Set-up Costs			Maintenance Costs		
	N	Mean	SE	N	Mean	SE
All employers	790	125	16	797	728	185
Industry*,**						
Agriculture, forestry, fishing, hunting	31	181	74	28	238	134
Mining, utilities, construction	37	405	224	37	395	188
Animal food manufacturing	142	126	31	142	270	76
Other food/beverage/tobacco manufacturing	52	192	98	51	382	144
Other manufacturing	107	113	28	110	261	77
Wholesale/retail trade	32	128	65	33	946	754
Professional/scientific/technical/education/arts/entertainment	40	78	35	40	374	159
Employment services	84	82	22	86	1,515	1,063
Public administration/social services	88	141	57	94	1,795	957
Accommodation/food services	143	61	12	143	857	452
Other industries	34	92	29	33	144	57
Employer size						
< 100	167	100	28	169	459	320
101-250	189	138	44	186	608	233
251-500	152	90	23	158	727	570
501-1,000	129	151	49	130	322	120
> 1,000	153	151	32	154	1,512	598
Region						
California	125	106	30	128	319	110
Arizona/Texas	114	187	75	114	1,454	899
Northeast	88	73	20	86	1,224	846
Northern/Western	156	123	35	159	451	132
Midwest	146	116	26	148	315	83
Southern	110	163	51	112	914	530
Florida	51	82	26	50	953	799
Participation in original Basic Pilot						
Yes	426	141	25	427	625	245
No	364	108	21	370	847	280
Training method						
Web Basic Pilot online tutorial	703	113	13	707	758	205
Self-instruction with the pilot procedures manual	281	139	32	287	887	377
Formal in-house training session	60	297	113	60	1,349	913
Informal on-the-job training	234	125	24	241	1,309	523
Other methods	18	69	39	18	447	278
Number of employer locations**						
One	629	130	19	634	490	137
Multiple	161	107	29	163	1653	725
Whether verification was conducted in-house						
In-house only	532	131	22	530	452	140
At other locations as well	253	115	23	262	1,296	484

*Set-up costs differ significantly at 0.05 level.

**Maintenance costs differ significantly at 0.05 level.

NOTE: SE = Standard Error.

SOURCE: Web Basic Pilot Employer Survey of Long-Term Users and Web Basic Pilot Employer Registration Data

from \$144 for employers in “other industries” to \$1,795 for those in public administration/social services. Not surprisingly, maintenance costs were higher for employers that verified employees at multiple locations than for those that verified at only one location (\$1,653 versus \$490).

The most frequently mentioned specific set-up costs were for training (40 percent of long-term users), telephone fees for Web access (10 percent), and computer hardware (9 percent). The most frequently mentioned operating costs were related to training of replacement staff (20 percent), wages for verification staff (17 percent), and computer maintenance (15 percent). However, not all costs associated with a new system can be easily quantified. Employers may also incur indirect costs for set-up, such as reassignment of employees, additional recruitment, and delayed production.²⁵

Approximately 97 percent of long-term users reported that the indirect set-up costs were either no burden or only a slight burden, and a similar percentage of the employers said that indirect costs associated with maintaining the system were either no burden or only a slight burden (97 percent).

Based on the nine interviews with employers that had terminated use of the system, it does not appear that the costs of setting up the system were especially high. None of these employers reported any costs in setting up the Web Basic Pilot because they already had computers and Web access. Five of these employers mentioned that the registration process took time but that they did not consider this a cost.

However, four of the nine interviewed employers that had terminated use of the system reported substantial maintenance costs. Most of these costs were associated with the need to hire and train new employees to replace those who were found not to be work-authorized. One employer reported labor costs for the human resources personnel using the Web Basic Pilot system; this employer estimated that the program took 15 minutes to use for each employee verified, which adds up when hundreds of employees are verified.

G. SUMMARY

The following conclusions are based on the analyses in this chapter.

- Although the Web Basic Pilot provides employers with a tool for identifying employees who have presented counterfeit or altered documents indicating that they are work-authorized, it generally does not detect identity fraud that occurs when an employee presents borrowed or stolen documents or counterfeit documents with information about work-authorized persons.
- The evaluation team estimates that approximately 5 percent of employees verified through the Web Basic Pilot program in the first half of fiscal year 2007 were

²⁵ Delayed production occurs when employers have to slow production for some reason. For example, this could occur with the Web Basic Pilot if employers fired someone because of a final nonconfirmation and production slowed while the employer looked for a replacement.

employees without work authorization who were either not found to be work-authorized or received a final nonconfirmation.

- The Web Basic Pilot appears to be effective in reducing the level of unauthorized employment at participating establishments. However, the failure of employers to consistently terminate the employment of workers who received final nonconfirmations threatens the effectiveness of a larger scale electronic employment verification program.
- The Web Basic Pilot apparently decreased discrimination in the recruitment and hiring of foreign-born employees because of increased employer willingness to hire *work-authorized* foreign-born employees; this willingness resulted from employers' increased confidence in their ability to distinguish between employees with and without work authorization.
- The Web Basic Pilot increased discrimination against work-authorized foreign-born employees after hiring because foreign-born employees, especially foreign-born citizens, are more likely than U.S.-born employees to receive tentative nonconfirmation findings, with the attendant burdens of contesting erroneous findings. The burden of erroneous tentative nonconfirmations on employees is exacerbated by the failure of some employers to follow Basic Pilot procedures designed to protect employee rights. This failure not only results in additional discrimination but also contributes to non-protected groups being denied their rights.
- SSA and USCIS took reasonable precautions to protect the security of the Web Basic Pilot databases. However, some employers did not consistently inform employees of tentative nonconfirmation findings in private. Concern has also been raised about the potential for individuals other than the designated employees of legitimate employers to use the system to obtain information about the work-authorization status of individuals.
- For most employers, set-up costs for the Web Basic Pilot were less than \$100, with a similar annual amount for maintenance. However, some employers reported much higher costs.
- It appears that most employers did not find the Web Basic Pilot unduly burdensome and that they found the process less burdensome than did original Basic Pilot employers did.

CHAPTER V. WHAT HAVE BEEN THE IMPACTS OF CHANGES TO THE WEB BASIC PILOT SINCE ITS INCEPTION?

A. BACKGROUND

1. INTRODUCTION

The last two chapters presented the implementation and outcome findings of the evaluation, including comparisons of the Web Basic Pilot to the original Basic Pilot program. However, as noted in Chapter I, the Web Basic Pilot program is not static; the Social Security Administration (SSA) and the U.S. Citizenship and Immigration Services (USCIS) have been taking steps to improve it in anticipation of major future expansion. These include changes designed to make the databases used in the program more accurate, changes to make the Basic Pilot system easier for employers to use, and a procedural change designed to improve the system's ability to detect workers without work authorization. This chapter focuses on the impacts of these changes. Before examining the policy questions, it examines changes in the characteristics of participating employers and workers being verified that should be taken into account in order to understand apparent changes in program outcomes and anticipate future changes.

2. DATA LIMITATIONS

This chapter draws heavily upon data from the following sources.

- Information was obtained directly from the *full Web Basic Pilot transaction database* for June 2004 through March 2007, which is based on almost 3.5 million cases. This is an extremely large sample and constitutes the total population of cases submitted during this time. Although sampling error is not a concern, the possibility of measurement error exists because the USCIS and SSA data provided from employer verification transactions contained some errors due, for example, to employer input errors. Although the data were cleaned, it is not possible to rectify all errors.¹ To examine trends, cases on this file are broken into 6-month intervals based on when they were submitted.
- For the purposes of this chapter, a *longitudinal transaction database* – restricted to employers that had transmitted cases in every 6-month period from October 2004 through March 2007 – was extracted from the full transaction database. This restriction was imposed to assist in the separation of trends attributable to shifts in the characteristics of participating employers from those attributable to changes in the Web Basic Pilot program and databases. A total of 923,024 records for 544 employers were included in the final longitudinal transaction database.

¹ See Appendix B for additional information on the methodology used for cleaning the transaction database.

- *The secondary data* that were used include information about employer characteristics captured by the Web Basic Pilot system at the time employers registered. Other secondary data that were used to describe employers and employees in the nation as a whole are taken from Federal sources, including the Bureau of Labor Statistics' Job Openings and Labor Turnover Survey (JOLTS), (<http://www.bls.gov/jlt/home.htm#data>), the Current Population Survey (<http://www.census.gov/cps/>), and the U.S. Census County Business Patterns 2005 (www.census.gov/csd/susb/usst04.xls).

Information from Federal data sources is believed to provide valid information about the characteristics of the nation's employers and the workforce; however, these sources do not always collect data that are directly comparable with the available data for the Web Basic Pilot program. For example, the definition of "employer" used in the Web Basic Pilot differs from the definitions of "establishment" and "firm" used by the U.S. Department of Labor. Because of these differences, it is necessary to use the comparative data cautiously.

The *Web surveys of long-term and recently enrolled users of the Web Basic Pilot* included all employers meeting specified criteria. It can be argued that sampling error is not an issue for these surveys; however, to be conservative, tests of significance were performed to determine whether random factors affecting which employers sign up for the program account for employer differences. Like all surveys, the employer surveys are also subject to nonsampling errors, such as nonresponse bias and measurement error.

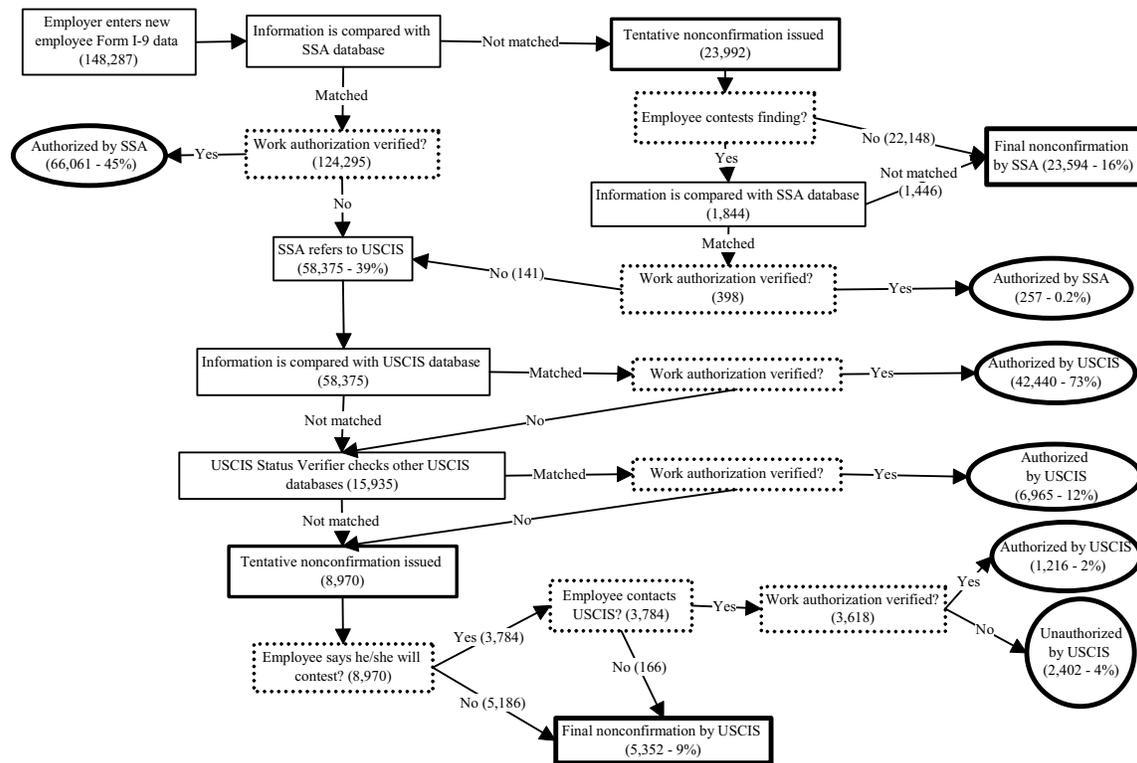
This chapter uses the *absolute mean difference* of two distributions to determine whether Web Basic Pilot employers and the workers they verify are becoming more similar to all U.S. employers and the employees they hire. This measure is a rough indicator, since it is partially dependent upon the somewhat arbitrary decision of how to categorize variables such as size, geographic region, and industry.

3. THE OCTOBER 21, 2005, PROCEDURAL CHANGE

To understand many of the changes discussed in this chapter, it is necessary to understand the procedural change affecting the verification of noncitizens that was implemented on October 21, 2005. Prior to the changed procedures, persons attesting to being work-authorized noncitizens were found to be work-authorized if SSA records contained adequate information to confirm that they had permanent work-authorization status. Using the revised procedures implemented on October 21, 2005, and described in Chapter I, all noncitizen cases having information on name and date of birth that is consistent with the Social Security number in SSA's records are referred to USCIS, regardless of the work-authorization information in SSA records. As was previously the case, SSA issues tentative nonconfirmations when the SSA database information is inconsistent with the information supplied by the employer on the Form I-9. Also unchanged are the procedures for workers attesting to being U.S. citizens.

Exhibit V-1 shows the process for verifying noncitizens prior to October 21, 2005.² Between June 2004 and October 20, 2005, almost 150,000 cases were submitted to the Web Basic Pilot system for persons attesting to being work-authorized noncitizens on their Form I-9s. As illustrated, SSA confirmed work authorization for 45 percent of the noncitizens at the first verification attempt and for 0.2 percent after two or more attempts. Another 16 percent became SSA final nonconfirmation cases when an SSA tentative nonconfirmation was not contested.³

Exhibit V-1: Verification Process for Persons Claiming to Be Noncitizens on Form I-9 Prior to the October 21, 2005, Procedural Change



NOTE: Percentages refer to the percentage of decisions made by SSA or USCIS.

SOURCE: Web Basic Pilot Transaction Database: June 2004-October 20, 2005

² The process used after October 20, 2005, is presented in Chapter I.

³ It is likely that some of the cases that appear to be final nonconfirmation cases were actually reviewed and found by SSA to be work-authorized but were not properly resubmitted to SSA. Indeed, one of the case study employers reported not terminating employees receiving final nonconfirmation findings when the employee provided documentation from SSA that his or her Social Security number was valid. Although it is possible that some of these employees had fraudulent documentation, it is also possible that the person had, in fact, gone to SSA.

B. PROGRAM USAGE

1. INTRODUCTION

Trends in program usage are important not only because they serve as indicators of how well the program has been implemented, but also because the strength of the program in deterring unauthorized employment depends upon its being implemented broadly by U.S. employers. The results of the transaction database analyses in Chapter IV demonstrated substantial progress in expanding the size of the program compared to the original Basic Pilot program. For example, in the 34 months from June 2004 through March 2007, Web Basic Pilot employers verified approximately 3.5 million workers. This is in contrast to the approximately 364,000 employee verifications conducted in the 26 months from November 1997 through December 1999.

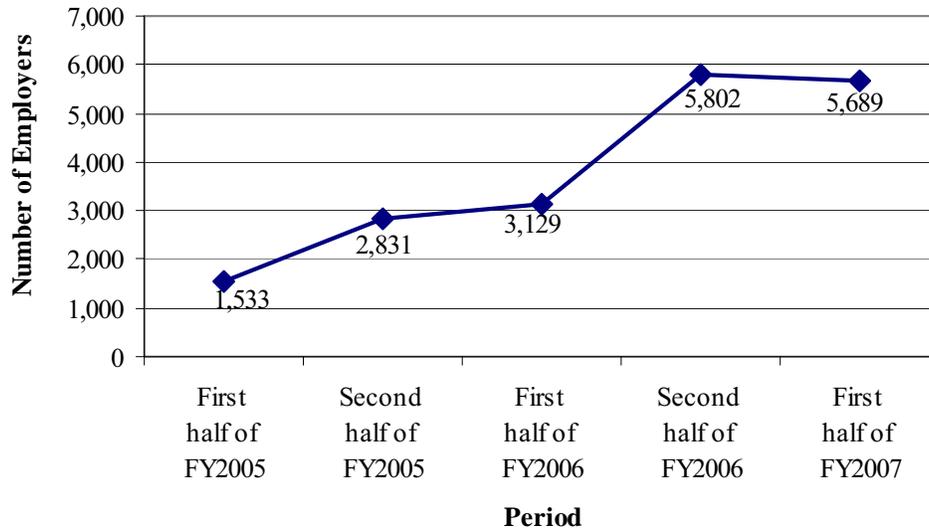
This section examines several trends related to overall program usage from the inception of the Web Basic Pilot program through March 2007. It examines trends in the numbers of employers transmitting cases, the number of cases transmitted, and the percentage of employers signing a Memorandum of Understanding (MOU) that used the system within 3 months of signing up. Sections C and D examine the related questions of how these changes vary for employers and workers with different characteristics, as well as the impact of differential changes on the representativeness of employers using the Web Basic Pilot.

2. FINDINGS

The number of employers transmitting cases to the Web Basic Pilot system has increased dramatically over time. As Exhibit V-2 indicates, the number of employers transmitting cases to the Web Basic Pilot system increased from 1,533 during the first half of fiscal year (FY) 2005 to 5,689 in the first half of FY2007, an increase of almost 400 percent.⁴

⁴ These data refer to the number of employers submitting cases to the Basic Pilot rather than the much larger number of employers that have signed MOUs allowing them to use the program.

Exhibit V-2: Trend in the Number of Employers Transmitting Cases to the Web Basic Pilot Program



SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007

The number of Web Basic Pilot verifications has increased even more rapidly than the number of employers using the system. As Exhibit V-3 shows, there were approximately 216,000 Web Basic Pilot verifications during the first half of FY2005. This number had increased almost 500 percent to over 1 million by the first half of FY2007. The fact that the number of verifications has increased faster than the number of employers could have several possible explanations. First, it could be attributable to differences in the types of employers using the system. Second, it is possible that employers are more consistently using the system. Third, employers may be conducting more prescreening now than in the past. This latter hypothesis is given credence by the fact that employment services (which, as discussed earlier, are especially likely to screen job applicants) accounted for 50 percent of transmissions in the first half of FY2007, compared to 41 percent in the first half of FY2005.

Exhibit V-3: Trend in the Number of Web Basic Pilot Verifications and the Ratio of Verifications to Newly Hired Workers Nationally

	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007
Number of verifications (000)	216	564	523	968	1,056
Number of newly hired workers in the nation (000)	28,904	28,587	29,753	29,647	29,590*
Ratio of verifications to newly hired workers in the nation	0.007	0.020	0.018	0.033	0.040

*Extrapolated by the evaluation team based on data for the first 3 months of FY2007.

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007; and Bureau of Labor Statistics, Job Openings and Labor Turnover Survey (JOLTS) (<http://www.bls.gov/jlt/home.htm#data>)

Indeed, because of the unique needs of employment services, USCIS verification personnel have told temporary employment agencies (which, according to responses to the long-term user survey, constitute 73 percent of employment agencies and account for 79 percent of verifications by employment agencies) that “once the job offer has been made and accepted, and the Form I-9 completed, temporary employment agencies may verify the new hire’s employment eligibility. We would not consider this pre-screening.”⁵ Although the definition of “hire” as the offering and acceptance of a job offer is not necessarily an unreasonable one, it is not the definition used on the Form I-9, which specifies that hire is “the actual beginning of employment.” Using this latter definition, the practice of verifying work authorization prior to the start of work would constitute prescreening. These differing definitions have important implications for the potential discriminatory impact of the Web Basic Pilot program. If “hire” is defined as offering and accepting a job, at least some employers would presumably not let some workers receiving tentative nonconfirmation notices start work until their tentative nonconfirmations are resolved, a practice that would have a disproportionately negative impact on foreign-born persons, as discussed in Chapter IV.⁶

The ratio of Web Basic Pilot verifications to the number of newly hired workers nationally has risen from less than 0.01 to approximately 0.04. Ideally, the evaluation team would estimate the percentage of all newly hired workers screened by the Web Basic Pilot. The reported ratio is likely to be higher than the percent of all new hires verified because the national data reported by the Bureau of Labor Statistics for JOLTS do not include some newly hired workers⁷ and because, as discussed in Chapter IV, some verifications are for job applicants rather than newly hired workers.

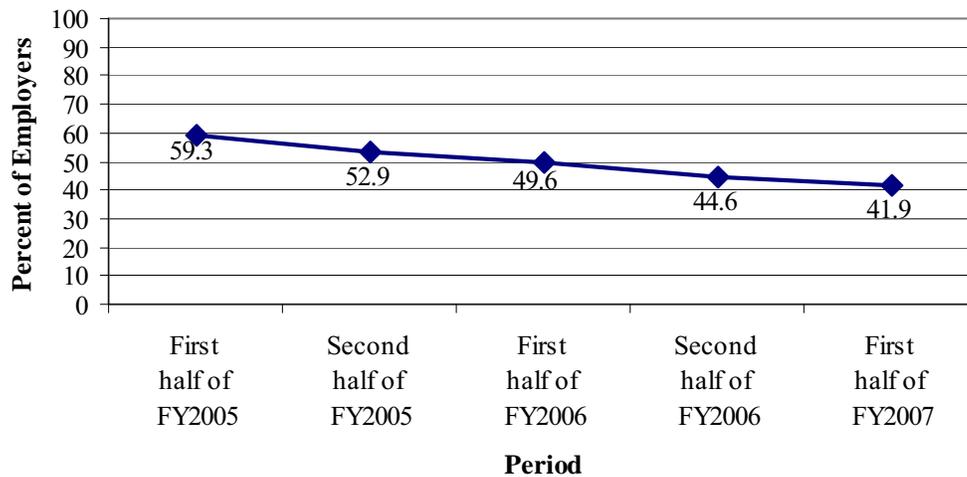
⁵ Email from the Verification Unit at USCIS, March 20, 2006.

⁶ Since the Form I-9, which must be completed before an employee can be verified through the Basic Pilot system, indicates that “hire” refers to the date work starts, there are no regulations indicating whether the employer can delay the start of work until tentative nonconfirmations are resolved. It is not possible to know what employers would do if the definition of “hire” were to be changed; however, it is reasonable to assume that employers would postpone the start of work for those positions that require considerable initial training, given that many employers are unhappy with the loss of training costs for these employees under the current program. On the other hand, employers are likely to let employees immediately start jobs that require minimal or no training. Since these jobs are disproportionately likely to be unskilled labor jobs, the change might make it harder for some foreign-born work-authorized employees to find skilled labor and white collar jobs.

⁷ JOLTS defines newly hired workers as “the total number of additions to the payroll occurring at any time during the reference month, including both new and rehired employees, full-time and part-time, permanent, short-term and seasonal employees, employees recalled to the location after a layoff lasting more than 7 days, on-call or intermittent employees who returned to work after having been formally separated, and transfers from other locations. The hires count does not include transfers or promotions within the reporting site, employees returning from strike, employees of temporary help agencies or employee leasing companies, outside contractors, or consultants” (downloaded from <http://www.bls.gov/news.release/jolts.tn.htm>, June 30, 2007).

The percentage of employers using the system within 3 months of signing the MOU has declined over time. As Exhibit V-4 shows, the proportion of employers that had used the system within 3 months of signing the MOU decreased from 59 percent in the first half of FY2005 to 42 percent in the first half of FY2007. It is possible that this trend can be explained by the increase in the number of small employers (as discussed in Section C), since small employers presumably hire fewer new employees in any period and, therefore, may not have had as many opportunities to use the system as larger employers.

Exhibit V-4: Percentage of Employers That Used the Web Basic Pilot System Within 3 Months of Signing an MOU



SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007

C. CHARACTERISTICS OF EMPLOYERS USING THE PROGRAM

1. INTRODUCTION

The preceding section focused on trends in the overall use of the Web Basic Pilot program. This section and Section D examine trends in the characteristics of employers and the workers they verified, respectively, since the rate of change is not necessarily the same in all segments of the population. Different rates of change can result in significant differences in the composition of the employer and employee population over time. For example, if the number of employers in manufacturing increases at a slower rate than the overall rate of increase in the total number of employers, the percentage of employers engaged in manufacturing will decrease. Examination of these trends helps to identify changes that may be confused with real program changes. Asking the related question of whether current Web Basic Pilot employers and the workers verified more closely

resemble the national population may also provide insights into how an expanded program may differ from the current program.⁸

Within this section, trend data are examined for four employer characteristics: industry, size, geographic location, and the reported percentage of the employer's workers who are immigrants. For all but the last characteristic, two sources of data are available: the information that employers reported to USCIS at the time they registered for the Web Basic Pilot program and the information they reported on the employer surveys. These two sources may not be the same because of differences in the questions asked of employers and because the populations are not identical. More specifically, trends based on the information reported to USCIS are for all employers transmitting one or more cases in a particular 6-month period, while the information from the Web Basic Pilot employers is for those employers defined as either long-term or recently enrolled users at the time of the Web Basic Pilot employer surveys.

The information on employer characteristics for those employers transmitting cases by 6-month period provides a better description of the trends in the entire employer population than the information from the employer surveys, since it provides more time points and is based on a larger population of employers.⁹ However, it is also helpful to understand the differences between long-term Web Basic Pilot users that also used the original Basic Pilot, other long-term users, and more recently enrolled users. First, differences between recently enrolled users and long-term users may help identify emerging trends obscured by looking at changes in the overall population. Second, using two imperfect sources of data increases the chances of making sound inferences about what is happening. Third, in examining whether differences among survey respondents on variables such as satisfaction and compliance can be explained by changes in employer characteristics, it is the characteristics of the employer respondents that must be considered and controlled for, when necessary.

2. FINDINGS

a. INDUSTRY

The industrial distribution of Web Basic Pilot employers is now more similar to the national distribution than it was at the start of the program. The mean absolute difference between the percentage of Web Basic Pilot employers in an industry and the percentage of all U.S. employers in that industry decreased from 11.2 to 10.4 from the first half of FY2005 to the first half of FY2007 (Exhibit V-5). An examination of changes in the industrial distribution for survey respondents shows an even greater downward trend in the mean absolute difference value. This measure is 12.1 for long-term users continuing from the original Basic Pilot program, 10.0 for long-term users that did not

⁸ The evaluation team believes that the resulting changes in the composition of employers and workers verified is of greater interest than the actual rates of changes and, therefore, has emphasized the changes in the composition of the employers using the system.

⁹ One caveat on using the information the employer reported to USCIS is that there have been changes over time in the definition of what constitutes an employer.

use the original Basic Pilot, and 9.8 for recently enrolled Web Basic Pilot users (Exhibit V-6).

Exhibit V-5: Trend in Percentage of Employers Transmitting Cases to the Web Basic Pilot Transaction Database, by Industry and in Comparison to the Nation as a Whole

Industry	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007	Nation
Agriculture, forestry, fishing, hunting	3.2	3.5	3.4	2.2	2.2	0.3
Mining, utilities, construction	5.9	6.5	5.4	6	5.8	11.1
Manufacturing	32.8	27.5	25.9	18.1	18.0	4.4
Wholesale/retail trade	4.4	5.1	4.9	8.1	8.4	20.7
Technical/education/arts/entertainment	4.4	6.1	6.0	5.7	5.9	13.7
Employment services	13.5	14.2	17.6	23.7	24.6	0.5
Public administration/social services	11.2	16.4	16.5	11.3	10.9	24.3
Accommodation/food services	20.1	15.4	15.5	21.4	20.8	8.0
Other industries	4.4	5.2	4.8	3.7	3.5	16.3
Mean absolute difference between Web Basic Pilot and nation	11.2	9.4	9.8	10.4	10.4	

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007, and U.S. Census County Business Patterns 2005

Exhibit V-6: Industry of Web Basic Pilot Employers, by When They Started Using the Basic Pilot and in Comparison to the Nation as a Whole

Industry	Used Both Systems (%)	Used Only Web Basic Pilot (%)	Recently Enrolled Web Basic Pilot Users (%)	Nation (%)
Agriculture, forestry, fishing, hunting	4.4	3.5	1.9	0.3
Mining, utilities, construction	4.2	5.4	11.1	11.1
Manufacturing	48.7	35.3	12.7	4.4
Wholesale/retail trade	2.9	7.3	24.8	20.7
Technical/education/arts/entertainment	8.0	12.9	7.5	13.7
Employment services	9.3	13.2	32.9	0.5
Public administration/social services	18.1	19.2	4.8	24.3
Accommodation/food services	4.4	3.1	4.3	8.0
Other industries	4.4	3.1	4.3	16.3
Mean absolute difference between Web Basic Pilot and nation	12.1	10.0	9.8	

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users and U.S. Census County Business Patterns 2005

The following are more specific findings related to industry.

- **The percentage of Basic Pilot employers engaged in manufacturing has declined over time but is still above the national level.** Among employers transmitting cases, the percentage of employers engaged in manufacturing decreased from 33 percent in the first half of FY2005 to 18 percent in the first half of FY2007, compared to 4 percent of employers nationally (Exhibit V-5). The percentage of employers engaged in manufacturing declined from 49 percent of employers that had participated in both the original Basic Pilot and the Web Basic Pilot programs to 13 percent of recently enrolled Web Basic Pilot users (Exhibit V-6).
- **The percentage of Basic Pilot employers in wholesale or retail trade has increased but is still below the national figure.** The percentage of employers in wholesale or retail trade that transmitted cases to the transaction database increased from 4.4 percent to 8.4 percent between the first half of FY2005 and the first half of FY2007, compared to the 20.7 percent of U.S. employers in this industry. Among employer survey respondents, 2.9 percent of original Basic Pilot users and 24.8 percent of recently enrolled users are in wholesale or retail trade.
- **Unlike other types of employers, the percentage of Basic Pilot employers in the employment services industry is now less similar to the national figures than was true for earlier employers.** Among employers transmitting cases, the percentage of employers in employment services rose from 13.5 percent in the first part of FY2005 to 24.6 percent in the first half of FY2007, compared to the national percentage of 0.5 percent. Among employer survey respondents, the representation of employment services increased from 9.3 percent of long-term users that had participated in the original Basic Pilot program to 13.2 percent of long-term users that had not participated and to 32.9 percent of recently enrolled users. These findings suggest that the Web Basic Pilot is particularly attractive to employers in the employment services sector.

b. EMPLOYER SIZE

Although current Web Basic Pilot users more closely resemble all U.S. employers in terms of size than was true in the past, large employers are still significantly overrepresented among Web Basic Pilot users. The mean absolute difference has declined from 36 to 21 (Exhibit V-7). With the expansion of the program, more Web Basic Pilot users are now small employers (defined here as employers with fewer than 100 employees). In the first half of FY2005, 27 percent of employers transmitting cases were small compared to 56 percent in the first half of FY2007. The definition of employer used in the Web Basic Pilot is somewhere between the U.S. Census Bureau's definitions of an establishment and a firm. The national estimate of the percentage of all establishments with fewer than 100 employees is 98 percent, and the estimated percentage of all firms with fewer than 100 employees is 79 percent (not shown). Thus, it is clear that small employers are still underrepresented among Web Basic Pilot users.

Exhibit V-7: Trend in Percentage of Employers Transmitting Cases to the Web Basic Pilot Transaction Database, by Employer Size and in Comparison to the Nation as a Whole

Employer Size	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007	Nation
< 100	26.7	33.2	36.9	56.4	56.2	97.7
100-499	44.8	42.4	39.9	28.4	28.2	2.1
500-999	12.6	10.9	10.5	6.9	7.0	0.2
≥1,000	15.9	13.5	12.7	8.4	8.6	0.2
Mean absolute difference between Web Basic Pilot and nation	35.5	32.2	30.4	20.6	20.7	

NOTE: National employer size is based on establishment size; Web Basic Pilot employer data are based on employer size reported by employers to USCIS, which may be either firm or establishment data.

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007, and U.S. Census County Business Patterns 2005

The employer survey data also showed increasing representation of small employers over time (Exhibit V-8). Small employers accounted for 13 percent of long-term users continuing from the original Basic Pilot, 23 percent of long-term users not participating in the original Basic Pilot, and 33 percent of recently enrolled users.

Exhibit V-8: Size of Web Basic Pilot Employers, by When They Started Using the Basic Pilot and in Comparison to the Nation as a Whole

Employer Size	Used Both Systems (%)	Used Only Web Basic Pilot (%)	Recently Enrolled Web Basic Pilot Users (%)	Nation (%)
< 100	12.9	23.2	33.4	97.7
100-499	38.7	48.2	39.2	2.1
500-999	21.1	14.2	10.3	0.2
≥1,000	27.3	14.4	17.1	0.2
Mean absolute difference between Web Basic Pilot and nation	42.4	37.2	32.1	

NOTE: National employer size is based on establishment size; Web Basic Pilot employer data are for all establishments for which the employer is verifying.

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users and U.S. Census County Business Patterns 2005

c. GEOGRAPHIC LOCATION

The geographic distribution of Web Basic Pilot employers has become increasing similar to the national distribution over time. The trend in the mean absolute difference in geographic categories for employers transmitting cases declined from 6.0 in the first half of FY2005 to 2.7 in the first half of FY2007 (Exhibit V-9). However, the mean absolute difference for employers that recently enrolled in the Web Basic Pilot program was 10.5, compared to 5.5 for those continuing from the original Basic Pilot and 5.2 for long-term users that did not use the original Basic Pilot (Exhibit V-10).

The percentage of employers among those transmitting cases in States with high concentrations of immigrants (California, Arizona, Texas, and Florida) has declined, while the percentage from the Northeast has increased. The percentage of California employers transmitting cases decreased from 18.4 percent to 13.2 percent between the first half of FY2005 and the first half of FY2007, compared to 11.6 percent of employers in the nation (Exhibit V-9). The corresponding declines for Arizona and Texas were from 16.2 percent to 10.1 percent, compared to 8.5 percent for the nation. Florida declined from 7.3 percent to 5.7 percent, with the result that the representation of Florida employers among Web Basic Pilot users is now below their share in the nation as a whole (6.8 percent). The proportion of Web Basic Pilot employers in the Northeast increased from 11.7 percent during the first half of FY2005 to 25.2 percent during the first half of FY2007, slightly above their representation in the national population (22.2 percent).

Exhibit V-9: Trend in Percentage of Employers Transmitting Cases to the Web Basic Pilot Program Transaction Database, by Geographic Location and in Comparison to the Nation as a Whole

Geographic Location	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007	Nation
California	18.4	17.6	15.5	14.0	13.2	11.6
Arizona/Texas	16.2	14.7	13.0	10.2	10.1	8.5
Northeast	11.7	13.2	16.1	25.3	25.2	22.2
Northern/Western	19.8	19.8	19.5	19.0	19.5	27.5
Midwest	15.4	13.4	13.1	11.6	12.6	9.3
Southern	11.2	14.5	16.5	14.2	13.7	14.1
Florida	7.3	6.8	6.3	5.8	5.7	6.8
Mean absolute difference between Web Basic Pilot and nation	6.0	4.8	4.2	2.7	2.7	

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007

Recently enrolled users were more likely than long-term users to be located in the Northeast or Midwest. Among recently enrolled users, 36 percent were located in the Northeast and 32 percent were located in the Midwest, compared to 13 percent and 17 percent, respectively, of long-term users that had used the original Basic Pilot (Exhibit V-10). This trend possibly reflects the expansion of the program nationwide in 2004 and new immigrant movement to nontraditional locations. This shift may continue as the legislatures in some States with rapidly increasing immigrant populations mandate use of the Web Basic Pilot for all or segments of their employers.

Exhibit V-10: Geographic Location of Web Basic Pilot Employers, by When They Started Using the Basic Pilot and in Comparison to the Nation as a Whole

Geographic Location	Used Both Systems (%)	Used Only Web Basic Pilot (%)	Recently Enrolled Web Basic Pilot Users (%)	Nation (%)
California	17.6	13.2	4.6	11.6
Arizona/Texas	13.4	14.6	6.0	8.5
Northeast	13.2	10.9	36.1	22.2
Northern/Western	17.4	23.2	12.7	27.5
Midwest	16.5	19.8	32.2	9.3
Southern	15.2	12.1	5.8	14.1
Florida	6.5	6.3	2.6	6.8
Mean absolute difference between Web Basic Pilot and nation	5.5	5.2	10.5	

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users and U.S. Census County Business Patterns 2005

d. IMMIGRANT WORKERS

Recently enrolled users were more likely than long-term users to report having a small percentage of foreign-born employees. The percentage of employers reporting that fewer than 5 percent of their employees are foreign born was 54.1 percent for recently enrolled users, compared to 14.5 percent for long-term users that had used the original Basic Pilot program and 23.7 percent of long-term users that did not use the original Basic Pilot program (Exhibit V-11).¹⁰

¹⁰ The evaluation team is unaware of a national estimate that can be used for comparison purposes.

Exhibit V-11: Reported Percentage of Employees Who Are Immigrants among Web Basic Pilot Employers, by When the Employer Started Using the Basic Pilot

Percentage of Immigrant Employees	Used Both Systems (%)	Used Only Web Basic Pilot (%)	Recently Enrolled Web Basic Pilot Users (%)
None	2.0	2.6	12.0
< 5%	12.5	21.1	42.1
6-20%	25.1	21.7	18.8
21-40%	24.3	23.8	10.1
41-80%	29.7	24.3	10.1
81-95%	5.8	5.7	3.4
> 95%	0.6	0.9	0.0

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

D. CHARACTERISTICS OF WORKERS BEING VERIFIED

1. INTRODUCTION

Section C discussed changes in the distribution of employers using the Web Basic Pilot since its inception. Since some types of employers may transmit disproportionately high or low numbers of cases, the distributions of workers verified may not completely parallel the employer distributions, even when a variable such as industry is examined. This section examines the characteristics of workers verified, by employer industry, size, and geographic location. It also examines changes in the distribution of citizenship status and place of birth for workers verified between October 2004 and March 2007.

2. FINDINGS

a. INDUSTRY

In terms of employer industrial classification, the distribution of workers verified did not become more similar to the national distribution of workers. In fact, the change was in the opposite direction, with the mean of the absolute values for cases transmitted by industry for the Web Basic Pilot compared to the nation increasing slightly from 10.6 to 11.2 between the first half of FY2005 and the first half of FY2007 (Exhibit V-12).

Exhibit V-12: Trend in the Percentage of Verifications of Newly Hired Workers by Web Basic Pilot Employers, by Industry and in Comparison to the Nation as a Whole

Industry	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007	Nation (First Half of FY2007)
Mining, utilities, construction	3.8	4.1	4.1	3.7	3.0	7.4
Animal food manufacturing	11	12.7	11.2	9.2	8.6	0
Other food manufacturing	2.1	2	1.8	1.5	1.4	1.2
Other manufacturing	4.1	4.8	4.9	5.2	3.8	4.4
Wholesale/retail trade	3.5	4.2	4.6	4.2	6.3	18.1
Professional/scientific/technical/education/arts/entertainment	7.4	5.6	6.9	7.3	6.9	23.3
Employment services	40.9	40.6	42.7	46.9	50.0	3.1
Public administration/social services	12.2	11.8	10.7	9.2	8.8	26.0
Accommodations and food services	12.7	11.4	10.1	10.1	8.7	9.5
Other industries	2.2	2.8	3.1	2.7	2.5	7.1
Mean absolute difference between Web Basic Pilot and nation	10.6	10.6	10.5	10.9	11.2	

NOTE: Employers in agriculture/forestry/fishing/hunting were excluded because of a lack of national data.

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007; and Bureau of Labor Statistics, Job Openings and Labor Turnover Survey (JOLTS) (<http://www.bls.gov/jlt/home.htm#data>)

In the first half of FY2007, almost half of all verifications were submitted by Web Basic Pilot employers in employment services, a significant increase from the first half of FY2005. The percentage of verifications performed by employers in the employment services industry increased from 41 percent to 50 percent. Throughout this period, the percentage of verifications by this sector far outstripped the percentage of enrolled employers in this industry. Although employment services employers report being larger than the average of all Web Basic Pilot employers, it is also possible that their high transmission rate reflects a greater proclivity of these employers to prescreen.

b. EMPLOYER SIZE

The percentage of verifications performed by small employers has increased and is now more similar to the national percentage of workers hired by small employers.

The percentage of verified workers working for employers with fewer than 100 employees more than doubled between the first half of FY2005 and the first half of FY2007 (from 20.0 percent to 41.5 percent) (Exhibit V-13). As a result of this increase, the distribution of verifications by small employers more closely resembles the national

distribution of employees of small establishments.¹¹ Overall, the mean absolute percentage difference decreased from 18.1 in the first half of FY2005 to 9.1 in the first half of FY2007.

Exhibit V-13: Trend in the Percentage of Verifications by Web Basic Pilot Employers, by Employer Size and in Comparison to the Nation as a Whole

Employer Size	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007	Nation (March 2006)
< 100	20.0	20.4	26.5	36.7	41.5	57.0
100-250	8.3	8.7	9.4	10.4	9.4	16.6
251-500	18.2	15.3	15.0	12.7	10.4	9.4
501-1,000	12.1	12.5	12.1	10.6	9.1	6.7
> 1,000	41.4	43.1	37.1	29.6	29.7	10.4
Mean absolute difference between Web Basic Pilot and nation	18.1	17.8	15.1	10.6	9.1	

NOTE: National figures are based on all employees, while Web Basic Pilot figures are based on verifications, which should be similar to newly hired workers.

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007, and Quarterly Census of Employment and Wages, 2006

c GEOGRAPHIC LOCATION

The geographic distribution of Web Basic Pilot verifications has become more similar to the national distribution of newly hired workers. In the first half of FY2005, the mean absolute difference was 6.0; in the first half of FY2007, it had declined to 2.7 (Exhibit V-14).

The percentage of verifications by employers in California, Arizona/Texas, and Florida is declining. The percentage of verifications from these four States has declined from a total of 46 percent of all verifications in the first half of FY2005 to 31 percent in FY2007, compared to 27 percent of all newly hired workers in these States. At least part of this change has presumably occurred because the original Basic Pilot was targeted at employers in a limited number of States, including California, Arizona, Texas, and Florida, prior to being expanded nationwide in December 2004.

¹¹ The evaluation team was unable to locate an estimate of the percentage of workers newly hired by small employers. Furthermore, as discussed above, the definition of employer used by USCIS is not the same as either the U.S. Census Bureau’s definition of establishments or its definition of firms. Thus, the percentage of employees of small establishments must be considered a very rough estimate of the national distribution of workers newly hired by small employers.

Exhibit V-14: Trend in the Percentage of Verifications of Newly Hired Workers by Web Basic Pilot Employers, by Geographic Location and in Comparison to the Nation as a Whole

Geographic Location	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007	Nation (First half of FY2007)
California	15.2	17.2	10.8	10.4	9.3	11.2
Arizona/Texas	23.5	19.7	23.1	19.2	16.6	9.5
Northeast	10.3	9.2	10.7	15.7	17.1	21.3
Northern/Western	16.2	17.1	17.7	20.4	20.6	28.1
Midwest	15.6	15.2	14.8	13.2	13.5	9.0
Southern	12.3	15.8	17.6	16.0	17.7	15.0
Florida	7.0	5.9	5.2	5.1	5.2	6.0
Mean absolute difference between Web Basic Pilot and nation	7.3	6.6	6.3	4.3	4.1	

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007; and Bureau of Labor Statistics, Job Openings and Labor Turnover Survey (JOLTS) (<http://www.bls.gov/jlt/home.htm#data>)

d. CITIZENSHIP STATUS AND PLACE OF BIRTH

i. Introduction

There are two sources of information about the citizenship status and place of birth of persons verified by the Web Basic Pilot program, both of which have drawbacks. First, there is information provided by the person being verified on the Form I-9. This information distinguishes persons attesting to be U.S. citizens, lawful permanent residents, or other work-authorized noncitizens. The strength of this data source is that it is available for all persons verified. Its weaknesses are that it does not distinguish between foreign-born and U.S.-born citizens and, of course, does not indicate which persons verified are not work-authorized but are using work-authorized categories in support of their fraudulent documentation. Additionally, this information is self-reported, and there is some evidence from earlier record reviews that some workers make mistakes because they do not understand the categories.

The second source of information is SSA data on citizenship status and place of birth. This data source does differentiate between foreign-born and U.S.-born citizens. However, no information is available if SSA data cannot be matched with employer-provided data, which is the case for most SSA final nonconfirmation cases because of the high percentage of these cases that are not contested.

ii. Findings

There has been a marked increase in the percentage of persons attesting to being U.S. citizens on the Form I-9 and decreases in the percentage of persons saying that they are “lawful permanent residents” or “aliens authorized to work.” The percentage of persons attesting to being citizens increased from 81 percent to 87 percent

between the first half of FY2005 and the first half of FY2007 (Exhibit V-15). At the same time, the percentage of lawful permanent residents decreased from 15 percent to 11 percent and the percentage of other “aliens authorized to work” decreased from 4 percent to 2 percent. This trend is not unexpected, given the expansion of the Web Basic Pilot program to the entire nation. However, it does require caution to be taken in examining trends likely to be associated with citizenship status.

Exhibit V-15: Trend in Distribution of Form I-9 Citizenship Status

Form I-9 Status	First Half of FY2005	Second Half of FY2005	First Half of FY2006	Second Half of FY2006	First Half of FY2007
All transactions	216,371	565,142	523,681	969,984	1,148,977
U.S. citizen or national (%)	80.6	83.1	85.0	86.2	87.2
Lawful permanent resident (%)	15.3	13.7	12.1	11.2	10.6
Alien authorized to work (%)	4.1	3.2	2.9	2.6	2.2

SOURCE: Web Basic Pilot Transaction Database: October 2005-March 2007

The percentage of foreign-born persons among cases that can be matched to the SSA database has also declined over time; however, the percentage of Web Basic Pilot verifications for foreign-born workers is still higher than the percentage of foreign-born workers in the nation. In FY2005, the percentage of foreign-born persons among workers verified was 21.0 percent among those workers matched by SSA (not shown). By FY2007, this percentage had declined to 17.7 percent. Since the cases for which SSA cannot provide information are primarily cases with an SSA final nonconfirmation, it is likely that these numbers underestimate the actual percentage of foreign-born workers among those cases submitted to the Web Basic Pilot. The Bureau of Labor Statistics estimates that the percentage of foreign-born workers (including undocumented workers) in the U.S. labor force was 14.8 percent in 2005 and 15.3 percent in 2006.¹² These data suggest that verifications are increasingly reflecting the citizenship status and place of birth of the U.S. workforce.

e. CHANGES IN ACCURACY

i. Introduction

An effective and efficient employment verification program requires a high level of data accuracy. Inaccurate results contribute to tentative nonconfirmation findings and therefore to undue burden on employers, employees, and the Federal government; contribute to discrimination; and reduce the program’s effectiveness in deterring unauthorized employment. The original Basic Pilot evaluation found that inaccurate data were a major source of the problems noted in the evaluation. As discussed in Chapter IV, the Web Basic Pilot program is more accurate than the original Basic Pilot program, based on the two primary indicators of accuracy used in this report: the erroneous

¹² U.S. Department of Labor, Bureau of Labor Statistics, News (April 25, 2007) (<http://www.bls.gov/news.release/pdf/forbrn.pdf>).

tentative nonconfirmation rate for ever-authorized workers and the percentage of all cases that were verified automatically. This section focuses on changes in these indicators since the program's inception. The implications of changes in these rates for discrimination and unauthorized employment are discussed in other sections of the report.

The October 21, 2005, procedural changes to refer all noncitizen cases to USCIS regardless of work-authorization information in SSA records had significant potential for affecting the accuracy of case findings. It is, therefore, helpful to start with an examination of the impacts of this change prior to looking at the overall trends.

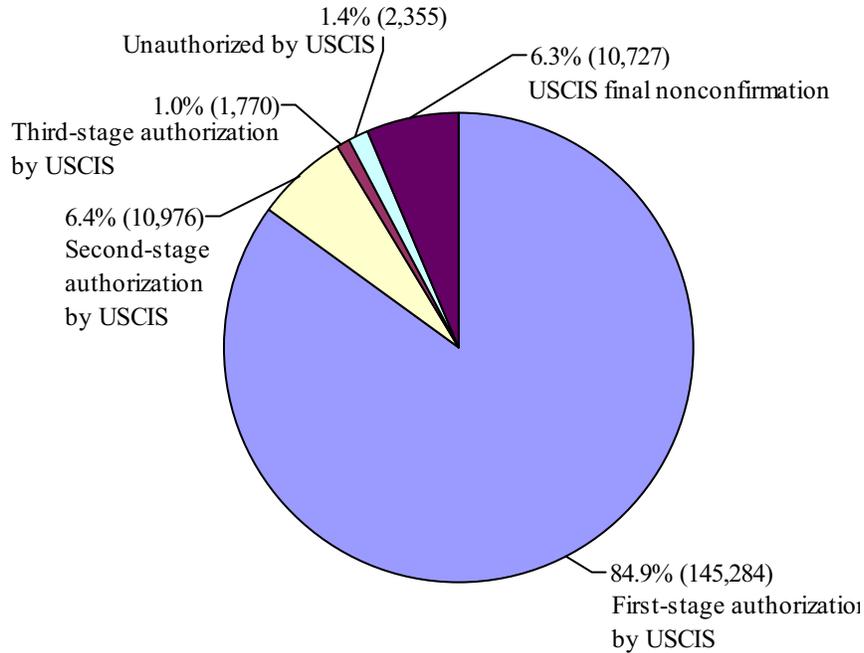
ii. Findings

(a) *The October 21, 2005, Procedural Change*

The intent of the October 21, 2005, procedural change was to increase the ability of the Web Basic Pilot program to detect unauthorized employment. Since noncitizens who were previously found to be work-authorized by SSA were referred to USCIS for further verification, it is reasonable to also expect that the procedural change would result in a higher number of these noncitizens receiving tentative nonconfirmations. This would decrease the rate of cases verified automatically and increase the rate of erroneous tentative nonconfirmations among ever-authorized noncitizens. To obtain some idea of the effect of the changed procedures on the accuracy of program findings, the evaluation team compared the case outcomes for noncitizens under the new procedures with what they would have been if the old procedures had continued.

Most noncitizens that would have been found to be work-authorized by SSA under the old procedures were found to be work-authorized by USCIS using the post-October 21, 2005, procedures. Exhibit V-16 provides an overview of the findings for those post-October 21, 2005, noncitizen cases that would have received a work-authorized finding from SSA if the procedures had not been changed to require referral to USCIS. As the exhibit shows, most (92 percent) of the cases that SSA would have found to be work-authorized under the pre-October 21, 2005, process were also found to be work-authorized under the new procedures. However, 8 percent of noncitizens whose SSA records indicated that they were work-authorized were either found by USCIS to be not work-authorized or became final nonconfirmation cases when sent to USCIS.

Exhibit V-16: Outcomes for Noncitizens Processed Under the Post-October 21, 2005, Procedures Who Would Have Received an SSA Finding of Work-Authorized Under the Old Procedures (N = 171,112)



SOURCE: Web Basic Pilot Transaction Database: October 21, 2005-March 2007

The changed procedures have increased USCIS’s workload without decreasing SSA’s workload. The October 21, 2005, changed procedures led to a higher percentage of cases being referred to USCIS, substantially increasing USCIS’s workload. Exhibit V-17 shows that the percentage of cases submitted to USCIS rose from 7 percent (June 2004 through October 20, 2005) to 12 percent (October 21, 2005, through March 2007). This change occurred even though the percentage of workers verified overall increasingly attested to being U.S. citizens.

Exhibit V-17: Comparison of Web Basic Pilot Outcomes before and After the October 21, 2005, Change to Procedures

Outcome	June 2004 - Oct. 20, 2005	Oct. 21, 2005 - March 2007
Total transactions	841,714	2,638,941
Decided by SSA	93%	88%
Decided by USCIS	7%	12%
Number of SSA decisions	841,714	2,638,941
First-stage authorization	86%	83%
Second-stage authorization	1%	0%
Final nonconfirmation	6%	5%
Referred to USCIS	7%	12%
Number of USCIS decisions	58,375	305,918
First-stage authorization	73%	80%
Second-stage authorization	12%	10%
Third-stage authorization	2%	1%
Unauthorized by USCIS	4%	2%
Final nonconfirmation by USCIS	9%	7%

NOTE: Details do not add to total because of rounding.

SOURCE: Web Basic Pilot Transaction Database: June 2004-March 2007

The changed procedures decreased the percentage of noncitizen cases that were automatically found to be work-authorized and increased their erroneous tentative nonconfirmation rate. Approximately 10,976 (6 percent) of the noncitizen cases that would have been authorized by SSA using the pre-October 21, 2005, rules were authorized by USCIS at the second stage. These cases incurred an additional \$0.48 system processing fee, plus costs for the manual verification process performed by Immigration Status Verifiers (estimated to be approximately \$7 per case).¹³ However, assuming that employers follow Basic Pilot procedures, the only impact of this extra step on employers and employees would be a delay of approximately 1 day in obtaining information on the work-authorization status of the employee. It is, of course, possible that some employers have taken adverse actions against employees during this extra processing step, although the evaluation has no evidence that indicates whether this is the case.

Another 1,770 (1 percent) of the cases that would have been found to be work-authorized by SSA became third-stage USCIS work-authorized cases under the new procedure. In these cases, employees and employers incurred the burdens associated with erroneous tentative nonconfirmations and the Federal government incurred additional processing expenses estimated at approximately \$31 per case.

¹³ The per-case costs for second and third step verifications were estimated based on data provided by USCIS on the workload, salaries, and overhead costs of Immigration Status Verifiers and supervisors.

It seems likely that the revised procedures have resulted in the identification of more persons without work authorization than was true under the prior procedures.

A small number (2,355, or 1.4 percent) of the cases that would have been first-stage SSA work-authorization cases under the pre-October 21, 2005, rules were found to be unauthorized by USCIS, and another 10,727 cases (6.3 percent) became USCIS final nonconfirmation cases. Although it is almost certain that not all of these final nonconfirmation cases lacked authorization to work, based on the findings of the prior evaluations of the Immigration Reform and Immigrant Responsibility Act pilots, it is likely that a high percentage are not work-authorized. It, therefore, appears that the revised procedure is more effective than the previous process in identifying additional workers without work authorization.

The revised procedures are more discriminatory than necessary since they require noncitizens to be checked using two different matching algorithms, while citizens are subject only to the SSA algorithm. USCIS and SSA use different algorithms for determining whether available information on name and date of birth is consistent with the submitted Social Security number or Alien number. Given the differences in the data file structures between the two agencies, it is not immediately possible to avoid the necessity for both the Social Security number and the Alien number to be input correctly in order to obtain a match from both agencies. However, the matching algorithms used by the two agencies in determining the correspondence between name and date of birth could be revised so that they are consistent.

To obtain some insight into the impact of these different algorithms, the evaluation team determined what the case outcomes of U.S. citizen cases found to be work-authorized by SSA on the initial match between June 2004 and March 2006 would have been, if they had been subject to a second match using the USCIS algorithm on name and date of birth.¹⁴ As expected, the overwhelming majority of cases (99.7 percent) that SSA found to be work-authorized without a tentative nonconfirmation during this period would also have matched using the USCIS algorithm. However, 3,100 additional workers would have received tentative nonconfirmations using the USCIS algorithm, representing an increase of 5.6 percent in the number of tentative nonconfirmations issued. Furthermore, for illustrative purposes, if it is assumed that three-quarters of the U.S. citizen workers receiving tentative nonconfirmations under the hypothetical double verification scenario would contest and be found to be work-authorized under these hypothetical procedures, the erroneous tentative nonconfirmation rate for citizens found to be work-authorized between June 2004 and March 2006 would have been 0.8 percent rather than the observed 0.6 percent.¹⁵

¹⁴ The reverse, and more interesting, question of what percentage of noncitizen cases would have matched USCIS records if USCIS used SSA's matching criteria was not explored because the complexity of the criteria used by SSA could not be easily emulated.

¹⁵ To conduct this analysis, the evaluation team used a previous version of the transaction database that was subject to slightly different cleaning routines than the current transaction database. The older database, unlike the one in the current study, included SSA information for individuals.

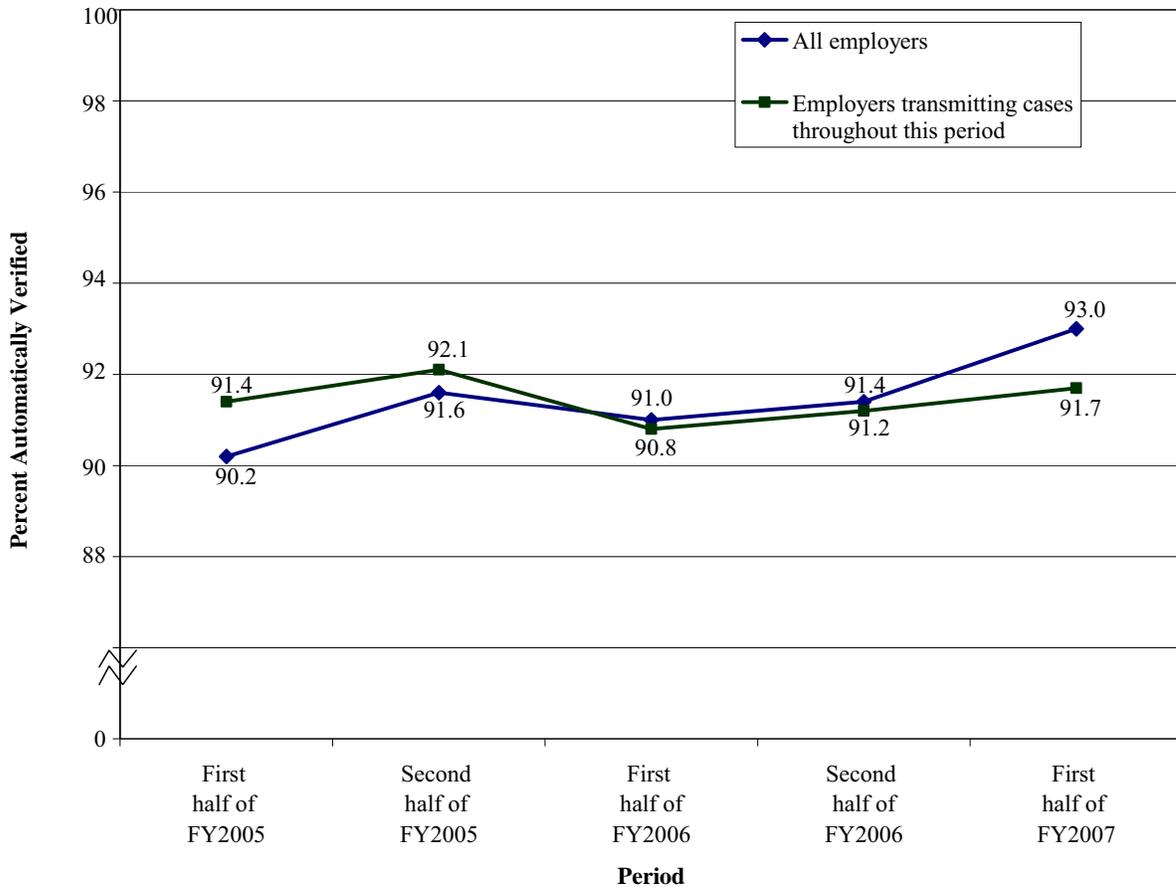
(b) *Overall Trends in the Accuracy of Findings*

Although the percentage of cases that were verified automatically has increased over time, much of the increase is likely due to changes in the employer population.

The percentage of all cases authorized automatically increased from 90.2 percent to 93.0 percent between the first half of FY2005 and the first half of FY2007 (Exhibit V-18). However, as seen in Sections C and D of this chapter, the composition of employers and their employees was not constant during this time period. To control for these differences, the evaluation team examined the trend for those employers that transmitted one or more cases during each of the 6-month periods over this time period. The percentage of cases authorized automatically increased for these employers, but the increase was considerably smaller (from 91.4 percent to 91.7 percent) than the trend for the verification requests of all employers – 0.3 percentage points compared to 2.8 percentage points.

The change in the percentage of cases verified automatically after the October 21, 2005, procedural change would have been greater if the procedural change had not been made. There was a decrease in the percentage of all workers authorized automatically in the 6-month period before the change and the 6 months after the change. The rate was 91.6 percent in the second half of FY2005, compared to 91.0 percent in the first half of FY2006. This decline was presumably attributable to the procedural change (Exhibit V-18). The change in the rate of cases verified automatically for employers continuing between these two time periods was even more dramatic (from 92.1 percent to 90.8 percent).

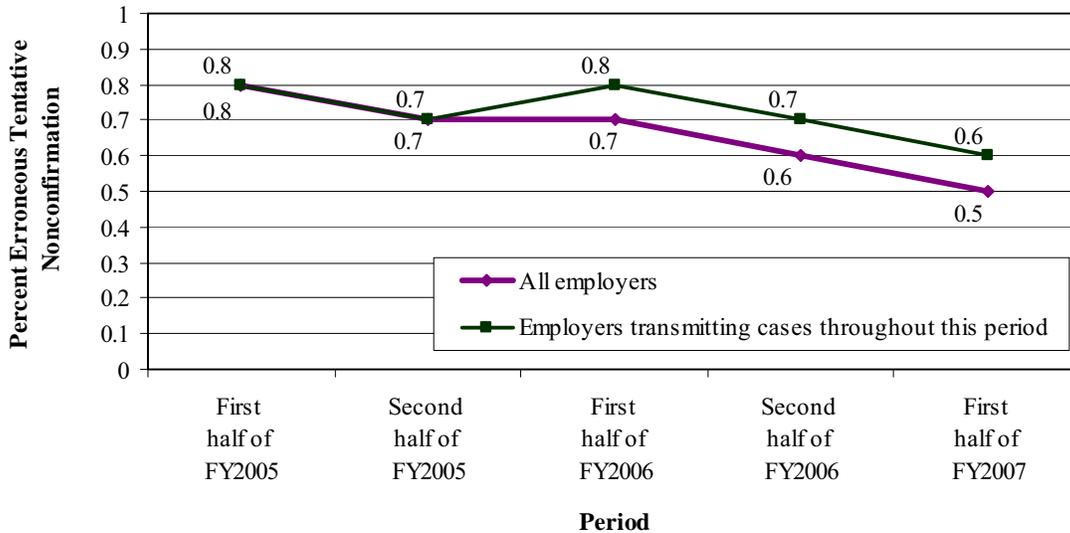
Exhibit V-18: Trend in Percentage of Screened Workers Who Were Verified Automatically, for All Employers and Employers Transmitting in Each of the 6-Month Periods Examined



SOURCE: Total and Longitudinal Web Basic Pilot Transaction Databases: October 2004-March 2007

The erroneous tentative nonconfirmation rate for all ever-authorized cases has declined over time, despite an increase immediately after implementation of the October 21, 2005, procedural change. The erroneous tentative nonconfirmation rate for all ever-authorized workers declined from 0.8 in the first half of FY2005 to 0.5 in the first half of FY2007 (Exhibit V-19). Limiting the analysis to employers transmitting cases throughout this period, the erroneous tentative nonconfirmation rate for ever-authorized workers declined from 0.8 in the first half of FY2005 to 0.6 in the first half of FY2007. For these continuing employers, the error rate for the first half of FY2006 (the period immediately after the October 21, 2005, change) was slightly higher than the rate for the first half of FY2005 (0.8 compared to 0.7). There was no corresponding increase observed for all employers.

Exhibit V-19: Trend in Erroneous Tentative Nonconfirmation Rate for Ever-Authorized Workers, for All Employers and Employers Transmitting in Each of the 6-Month Periods Examined



SOURCE: Total and Longitudinal Web Basic Pilot Transaction Databases: October 2004-March 2007

(c) *Implications of Trends in Employee Characteristics for Future Accuracy*

i. Introduction

The discussion in this section is based on both multivariate and univariate analyses. Like any projections, these are subject to considerable uncertainty. Assumptions used in estimating the standardized rates presented include that:

- The definitions of variables used for standardization are sufficiently similar between the Web Basic Pilot program and available Federal statistics to provide comparable information. This is especially problematic for citizenship, since the Federal survey used for estimating the characteristics of newly hired workers nationally does not provide data on citizenship status; the analysis, therefore, is based on data for the citizenship status of the labor force, which may differ from the citizenship status of newly hired workers.
- Workers verified are comparable to the Web Basic Pilot employers' newly hired workers in terms of industry, size, and geographical location; however, the fact that some employers are verifying job applicants and others may be selectively screening newly hired workers raises questions about comparability.
- Standardization of the erroneous tentative nonconfirmation rate is based on the distributions of all verifications and all newly hired workers, since

there is no way to determine the national number of “ever-authorized” newly hired workers.

ii. Findings

The data and analyses in Section D indicate that the current workers verified by the Web Basic Pilot program are, for the most part, more similar than earlier workers to the national population of newly hired employees in terms of their citizenship and the industry, size, and location of their employers. Furthermore, as seen in Exhibit V-20, the characteristics of verified workers are also related to the probability that they will be verified automatically and the probability that ever-authorized workers will receive tentative nonconfirmations. Using this information, it is possible to make some observations on the likely impact of workers verified by the Web Basic Pilot continuing to become increasingly like all newly hired workers – a result that would be very likely if the program were to become mandatory. For example, it appears currently that citizens are underrepresented in the Web Basic Pilot program compared to the nation. Since citizens are more likely than noncitizens to be authorized automatically and less likely to get an erroneous tentative nonconfirmation, it is reasonable to expect that a program that verifies all new hires nationally would have a higher percent verified automatically and a lower erroneous tentative nonconfirmation rate than is currently the case, if nothing else changes.

Exhibit V-21 presents the estimates of the automatically verified and erroneous tentative nonconfirmation rates if the distribution of verified workers were the same as those for newly hired workers nationally. It also presents estimates of the effect of standardizing simultaneously on all four of the variables examined (industry, employer size, geographic location, and citizenship).¹⁶

¹⁶ The combined effect is not necessarily the same as the total of the individual effects, since the combined effect takes into account associations between the predictor variables. For example, average employer size varies by industry.

Exhibit V-20: Percentage of Screened Workers Verified Automatically, Erroneous Tentative Nonconfirmations of Ever-Authorized Workers, and Difference in Representation of Web Basic and National Workers, by Characteristics of Workers: First Half of FY2007

Characteristic of Workers Verified	Percent Verified Automatically	Erroneous Tentative Nonconfirmation Rate	Web Basic Minus National Workers' Representation in Category*
Overall	93.1	0.51	N/A
Industry			
Mining, utilities, construction	93.3	0.71	-4.4
Animal food manufacturing	93.4	0.46	8.6
Other food/beverage/tobacco manufacturing	92.5	0.66	0.2
Other manufacturing	92.3	0.84	-0.6
Wholesale/retail trade	91.7	0.91	-11.8
Professional/scientific/technical/education/arts/entertainment	94.9	0.53	-16.4
Employment services	89.9	0.31	46.9
Public administration/social services	90.5	0.77	-17.2
Accommodation/food services	91.3	0.70	-0.8
Other industries	92.2	1.11	-4.6
Employer size			
< 100	89.3	0.31	-15.5
100-250	89.4	0.52	-7.2
251-500	89.3	0.73	1.0
501-1,000	93.1	0.58	2.4
≥ 1,000	92.8	0.66	19.3
Geographic location			
California	91.1	1.04	-1.9
Arizona/Texas	89.7	0.51	7.1
Northeast	92.0	0.54	-4.2
Northern/Western	90.2	0.33	-7.5
Midwest	95.7	0.39	4.5
Southern	89.6	0.40	2.7
Florida	92.2	0.71	-0.8
Citizenship status			
Citizen	96.3	1.33	-3.9
Noncitizen	71.0	0.51	3.9

* A positive value indicates that the group is over-represented in the Web Basic Pilot program compared to the nation and a negative value indicates it is under-represented.

SOURCE: Web Basic Pilot Transaction Database: October 2006-March 2007

Estimating the likely effect of changes in the industrial, geographic, or size distributions of verified workers toward the national average is harder than estimating the impact of citizenship status. For example, employment services are significantly overrepresented in the Web Basic Pilot. Since these establishments tend to have below-average verified automatically rates and above-average erroneous tentative nonconfirmation rates, it is reasonable to expect that a program that verifies all newly hired workers would have a higher percentage verified automatically and a lower erroneous tentative nonconfirmation rate, if the only change were in citizenship status. On the other hand, public administration and social services, which also have a below-average automatically verified rate and an above-average rate of erroneous tentative nonconfirmations for ever-authorized workers, are underrepresented. Only looking at this industrial group would lead to an opposite conclusion from looking at employment services. Because there is not a consistent pattern for the expected trends based on the different categories of industry, it is helpful to have a summary measure that takes into account all of the industry categories observed. Exhibit V-21, therefore, presents summary measures for the characteristics examined in this report.

Exhibit V-21: Estimated Percentage Verified Automatically and Erroneous Tentative Nonconfirmation Rates for Ever-Authorized Workers in the First Half of FY2007, Assuming That Workers Verified Resembled the National Distribution of All Newly Hired Workers on the Variable Specified

Variable Adjusted	Standardized Minus Observed Rate	
	Percent Verified Automatically	Erroneous Tentative Nonconfirmation Rate
Geographic location	0.11	0.03
Industry	0.36	0.18
Size	-0.73	-.03
Citizenship status	0.95	-.03
Geographic location, industry, size, and citizenship status	-0.03	0.12

NOTE: The industry adjustment excludes the agricultural and military sectors, which are not included in the data used for standardization.

SOURCE: Web Basic Pilot Transaction Database: October 2004-March 2007; Bureau of Labor Statistics, Job Openings and Labor Turnover Survey (JOLTS) (<http://www.bls.gov/jlt/home.htm#data>); and Udall Center for Studies in Public Policy, University of Arizona (udallcenter.arizona.edu)

If the Web Basic Pilot workers verified become more similar to newly hired workers nationally in terms of industry, employer size, geographic location, and citizenship, there is unlikely to be a significant change in the percentage verified automatically.

It is seen in Exhibit V-21 that the net effect of standardizing on all four variables simultaneously leads to an expected decrease of 0.03 in the percentage verified automatically.¹⁷ Given that a number of assumptions needed to be made to make this

¹⁷ See Appendix D for an explanation of how this standardization was done.

estimate, it is important not to overinterpret this result. However, it is clear that changes in these rates are affected by many factors, and USCIS and SSA should not assume that changing demographics of workers will continue to lead to large increases in the rate of cases verified automatically. Of course, programmatic changes will hopefully lead to further increases in this rate.

If the Web Basic Pilot workers verified become more similar to newly hired workers nationally in terms of industry, employer size, geographic location, and citizenship, the erroneous tentative nonconfirmation rate may increase slightly. It is seen in Exhibit V-21 that the net effect of standardizing on all four variables simultaneously leads to an expected increase of 0.12 in the erroneous tentative nonconfirmation rate. Although caution must be used to avoid overinterpreting this result, USCIS and SSA should recognize that small future increases in the erroneous tentative nonconfirmation rates may be due to changes in the demographics of workers verified rather than to ineffective program changes.

E. CHANGES IN DISCRIMINATION

1. INTRODUCTION

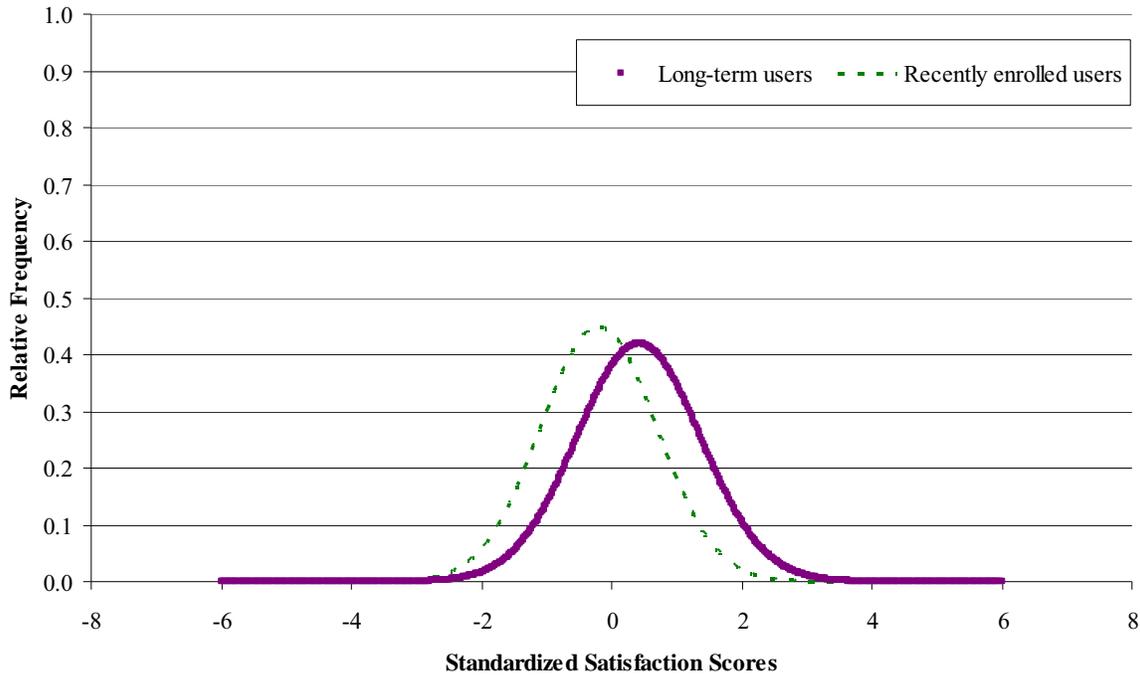
As discussed in Chapter IV, discrimination is closely tied to data accuracy because foreign-born workers tend to have a disproportionate number of erroneous tentative nonconfirmations, which may have adverse consequences for the workers receiving them. The preceding section focused on overall changes in the accuracy of Web Basic Pilot findings. This section examines over-time differences in this indicator by citizenship status and place of birth. It also compares long-term and recently enrolled users on variables closely associated with discrimination: willingness to hire foreign-born workers and compliance with Basic Pilot procedures designed to protect employee rights. This section focuses on changes in indicators of data accuracy, using the longitudinal transaction database restricted to employers that transmitted cases in each of the 6-month periods examined (to minimize the effect of changes in employer composition on the findings).

Discrimination is also closely tied to employer compliance with the verification procedures designed to protect the rights of workers. Compliance is discussed in Section G.

2. FINDINGS

The erroneous tentative nonconfirmation rate for workers attesting to having temporary authorization to work was considerably higher than the rate for either lawful permanent residents or U.S. citizens. In the first half of FY2007, the erroneous tentative nonconfirmation rate for newly hired workers attesting on their Form I-9 to being aliens authorized to work was 2.8, compared to 0.8 for lawful permanent residents and 0.5 for U.S. citizens (Exhibit V-22). Similar differences were found throughout the time periods examined.

Exhibit V-22: Frequency Distributions of Long-Term and Recently Enrolled Users on Satisfaction Scale



SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

NOTE: Scores were standardized to a mean of 0 and a standard deviation of 1 based on the distribution for recently enrolled users.

The erroneous tentative nonconfirmation rate for ever-authorized workers attesting to being lawful permanent residents on their Form I-9s was greater in the first half of FY2007 than in the first half of FY2005, because of the October 21, 2005, procedural change. In the first half of FY2005, the erroneous tentative nonconfirmation rate for lawful permanent residents who were eventually found to be work-authorized was 0.6 percent, compared to 0.8 percent in the first half of FY2007. The corresponding error rates for immediately before and immediately after the October 21, 2005, change were 0.5 percent and 0.9 percent, respectively.

Although the erroneous tentative nonconfirmation rate for ever-authorized workers attesting to being “aliens authorized to work” on their Form I-9s was lower in the first half of FY2007 than in the first half of FY2005, the October 21, 2005, change had a large immediate impact on these workers. The error rate for aliens authorized to work was 2.8 percent in FY2007 compared to 3.7 percent in FY2005, despite the large increase in error rate after implementation of the October 21, 2005, change (from 3.5 to 7.1).

The October 21, 2005, processing change did not affect the erroneous tentative nonconfirmation rate for U.S. citizens. Since the procedural change made on October 21, 2005, applied solely to noncitizens, the erroneous tentative nonconfirmation rate for

citizens should not have been affected. As expected, the erroneous tentative nonconfirmation rate for citizens declined at a steady pace throughout the period examined (from 0.7 percent to 0.5 percent).

Recently enrolled users were somewhat less likely than long-term users to report that the program made them more willing to hire immigrants. Nineteen percent of long-term users reported that the program made them more willing to hire immigrants, compared to 12 percent of recently enrolled users. Only 4 percent of long-term users and 5 percent of recently enrolled users reported decreased willingness to hire immigrants.

F. CHANGES IN EMPLOYER SATISFACTION AND BURDEN

1. INTRODUCTION

As discussed in Chapter IV, employers found the Web Basic Pilot program less burdensome and more satisfactory than the original Basic Pilot program. This section examines how employers' views of the program have changed since the inception of the Web Basic Pilot program. These analyses are based on comparisons of long-term users and more recently enrolled users. Many of the analyses presented here use an overall satisfaction scale developed for the evaluation, based on employer responses to questions on the employer surveys.¹⁸

2. FINDINGS

Recently enrolled Web Basic Pilot users were less satisfied with the system than were long-term users. Exhibit V-22 shows the distribution on the satisfaction scale for long-term and recently enrolled users. The effect size for the difference is 0.67 on a scale of 0.0 to 1.0, which is typically defined as a medium effect. Exhibit V-23 compares long-term and recently enrolled users on some of the individual items that constitute the satisfaction scale.

¹⁸ See Appendix D for additional information on the scales.

Exhibit V-23: Responses of Long-Term and Recently Enrolled Users to Questions Related to Satisfaction with the Web Basic Pilot

Opinion and Type of Employer	Strongly Disagree (%)	Disagree (%)	Agree (%)	Strongly Agree (%)
The tasks required by the verification system overburden the staff*				
Long-term users	39.0	56.8	2.6	1.7
Recently enrolled users	20.0	68.8	9.8	1.5
It is impossible to fulfill all the employer obligations required by the Web Basic Pilot verification process*				
Long-term users	39.9	55.3	3.0	1.8
Recently enrolled users	20.9	72.0	5.2	2.0
Overall, the Web Basic Pilot is an effective tool for employment verification*				
Long-term users	6.5	2.9	28.6	62.0
Recently enrolled users	5.9	2.8	56.2	35.1
It reduces the chances of getting a mismatched SSA earnings letter*				
Long-term users	6.6	5.8	34.6	53.0
Recently enrolled users	5.5	2.6	53.1	33.2
The online registration process was easy to complete*				
Long-term users	0.1	1.3	59.3	39.3
Recently enrolled users	0.8	6.3	62.8	30.1
The online tutorial was hard to use*				
Long-term users	21.2	75.9	2.6	0.2
Recently enrolled users	16.5	77.2	5.6	0.8
It is easy for system users to obtain a lost or forgotten password from the system helpdesk				
Long-term users	4.5	14.4	63.6	17.5
Recently enrolled users	2.1	14.5	71.2	12.1

*Statistically significant at 0.05 level.

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

It is not clear if the differences between the satisfaction levels of long-term and recently enrolled users are due to differences in the types of employers in the two groups. As discussed in Chapter III, larger employers were more likely than smaller employers to have a high satisfaction level. Furthermore, as shown in Section C, the percentage of large employers among Web Basic Pilot users has decreased over time. Similarly, employers with high percentages of immigrant employees are more likely to be satisfied with the program and are more likely to be long-term users. Comparing the satisfaction level of employers with the same characteristics (size, percentage of immigrant employees, industry, and geographic location), most (18 of 24) of the comparisons indicated that long-term users are more satisfied (Exhibit V-24). The two statistically significant comparisons of employers with these same characteristics also suggested that long-term users are more satisfied. A multivariate analysis was conducted to determine whether the combination of employer characteristics that differed between the two groups of employers could explain the observed lower level of satisfaction for the more recently enrolled users.¹⁹ With these controls, the effect of whether the employer was a recently enrolled user was close to being statistically significant (0.08).

Exhibit V-24: Comparison of Mean Satisfaction Score for Long-Term and Recently Enrolled Users, by Employer Characteristics

Employer Characteristic	Long-Term Users		Recently Enrolled Users	
	Number	Mean	Number	Mean
Industry*				
Agriculture, forestry, fishing, hunting	41	476.6	8	420.2
Mining, utilities, construction**	49	540.1	46	490.4
Animal food manufacturing	188	495.9	4	490.1
Other food/beverage/tobacco manufacturing	69	486.0	5	462.0
Other manufacturing	138	492.7	31	485.5
Wholesale/retail trade	43	507.1	15	476.6
Professional/scientific/technical/education/arts	50	509.5	104	527.4
Employment services	106	517.1	32	483.4
Public administration/social services	114	496.7	137	474.7
Accommodation/food services	192	502.6	20	516.3
Other industries	39	483.8	18	485.7
Employer size*				
< 100	182	497.0	140	487.0
100-500	444	492.7	165	485.0
> 500	403	510.0	115	510.5

Exhibit V-24 continued on next page.

¹⁹ See Appendix D for additional information on the multivariate analyses.

Exhibit V-24: Comparison of Mean Satisfaction Score for Long-Term and Recently Enrolled Users, by Employer Characteristics (continued)

Employer Characteristic	Long-Term Users		Recently Enrolled Users	
	Number	Mean	Number	Mean
Geographic location				
California**	159	500.4	19	454.3
Arizona/Texas	144	501.7	26	501.7
Northeast	125	490.4	153	496.5
Northern/Western	207	497.6	53	473.4
Midwest	186	502.6	134	498.5
Southern	142	501.6	24	499.2
Florida	66	514.5	11	497.9
Percent of immigrant employees*				
< 5%	189	497.1	226	488.4
6-40%	480	497.3	122	498.4
≥ 41%	339	503.7	57	484.7

*The difference in the distributions of long-term and recently enrolled users' satisfaction scores is statistically significant at the 0.05 level.

**The difference in the satisfaction level of long-term and recently enrolled users is statistically significant at the 0.05 level.

NOTE: Satisfaction was measured using an item response theory scale score standardized to a mean of 500 and a standard deviation of 100.

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

As the program expands, employer satisfaction may go down as the composition of employers using the Web Basic Pilot system more closely approximates the characteristics of all employers in the nation. A multivariate analysis predicting satisfaction from known information about employers indicated that employers in mining, utilities, or construction were significantly more likely than other employers to be satisfied with the program and that large employers were significantly more likely to be satisfied than were small employers. None of the other variables examined had a statistically significant relationship with the satisfaction score. Since employers engaged in mining, utilities, and construction and large employers are both overrepresented in the Web Basic Pilot program, it is reasonable to expect that, barring other changes, program expansion will result in decreased employer satisfaction.

G. CHANGES IN EMPLOYER COMPLIANCE

1. INTRODUCTION

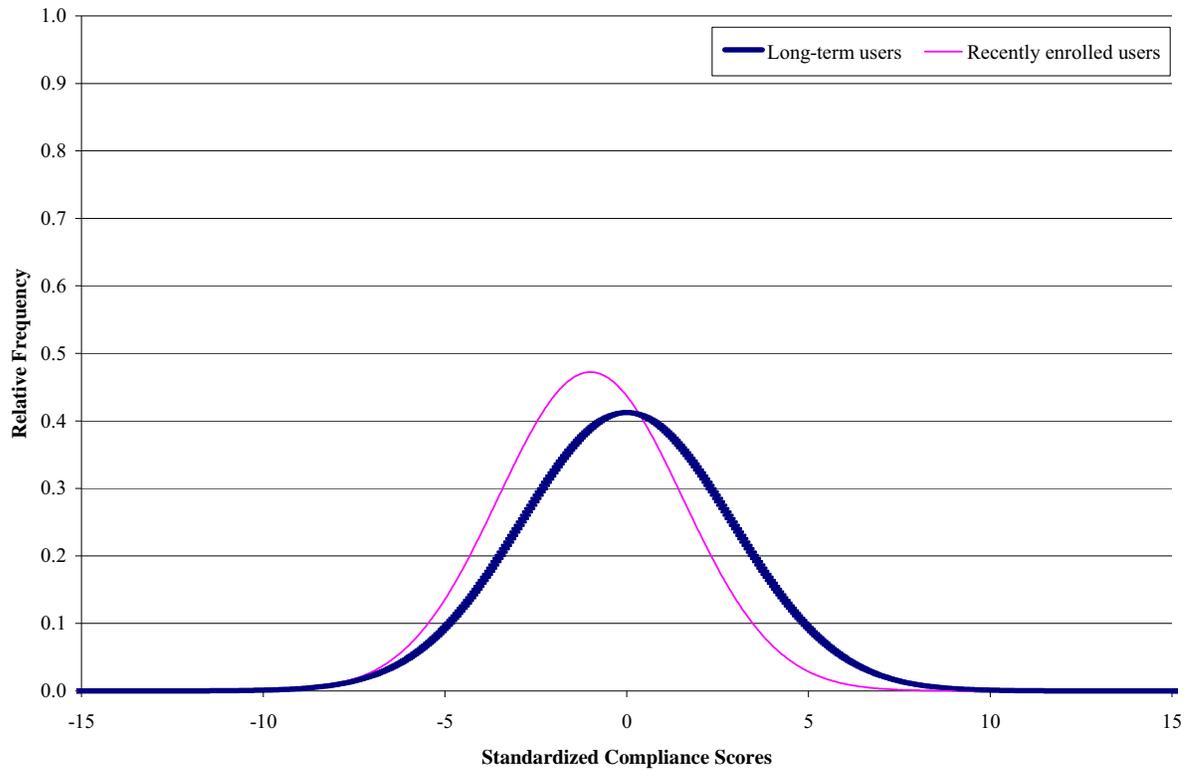
As indicated in Chapters III and IV, the Web Basic Pilot changes appear to have increased employer compliance with program procedures compared to the original Basic

Pilot program. However, the rate of employer noncompliance is still higher than desirable, which decreases the ability of the program to deter unauthorized employment and diminishes the effectiveness of safeguards designed to protect the rights of work-authorized workers who obtain erroneous tentative nonconfirmations. In this section, employer compliance is examined to determine whether there are some systematic differences between long-term and recently enrolled users. In examining these comparisons, it is important to note that recently enrolled users were much less likely than long-term users to answer questions about how they handled tentative nonconfirmations, probably because of the shorter time between when they joined the program and when they completed the survey. To the extent that nonresponding employers are more or less likely to comply with the program, the results may not be fully representative of all recently enrolled users.

2. FINDINGS

While most recently enrolled users reported that they were following the Web Basic Pilot procedures, they were less likely than long-term users to comply with these procedures. Exhibit V-25 shows the normal distribution for the compliance scale of long-term and recently enrolled Web Basic Pilot users. It indicates that recently enrolled users were significantly less likely than long-term users to comply with the requirements. However, the effect size estimate of 0.3 (on a scale ranging from 0 to 1) is usually defined as being small. Exhibit V-26 compares the two groups of employers on some of the individual variables comprising the scale.

Exhibit V-25: Frequency Distributions of Long-Term and Recently Enrolled Users' Scores for Compliance with the Web Basic Pilot Procedures



NOTE: Scores were standardized to a mean of 0 and a standard deviation of 1 based on the distribution for recently enrolled users.

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

Exhibit V-26: Percentage of Long-Term and Recently Enrolled Web Basic Pilot Users Indicating That They Were Not Following Specific Procedures

Question	Long-Term Users		Recently Enrolled Users	
	Number	Percent	Number	Percent
Number of employees hired so great, can't make deadline* (percent saying yes)	1,030	15.9	416	22.4
Software so cumbersome, can't make deadline (percent saying yes)	1,029	2.6	414	2.7
Contesting not encouraged (percent agreeing or strongly agreeing)	926	4.6	283	6.7
Work assignment restricted (percent agreeing or strongly agreeing)	888	21.6	297	19.6
Pay is reduced until employment authorization is confirmed*	850	2.4	289	4.8
Training is delayed until after employment authorization is confirmed*	874	16.2	288	14.6
Employee informed privately (percent saying never, sometimes, or often)	969	5.7	283	8.5
Written notification given (percent saying never, sometimes, or often)	953	9.4	192	12.7
Verifies job applicants* (percent saying yes)	1,030	15.6	420	20.5
Verifies employees who worked prior to the institution of Web Basic Pilot	1,030	4.8	420	3.6

*Statistically significant at 0.05 level.

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

The difference in compliance between the long-term and recently enrolled users may be explained, at least in part, by differences in employer characteristics. To determine whether employer characteristics can explain the observed difference in employer compliance, the evaluation team examined the differences in compliance between long-term and recently enrolled users with specific employer characteristics (Exhibit V-27). The findings should be interpreted with caution because of the small sample size in many of the employer categories. As the table indicates, almost all of the mean compliance scores are lower for recently enrolled users than for long-term users with similar characteristics. Furthermore, recently enrolled users in public administration/social services and accommodation/food services have significantly lower compliance levels than the long-term users in the same industries.

Exhibit V-27: Comparison of Mean Compliance Score for Long-Term and Recently Enrolled Web Basic Pilot Users, Overall and by Employer Characteristics

Employer Characteristic	Long-Term Users		Recently Enrolled Users	
	Number	Mean	Number	Mean
Overall*	754	19.2	233	18.2
Industry*				
Agriculture, forestry, fishing, hunting	31	19.8	2	19.3
Mining, utilities, construction	42	18.3	25	18.5
Animal food manufacturing	144	20.0	3	20.0
Other food/beverage/tobacco manufacturing	53	19.4	2	22.0
Other manufacturing	100	19.2	17	18.3
Wholesale/retail trade	30	17.9	6	17.3
Professional/scientific/technical/education/ arts/entertainment	33	19.5	55	18.7
Employment services	79	18.3	21	17.9
Public administration/social services**	75	19.5	88	18.1
Accommodation/food services**	149	19.4	11	17.4
Other industries	29	17.5	11	18.7
Employer size*				
< 100	124	18.7	73	18.2
100-500**	331	19.2	96	17.9
> 500	310	19.4	72	18.9
Geographic location				
California	125	19.0	16	17.9
Arizona/Texas	110	19.3	15	17.9
Northeast	91	19.5	84	18.7
Northern/Western	154	19.2	39	18.2
Midwest	133	19.0	61	18.2
Southern	102	19.4	18	17.9
Florida	50	19.1	8	17.1
Percent of immigrant employees*				
< 5%	114	18.9	102	18.3
6-40%**	372	19.3	87	18.3
≥ 41%**	268	19.2	44	17.9

*The distribution of compliance scores based on the indicated employer characteristic between long-term and recently enrolled users is statistically significant at the 0.05 level.

**The compliance level of long-term and recently enrolled users within the indicated group is statistically significant at the 0.05 level.

Compliance was measured using a factor score standardized to a mean of 19.0 and a standard deviation of 2.84.

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

As the program expands, employer compliance may go down as the composition of employers using the Web Basic Pilot system more closely approximates the characteristics of all employers in the nation. A multivariate analysis predicting compliance from known information about employers indicated that employers in mining, utilities, and construction; wholesale and retail trade; and employment services were significantly less likely than other employers to comply with the program requirements. On the other hand, employers in animal food manufacturing are relatively more likely to comply. None of the other variables examined had a statistically significant relationship with the compliance score. Although the expected decrease in the proportion of verifications from employment agencies is likely to increase compliance, the other trends lead to an expected decrease in compliance. The regression analysis indicates that the overall impact of the expected changes, adjusting for differences between the distribution of Web Basic Pilot users and the national distribution of employers on industry, would be a decrease in compliance from a mean on the compliance scale of 19.2 to 18.9.

H. SUMMARY

The following conclusions are based on the analyses in this chapter.

- The Web Basic Pilot has grown dramatically since its inception, thereby increasing its ability to deter unauthorized employment. However, no more than 4 percent of all newly hired workers were verified through the Web Basic Pilot in the first half of FY2007.
- The composition of the employer population and of the employees verified has, in general, been becoming increasingly more similar to the national populations of employers and newly hired workers. However, significant differences remain. For example, the percentage of small employers using the Web Basic Pilot has increased over time but still remains well below the national percentage. Similarly, the proportion of foreign-born workers verified was lower in the first half of FY2007 than in earlier periods but remained above the national rate.

One important exception to the generalization that employers and the workers they verify are becoming more similar to those in the nation is that the number of employees verified by employment services is increasing. In the first half of FY2007, employment services were responsible for 50 percent of all verifications in the Web Basic Pilot but only approximately 3 percent of all newly hired workers nationally. The high level of verifications by employment services may reflect the USCIS decision that temporary help agencies may define “hire” as the day an employee accepts a job offer rather than using the first day of work definition provided on the Form I-9.

- The October 21, 2005, procedural change requiring that all noncitizen cases matched at SSA be sent to USCIS for further checking appears to have resulted in the identification of more persons without work authorization than was true under the prior procedures, in which SSA issued a work-authorization finding when its

records indicated that a noncitizen had permanent work authorization. At the same time, this procedural change led to an increase in the erroneous tentative nonconfirmation rates for noncitizen cases without affecting the rate for citizens. The changed procedures also resulted in increased workloads for USCIS but had no impact on SSA's workload.

- The overall percentage of cases authorized automatically has increased over time; however, it is likely that much of the increase is due to changes in the types of cases being verified.
- There are significant differences in the rates at which noncitizens and citizens are automatically found to be work-authorized. On average, 96 percent of workers attesting to being U.S. citizens were found to be work-authorized automatically, compared to 72 percent of cases in which the employee attested to being a lawful permanent resident and 63 percent of cases in which the employee attested to being an alien authorized to work.
- The overall erroneous tentative nonconfirmation rate for ever-authorized workers has declined over time. However, large differences in the error rates for U.S.-born and foreign-born workers remain. Furthermore, foreign-born citizens are more likely than noncitizens to have erroneous tentative nonconfirmations.
- If the distribution of workers being verified in the first half of FY2007 had more closely represented the national distribution of newly hired workers in terms of geographic location, industry, size, and percentage of employees attesting to being noncitizens, it is likely that the percentage of workers automatically found to be work-authorized would have been slightly lower and the erroneous tentative nonconfirmation rate would have been higher. Thus, the past trends in the accuracy of Web Basic Pilot verifications attributable to the changing composition of workers being verified may not continue in the future. A major reason behind this trend reversal is the disproportionately high percentage of verifications by employment services, which tend to have above-average automatic authorization rates and below-average erroneous tentative nonconfirmation rates.
- Employer satisfaction and compliance levels were both lower among recently enrolled users than among long-term users. It appears that at least part of these differences may be attributed to the changing characteristics of employers signing up for the program. Furthermore, the analyses in this report suggest that, as the program expands, employer satisfaction and compliance may decrease as the composition of employers using the Web Basic Pilot system more closely approximates the characteristics of all employers in the nation.

CHAPTER VI. RECOMMENDATIONS FOR IMPROVING THE WEB BASIC PILOT PROGRAM

This chapter presents recommended changes to the Web Basic Pilot program based on the evaluation.¹ Some of these recommendations were presented in the Interim Report for this evaluation and are in the process of being implemented. These recent changes are noted but cannot be fully discussed in this report. These recommendations are grouped into the following broad categories: those needed to address the high erroneous tentative nonconfirmation rate for naturalized citizens, those related to reducing identity fraud, other changes to the Web Basic Pilot program, and evaluation research.

A. ADDRESS HIGH ERRONEOUS TENTATIVE NONCONFIRMATION RATE FOR NATURALIZED CITIZENS

The Social Security Administration (SSA) and the U.S. Citizenship and Immigration Services (USCIS) need to address the high erroneous tentative nonconfirmation rate for foreign-born U.S. citizens. Although minimizing the erroneous tentative nonconfirmation rate for all work-authorized workers is an important goal for creating a viable version of a considerably expanded Web Basic Pilot, the rate for foreign-born citizens is so much higher than for other work-authorized employees that this group should receive priority. Reducing the high tentative nonconfirmation rate for naturalized and derivative² citizens will not be easy or fast, since neither SSA nor USCIS consistently has the information needed to verify the work-authorization status of these citizens. Furthermore, not all USCIS information can be extracted from its databases based on Social Security numbers (SSNs), the only identifier on the Form I-9 for persons claiming to be U.S. citizens. The recently initiated USCIS Transformation Project, the Digitization Project in particular, may, over time, assist in filling in some of the gaps in USCIS electronic records. Under this project, paper files are being scanned and digitized so that information in these older records will be available electronically. The following recommendations should be explored:

- USCIS and SSA should arrange for a one-time electronic transmittal of information for all persons having information in USCIS databases indicating that they are naturalized citizens. This information should not be restricted to individuals for whom USCIS has SSNs, since SSA is often able to uniquely identify persons on its database from other information (i.e., name, date of birth, and country of birth).
- USCIS should ensure that applicants for U.S. citizenship include their SSN on the application form. In the future, USCIS should electronically send the SSN, name,

¹ For a report summary, please see the Executive Summary.

² Derivative citizenship refers to citizenship accorded to children under age 18 who derive U.S. citizenship at the time their parents are naturalized.

date of birth, and new citizenship status to SSA at the time that U.S. citizenship is acquired.

- USCIS should develop a way of capturing information (including SSN) about children under age 18 who derive U.S. citizenship at the time their parents are naturalized, so that their USCIS records regarding citizenship status are accurate, regardless of whether the parents apply for Certificates of Citizenship for them. This information should routinely be transmitted to SSA.
- USCIS should work with the U.S. Department of State's Passport Agency to develop a mechanism to electronically capture information, including SSN, on persons who are first documenting their derived U.S. citizenship status by requesting and being issued a U.S. passport. The information captured should be sufficient to positively match individuals to USCIS records and should be used to update the citizenship status of persons on USCIS data records. This information should also be communicated to SSA, so that its records can be updated. Again, to the extent possible, a one-time data merge should be performed and a mechanism established for routine transmittal of information in the future.
- USCIS should update its electronic records to reflect U.S. citizenship status by inputting pre-1996 naturalization and citizenship information, as well as SSNs available in retired paper files. This is being taken care of, in part, through the previously mentioned digitization. This information should also be shared with SSA.
- USCIS and SSA should consider giving employees who attest to U.S. citizenship on the Form I-9 and who receive a tentative nonconfirmation finding of "Unable to confirm U.S. Citizenship" an option of providing their former A-numbers to their employers to expedite verification of their work-authorization status.³ The Notice of Tentative Nonconfirmation could be used for this purpose, so that employees would have three choices (to not contest, to contest immediately, or to ask USCIS to check its database based on an indicated A-number). If the last option was selected, USCIS would then either tell the employer that the employee is work-authorized or direct the employer to issue a referral letter for the employee to visit an SSA field office.⁴

³ USCIS is exploring this recommendation; it also plans to provide an option for naturalized citizens to call USCIS to resolve their tentative nonconfirmations.

⁴ This scenario assumes the adoption of the recommendation, discussed in Section C, on inputting information on the employee's decision about contesting.

- SSA should conduct outreach activities to encourage naturalized citizens, and persons with derived citizenship, to update their SSA records accordingly.⁵

Many of these recommendations are currently being explored and/or are in the process of being implemented.

B. CONTINUE EXPLORATION OF WAYS TO DECREASE IDENTITY FRAUD

The Web Basic Pilot system design addresses only the use of fraudulent documents that contain information about fictitious persons. Its design does not permit detection of identity fraud (i.e., the use of fraudulent or real documents with information about real persons). This limits the effectiveness of the Web Basic Pilot program in reducing the employment of persons who are not work-authorized. Furthermore, as the program expands, it is reasonable to expect that a growing awareness of how the program operates will lead to an increase in the incidence of identity fraud to obtain employment, unless actions are taken to prevent it.

There should be continued exploration of how photographs, fingerprints, or other biometric checks can be incorporated into the Web Basic Pilot system for all newly hired workers while protecting employees against discrimination and ensuring privacy. The current small-scale Photo Screening Tool pilot program, initiated with approximately 50 employers in March 2007, includes only photographs for individuals with certain USCIS-issued documents. This approach is, on the face of it, discriminatory, since only noncitizens have such documents. Furthermore, as the program becomes better known in the immigrant community, more unauthorized workers may turn to using fraudulent citizenship documents instead of fraudulent noncitizen documents, to avoid having their photographs on fraudulent documents subject to such scrutiny, and thereby reduce the potential usefulness of photographs to detect unauthorized employment. USCIS is currently pursuing ways to expand the document photographs available by incorporating U.S. passports and State driver's licenses and non-driver identification cards into the system, so that the Photo Screening Tool will be able to return information for citizens as well as noncitizens.

C. IMPLEMENT OTHER WEB BASIC PILOT CHANGES

This section presents a number of recommendations for modifications to the Web Basic Pilot program. These are divided into legislative changes, system changes, procedural changes, and changes in materials.

⁵ In addition to publicity campaigns, other outreach efforts may be warranted, especially if electronic updating systems cannot be put in place promptly. For example, in some areas SSA staff attend naturalization ceremonies to encourage and assist new citizens in updating their citizenship status in SSA records at that time – a practice that could be broadened. In locations where SSA staff cannot attend naturalization ceremonies, SSA could provide a handout for USCIS to distribute, instructing new citizens on how to correct their SSA records.

1. LEGISLATIVE CHANGES

Consideration should be given to requesting legislative changes to the following Basic Pilot procedures that potentially have both *positive and negative* consequences:

- **Extending the timeframe for entering information for new employees** to 5 days after hire, to accommodate the needs of large employers and employers where verification for several sites is centralized;
- **Modifying procedures related to prescreening by** implementing one of the following options to decrease employer burden and unauthorized employment:
 - **Allowing prescreening;**
 - **Defining “hire” to mean job offer (or job offer and acceptance) and allowing employers to delay the start of work until after verification is completed; or**
 - **Requiring employers to delay the start of work until after verification is completed.**

USCIS is considering modifying the definition of “hire” from being the time when the employee starts work to being the time that an employee is offered a job and accepts it. The evaluation team believes that this issue is sufficiently important that it should be examined carefully in terms of its implications for employer burden, employee rights, and discrimination and then be decided after full deliberation. Once determined, the decision needs to be well publicized so employers and employees are well aware of the definition.

- **Altering the Web Basic Pilot program to expedite the tentative nonconfirmation process when it is highly likely that the SSN or A-number is fraudulent** would decrease the amount of time such employees are employed while at least theoretically resolving the tentative nonconfirmation.⁶
- **Permitting employers to use the Web Basic Pilot when they conduct the Form I-9 re-verification required for noncitizens who presented immigration documents with expiration dates on their original Form I-9.** If this is permitted, it would be reasonable to use the same procedures for providing and resolving tentative nonconfirmation cases as are currently used for new employees.

2. SYSTEM CHANGES

The following recommendations focus on changes to the Web Basic Pilot system and the databases it uses.

⁶ This recommendation assumes that the law related to prescreening has not been modified.

a. AUTOMATE SSA'S PROCESS FOR HANDLING TENTATIVE NONCONFIRMATIONS

SSA should continue to work on implementing its Employment Verification SSA TNC Automated Response Process (EV-STAR), which automates the process of contesting SSA tentative nonconfirmations. Automating the SSA secondary verification process would tighten SSA procedures and make SSA more accountable for providing results for cases it resolves. It would also decrease the burden on SSA, employers, and employees; reduce the incidence of erroneous tentative nonconfirmations resulting from case resubmission; and make the transaction database more accurate. Until this change has been made, the transaction database should be monitored to check whether employers are incorrectly resubmitting as new cases tentative nonconfirmation cases resolved by SSA.⁷

b. FURTHER AUTOMATE THE USCIS VERIFICATION PROCESS

USCIS should continue work on automating its secondary verification process to reduce the amount of work necessary at the secondary stage. Improvements should minimize the need for Immigration Status Verifiers (ISVs) to manually check databases other than the Verification Information System to determine if the person being verified can be found to be work-authorized without issuing a tentative nonconfirmation. The ultimate goal should be to have a sufficiently accurate automated system that manual checking at the secondary stage can be eliminated. Additionally, USCIS should use the percentage of cases found to be work-authorized at the second stage as an indicator of whether this stage is necessary to avoid unduly high erroneous tentative nonconfirmation rates for noncitizens. In the first half of fiscal year 2007, 11 percent of cases (13,300 cases) found to be work-authorized without a tentative nonconfirmation were identified at the second stage; this rate is sufficiently high to justify continuation of secondary verifications at this time. If the second stage had not existed, the number of tentative nonconfirmations issued would have been 21,200 (17 percent of cases referred to USCIS) instead of 7,900 (7 percent of cases referred to USCIS) in the third stage.

The software used to generate case lists for ISVs should be modified to include checks for duplicate cases, to the extent feasible. As the evaluation team understands current procedures, all cases receiving USCIS tentative nonconfirmations are sent to ISVs for manual checking. Cases sent to ISVs include those that the employer subsequently closed as Invalid Queries and cases duplicated because the employer inadvertently sent the same case more than once. The evaluation team believes that it should be possible to check electronically for duplicate cases submitted close together in time before assigning cases to ISVs; this change will not, of course, eliminate all duplicate cases from having to be checked twice, since it would not be advisable to create significant delays in order to perform this checking. This recommendation will become increasingly important as the program expands, since the probability of cases being recognized as duplicates will presumably decrease as the number of ISVs expands and the probability of an ISV getting the same duplicated case diminishes.

⁷ EV-STAR is scheduled to go on-line by October 1, 2007.

c. MODIFY THE SYSTEM TO CAPTURE ADDITIONAL INFORMATION

The Basic Pilot system should be modified to capture important additional information in the transaction database.

- **The Web Basic Pilot should be modified to permit entry of information about case resolution that becomes available after issuance of a final nonconfirmation.** Although there is currently no formal process for reopening cases that have become final nonconfirmations,⁸ an informal process has developed where a USCIS employee calls to tell the employer that the discrepancy has been resolved and that the employee is work-authorized. However, there is currently no way to update the database to indicate that the outcome has been changed, resulting in discrepancies that could create problems for work-authorized employees or their employers if monitoring or enforcement actions indicate that employment should have been terminated. If a field is added to the system for this purpose, it would, of course, also make sense to provide the employer with an automated notification of the changed finding.
- **More information related to case referral should be collected to inform future evaluations and monitoring efforts.** Employers currently provide some information about the final disposition of tentative nonconfirmations by inputting referral dates (if the case is referred) and case closure codes. However, the case closure codes are unclear and are not sufficiently comprehensive to describe adequately what happened after the tentative nonconfirmation was issued, especially if the case was not contested. This information would be useful for monitoring and evaluation purposes and may help remind employers of what should be happening after a tentative nonconfirmation is received. As a starting point in addressing this problem, the evaluation team suggests that the employer be required to provide information on the immediate outcome of the case (a referral code) that would include categories such as the following:
 - The employee quit before the tentative nonconfirmation finding was issued;
 - The employee was fired before the tentative nonconfirmation was issued;
 - The employee was notified of the tentative nonconfirmation and quit without saying whether he or she wished to contest;
 - The employee was notified of the tentative nonconfirmation and said that he or she *did not* want to contest;
 - The employee was notified of the tentative nonconfirmation and said that he or she *did* want to contest; and
 - Other (explain).

⁸ USCIS is currently considering implementing a process to accommodate more formal requests for reconsideration of final nonconfirmation findings.

If the employer says that the employee wishes to contest, the system will request a referral date. As recommended above for cases initially closed, the employer should be provided with appropriate closure code options for each case depending upon the system finding. These changes should be subject to usability testing before implementation, including obtaining input on the comprehensiveness of codes as well as their clarity.

d ***MODIFY THE USCIS MATCHING ROUTINE***

USCIS should modify the algorithm used in matching to be consistent with SSA's criteria. Noncitizen cases are subject to more stringent matching criteria than citizen cases because they must match both SSA and USCIS databases before a determination of work authorization can be made. Given that the two databases use different numerical identifiers (the SSN versus the A-number), there is currently no easy way to eliminate this "double jeopardy" situation. However, the USCIS matching routine involving name and date of birth could be modified to make it more consistent with the SSA matching routine. Modifying the date of birth criteria should be fairly easy; although more difficult, modifying the name criteria should also be feasible. The evaluation team's recommendation that the change be made by USCIS rather than SSA is based on the assumption that SSA's routines have been better tested than USCIS's routines because of SSA's more extensive experience with matching routines.

USCIS should work toward a system that permits it to identify cases by SSN as well as A-number. To create a system that permits USCIS to identify noncitizens by SSN, USCIS staff should collect and enter SSNs whenever they have contact with a noncitizen. To the extent that SSA can accurately identify SSNs on the basis of name and birthdate, SSA should provide SSN information to USCIS for noncitizen cases currently without associated SSNs in USCIS files. Although it is likely to take a long time to construct a data file with SSNs for all noncitizens, such a data file would significantly reduce the probability that work-authorized noncitizens would receive erroneous tentative nonconfirmations attributable to the incorrect entry of A-numbers and thus decrease the impact of "double jeopardy" experienced by noncitizens compared to citizens.⁹

e ***MODIFY CLEANING ROUTINES***

Data quality in the Web Basic Pilot would be improved if procedures were developed for the routine automated cleaning of the transaction database to obtain more meaningful reports for management information purposes. For example, cases that employers close as employer data entry errors should not be categorized as final

⁹ The Federal government is now trying to reduce the use of SSNs as identifiers; however, it is not clear to the evaluation team what alternative number could be used to link SSA and USCIS information.

nonconfirmation cases, which is what currently occurs, thereby overstating significantly the number of final nonconfirmation cases occurring.¹⁰

3. PROCEDURAL CHANGES

This section focuses on changes to Web Basic Pilot procedures that do not require legislative or system changes.

a. CONSIDER REVISING SSA'S HANDLING OF TENTATIVE NONCONFIRMATION FINDINGS

SSA should consider ways to reduce the employee burden associated with the requirement for in-person contact to resolve tentative nonconfirmations. Currently, employees receiving SSA tentative nonconfirmations are required to visit an SSA office to resolve the tentative nonconfirmation. This can be a burden on employees, especially when the SSA office is located at a considerable distance. Possible changes to this procedure include the following:

- Employees should be allowed to use fax and telephone for resolving tentative nonconfirmations, to the extent possible. Although the evaluation team recognizes that SSA often needs to scrutinize documents to determine their authenticity, there are some situations in which this may not be necessary. For example, cases involving employer input errors might be resolved without seeing the original documents; in this situation, the employee might be asked to have the employer amend the input and resubmit the case. Also, initial contact by telephone may help ensure that the employee does not have to travel to SSA a second time to bring additional documents.
- It may be helpful for SSA field office staff to travel to some remote locations to handle tentative nonconfirmations, perhaps on a weekly basis.

b. ESTABLISH NOTIFICATION GUIDELINES

USCIS should continue working on the development and implementation of guidelines that provide specific timeframes for notifying employees of tentative nonconfirmations and for terminating employees who receive final nonconfirmations or unauthorized findings. Without specific timeframes for notifying employees of tentative nonconfirmation findings and terminating employees with final nonconfirmations, employers may allow the verification process to become protracted.

¹⁰ Although these cases should not normally be included in management reports designed to measure system efficiency, they should be retained and used for two purposes. First, this information could be of use in monitoring employers (e.g., high rates of cases closed in error might indicate that employers are “fishing” for ways to verify employees or are inadequately checking cases before submitting them to the Web Basic Pilot). Second, some workload reports should reflect the number of transmissions rather than the actual number of cases; these include reports used for estimating system costs (which are based on transmissions) and also USCIS workload reports, since the error may not be identified in time to avert the ISVs’ work on cases needing secondary verification.

As a result, unauthorized workers are allowed to work for extended periods, thereby reducing the effectiveness of the program.

C. CONTINUE IMPLEMENTATION OF PLANS FOR A STRONG MONITORING AND COMPLIANCE PROGRAM AND DETERMINE HOW THIS PROGRAM WILL BE ENFORCED

The evaluation has documented a number of employer violations of Web Basic Pilot procedures. Although some of these problems can be addressed through improved education and training, it is also necessary to have a way of identifying and acting upon serious program violations. Recognizing this need, USCIS has recently established monitoring and compliance units. This work should continue, especially if the program becomes mandatory, since employers forced to join the program are more likely to look for ways around the program requirements than are those who volunteer.

As part of its monitoring and compliance efforts, USCIS should continue exploring options for using the transaction database to identify employers that are not following Basic Pilot procedures. The following are examples of indicators that could be used for this purpose¹¹:

- A high rate of duplicate SSNs and A-numbers submitted by an employer, given its size, industry, and location, may indicate that the employer is knowingly hiring unauthorized workers.
- An unusually low number of queries, given employer location, industry, and size, may point to selective verification of employees.
- An unusually high or low percentage of employees (either total or foreign born) receiving tentative nonconfirmations, given employer location, industry, and size, may indicate that an employer is selectively verifying employees who appear to be foreign-born or failing to verify those believed not to be work-authorized.
- Initiated dates prior to hire dates or blank hire dates constitute an indicator of prescreening.¹²
- Initiated dates well after hire dates may indicate that the employer is verifying persons other than newly hired employees.
- An unusually large number of queries, given the size, industry, and location of the employer, may indicate that the employer is prescreening job applicants or

¹¹ These indicators were developed by a USCIS working group on monitoring and compliance in which an evaluation team member participated. At the time this report is being written, USCIS is in the process of establishing monitoring and compliance units that are using these options as a starting point in further developing the indicators.

¹² This recommendation assumes that USCIS stops the recently implemented practice of edit checks preventing the employer from entering hire dates after initiated dates or leaving hire dates blank.

verifying persons with expiring employment authorization documents, existing employees, or others who are not newly hired employees.

- An unusually small percentage of SSA/USCIS tentative nonconfirmations that are referred to SSA/USCIS, given the size, industry, and location of the employer; an unusually high percentage of referred cases becoming “no shows”; or a high rate of self-terminated employees may indicate that an employer is not properly notifying employees of their right to contest tentative nonconfirmation findings.
- No queries being submitted by an employer above a specified threshold size may indicate that the employer is not using the system; although not necessarily a serious issue under a voluntary system, this would require followup in a mandatory system.
- A significant number of cases more than 2 weeks old that do not have closure codes signifies that the employer is not properly closing cases.
- Employers having an unusually high percentage of cases with SSNs or A-numbers that are likely to be fraudulent, based on indicators such as the pattern of their usage or their being never-issued numbers or numbers belonging to deceased individuals, may be aiding and abetting employees in obtaining unauthorized employment.
- An unusually low percentage of final nonconfirmation and unauthorized employees with blank closure codes or codes of “employment terminated” may indicate that the employer is not firing employees with final nonconfirmations, as may an unusually high number of “not terminated” codes.¹³
- A high percentage of employees with temporary work authorization having reverifications close to document expiration dates or a high percentage of duplicate A-number verifications may indicate that the employer is reverifying employees with expiring employment authorization documents.
- A high overall rate of duplicate SSNs and A-numbers, especially if found in disparate locations within a limited time period, may indicate employee fraud that may be aided by employers.
- The system showing no tentative nonconfirmation notices and/or referral letter printouts may mean that the employer is not properly providing employees with information needed to contest cases. Although this information is not currently collected, it should be fairly easy to modify the system to capture it automatically.

¹³ In some cases, there may be valid reasons for not terminating these employees. These include cases that have been successfully appealed (since the results of the appeal cannot currently be entered into the system) and cases in which the employer has strong evidence supporting the person’s work-authorization status, such as a letter from SSA, a thorough background check of the worker, or long-term personal knowledge of a worker.

- No record of the employer printing out the pilot participation notice may well mean that the employer is not properly notifying prospective employees of participation in the program. Although this information is not currently collected, it should be easy to modify the system to capture it automatically.

In addition to improved monitoring and compliance, the Federal government should ensure that adequate enforcement efforts are instituted. The effectiveness of the monitoring and compliance units will be dependent, in part, upon the willingness of enforcement agencies to pursue cases identified by these units as constituting serious violations that are not voluntarily corrected by employers after proper notification from USCIS. Enforcement is also critical in cases in which it appears that employers are knowingly engaged in highly serious violations (e.g., selling fraudulent documents to undocumented workers) where initial USCIS notification is not deemed appropriate.

d CONDUCT OUTREACH

USCIS should implement current plans for a program to inform employees of their rights. This recommendation will become increasingly important and increasingly cost-effective as the program expands to cover more new employees, since employers do not always make employees aware of their rights under the Web Basic Pilot or even that the employer is participating in the program.

USCIS should increase outreach to employers as the Web Basic Pilot expands. Such outreach and training has to extend beyond those program users currently required to complete the tutorial, to include managers and supervisors responsible for enforcing other aspects of the program. Outreach is also needed to make nonparticipating employers aware of the program, its benefits, and its requirements.

4. CHANGES TO MATERIALS

a REVIEW AND REVISE ALL EMPLOYEE MATERIALS TO MAKE SURE THEY ARE SUITABLE FOR USE WITH EMPLOYEES

Tentative nonconfirmation letters and referral forms should be combined and the wording revised so that employees can more easily understand what they need to do. USCIS is currently translating the notices into other languages, which is a positive step. However, it is also necessary to revise these notices so that they are at a reading level that can be easily read and understood by most employees. At the same time, the tentative nonconfirmation letter and the referral letter should be combined into a single document. Much of the information in the two documents is duplicative, and combining them would make the process less burdensome for employers.

b. REVIEW AND REVISE THE SYSTEM, TUTORIAL, AND OTHER EMPLOYER MATERIALS TO FURTHER ENHANCE THEIR USER FRIENDLINESS

Additional changes should be made to the tutorial to further improve its effectiveness. The following changes are recommended:

- **When questions are answered incorrectly, the tutorial should provide and explain the correct response to ensure that the user understands the material.**
- **Periodic retesting and, if needed, refresher training should be used to ensure that material has not been forgotten;** this will also discourage the observed practice of assuming another user's name and password to avoid the tutorial and Mastery Test.
- **Training modules for staff other than system users and administrators should be developed** to help prevent violations of procedures that are the responsibility of staff other than system users. For example, managers and supervisors need to be aware that they may not take adverse actions against employees while the employees are resolving tentative nonconfirmations. Additionally, human resources managers may be unaware that the policies they promulgate on training or pay while tentative nonconfirmations are being contested are in violation of the Memorandum of Understanding or the statute governing the program. The training material developed should also include suggestions for supervisors on how to monitor other staff members involved in the process.
- **The tutorial or resource section should include examples of how to use the system to verify employees under a variety of scenarios,** including more complicated cases. Employers would benefit from seeing how more complicated cases are supposed to be handled from the point of data entry all the way through the referral process and case closure.
- **Employers would like the opportunity to complete the entire verification process with a sample tentative nonconfirmation case before being responsible for implementing the process with real employees.** While some employers do this now, not all of them are aware of the possibility. The evaluation team also endorses an idea raised at a recent USCIS meeting to provide the employer with a list of test names that can be entered, to simplify the identification of these cases during database cleaning.
- **Further clarification of employer responsibilities should be incorporated into the tutorial,** including emphasizing the importance of the following:
 - Reviewing the screen to double-check data input before sending the information to SSA and USCIS;

- Notifying employees of tentative nonconfirmation findings and giving them a copy of the Notice to Employee of Tentative Nonconfirmation and, when appropriate, a referral letter;
 - Informing employees of tentative nonconfirmation findings in private; and
 - Clarifying when and how cases should be closed in error and resubmitted. For example, it is not clear whether an employer should try to enter a case under a name the employee previously used if the employee receives a tentative nonconfirmation.
- **The training materials and tutorial should be modified to clarify issues that confused some of the case study employers.**
 - The Web Basic Pilot tutorial should address the question of the definition of a “new hire” to help employers understand the critical concept of prescreening.¹⁴ This clarification is especially important for temporary help and employment agencies.
 - The tutorial should include a general overview of what the Web Basic Pilot program is designed to do and how it works. In particular, employers do not understand why many tentative nonconfirmations are issued, and, as a result, some employers simply ignore the findings. The tutorial should provide multiple scenarios for why tentative nonconfirmations might be issued and also explain what happens at SSA and USCIS when those cases are referred. Employers commented that the tutorial focused too much on basic computer skills (where to click to advance the screens) when the employers really need to know how the process works and why it is important to follow the prescribed steps. Another employer recommendation that may help is to include a flowchart of the process in the tutorial.
 - **The language used in the tutorial and in the system itself should be modified to make the process less confusing for both employers and employees.** For example, the following terms appear to confuse people¹⁵:
 - **Tentative nonconfirmation.** Several employers did not understand what this term means and were therefore unable to explain the finding to employees. As a result, employees did not understand why they had received the finding or how to correct it.

¹⁴ This recommendation assumes that the prohibition against prescreening will continue.

¹⁵ When employers misunderstand and misuse these terms, the results shown in the transaction database become inaccurate, which has a negative impact on the usefulness of the transaction database reports for management and monitoring purposes.

- **DHS Verification in Process.** One case study employer thought that this result meant that the employee was in the process of obtaining work authorization.
 - **Case in Continuance.** This was sometimes misconstrued as meaning that the employee was in the process of obtaining work authorization.
 - **Self-terminated.** One pretest system user thought that “self-terminated” referred to employer termination of the query and used this code rather than the Invalid Query code.
- **The system should be used to provide online guidance to employers on requirements, such as the requirements for the referral process.** This is especially important for explaining the tentative nonconfirmation process; some employers may encounter these cases infrequently, making it less likely that they will correctly recall the information in the tutorial.
 - **The tutorial should be modified so that it serves as a more effective reference tool. Alternatively, a separate indexed reference guide could be created for users to access help on specific topics.** Currently, the tutorial lessons are indexed by broad topics and users must advance through entire lessons to find answers to specific questions. A more detailed index page or a search engine for the tutorial would be a more efficient resource for employers. Employers also requested a frequently asked questions section, as well as listings of local SSA offices. It would also be helpful to provide an option for printing the entire tutorial rather than each individual screen.
 - **Users should receive clear instructions on whom to call for help, and efforts should be made to ensure that help desk staff are well-trained.** The toll-free help desk number appears only on the system home page, not on pages where users are likely to need assistance. Many employers call their local SSA office for help with the Web Basic Pilot and frequently find that the local staff are unfamiliar with the program. The Office of Special Counsel for Unfair Immigration-Related Labor Practices in the U.S. Department of Justice also reports having received telephone calls from employers and employees that should have been handled by the Web Basic Pilot help desk. Users would also like to be able to e-mail questions to help desk staff. It is also important to train help desk staff so that they are able to answer employer questions more effectively, since several long-term and recently enrolled users commented on the employer surveys that help desk personnel were unable to answer their questions.
 - **The administrator and user account types should be supplemented with one or more additional account types to reflect the full range of employer practices.** For example, one case study employer reported that because of the filing system the employer uses to manage tentative nonconfirmation cases, it is possible for any human resources staff member to work on any case, regardless of who initiated it. To provide this flexibility, the company set every staff member’s

system ID to “Administrator.” However, as a result all staff members have access to other administrator functions (e.g., changing passwords) that should be restricted to staff actually serving as system administrators. Therefore, it appears that, at a minimum, there should be an intermediate type of access that is less restrictive than the current user account and more restrictive than the current administrator account.

- **Data entry and navigation through the verification screens should be simplified.** For example, the date fields should be formatted so that employers do not have to enter “/”s between numbers. In addition, users should be able to print the Verification Result screen rather than opening up a case details PDF page, and they should be able to return to the verification screens from the PDF page without using the back button on their Web browsers. The Exit/Logout button should be more obvious so that users can find it more easily. Also, the system should be modified so that employers can revise information sent in error without having to cancel out the first case and re-enter all of the original information in addition to correcting the error.
- **The process that employers use to resolve cases should be further streamlined.** For instance, the number of steps the employer must take to close work-authorized cases should be reduced. If an employee is work-authorized at the initial query the employer must click on the Resolve Case button on the verification result screen. The case resolution is entered on a separate screen, and the Resolve Case button must be clicked again. It should be feasible to offer the employer a choice on the verification result screen to “resolve case as work-authorized” or “institute additional checking procedures” and to automatically enter the closure code, if the first alternative is selected.
- **Employers should be able to print employee-specific tentative nonconfirmation notices in a variety of languages directly from the referral screen, rather than printing generic letters from the resource section.** Some employers were unaware that Spanish letters were available in the resource section.
- **The system should be subjected to additional formal usability testing¹⁶ with employers to identify other aspects of the system that employers might find cumbersome or confusing** and to verify that changes implemented are, in fact, understandable and efficient from the user’s perspective. Furthermore, usability testing should be conducted whenever employer and employee materials are developed, to ensure that changes are clear to the target audience.
- **To minimize duplicate data entry by employers, efforts should be continued to integrate employers’ human resources systems and the Web Basic Pilot**

¹⁶ Formal usability testing includes procedures for observing and interviewing users to examine issues such as whether they are having difficulty understanding instructions or finding needed information. It goes beyond simple testing of the software to ensure that it does what it is designed to do.

system.¹⁷ Greater integration of the Web Basic Pilot with human resources systems would enable employers to “personalize” the system so that returns directly match their records and so they can produce customized system reports. Such integration would allow users to enter data once to meet the needs of both the employer and the Web Basic Pilot. For instance, the Web Basic Pilot could be modified so that the employer’s employee identification numbers are included and are returned with case findings. Employers would also like to be able to export reports from the Web Basic Pilot into Microsoft Excel, Microsoft Word, and Adobe Acrobat. Efforts to integrate the Web Basic Pilot system and human resources systems should take into account the option to use an electronic Form I-9, currently available to employers.

D. EVALUATION RESEARCH

Major procedural changes should be carefully reviewed and subjected to independent evaluation, based on existing data or a pilot program, prior to implementation. It is the understanding of the evaluation team that the October 21, 2005, change was based on anecdotal evidence from a small number of cases. This evaluation documented that the revised program did indeed detect some unauthorized workers, but that it also resulted in increased rates of erroneous tentative nonconfirmations for noncitizens and a significant increase in burden on ISVs at USCIS. An independent evaluation prior to the implementation of this change would have enabled policymakers to make a more informed decision.

Independent general Web Basic Pilot evaluation activities need to be continued. In addition to evaluating specific procedural changes, it is important to conduct more general independent evaluations to measure the progress of USCIS and SSA in implementing the Web Basic Pilot program and to determine the program’s effectiveness in meeting the goals set for it, given that the Web Basic Pilot is rapidly evolving and that not all consequences of modifying it can be anticipated.

¹⁷ USCIS is working not only to make more options available to employers but also to make users aware of what options are available. For example, USCIS has designed a “Wizard” to help users select the best verification option at the time they register to use the Basic Pilot.

LIST OF APPENDIXES

Appendix A: Form I-9 and List of Acceptable Documents

Appendix B: Steps for Cleaning the Transaction Database

Appendix C: Estimation of the Work-Authorization Status
of Unresolved Cases

Appendix D: Multivariate Analyses

Appendix E: Case Study Synopsis

Appendix A

Form I-9 and List of Acceptable Documents

INSTRUCTIONS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM.

Anti-Discrimination Notice. It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1- Employee. All employees, citizens and noncitizens, hired after November 6, 1986, must complete Section 1 of this form at the time of hire, which is the actual beginning of employment. **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

Preparer/Translator Certification. The Preparer/Translator Certification must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his/her own. However, the employee must still sign Section 1 personally.

Section 2 - Employer. For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors.

Employers must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, Section 2 must be completed at the time employment begins. **Employers must record: 1) document title; 2) issuing authority; 3) document number, 4) expiration date, if any; and 5) the date employment begins.** Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9. **However, employers are still responsible for completing the I-9.**

Section 3 - Updating and Reverification. Employers must complete Section 3 when updating and/or reverifying the I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in Section 1. Employers **CANNOT** specify which document(s) they will accept from an employee.

- If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired **or** if a current employee's work authorization is about to expire (reverification), complete Block B and:

- examine any document that reflects that the employee is authorized to work in the U.S. (see List A **or** C),
- record the document title, document number and expiration date (if any) in Block C, and
- complete the signature block.

Photocopying and Retaining Form I-9. A blank I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed I-9s for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

For more detailed information, you may refer to the Department of Homeland Security (DHS) Handbook for Employers, (Form M-274). You may obtain the handbook at your local U.S. Citizenship and Immigration Services (USCIS) office.

Privacy Act Notice. The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Customs Enforcement, Department of Labor and Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

Reporting Burden. We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: **1) learning about this form, 5 minutes; 2) completing the form, 5 minutes; and 3) assembling and filing (recordkeeping) the form, 5 minutes, for an average of 15 minutes per response.** If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., Washington, DC 20529. OMB No. 1615-0047

NOTE: This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.

**EMPLOYERS MUST RETAIN COMPLETED FORM I-9
PLEASE DO NOT MAIL COMPLETED FORM I-9 TO ICE OR USCIS**

Form I-9 (Rev. 05/31/05)Y

Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen or national of the United States
- A Lawful Permanent Resident (Alien #) A _____
- An alien authorized to work until _____
(Alien # or Admission #)

Employee's Signature	Date (month/day/year)
----------------------	-----------------------

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name	Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility. Document Title: _____ Document #: _____ Expiration Date (if any): _____	

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
--	-----------------------

LISTS OF ACCEPTABLE DOCUMENTS

LIST A	LIST B	LIST C
Documents that Establish Both Identity and Employment Eligibility	Documents that Establish Identity	Documents that Establish Employment Eligibility
<ol style="list-style-type: none"> 1. U.S. Passport (unexpired or expired) 2. Certificate of U.S. Citizenship (<i>Form N-560 or N-561</i>) 3. Certificate of Naturalization (<i>Form N-550 or N-570</i>) 4. Unexpired foreign passport, with <i>I-551 stamp</i> or attached <i>Form I-94</i> indicating unexpired employment authorization 5. Permanent Resident Card or Alien Registration Receipt Card with photograph (<i>Form I-151 or I-551</i>) 6. Unexpired Temporary Resident Card (<i>Form I-688</i>) 7. Unexpired Employment Authorization Card (<i>Form I-688A</i>) 8. Unexpired Reentry Permit (<i>Form I-327</i>) 9. Unexpired Refugee Travel Document (<i>Form I-571</i>) 10. Unexpired Employment Authorization Document issued by DHS that contains a photograph (<i>Form I-688B</i>) 	OR	<ol style="list-style-type: none"> 1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address 3. School ID card with a photograph 4. Voter's registration card 5. U.S. Military card or draft record 6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority <p style="text-align: center; margin: 10px 0;">For persons under age 18 who are unable to present a document listed above:</p> <ol style="list-style-type: none"> 10. School record or report card 11. Clinic, doctor or hospital record 12. Day-care or nursery school record
	AND	<ol style="list-style-type: none"> 1. U.S. social security card issued by the Social Security Administration (<i>other than a card stating it is not valid for employment</i>) 2. Certification of Birth Abroad issued by the Department of State (<i>Form FS-545 or Form DS-1350</i>) 3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal 4. Native American tribal document 5. U.S. Citizen ID Card (<i>Form I-197</i>) 6. ID Card for use of Resident Citizen in the United States (<i>Form I-179</i>) 7. Unexpired employment authorization document issued by DHS (<i>other than those listed under List A</i>)

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

Appendix B
Steps for Cleaning the Transaction Database

STEPS FOR CLEANING THE TRANSACTION DATABASE

This appendix describes the approach used to clean the Web Basic Pilot transaction database. This process is divided into four sets of steps: (1) preliminary steps, (2) Social Security number (SSN) check, (3) Alien number (A-number) check, and (4) date of birth and name checks. Each of these sets of steps is examined in turn.

A. PRELIMINARY STEPS

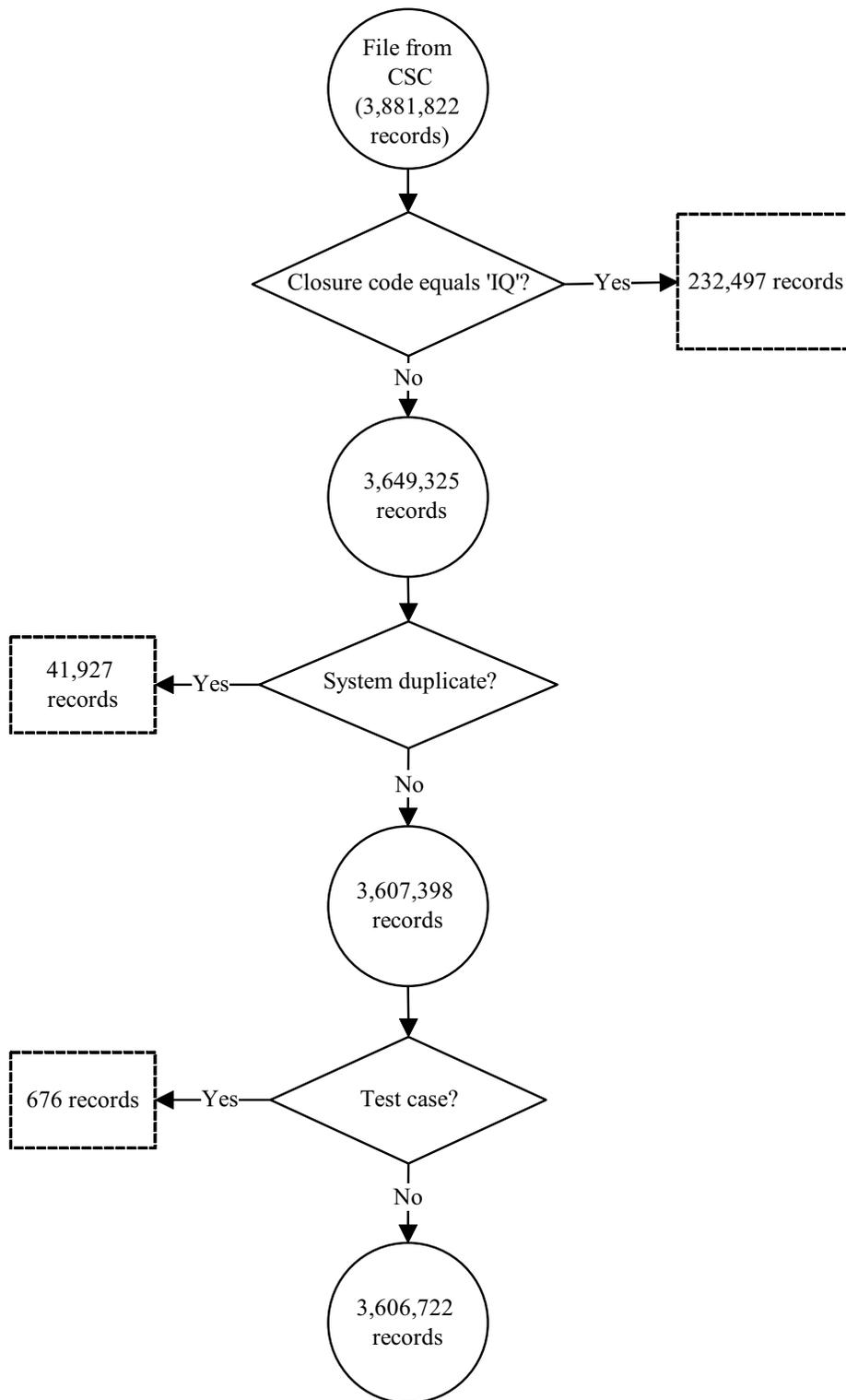
Exhibit B-1 depicts the preliminary steps in which cases that are clearly invalid are deleted from the original file. These include cases that the employer indicated were “Invalid Queries” by closing the case with a closure code of “IQ.” Of the almost 3.9 million cases on the initial transaction database, approximately 233,000 cases (6 percent) were deleted for this reason. Another 42,000 cases were deleted because they were clearly a system duplicate; that is, all of the case information (employer number, SSN, case outcome, etc.) and the initiated date were the same. Finally, 700 cases were deleted because they were test cases (based on the employer name).

B. SOCIAL SECURITY NUMBER CHECKS

Since the definition of a case is a single hiring of an employee by an employer, the cleaning routines do not delete duplicate SSNs involving different employers. It is, however, not always easy to distinguish between duplicate SSN cases for unique cases (e.g., those involving a single employer that are rehires or the hiring of more than one person using a specific fraudulent SSN) and for multiple transmissions for a single case (e.g., cases in which the employer incorrectly submits a tentative nonconfirmation case as a new case rather than as a resubmittal after the employee has visited the Social Security Administration (SSA) or mistakenly submits a given case more than once). The evaluation team, therefore, developed and applied a set of rules to use in making these distinctions.

In developing the rules to use in cleaning the transaction database, the evaluation team examined records on the initial file to determine whether the rules make sense in terms of what is on the database. For example, the duplicate SSNs for several employers were examined to see if it was reasonable to assume that when two SSNs were transmitted close together in time that they related to a single case rather than multiple hirings of the same person or of different persons having the same fraudulent SSNs. Although it is not possible to develop rules that will be correct for all cases, the evaluation team believes that applying the rules results in a database that more accurately reflects what is happening to individuals being screened by the Web Basic Pilot program than does the original data file.

Exhibit B-1: Preliminary Steps in Cleaning the Web Basic Pilot Transaction Database



NOTE: IQ = Invalid Query.

Exhibit B-2 shows the sequence of checks run on duplicate SSNs. The first check was to identify whether it seems likely that the case is one that the employer should have closed as an Invalid Query, but failed to do so. This step led to the deletion of 24,100 cases. For example, when an employer submits two non-identical records on the same day for the same SSN that differ from one another on basic identifying information such as last name, the evaluation team assumes that the first case was a case that should have been closed in error.

Cases were assumed to be resubmittals of cases that had been referred to SSA when two records for an employer had the same SSN and the same hire date, the first case outcome was an SSA tentative nonconfirmation, the second case was submitted between 1 and 30 days after the first, and neither submission was a case resubmittal. This rule led to deletion of 26,700 cases; prior to deletion of the earlier of the two cases submitted, the latter record was recoded as a resubmittal and information from the earlier record was used to complete the fields describing the initial disposition of the case.

Cases were assumed to be mistaken resubmittals of authorized cases when both duplicate SSN cases from the employer received a system response of authorized, there were fewer than 30 days between their hire dates, and there were fewer than 8 days between case submissions. Approximately 55,800 cases were deleted based on this rule.

C. ALIEN NUMBERS

Of the 602,560 cases with A-numbers, 860 were cases in which A-numbers were clearly “made up” (e.g., a number consisting only of 9s). Cases with A-numbers other than the made-up number cases were examined during a process that was similar to that used for duplicate SSNs. Since the SSN checks preceded the A-number checks and since all cases have SSNs and only noncitizen cases have A-numbers, it is not surprising that the duplicate A-number checks resulted in the deletion of fewer cases than the duplicate SSN number checks. As a result of the A-number checks, 2,300 cases were deleted because it appeared that they should have been closed in error. Another 1,100 cases were deleted as probable resubmissions, and approximately 300 cases appeared to be attributable to mistaken resubmittal of a work-authorized case.

Exhibit B-2: Check for Duplicates Defined by Social Security Number

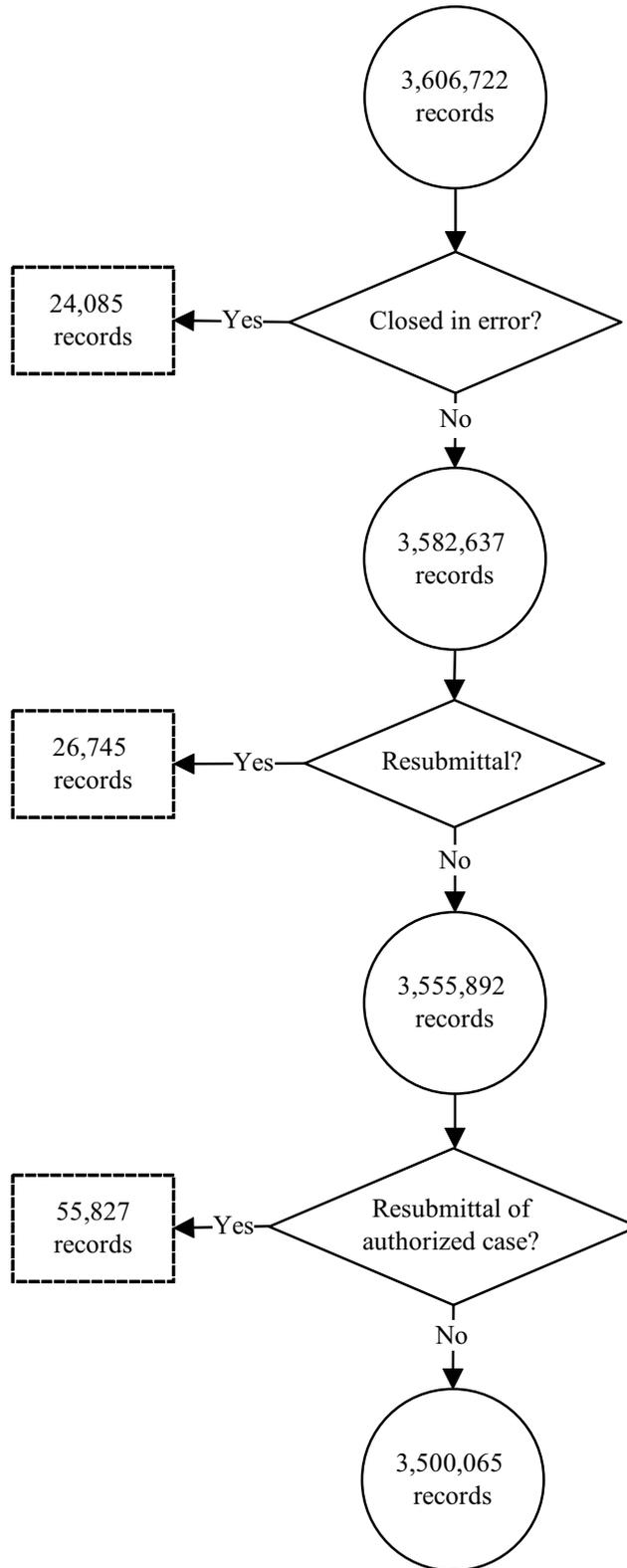
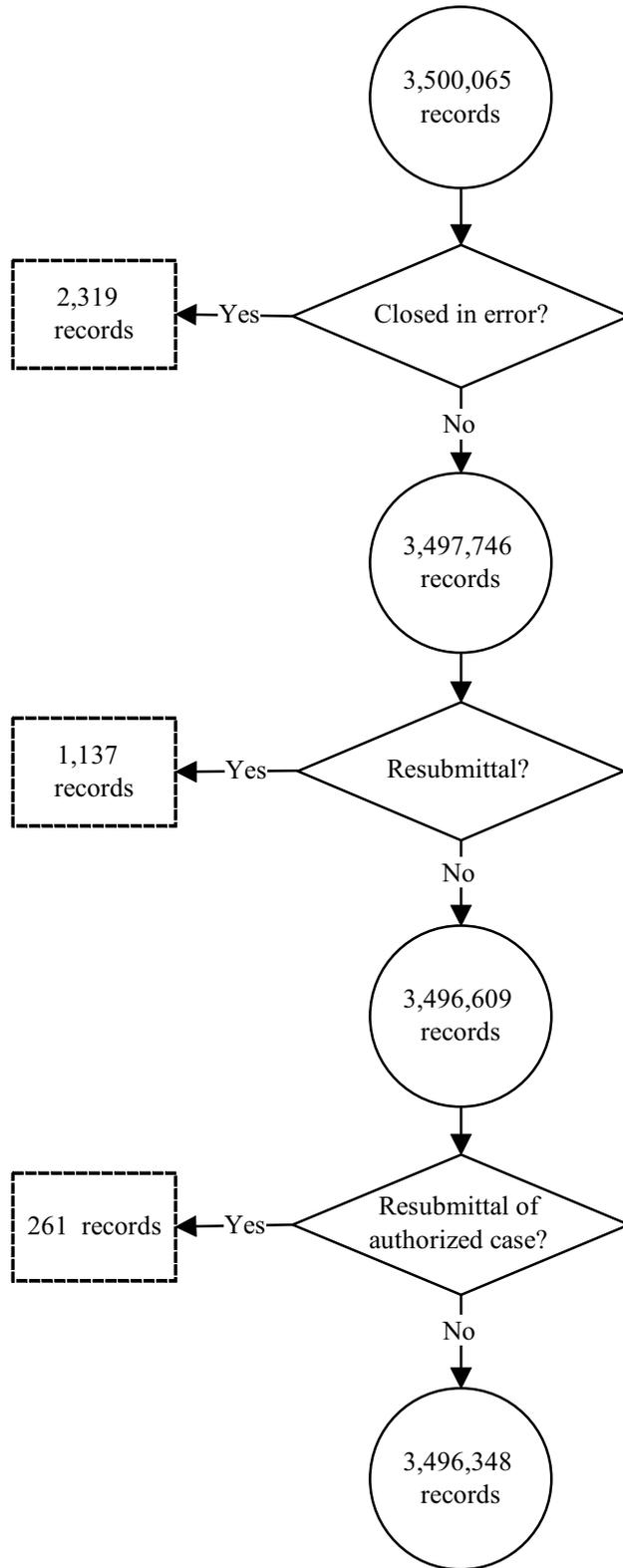


Exhibit B-3: Check for Duplicates Defined by Alien Number



D. DATE OF BIRTH AND NAME CHECKS

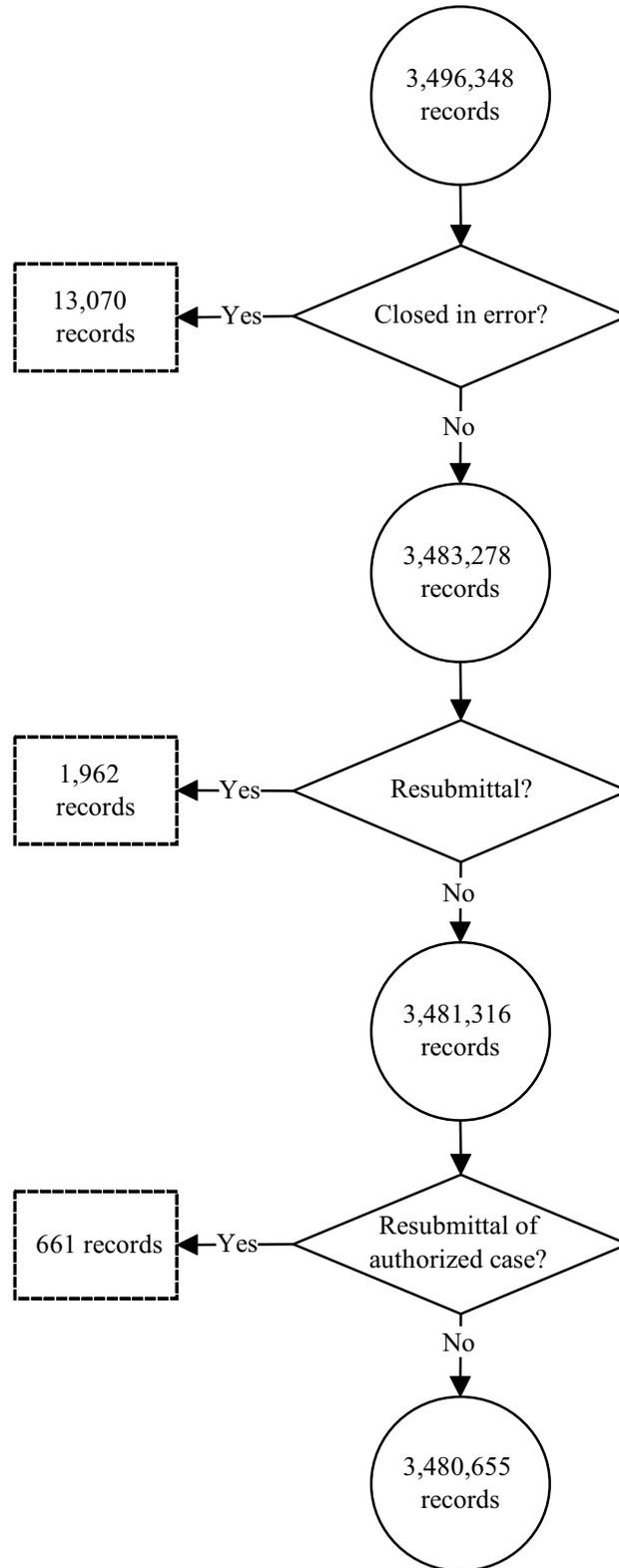
A variable was created by combining the employee's date of birth, the first four letters of his or her last name, and the first initial of his or her first name, according to Form I-9 information submitted by the employer.¹ This set of steps was primarily designed to identify duplicate cases that would not have been identified in the SSN and A-number checks because the two "duplicate" cases had different SSNs or A-numbers (Exhibit B-4); this situation would occur if the employer realized that an incorrect SSN or A-number had been transmitted and resubmitted the corrected information without closing the original case as an Invalid Query. Once the name variable was constructed, duplicate names were put through the same types of checks as those run for duplicate A-numbers. Based on these checks, 13,100 cases were deleted as coded in error cases. Almost 2,000 cases were cases in which it appeared that the employer had incorrectly submitted resubmittals as new cases, and in another 700 cases the employer appeared to have resubmitted a case that had already been found to be work-authorized.

E. TOTAL CASES CLEANED

A total of 401,167 records were removed during the cleaning process. These records constituted a little more than 10 percent of the 3,881,822 records contained in the uncleaned data file received.

¹ These checks are not the same as those used in the verification process.

Exhibit B-4: Check for Duplicates Defined by Date of Birth and Name



Appendix C

Estimation of the Work-Authorization Status of Unresolved Cases

ESTIMATION OF THE WORK-AUTHORIZATION STATUS OF UNRESOLVED CASES

A. BACKGROUND

Evaluation of several of the pilots' key goals, as articulated in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and by stakeholders, required the evaluation team to estimate work-authorization rates for various groups of newly hired employees in establishments participating in the Web Basic Pilot. Examination of the transaction database provided only limited information of use in evaluating the progress toward these goals. Using the October 2006 through March 2007 transaction database for illustration, the work-authorization rate cannot be accurately estimated using only normal statistical procedures, since only 0.01 percent of all cases were determined by the Web Basic Pilot system to be unauthorized, while 5.3 percent of the cases were final nonconfirmation cases. Therefore, the estimated percentage of screened employees with either unauthorized or final nonconfirmation findings who were not work-authorized was between 0.01 percent and 5.3 percent using only these data. This range is too broad to provide a meaningful estimate.¹

Information from employer and Federal interviews indicated that the final nonconfirmation cases included a mix of work-authorized and non-work-authorized employees. However, this information was not specific enough to provide precise estimates of the percentage of the cases in each category. The evaluation team therefore developed a model to estimate the work-authorization status of employees in the Web Basic Pilot transaction database. Information about the model is provided in this appendix.

B. MODEL-BASED ESTIMATION FOR SSA CASES

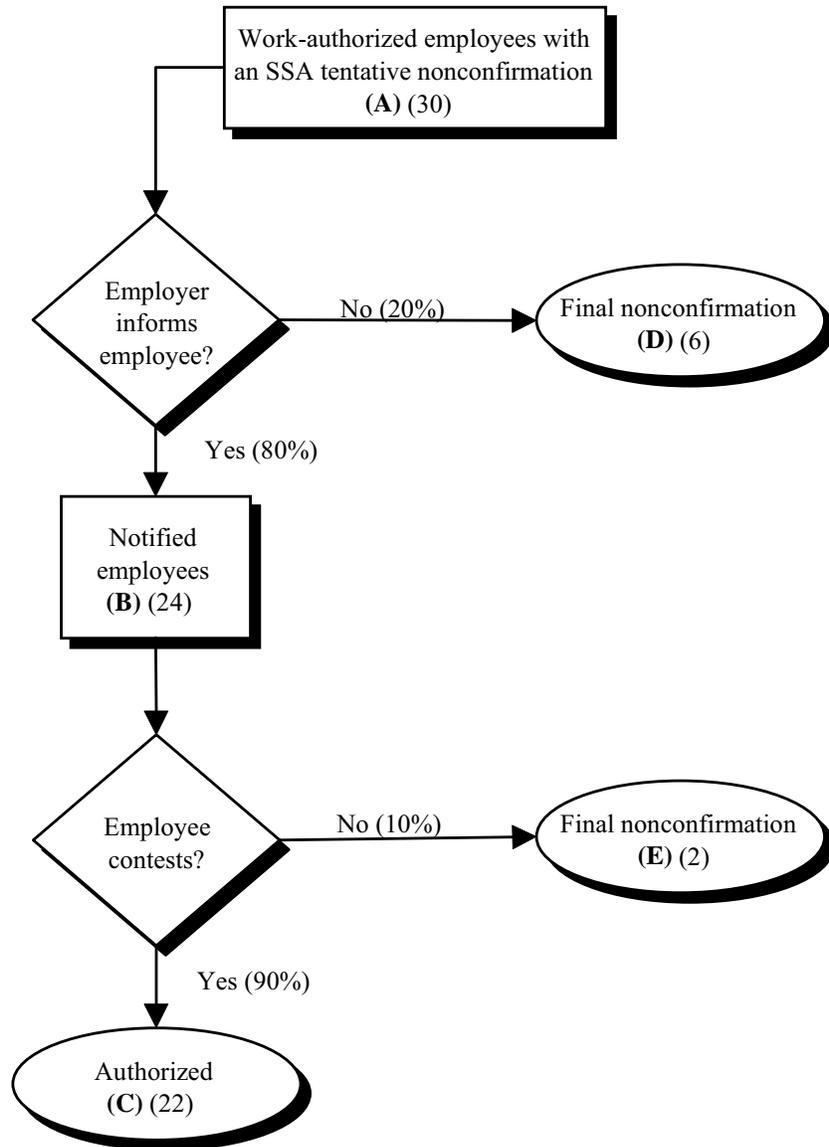
For employees whose records were never sent to the U.S. Citizenship and Immigration Services (USCIS), the model used information on the observed relationship between the initial findings of the Social Security Administration (SSA) database match and final case resolution (i.e., authorized, not authorized, or final nonconfirmation) to estimate the percentage of unauthorized employees. The model also included assumptions that have not been empirically tested.

Exhibit C-1 provides the basic model for cases in which SSA issues a tentative nonconfirmation. The bold letters in parentheses on the exhibit are for reference purposes. The numbers are for illustrative purposes only.

The purpose of this part of the model is to estimate how many employees who received final nonconfirmation outcomes from SSA would have been found to be work-authorized, given what is known about the cases and a set of "reasonable assumptions."

¹ No attempt was made to estimate the number of persons without work authorization among verified employees found to be work-authorized.

Exhibit C-1: Illustration of Web Basic Pilot Process Between SSA Tentative Nonconfirmation and Final Determination for Work-Authorized Employees*



*The numbers refer to employees with an initial SSA determination of “name disagrees with SSA” and assume that 80 percent of employees are informed of the tentative nonconfirmation and that 90 percent of work-authorized employees contest the tentative nonconfirmation.

NOTE: In using the model for estimating, the number authorized (C) is taken from the transaction database. The remaining numbers are estimated.

The evaluation team used the following assumptions to estimate the number of employees with final nonconfirmations who would have been determined to be work-authorized by the Web Basic Pilot system if all cases had been resolved.

1. The probability that an employee receiving a final nonconfirmation from SSA is actually work-authorized² depends on the initial reason for the case not being matched on the SSA database. For example, it is reasonable to believe that there are more work-authorized individuals among those non-matched cases for which the employee's name did not match the SSA database than among those for whom both the name and date of birth disagreed. This assumption is consistent with data on the percentage of employees in each category who contested tentative nonconfirmations, assuming that employees in categories with high concentrations of authorized employees are more likely to contest than those in categories with few authorized employees. Employees with employer-input names that disagreed with SSA names were more likely to contest than were employees with a date of birth that did not match the SSA database (8.4 percent compared to 2.2 percent) (Exhibit C-2).
2. The percentage of employees informed by their employers of tentative nonconfirmations from SSA does not depend on the reason for issuing the tentative nonconfirmation. For example, employees not matched because of an invalid Social Security number were no more or less likely to have been informed of a tentative nonconfirmation than were employees whose names did not match the SSA database. In the model, the user estimates this percentage, so alternative scenarios can be tested. Exhibit C-1 models the probability that the employee will move from **(A)** to **(B)** (from tentative nonconfirmation to notification). The illustration assumes that the user has set the percentage of notified employees equal to 80 percent.
3. The percentage of *work-authorized* employees contesting SSA tentative nonconfirmations does not depend on the reason for issuing the tentative nonconfirmation. For example, work-authorized employees not matched because of an invalid Social Security number are no more or less likely to contest than are employees who did not match on date of birth. In the model, the user estimates this percentage, so alternative scenarios can be tested. Exhibit C-1 models the probability that the employee will move from **(B)** to **(C)** (from notification to authorization). The illustration assumes that the user has set the percentage of employees who contest tentative nonconfirmations equal to 90 percent.

² To simplify the explanation of the model, employees who were or would have been authorized by the system are referred to as work-authorized. In reality, as discussed in the report, some employees determined to be work-authorized were not actually work-authorized.

Exhibit C-2: Percentage of Employees Receiving Tentative Nonconfirmations from SSA with a Final Finding of Work-Authorized by SSA, by Initial SSA Finding

Initial SSA Finding	Number of SSA	
	Tentative Nonconfirmation Cases	Percent of SSA Cases Found to Be Work-Authorized
Invalid Social Security number	5,566	0.5
Date of birth disagrees with SSA database	8,213	2.2
Name disagrees with SSA database	6,379	8.4
Name and date of birth disagree with SSA database	22,506	0.7
Social Security number belongs to dead person	484	0.2
Unlawful permanent resident	11,336	22.3
Total	54,484	7.2

SOURCE: Web Basic Pilot Transaction Database: October 2006-March 2007

C. MODEL-BASED ESTIMATES FOR USCIS

The basic model for cases in which USCIS issues a tentative nonconfirmation is the same as the model for the SSA cases except that the estimates of final case outcomes are based on the relationship between a combination of the initial SSA finding and the initial USCIS automated match finding and the final case finding.

D. RANGE ESTIMATION

To obtain a preliminary estimate of the range of possible values for the percentage of unauthorized employees, two scenarios were tested. In the first, all of the user-input parameters were set to 100 percent. This scenario assumes that all work-authorized individuals have been notified of their tentative nonconfirmations and that all notified employees have contested their cases. As expected, this calculation results in an estimate of the percentage unauthorized of 5.3 percent; that is, it is equal to the percentage of all tentative nonconfirmation cases. This is the maximum value.

To obtain a reasonable minimum value, the evaluation team assumed that the product of the percentage of tentative nonconfirmation cases who are informed and the percentage of informed tentative nonconfirmation cases who contest is set equal to the minimum value consistent with the observed rate of employees who actually contested within the SSA and USCIS categories examined. This resulted in an estimate of 4.0 percent. Thus, the range of estimated values is 4.0 percent to 5.3 percent. To obtain a point estimate, the evaluation team set the percentage of SSA work-authorized tentative nonconfirmation cases who contest at the midpoint between the minimum (22 percent) and maximum (100 percent) values [i.e., $22 + 0.5 * (100 - 22) = 61$ percent]. Similarly, the percentage of USCIS work-authorized tentative nonconfirmation cases who contest was set at the midpoint between the minimum (69 percent) and maximum (100 percent) values. Similarly, the percentage of USCIS work-authorized tentative nonconfirmation cases who contest was set at the midpoint between the minimum (69 percent) and maximum (100

percent) values [i.e., $69 + 0.5 * (100 - 22) = 85$ percent]. The resulting model estimate was 5.0 percent.

Appendix D

Multivariate Analyses

MULTIVARIATE ANALYSES

This appendix provides supplemental information about the multivariate analyses presented in this report. The evaluation team used the following statistical techniques in its multivariate analyses: linear regression, logistic regression, and hierarchical linear modeling. This appendix explains the procedures used and provides details about the results.

A. MULTIPLE REGRESSION

All of the regression analyses followed the same basic set of procedures. First, the evaluation team performed a series of bivariate analyses between the dependent variable and the independent variables expected to be associated with it. The purpose of these analyses was to reduce the number of variables included in the multivariate analysis to a reasonable number (i.e., to simplify the model) and to identify whether any of the independent variables should be transformed by logarithmic or other mathematical functions. Second, variables that were highly correlated with each other were identified to avoid multicollinearity problems. Although the stepwise multiple regression method was used to help identify the combination of variables that best predict the dependent variable, alternative models were also tested. An alternative model was selected if it was easier to interpret in light of the bivariate results and if the theoretical expectations fit almost as well as the model selected by stepwise regression.

Analyses of continuous dependent variables were done using the linear regression routine in SPSS version 13. Analyses of dichotomous dependent variables were done using the logistic regression routine in SPSS version 13. This section presents parameter estimates for the final regression models (see Exhibits D-1 through D-4).

Exhibit D-1: Regression Analysis Predicting Overall Employer Satisfaction Score*

	Unstandardized Coefficients		Standardized Coefficients	T-Ratio	P-Value
	B	SE	Beta		
(Constant)	490.99	4.10		119.74	0.00
Industry: Agriculture, forestry, fishing, hunting	-25.34	18.83	-0.05	-1.35	0.18
Industry: Mining, utilities, construction	41.29	16.93	0.09	2.44	0.01
Industry: Employment services	17.32	11.89	0.05	1.46	0.15
Average set-up cost	0.01	0.01	0.06	1.61	0.11
Employer size	0.00	0.00	0.08	2.20	0.03

* Satisfaction is measured using an item response theory scale score standardized to a mean of 500 and a standard deviation of 100.

SOURCE: Web Basic Pilot Employer Survey of Long-Term Users

Exhibit D-2: Regression Analysis Predicting Employers' Satisfaction Level Between Long-Term and Recently Enrolled Users*

	Unstandardized Coefficients	Standard Error	Standardized Coefficients	T-Value	P-Value
(Constant)	491.15	4.08		120.36	0.00
Group: Recently enrolled users	-11.23	6.31	-0.05	-1.78	0.08
Less than 5% of immigrant employees	-10.59	6.14	-0.05	-1.72	0.09
More than 500 employees	17.81	5.41	0.09	3.29	0.00
Industry: Agriculture, forestry, fishing, hunting	-28.18	14.23	-0.05	-1.98	0.05
Industry: Mining, utilities, construction	29.18	10.40	0.08	2.80	0.01
Industry: Professional/scientific/education/arts	36.67	9.13	0.12	4.02	0.00
Industry: Employment services	20.10	8.94	0.06	2.25	0.02

* Satisfaction is measured using an item response theory scale score standardized to a mean of 500 and a standard deviation of 100.

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

Exhibit D-3: Regression Analysis Predicting Overall Employer Compliance Score

	Unstandardized Coefficients		Standardized Coefficients	T-Ratio	P-Value
	B	SE	Beta		
(Constant)	19.26	0.13		145.17	0.00
Industry: Mining, utilities, construction	-0.99	0.47	-0.08	-2.12	0.03
Industry: Animal food manufacturing	0.72	0.27	0.10	2.61	0.01
Industry: Wholesale/retail trade	-1.39	0.54	-0.09	-2.58	0.01
Industry: Employment services	-0.91	0.35	-0.10	-2.60	0.01

SOURCE: Web Basic Pilot Employer Survey of Long-Term Users

Exhibit D-4: Regression Analysis Predicting Employer Compliance Level Between Long-Term and Recently Enrolled Users

	Unstandardized Coefficients		Standardized Coefficients	T-Value	P-Value
	B	SE	Beta		
(Constant)	18.40	0.31		58.43	0.00
Group: Recently enrolled users	-0.78	0.24	-0.12	-3.22	0.00
Percent of employees who are immigrants	-0.02	0.07	-0.01	-0.27	0.78
Industry: Agriculture, forestry, fishing, hunting	1.35	0.53	0.08	2.56	0.01
Industry: Animal food manufacturing	1.68	0.30	0.21	5.57	0.00
Industry: Other food/beverage/tobacco manufacturing	1.20	0.43	0.10	2.80	0.01
Industry: Other manufacturing	0.85	0.32	0.10	2.67	0.01
Industry: Professional/scientific/education/arts/entertainment	1.07	0.36	0.10	2.94	0.00
Industry: Public administration/social services	0.79	0.29	0.10	2.71	0.01
Industry: Accommodation/food services	0.98	0.29	0.13	3.34	0.00

SOURCE: Web Basic Pilot Employer Surveys of Long-Term and Recently Enrolled Users

B. HIERARCHICAL LINEAR MODELING

Hierarchical linear modeling (HLM), like the more commonly used multiple regression, is a multivariate analysis technique to examine the linear relationship between a set of independent variables and a dependent variable. In both models, a set of independent variables explains a proportion of the variance in a dependent variable and can explain the relative importance of the independent variables. HLM is an analysis tool that provides estimates of the relationships between both individual-level (in this context, employee) and organizational-level (in this context, employer) variables, by correcting for aggregating bias and unit of analysis problems that are commonly found in multiple regression. However, HLM analyses are much more difficult to run and, therefore, more expensive than the more commonly used techniques such as multiple regression. The evaluation team, therefore, decided to use the HLM approach for only two of the most important analyses in this report.

The first analysis selected for HLM examined factors affecting the probability that an employee would be found to be work-authorized based solely on the automated match. The second analysis looked at the probability of an employee receiving a tentative

nonconfirmation. Both analyses were restricted to cases that were authorized at some point during the Web Basic Pilot process.

The Bernoulli model was used to investigate the effect of selected independent variables on these two outcomes across time. The estimating model is a nonlinear three-level generalized HLM, nesting transaction database records within time within employers. The model could be described as follows:

Level-1 Model: Transaction

$$\text{Prob}(Y=1|B) = P$$

$$\log[P/(1-P)] = P_0 + P_1*(\text{NONCITIZEN}) + P_2*(\text{PREPOST})$$

Level-2 Model: Time

$$P_0 = B_{00} + B_{01}*(\text{SIXMONTH}) + B_{02}*(\text{COUNT_A}) + R_0$$

$$P_1 = B_{10}$$

$$P_2 = B_{20}$$

Level-3 Model: Employers

$$B_{00} = G_{000} + G_{001}(\text{EMPLOY_A}) + G_{002}(\text{AZTX}) + G_{003}(\text{NORTHEAS}) + G_{004}(\text{NORTHERN}) + G_{005}(\text{MIDWEST}) + G_{006}(\text{SOUTHERN}) + G_{007}(\text{FL}) + G_{008}(\text{AFFH}) + G_{009}(\text{MUC}) + G_{0010}(\text{AFM}) + G_{0011}(\text{OFBTM}) + G_{0012}(\text{OM}) + G_{0013}(\text{WRT}) + G_{0014}(\text{PSTEAE}) + G_{0015}(\text{ES}) + G_{0016}(\text{PASS}) + G_{0017}(\text{AFS}) + U_{00}$$

$$B_{01} = G_{010}$$

$$B_{02} = G_{020}$$

$$B_{10} = G_{100}$$

$$B_{20} = G_{200}$$

At level 1, the confirmation status of a transaction database record is modeled by average rate within employer in that time (P_0), Form I-9 citizenship status (NONCITIZEN), and verification process change (PREPOST). Predictors NONCITIZEN and PREPOST are two dummy variables to flag employees who are noncitizens and who were processed after the system change, respectively. A significant P coefficient would suggest that the characteristic is an important predictor, and the odds ratio indicates the magnitude of significance.

At level 2, the model predicted the average rate (P_0) within a time from the average confirmation rate of an employer across time (B_{00}), the trend across time (B_{01}), and the frequency of using the system (B_{02}).

Finally, at level 3, the variation of the average confirmation rate of an employer across time was examined to ascertain whether it was affected by employer characteristics, including employer size (G001), State grouping (G002-G007), industrial grouping (G008-G0017), and a residual (U00).

Exhibit D-5 presents the results of the HLM for whether the case was authorized automatically, and Exhibit D-6 presents the results for the HLM for whether the case was authorized without a tentative nonconfirmation.

Exhibit D-5: Estimation of Nonlinear Hierarchical Model for Whether a Case Was Authorized Automatically

Predictor	Coefficient	Standard Error	T-Ratio	Degrees of Freedom	P-Value	Odds Ratio
Employer-level predictors						
Intercept	4.59	0.33	13.85	526	0.00	
Geographic location (compared to California)						
Arizona/Texas	0.15	0.11	1.33	526	0.18	1.16
Northeast	-0.06	0.15	-0.41	526	0.68	0.94
Northern/Western	0.20	0.11	1.83	526	0.07	1.22
Midwest	0.27	0.11	2.44	526	0.02	1.30
Southern	0.27	0.14	2.01	526	0.05	1.31
Florida	-0.08	0.14	-0.60	526	0.55	0.92
Industry (compared to other industries)						
Agriculture, forestry, fishing, hunting	0.67	0.35	1.90	526	0.06	1.95
Mining, utilities, construction	0.24	0.37	0.66	526	0.51	1.27
Animal food manufacturing	0.53	0.24	2.16	526	0.03	1.70
Other food/beverage/tobacco manufacturing	0.44	0.25	1.76	526	0.08	1.55
Other manufacturing	0.35	0.25	1.41	526	0.16	1.42
Wholesale/retail trade	0.69	0.29	2.38	526	0.02	1.99
Professional/scientific/technical/education/arts	0.23	0.25	0.92	526	0.36	1.26
Employment services	0.92	0.24	3.84	526	0.00	2.51
Public administration/social services	0.28	0.24	1.17	526	0.24	1.33
Accommodation/food services	0.04	0.24	0.19	526	0.85	1.05
Employer size	0.01	0.03	0.42	526	0.68	1.01
Trend-level predictors						
Time	-0.06	0.02	-2.33	2,715	0.02	0.95
Number of transactions (hundreds)	0.00	0.00	0.29	2,715	0.77	1.00
Case-level predictors						
Form I-9 citizenship status	-2.73	0.22	-12.32	861,038	0.00	0.07
Verification process change	-0.16	0.07	-2.20	861,038	0.03	0.85

SOURCE: Web Basic Pilot Longitudinal Transaction Database: October 2004-March 2007

Exhibit D-6: Estimation of Nonlinear Hierarchical Model for Whether an Ever-Authorized Case Was Authorized Without a Tentative Nonconfirmation

Predictor	Coefficient	Standard Error	T-Ratio	Degrees of Freedom	P-Value	Odds Ratio
Employer-level predictors						
Intercept	3.74	0.34	11.16	526	0.00	
Geographic location (compared to California)						
Arizona/Texas	0.58	0.13	4.37	526	0.00	1.79
Northeast	0.09	0.16	0.56	526	0.58	1.09
Northern/Western	0.51	0.10	5.18	526	0.00	1.66
Midwest	0.75	0.10	7.34	526	0.00	2.12
Southern	1.02	0.15	6.97	526	0.00	2.78
Florida	0.00	0.13	0.03	526	0.98	1.00
Industry (compared to other industries)						
Agriculture, forestry, fishing, hunting	1.05	0.36	2.93	526	0.00	2.87
Mining, utilities, construction	0.03	0.43	0.07	526	0.94	1.03
Animal food manufacturing	0.41	0.34	1.23	526	0.22	1.51
Other food/beverage/tobacco manufacturing	0.12	0.33	0.35	526	0.73	1.12
Other manufacturing	0.16	0.33	0.47	526	0.64	1.17
Wholesale/retail trade	0.40	0.38	1.05	526	0.30	1.50
Professional/scientific/technical/education/arts	0.18	0.35	0.51	526	0.61	1.20
Employment services	1.49	0.34	4.38	526	0.00	4.42
Public administration/social services	0.01	0.34	0.04	526	0.97	1.01
Accommodation/food services	-0.34	0.33	-1.05	526	0.29	0.71
Employer size	0.02	0.03	0.64	526	0.52	1.02
Trend-level predictors						
Time	0.13	0.03	3.91	2,715	0.00	1.14
Number of transactions (hundreds)	0.00	0.01	-0.49	2,715	0.63	1.00
Case-level predictors						
Form I-9 citizenship status	-0.40	0.12	-3.40	861,038	0.00	0.67
Verification process change	-0.17	0.11	-1.64	861,038	0.10	0.84

NOTE: The erroneous tentative nonconfirmation rate is equal to 1.00 – the rate for cases being authorized without a tentative nonconfirmation.

SOURCE: Web Basic Pilot Longitudinal Transaction Database: October 2004–March 2007

C. ESTIMATING IMMEDIATELY AUTHORIZED AND ERRONEOUS TENTATIVE NONCONFIRMATION RATES, ASSUMING THAT WEB BASIC PILOT EMPLOYERS RESEMBLED NATIONAL EMPLOYERS

Logistic regression models were developed for use in estimating what the immediately authorized and erroneous tentative nonconfirmation rates would have been in the first half of fiscal year (FY) 2007, if the workers verified by the Web Basic Pilot had had characteristics similar to those of all newly hired workers in the nation. The variables that were controlled for were the same variables used in the hierarchical linear models discussed in Section B of this appendix, except that (1) the time period and verification process change were excluded as not being relevant for the restricted population of the first half on FY2007 and (2) the number of transactions and the industry variable for agriculture, forestry, fishing, and hunting were excluded because information was not available for the national population and so cannot be used in standardization. The population used in developing the model was all cases verified in the first half of FY2007. Logistic regression models were used for this purpose, because they are easier to use in developing estimates under standardized conditions than is the case for hierarchical linear models.¹

The logistic regression equations used for estimating the combined impact of geographic location, industry, employer size, and Form I-9 citizenship status are shown in Exhibits D-7 and D-8. Standardized values were obtained using means for the national population on the independent variables and then evaluating the equation:

Estimated standardized rate = $1/(1+\exp(-\text{total of the products of the mean national values and the model coefficients}))$.

¹ Tests of significance in the hierarchical linear model are more accurate than in the logistic regression model and conclusions about statistical significance are, therefore, based on the hierarchical linear model.

Exhibit D-7: Estimation of Logistic Regression Model for Whether a Case Was Authorized Automatically

Predictor	Coefficient
Employer-level predictors	
Intercept	3.050
Geographic location (compared to California)	
Arizona/Texas	0.128
Northeast	0.278
Northern/Western	0.180
Midwest	0.278
Southern	0.253
Florida	0.247
Industry (compared to other industries)	
Mining, utilities, construction	-0.295
Animal food manufacturing	0.141
Other food/beverage/tobacco manufacturing	0.062
Other manufacturing	-0.071
Wholesale/retail trade	-0.111
Professional/scientific/technical/education/arts	-0.090
Employment services	-0.079
Public administration/social services	-0.344
Accommodation/food services	-0.273
Employer size	0.042
Form I-9 citizenship status	-2.309

NOTE: Agricultural industries are not included because national data were not available for standardization.

SOURCE: Web Basic Pilot Transaction Database: October 2006-March 2007

Exhibit D-8: Estimation of Logistic Regression Model for Whether an Ever-Authorized Case Was Authorized Without a Tentative Nonconfirmation

Predictor	Coefficient
Employer-level predictors	
Intercept	4.535
Geographic location (compared to California)	
Arizona/Texas	0.608
Northeast	0.417
Northern/Western	0.822
Midwest	0.850
Southern	0.772
Florida	0.338
Industry (compared to other industries)	
Mining, utilities, construction	0.442
Animal food manufacturing	0.849
Other food/beverage/tobacco manufacturing	0.474
Other manufacturing	0.302
Wholesale/retail trade	0.235
Professional/scientific/technical/education/arts	0.643
Employment services	0.969
Public administration/social services	0.321
Accommodation/food services	0.465
Employer size	-0.115
Form I-9 citizenship status (noncitizen=1)	-0.748

NOTE: Agricultural industries are not included because national data were not available for standardization; the erroneous tentative nonconfirmation rate is equal to 1.00 – the rate for cases being authorized without a tentative nonconfirmation (the erroneous tentative nonconfirmation rate for ever-authorized workers).

SOURCE: Web Basic Pilot Transaction Database: October 2006-March 2007

Appendix E

Case Study Synopsis

CASE STUDY SYNOPSIS

A. INTRODUCTION

The five employers selected for the case study portion of the Web Basic Pilot evaluation had varying levels of experience with the Web Basic Pilot program. The employers had between 1 and 10 years of experience participating in U.S. Citizenship and Immigration Services (USCIS) pilot programs. Three employers had used the original Basic Pilot prior to the Web version.

All employers reported being somewhat satisfied to very satisfied with the Web Basic Pilot program. Employers reported few difficulties with the on-line system itself. None of the employers encountered any problems in registering for the Web Basic Pilot program or any ongoing technical problems. Two employers located on the West Coast reported being unable to reach anyone by telephone to have their passwords reset. Several employers made recommendations for administrative features that would help reduce the amount of time human resources (HR) staff spent using the system. These recommendations are presented in Section K of this appendix.

The case studies revealed a wide range of compliance with Web Basic Pilot procedures among the five employers. The practices of the five employers are summarized in Exhibit E-1. Two of the five employers complied with all Web Basic Pilot requirements with few exceptions. Two additional employers complied with some but not all program requirements, and they differed with respect to the program requirements to which they did adhere. The fifth employer did not comply with the majority of program requirements. It appears that the three employers that did not comply with all Web Basic Pilot requirements were largely unaware of their noncompliance.

In addition to the five employer interviews, the evaluation team also conducted interviews with 79 employees from the five employers. Sixty-five of these employees had received tentative nonconfirmation findings, seven had received “Employment Authorized” findings, and seven had apparently received tentative nonconfirmation findings as the result of data entry errors that the employer never properly closed as Invalid Queries.¹ Of the 65 employees who received tentative nonconfirmation findings, one+ employee was not knowledgeable about the tentative nonconfirmation finding or the contesting process because his mother had resolved the finding for him. Thus, the total sample of tentative nonconfirmation recipients was 64.

¹ This result led to a re-examination and revision of the cleaning routines for the transaction database, to reduce the number of cases incorrectly classified as tentative nonconfirmations.

Exhibit E-1: Matrix of Case Study Employer Practices

Practice	Employer				
	A	B	C	D	E
Used Web Basic Pilot to verify all newly hired workers	X	X	X		
Always entered information within 3 days of hire	X				
Used Web Basic Pilot to prescreen job applicants				X	X
Conducted Web Basic Pilot administrative and employee notification/referral processes within HR department	X	X		X	X
Asked area/department supervisors to conduct notification and referral processes with employees			X		
Notified employees/applicants of tentative nonconfirmations	X	X	X	X	
Provided written notifications of tentative nonconfirmations	X	X	X		
Properly explained contesting options	X	X		X	
Notified employees/applicants privately	X	X	X	X	N/A
Referred contested cases to SSA/USCIS through Web Basic Pilot	X	X	X		
Provided employees with hard copies of referral letters	X	X			
Properly explained SSA contesting process	X	X		X	
Properly explained USCIS contesting process	X	X			
Allowed employees to work while contesting tentative nonconfirmations	X	X	X		
Employees receiving tentative nonconfirmations reported other adverse treatment by employer			X		
Resubmitted contested SSA cases through Web Basic Pilot	X	X	X		
Terminated unauthorized employees or employees who did not contest	X	X	X	N/A	N/A
Promptly terminated unauthorized employees or employees who did not contest	X	X		N/A	N/A
Reported significant costs for using Web Basic Pilot			X		
Closed all cases	X	X	X		
Properly closed data entry cases as Invalid Queries	X	X	X		
Displayed Web Basic Pilot poster	X	X	X		
Stored password and user manual in secure location	X	X	X	X	

SOURCE: Web Basic Pilot Case Study Interviews

Interviewers also reviewed 364 employee files from the five employers. Of these 364 employees, 326 received tentative nonconfirmation findings. During the record review process, interviewers examined the contents of each employee file and checked to see whether information contained in the file matched the information captured on the Web Basic Pilot transaction database. The results of the record review analyses are presented in Exhibits E-2 and E-3.

Exhibit E-2: Percentage of Case Study Employers' Employee Records Containing Specific Items Related to Web Basic Pilot

Content	Overall (n=364)	Employer				
		A (n=99)	B (n=81)	C (n=94)	D (n=61)	E (n=29)
Case files containing:						
Form I-9	98.6	100.0	100.0	98.9	95.1	96.6
Copy of Web Basic Pilot case details	92.0	99.0	88.9	98.9	82.0	75.9
Tentative nonconfirmation notice	72.4	100.0	85.7	95.7	0.0*	25.0*
Contesting SSA tentative nonconfirmation case files containing SSA referral letter	97.0	100.0	94.2	98.4	N/A	N/A
Contesting USCIS tentative nonconfirmation case files containing USCIS referral letter	80.0	40.0	100.0	100.0	N/A	N/A
Case files that matched Web Basic Pilot database on employee's:						
First name	97.5	98.0	95.0	98.9	98.4	96.4
Last name	96.7	100.0	98.8	96.8	86.9	100.0
Social Security number	95.9	96.0	95.1	97.9	91.7	100.0
Citizenship status	93.0	99.0	97.5	91.3	84.7	82.1
Date of birth	93.9	96.0	95.0	95.7	86.9	93.1
Hire date	73.0	94.8	81.8	90.4	6.9	50.0
Noncitizen case files that matched on Alien number	92.1	100.0	93.3	98.9	77.8	75.0

* These employers reported during interviews that they did not use the tentative nonconfirmation notices provided by the system.

SOURCE: Web Basic Pilot Record Review

Exhibit E-3: Analysis of Average Number of Days Elapsed Between Various Steps of the Web Basic Pilot Process

Time Span	Overall (n=364)	Employer				
		A (n=99)	B (n=81)	C (n=94)	D (n=61)	E (n=29)
From date employee signed Form I-9 to hire date	6.0	15.3	2.3	1.0	1.6*	3.6*
From hire date to case-initiated date	6.2	1.7	11.7	5.2	0.8*	20.9*
From case-initiated date to date employee signed tentative nonconfirmation notice	12.4	20.9	1.5	14.7	N/A	N/A
From date employee signed tentative nonconfirmation notice to date employee was referred to SSA	0.8	-0.1	0.0	2.5	N/A	N/A
From date employee signed tentative nonconfirmation notice to date employee was referred to USCIS	1.5	0.3	0.0	2.5	N/A	N/A
From date employee was referred to SSA to date SSA representative signed referral letter	2.1	1.1	1.9	92.0	N/A	N/A
From date SSA representative signed referral letter to date case was resubmitted to Web Basic Pilot	10.1	13.3	8.0	15.0	N/A	N/A
From date case was resubmitted to Web Basic Pilot to closure date (SSA cases)	0.1	0.0	0.2	0.0	N/A	N/A
From hire date to closure date	39.7	31.1	19.0	73.6	5.5*	7.8*
From case-initiated date to closure date	34.1	29.4	7.6	68.4	2.8	0.0

*The record review found that the hire dates entered into the Web Basic Pilot system by these employers frequently did not match the hire dates listed on the Form I-9.

SOURCE: Web Basic Pilot Record Review

This appendix synthesizes the findings from all five case study employers and their employees. This synopsis discusses these employers' procedures for using the Web Basic Pilot system by examining whether or not they complied with program requirements. It also reports findings on the impact of the contesting process on employees and the employer, as well as the program's overall impact on employees who received tentative nonconfirmations. Finally, the appendix discusses some key findings about the use of the Web Basic Pilot system by large employers and ends with employer recommendations for improvements to the Web Basic Pilot. The synopsis is structured as follows:

- Who the employer verified;
- The tentative nonconfirmation notification process;
- The referral process;

- The impact of the contesting process on employees and the employer;
- Following up on issued tentative nonconfirmations;
- Terminating unauthorized employees;
- Other administrative requirements;
- Impact on employees who received tentative nonconfirmations;
- The Web Basic Pilot and large employers; and
- Employer recommendations for improvements to the Web Basic Pilot.

B. WHO THE EMPLOYER VERIFIED

Three employers followed correct procedures for using the system to verify only newly hired employees. However, staff from one of these employers stated that it would be ideal if they could use the system to prescreen job applicants. Only one of the three employers reported being able to meet the requirement that employees' information be entered into the system within 3 days of their hire dates. The record review confirmed that an average of only 1.7 days passed between hire date and case-initiated date for this employer. However, staff from two other employers also reported that they frequently had trouble meeting this deadline. For these two employers, the record review indicated that cases were initiated, on average, 11.7 days and 5.2 days, respectively, after the employees' hire dates. Both were large employers with multiple departments in various locations. Although the Web Basic Pilot system was used centrally within each employer's HR office, both employers reported that the interviewing and hiring process was decentralized. Therefore, the hiring paperwork (i.e., application packages, Form I-9s, and photocopied documents) frequently would not arrive in time for HR staff to enter new employees' information within 3 days of their hire dates. The record review showed that all three employers were correctly entering the hire date from the Form I-9 into the Web Basic Pilot system.

Two employers used the system to prescreen job applicants or screen newly hired workers before they allowed them to start working for the company. The staff of neither employer provided any indication that they were aware of their misuse of the system. In fact, one employer's representative stated that the only time their staff were unable to follow proper procedures was when they had to have employees start working before they had time to enter the employees' information into the Web Basic Pilot (which, of course, is the correct Web Basic Pilot procedure). This same employer's representative expressed the opinion that all employers should be required to use the system to prescreen job applicants. Interviews with workers from these two employers revealed that neither employer followed a consistent hiring and verification process and confirmed that several employees had been prescreened. The record review showed that the hire dates entered by these two employers were frequently not the same as those listed

on the Form I-9. There was no evidence that any of the five employers used the Web Basic Pilot system to verify employees hired before the record review.

The record review showed that all five employers retained almost all employees' Form I-9s and that the information from the forms had been correctly entered in the Web Basic Pilot system (with the exception of the hire date). As shown in Exhibit E-2, nearly 100 percent of all files contained Form I-9s and nearly all matched the transaction database on employee first and last name, Social Security number, citizenship status, and date of birth. Two employers were not as precise about entering Alien numbers. Most employee files also contained at least one copy of the Web Basic Pilot case details sheet.

C. TENTATIVE NONCONFIRMATION NOTIFICATION PROCESS

The majority of employees who received tentative nonconfirmation findings were notified by their employers. Most employees reported that they had been notified of a tentative nonconfirmation finding or a “problem with their paperwork” by their employers. The interviews revealed that:

- Two employers notified all employees of their tentative nonconfirmation findings by following the correct Web Basic Pilot procedures.
- Two employers notified most employees of a problem but did not follow the correct procedures for doing so.
- One employer did not notify employees.

Two of the five employers used the written tentative nonconfirmation notices provided by the system and properly explained the notice and the contesting process to employees. Two employers – both of which correctly verified only new employees – followed the correct Web Basic Pilot procedures for:

- Informing employees about tentative nonconfirmation findings;
- Giving employees the tentative nonconfirmation notices;
- Explaining what the tentative nonconfirmation notice meant;
- Ensuring that employees understood their options for contesting; and
- Filing the signed tentative nonconfirmation notices with the employee's records (100.0 percent and 85.7 percent, respectively).

The employees who worked for these two employers confirmed that their employers had followed all of these procedures.

One employer printed the tentative nonconfirmation notices for employees to sign but did not properly explain the notice or the contesting options. At one employer, it was the supervisors' responsibility to inform employees of tentative nonconfirmation findings, explain the finding and the employees' options, and have the employees sign the tentative nonconfirmation notices. Employee interviews revealed that, despite training classes offered by the HR office, supervisors did not follow proper procedures. In most cases, the supervisors told the employees that there was a problem with their paperwork or that they were not authorized to work. Many supervisors directed the employees to sign the tentative nonconfirmation notices "so they could work longer" but did not properly explain the tentative nonconfirmation notice, the employees' options, or the contesting process. Once signed, the tentative nonconfirmation notices were properly filed with the employees' records (95.7 percent).

Neither of the two employers that prescreened job applicants used the written tentative nonconfirmation notices to notify applicants/employees of the tentative nonconfirmation findings. However, one employer informed most applicants when they had a problem with their paperwork. The representative of one employer reported, rather than print the tentative nonconfirmation notices from the system, their staff showed the applicant the computer screen indicating a tentative nonconfirmation finding. During the record review process, no tentative nonconfirmation notices were found in any employee records. This employer did, however, orally inform applicants that they must resolve a problem with the Social Security Administration (SSA) or USCIS. Nine of 10 employees who received tentative nonconfirmation findings from this employer said they were told that there was a problem with their paperwork; however, they did not receive a tentative nonconfirmation notice. The representative of another employer reported that the company's staff sometimes told applicants/employees about problems with their paperwork or ignored the finding if they "did not think it was correct." This employer did not give applicants/employees the tentative nonconfirmation notice or any information about their contesting options. Only two employees at this employer reported being told of a problem with their paperwork. During the record review process, tentative nonconfirmation notices were found in only 25.0 percent of the files.

Most employees reported being notified in private of a tentative nonconfirmation finding or problems with their paperwork. There were, however, exceptions at each of the four employers where employees were regularly notified:

- One employer sometimes notified a group of employees who had all received tentative nonconfirmation findings and were all participating in the same training session.
- One employer reported that the employees' supervisors were also asked to be present at "private" notification meetings. However, only a few employees reported that their supervisors attended the meeting.

- One employer sometimes told employees about a problem with their paperwork in a public location where other employees could hear. A few employees reported that the employer posted a list of names of those who were “not authorized to work.”
- One employer sometimes told employees in a public place where other people were around, but in a location where only the employee could hear.

D. REFERRAL PROCESS

The two employers that followed the correct procedures for notifying employees of tentative nonconfirmation findings were also the only employers that followed the correct procedures for referring employees to SSA or USCIS. The two employers followed correct procedures for:

- Referring employees to the appropriate agency through the Web Basic Pilot system;
- Giving employees the appropriate information, maps, and directions, as well as use of the HR office telephone; and
- Ensuring that employees understood what they needed to do to contest their tentative nonconfirmation findings.

The employees who worked for these two employers confirmed that the employers followed all of these procedures. One employee reported that his employer even took care of the contesting process for him because he did not speak English and did not understand the process.

The record review revealed that both employers almost always filed SSA referral letters with employees’ records, but only one of the two employers regularly filed USCIS referral letters. A representative of the other employer indicated during the interview that the company’s HR staff were able to provide employees with the toll-free number for contacting USCIS without having to print the USCIS referral letter. This employer allowed employees to use the telephone in the HR office to contact USCIS immediately.

One employer did not refer cases through the Web Basic Pilot system or use the referral letters, but the employer’s staff informed most employees how to correct paperwork problems with SSA. This employer told most employees to go to the local SSA office to correct tentative nonconfirmation findings from SSA. However, the employer seemed confused about how to handle tentative nonconfirmation findings from USCIS and did not tell employees how to correct USCIS problems unless the problem was evident from the employees’ paperwork (i.e., renewing an expired work permit). All but one employee from this employer reported that HR staff had told them to go to SSA or USCIS to correct a problem with their paperwork. The one employee who was hired without being told of a problem with his paperwork received a tentative nonconfirmation finding from USCIS. Despite not having the referral letters, most of this employer’s

workers who were work-authorized were able to correct their problems with the appropriate agency. Since the employer did not refer employees to the proper agencies through the Web Basic Pilot system, no referral letters were found in the employee records.

Two employers did not properly inform their employees of how to correct problems with their paperwork. The HR office at one employer initiated referrals through the Web Basic Pilot system, printed referral letters for employees, and filed copies with the employees' records. However, the supervisors did not explain the referral letter to employees or give them a copy unless they requested it. The supervisors sometimes told employees to go to SSA or USCIS, but only if employees asked what they needed to do to correct the problem. In one case, an employee was incorrectly told to go to SSA instead of USCIS. One additional employer did not initiate referrals through the system and sometimes told employees about problems with their paperwork. In cases when employees were informed, the employer's staff did not use the referral letters and did not consistently refer employees to SSA. This employer seemed unaware that USCIS was part of the system. No referral letters were found in the employee files at this employer.

E. IMPACT OF THE CONTESTING PROCESS ON EMPLOYEES AND THE EMPLOYER

Two employers allowed employees to continue working while they contested tentative nonconfirmation findings and did not take any adverse actions against them. These two employers allowed employees to continue working while they contested their tentative nonconfirmation findings. These employers did not reduce or hold back wages, did not delay training, and did not otherwise treat the employees any differently from other employees. Employee interviews confirmed that they were not treated any differently by the employer during this process.

One employer allowed employees to continue working while they contested tentative nonconfirmation findings, but employees felt they were mistreated by their supervisors. Employees who worked for one employer reported that supervisors assumed that all employees who received tentative nonconfirmation findings were illegal workers. A few employees reported that they were required to work longer hours and in poor conditions. Most employees who reported being mistreated also said they were not authorized to work. However, one employee who was authorized to work also reported that he received harsher treatment because the supervisor assumed he was an illegal worker. Supervisors at this employer often encouraged employees to reapply with different Social Security numbers once they were terminated.

The two employers that prescreened job applicants did not allow applicants to start working for the company if they received tentative nonconfirmation findings. At one employer, applicants were not hired, given a uniform, or allowed to start training until the system showed them to be authorized. The employer did have a process for applicants to contest the tentative nonconfirmation findings, although the process did not follow all Web Basic Pilot requirements. Another employer also reported that the company did not hire applicants who received tentative nonconfirmation findings, although employee

interviews revealed that several employees were hired and never told about the finding. Although these employees were not denied employment, they were not given the opportunity to correct any problems with their paperwork. The interviews did not indicate that a contesting process was in place at this employer.

Four employers reported that they incurred little to no cost due to the Web Basic Pilot contesting process. Two employers found the Web Basic Pilot program cost-effective compared to the alternatives of calling SSA to verify Social Security numbers or mistakenly hiring workers who were not work-authorized. Neither employer officially allowed employees to contest findings on company time, but one of the two employers acknowledged that employees sometimes used company time or the company telephone. A third employer that prescreened most job applicants but allowed them to contest tentative nonconfirmation findings reported that the only associated costs were paperwork and processing costs and that these costs had little impact on the company. A fourth employer said that it incurred no costs with the system, but there was no evidence that this employer had a contesting process.

One employer reported that it incurred significant costs due to an increased staff turnover rate. This employer reported an increased turnover rate due to its use of the Web Basic Pilot system, as well as large costs associated with providing training, safety equipment, and handbooks to many new employees who turned out not to be work-authorized and were eventually terminated. Furthermore, the supervisors instructed many unauthorized workers to reapply with new Social Security numbers when they were terminated. Some employees reported applying, being hired, and then being terminated as many as three times. The Web Basic Pilot program was not discouraging unauthorized workers from applying for work with this employer. In this employer's opinion, the Web Basic Pilot increased the turnover rate and the costs associated with hiring and training new, and sometimes repeat, employees. Despite these costs, the employer stated that the program was beneficial and therefore continued to use it.

F. FOLLOWING UP ON ISSUED TENTATIVE NONCONFIRMATIONS

Three employers followed all proper procedures for following up on tentative nonconfirmation findings. These employers reported correct procedures for:

- Initiating referrals through the Web Basic Pilot system;
- Resubmitting SSA cases when the employer received a signed referral letter from SSA; and
- Looking for USCIS responses in the system.

Two of the three employers also reported that they resubmitted SSA cases when 8 days had passed and they had not yet received a signed referral letter from the employee.

Two employers did not follow up on any tentative nonconfirmation cases in the Web Basic Pilot system. One employer entered new cases for all employees who returned

from SSA or USCIS with additional proof of work authorization, thereby creating several cases for many employees. The employer did not initiate referrals through the Web Basic Pilot system, resubmit SSA cases, or look for automatic responses from USCIS. Similarly, another employer did not initiate referrals through the system, resubmit SSA cases, or understand the purpose or meaning of tentative nonconfirmation findings and the referral process.

Three employers made an effort to close all cases with the proper closure codes and correctly closed cases with data entry errors; two employers did not. During their employer interviews, three employers reported proper procedures for closing cases. The transaction database confirmed that each employer had closed all but a small number of cases. These three employers also reported correct procedures for closing as Invalid Queries cases that received tentative nonconfirmation findings as a result of a data entry error.

Staff at a fourth employer were aware that the company should be closing cases but considered the process time consuming and had not closed the majority of the company's cases, including many data entry error cases. Furthermore, the employer's representative reported that an applicant's name was frequently entered several times in different configurations in an effort to obtain an "Employment Authorized" response, especially when applicants had more than one last name. Most of these repeat cases remained open in the system rather than being closed as Invalid Queries. Another employer was unaware that cases should be closed and did not know how to do so.

G. TERMINATING UNAUTHORIZED EMPLOYEES

Three employers reported following most procedures for terminating all employees who were not work-authorized or otherwise decided not to contest a tentative nonconfirmation finding. However, two of the employers relied on department staff to terminate these employees, which led to delays in the process. Staff at one employer said that they had never had to fire an employee, because most employees turned out to be work-authorized, but that they would promptly terminate any employee who was not authorized. HR staff at two additional employers reported that they initiated the termination process promptly upon discovering that employees were not work-authorized or would not contest the tentative nonconfirmation findings. The employers' departments or supervisors would handle the terminations rather than the HR offices. Employee interviews at one of the two establishments revealed that supervisors often prolonged the contesting process so that unauthorized employees could continue to work for them. Supervisors frequently did not terminate employees when told to do so and often told HR that they could not afford to lose a worker at that time.

One employer did not terminate employees who received final nonconfirmation findings if they provided documentation from SSA that their Social Security number was valid. The employer closed these cases as "Employee Not Terminated." Staff at this employer reported that when they resubmitted cases through the system after employees contested, a few employees still received final nonconfirmation findings even though they had received from the local SSA office "letters indicating that the Social

Security numbers were valid.”² In these cases, the employer relied on the letter from the local SSA office rather than the Web Basic Pilot finding. The employer felt that this discrepancy was a problem with the system that needed to be addressed by SSA and USCIS.

Since two other employers used the system primarily to prescreen job applicants, they rarely had the opportunity to terminate a working employee as a result of the tentative nonconfirmation process. Both employers reported that they would terminate any employees who were not work-authorized.

H. OTHER ADMINISTRATIVE REQUIREMENTS

Not all employers displayed the poster or otherwise ensured that job applicants were informed of their participation in the Web Basic Pilot program. Three employers displayed the Web Basic Pilot poster in their HR offices; however, at two employers, the application process was decentralized. Therefore, not all applicants would see the poster at the time of application. The other two employers did not display the poster, but one of them included a notice on its job postings to inform applicants that the system would be used to verify work authorization.

Most employers maintained proper security procedures for using the system. HR representatives in four establishments reported that staff memorized user passwords or otherwise maintained them in a secure location. At the fifth employer, the system password was in plain sight near the computer.

I. IMPACT ON EMPLOYEES WHO RECEIVED TENTATIVE NONCONFIRMATIONS

The impact of prescreening on employees varied. Some employees were able to contest the finding and were eventually hired, others did not understand how to contest and were never hired, and others were never told about the finding and were hired anyway. At one employer, employees who were prescreened were given the opportunity to correct their paperwork but were not allowed to start working until they did so. Of the employees interviewed, most work-authorized applicants were able to contest the finding and were eventually hired by the employer. However, one applicant did not understand the instructions he was given so he did not contest and was never hired by the employer. Staff at another employer reported that they prescreened job applicants and did not hire those who received tentative nonconfirmation findings, although they sometimes ignored the tentative nonconfirmation finding if they “didn’t think it was correct.” All the employees interviewed from this establishment were hired despite tentative nonconfirmation findings; most had not been informed of any problems with their paperwork. Because the employer did not keep records on employees who were not hired, the evaluation team was unable to interview employees who were not hired because of tentative nonconfirmation findings.

² It was unclear from the interview whether the employer was referring to the signed referral letter or another letter from SSA.

At one employer, employees reported adverse treatment by their supervisors because of their tentative nonconfirmation finding. Unauthorized workers who continued to work for this employer during the contesting process reported the most mistreatment from their supervisors, including:

- Working overtime or under poor conditions,
- Being fired for taking time off due to illness, and
- Being afraid that they could be fired at any time.

One employee who reported that he was work-authorized said that the supervisor was unpleasant to him because the supervisor assumed that he was an illegal worker.

The majority of employees said that they were not nervous or scared about the tentative nonconfirmation findings and appreciated the chance to correct problems with their paperwork. Most employees who reported being nervous about losing their jobs or confused about the findings came from employers that did not properly explain the tentative nonconfirmation finding or give employees the tentative nonconfirmation notice and referral letter. Workers from employers that properly informed employees about the tentative nonconfirmation notice and referral process either expressed no reaction or said they were nervous at first but were reassured by their employer that everything would work out. Several employees indicated that they were glad to be able to correct their paperwork. However, two employees were irritated about spending their own time to correct what they perceived as the government's errors. Employees who were not work-authorized reported feeling bad or guilty or having no reaction when they were told of the problems with their paperwork.

Most employees who did not contest the tentative nonconfirmation findings were not work-authorized. A few work-authorized employees did not contest the findings or were unsuccessful in contesting the findings because their employers did not give them sufficient or correct information. For example, two work-authorized employees were unable to contest the tentative nonconfirmation findings because they did not understand how to correct their paperwork. Another two work-authorized employees tried to contest but were unsuccessful; one was incorrectly told to go to SSA rather than USCIS, and the other visited USCIS but did not have a referral letter explaining that he needed to resolve a tentative nonconfirmation finding. In the latter case, the employee obtained a letter from USCIS stating that he was in the process of becoming a permanent resident; however, this documentation was not sufficient to prevent him from being terminated. Two additional employees were told by their employer that the HR office would take care of the problem for them, so they did not contest the finding themselves.

Most employees reported positive experiences correcting their paperwork with SSA or USCIS. Most of the 28 employees who reported visiting SSA to contest tentative nonconfirmation findings were satisfied with their experiences and treatment, even those who had not received referral letters from their employers. Overall, employees who contested SSA findings did so quickly: The record review showed an average of only 2.1

days between the referral to SSA and the date the SSA representative signed the referral letter (if one was provided to the employee). Most employees said they did not have to spend much time waiting or speaking with a representative at the local SSA office. Three employees reported having to wait for approximately 2 hours, and two employees said the process took them all day. Another employee took the whole day off and lost that day's wages because he was not sure how long the process would take.

Three employees contacted USCIS to correct problems with their paperwork. One employee received the referral letter, called the USCIS telephone number, and resolved the problem over the telephone without any difficulty. The other two employees did not receive referral letters and went to local USCIS offices. The latter two employees reported spending 1 to 2 days getting copies of various documents to return to their employers. One employee returned with a letter stating that his permanent residency card was in process and was terminated because the system reported a final nonconfirmation. The second employee returned with a work permit renewal application and a letter from his lawyer and was *not* terminated despite a final nonconfirmation from USCIS.

J. THE WEB BASIC PILOT AND LARGE EMPLOYERS

An important finding emerged as a result of having three large employers with multiple departments in this case study. These employers had central HR offices that had to coordinate the Web Basic Pilot process with multiple departments or work sites at different locations. How the HR office chose to interact with these departments had an impact on how the Web Basic Pilot process was implemented at each site, the amount of time the process required, and the level of compliance with Web Basic Pilot procedures.

The need for HR offices to rely on external departments to assist with the Web Basic Pilot process extended the overall duration of the tentative nonconfirmation notification and contesting process at all three establishments. The HR offices at two of the large establishments had to wait for various departments to forward hiring packages and work-authorization documents before information could be entered into the Web Basic Pilot system. Both employers reported that they frequently had difficulty meeting the Web Basic Pilot requirement to enter new employees' information within 3 days of hire. Additionally, when the hiring process took place at the department level rather than in the HR office, employees were not always aware that the employer was using the Web Basic Pilot program. Although both employers displayed the Web Basic Pilot poster in their central HR offices, it is unlikely that many job applicants viewed this poster.

Once tentative nonconfirmation findings had been issued, all three employers had to go through departments or supervisors to contact the employees. Two of the large employers contacted department managers and requested that the employees report to the HR office to receive the notification from an HR representative. One employer reported that this process could sometimes take several weeks depending on whether the department managers would excuse employees from their training sessions. Employee interviews at this employer indicated that it took anywhere between 1 day and 3 months until some employees were notified of their tentative nonconfirmation findings. The record review

also showed that an average of 20.9 days passed between case-initiated dates and the dates that employees signed their tentative nonconfirmation notices. The other employer was able to conduct this process more quickly, and the record review showed an average of only 1.5 days between case-initiated dates and the dates employees signed the notices.

Alternatively, a third employer provided the tentative nonconfirmation notices directly to the supervisors and relied on them to provide the notices to the employees. Once the notices had been signed, the supervisors forwarded them to the HR department. Employee interviews indicated that some employees had been working for several weeks before they were notified of a problem with their paperwork. The record review showed that an average of 14.7 days passed before employees were able to sign their tentative nonconfirmation notices, and another 2.5 days passed before employees were referred to either SSA or USCIS through the Web Basic Pilot system. At this point, the HR office sent the referral letters to the supervisors. Employees reported that they received the referral letters anywhere between 2 weeks and 1 month after they had received the tentative nonconfirmation notices. Overall, the record review for this employer showed that it took an average of 68.4 days for tentative nonconfirmation cases to be resolved (from initiated date to closure date).

The case of one employer suggests that there is significant room for noncompliance when departments or supervisors are heavily involved in the tentative nonconfirmation notification and referral process. Although this employer's central HR office followed all administrative requirements for the Web Basic Pilot and offered training classes for supervisors in the proper procedures for tentative nonconfirmation notification and referral, supervisors did not comply with many of the Web Basic Pilot requirements. Employee interviews indicated that supervisors at this establishment deliberately prolonged the contesting process to enable unauthorized workers to continue working until a project was completed. Rather than explain the employee's options, the supervisors told most employees to sign the tentative nonconfirmation notice and referral letter so they could keep working, or delegated this responsibility to the site secretaries. Most employees who were work-authorized had to ask repeatedly what they needed to do to contest the findings and were rarely given sufficient information. Employees felt that their supervisors took advantage of them. The supervisors also did not terminate employees promptly when instructed by the HR office; most employees were employed for approximately 3 months before being terminated. A second employer also reported that its HR office relied on department managers to carry out employee terminations.

K. EMPLOYER RECOMMENDATIONS FOR IMPROVEMENTS TO THE WEB BASIC PILOT

Employers made several recommendations for improvements to both the overall Web Basic Pilot process and the administrative features of the on-line system.

Employers made the following recommendations for changes to the Web Basic Pilot process:

- **Two employers recommended that the requirement to enter employees' information into the Web Basic Pilot system be lengthened from 3 to at least 5 days.**
- **Two employers suggested that the Web Basic Pilot system should be used by all employers to prescreen applicants before they are hired or start working.** This suggestion indicates that these employers may not fully understand the reasons for not prescreening applicants.

Employers made the following recommendations for changes to the administrative features of the on-line system:

- **Two employers reported difficulty having their passwords reset.** These employers reported that calling the help desk to have their passwords reset was time consuming, particularly when the office was closed and the employer had to wait until the next day to get a new password. One employer recommended an after-hours telephone line or a text e-mail system that could provide users with their user names and passwords if the office was closed. It is the understanding of the evaluation team that this recommendation has already been implemented.
- Two employers made the following recommendations for how to streamline the administrative processes for using the on-line system:
 - **One employer felt that the process of resolving cases could be streamlined.** For example, if an employee is work-authorized at the initial query, the employer must complete several steps to close the case. Once the verification result screen appears, the user must click the "Resolve Case" button. Then, a second screen appears on which the user must select case resolution and click the "Resolve Case" button again. The employer thought the two screens were redundant and suggested that the system automatically resolve cases that are initially work-authorized.
 - **One employer recommended that the system indicate which cases have received new findings from USCIS and require action.** Employers currently receive the message "X cases requiring action," but they reported that it is time consuming to scroll through all open cases to determine which have new results, particularly since HR staff check for new responses daily.
 - **One employer recommended that "general users" be able to work on any case in the system.** At this employer, it is possible for any HR staff member to work on any case, regardless of whether he or she initiated it; therefore, all users must be set as administrators. However, when users are designated as administrators, they also have access to other features of the system that should be accessible only to the HR director.

- **One employer recommended that the system indicate data entry errors or other errors on the part of SSA or USCIS.** Also, this employer would like the Web Basic Pilot to indicate when it will take longer than 8 or 10 days to resolve a case.

Two employers would appreciate more compatibility between the Web Basic Pilot system and their existing HR systems:

- **One employer recommended that the Web Basic Pilot allow for some employer personalization.** This employer would like to be able to enter the company's employee numbers and department numbers to facilitate the reporting and merging of information with its existing databases. Because the HR department relies on the help of various other departments to complete the Web Basic Pilot process, the employer would like to be able to run reports to determine the numbers of tentative nonconfirmation findings, resolved tentative nonconfirmation findings, and pending tentative nonconfirmation cases by department. Currently, the employer must re-enter the employee information, case status, and Web Basic Pilot findings from the Web Basic Pilot system into its own HR database in order to sort this information by employee and department number. If an administrative function cannot be added to the Web Basic Pilot to facilitate production of these reports, the employer would like to be able to export data from the Web Basic Pilot system into an Excel worksheet or similar application. This type of sorting and reporting would reduce the amount of time HR staff spend using the Web Basic Pilot and handling tentative nonconfirmation cases.
- **Another employer suggested that the system allow employers to upload employee information from an existing HR database.** At this employer, all employee information from the applications and Form I-9s is entered into an existing HR database and must be retyped into the Web Basic Pilot system.

Exhibit F

**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

Accuracy of the Social Security Administration's Numident File

A-08-06-26100 December 2006

CONGRESSIONAL RESPONSE REPORT

Mission

We improve SSA programs and operations and protect them against fraud, waste, and abuse by conducting independent and objective audits, evaluations, and investigations. We provide timely, useful, and reliable information and advice to Administration officials, the Congress, and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.

Promote economy, effectiveness, and efficiency within the agency.

Prevent and detect fraud, waste, and abuse in agency programs and operations.

Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.

Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

Independence to determine what reviews to perform.

Access to all information necessary for the reviews.

Authority to publish findings and recommendations based on the reviews.

Vision

By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.

December 18, 2006

**The Honorable Jim McCrery
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515**

Dear Mr. McCrery:

I am pleased to provide you with the enclosed report addressing your April 7, 2006 letter, requesting an assessment of the accuracy of Social Security Administration's (SSA) Numident fields that are relied on by the Basic Pilot—a Department of Homeland Security (DHS) employment eligibility verification service.

Thank you for bringing your concerns to my attention. My office is committed to combating fraud, waste, and abuse in SSA's operations and programs. The report highlights various facts pertaining to the issues raised in your letter. To ensure SSA, DHS and the Department of State are aware of the information provided to your office, we are forwarding a copy of this report to the Inspectors General for each of these agencies.

If you have any questions concerning this matter, please call me or have your staff contact H. Douglas Cunningham, Assistant Inspector General for Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:

Jo Anne B. Barnhart

Executive Summary

OBJECTIVE

To assess the accuracy of the Social Security Administration's (SSA) Numident fields that are relied on by the Basic Pilot.

background

As of November 2005, SSA had assigned about 435 million Social Security numbers (SSN)—for the primary purpose of accurately reporting and recording the earnings of people who work in jobs covered by Social Security. When SSA assigns an SSN to an individual, the Agency creates a master record in its "Numident" file containing relevant information about the numberholder.

SSA provides employers with a number of verification programs and services that allow them to match employees' names and SSNs with SSA's records. Additionally, the Basic Pilot, a Department of Homeland Security (DHS) program supported by SSA, provides employers a tool for determining whether newly-hired employees reported the correct name, SSN, date of birth and are authorized to work in the United States. Recently, the House and Senate each passed immigration reform bills that would mandate employers' use of an employment eligibility verification system similar to the Basic Pilot. Given the extent and significance of this proposed legislation, it is essential that the Numident file contain correct information.

On April 7, 2006, we received a request from the Honorable Jim McCrery of the House Committee on Ways and Means, Chairman of the Subcommittee on Social Security, to assist the Subcommittee in obtaining information on the reliability of SSA data used in the Basic Pilot program to verify employment eligibility. In particular, the Chairman asked that we assess the accuracy of SSA Numident fields that are relied on by the Basic Pilot. The Chairman specified that we determine Numident accuracy rates for each of the following populations: (1) native-born U.S. citizens,

(2) foreign-born U.S. citizens, and (3) non-U.S. citizens. To address his request, we reviewed 810 randomly-selected Numident records in each of these populations (a total of 2,430 records) to determine their accuracy and whether data discrepancies might result in inaccurate feedback from the Basic Pilot. Because SSA does not delete, destroy, rescind, inactivate or cancel SSNs once they are assigned, we selected our sample of all SSNs the Agency had assigned as of November 30, 2005.

RESULTS OF REVIEW

We cannot predict the types of documentation each of the tested numberholders might present to an employer when attempting to prove their identities and authorization to work in the United States—the current process allows a number of varying sources of this information. Accordingly, our audit conclusions only pertain to the accuracy of SSA's Numident file when compared to (1) information SSN numberholders provided to SSA when applying for their original and/or replacement Social Security cards and, if applicable, (2) certain data elements DHS had for the Numident records tested. Despite these limitations, we found SSA's Numident file information to be generally accurate.

We identified some discrepancies that could result in the Basic Pilot providing incorrect feedback to employers attempting to determine the employment eligibility of their workers. Specifically, of the 2,430 Numident records reviewed, 136 contained discrepancies in the name, date of birth or citizenship status of the numberholder or we determined that the numberholder may be deceased. In all of these cases, the Basic Pilot provided incorrect results. As a result, we estimate that discrepancies in approximately 17.8 million (4.1 percent) of the 435 million Numident records could result in incorrect feedback when submitted through the Basic Pilot. While the accuracy of SSA's Numident records is noteworthy, if use of an employment verification service such as the Basic Pilot becomes mandatory, the workload of SSA and DHS may significantly increase—even if only a portion of these 17.8 million numberholders need to correct their records with one of these agencies.

We are particularly concerned with the extent of incorrect citizenship information in SSA's Numident file for the foreign-born U.S. citizens and non-U.S. citizens we tested. Based on DHS information, we determined that 62 (7.7 percent) of the 810 foreign-born U.S. citizen Numident records we reviewed were misclassified—and the numberholders were not actually U.S. citizens. Given this exception rate, we estimate that about 616,420 of the approximate 8 million numberholders in the foreign-born U.S. citizen category are not actually U.S. citizens. Additionally, we noted that 57 (7.0 percent) of the 810 non-U.S. citizen Numident records we reviewed were currently misclassified—because the individuals had become U.S. citizens after obtaining their SSN but had not updated their records with SSA. Although SSA is not at fault for these latter

misclassifications, we estimate that of the 46.5 million non-U.S. citizen records in SSA's Numident file, about 3.3 million contain out-of-date citizenship status codes. As such, these individuals may need to visit an SSA office to correct their Numident record before they would be confirmed eligible for employment by the Basic Pilot.

CONCLUSION

Given the scope and breadth of information held in SSA's Numident file, we applaud the Agency on the accuracy of the data we tested. However, we estimate that approximately 17.8 million Numident records contain discrepancies that may result in incorrect Basic Pilot feedback to employers. As Congress considers legislation requiring mandatory verification of all U.S. workers' employment eligibility through a system such as the Basic Pilot, we believe it should examine the significant workload that may result from the millions of numberholders whose Numident records may need to be corrected. Our review showed that the Numident records for these individuals have discrepancies in the numberholders' names, dates of birth, citizenship status and/or death indications that would result in inaccurate feedback from the Basic Pilot.

Because our tests included SSNs that were assigned decades ago, we recognize that some numberholders would no longer be working and would not attempt to correct their SSA and/or immigration records. However, if even a portion of the estimated numberholders whose Numident records contained discrepancies were required to visit an SSA office to correct their information, the Agency's workload may significantly increase until such time as the affected records were corrected.

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INTRODUCTION

OBJECTIVE

To assess the accuracy of the Social Security Administration's (SSA) Numident fields that are relied on by the Basic Pilot.

BACKGROUND

As of November 2005, SSA had assigned about 435 million Social Security numbers (SSN)—for the primary purpose of accurately reporting and recording the earnings of people who work in jobs covered by Social Security. When SSA assigns an SSN to an individual, the Agency creates a master record in its "Numident" file containing relevant information about the numberholder. This information includes the numberholder's name, date of birth, place of birth, parents' names, citizenship status, date of death (if applicable) and the office where the SSN application was processed and approved. Additionally, the Numident record for each numberholder identifies (1) any changes to the original information provided by the numberholder (for example, name changes, revisions to citizenship status) and (2) an account of all replacement SSN cards obtained.

The first explicit statutory authority to issue SSNs was enacted in 1972. Before that time, SSNs were issued pursuant to administrative procedures that the Agency had established. At the inception of the program, all SSNs were assigned and cards issued based solely on information provided by the applicant. Evidence of identity was not required. However, beginning in November 1971, persons age 55 and over applying for an SSN for the first time were required to submit evidence of identity. As of April 1974, noncitizens were required to submit documentary evidence of age, identity and immigration status. In May 1978, SSA began requiring all SSN applicants to provide evidence of age, identity and U.S. citizenship or noncitizen status. In addition, as of September 2002, SSA began verifying all immigration documents with DHS before assigning SSNs to noncitizens.

SSA posts an employee's wages to its Master Earnings File (MEF) based on a *Wage and Tax Statement* (Form W-2) submitted by his or her employer. However, these earnings can only be posted successfully to a numberholder's MEF record if the name and SSN reported on the Form W-2 match the information on SSA's Numident file for that individual. For example, if the Numident record for a numberholder contains a last name that significantly differs from what the employer provided on the Form W-2, the earnings will not be posted to the individual's earnings record—and, if not corrected, will not be counted towards the numberholder's future Social Security benefits. Additionally, if an employee falsely uses a name and/or SSN to work in the United States, which does not match the associated Numident record, these wages will not be posted to the correct numberholder's account.

To prevent these name and SSN discrepancies, SSA provides employers and third parties with a number of verification programs and services that allow them to verify employees' names and SSNs against SSA's records before submitting the Form W-2s. To ensure correct responses to employers through these verification services, it is essential that SSA's Numident records are as accurate and complete as possible.

On April 7, 2006, we received a request from the Honorable Jim McCrery of the House Committee on Ways and Means, Chairman of the Subcommittee on Social Security, to assist the Subcommittee in obtaining information on the reliability of SSA data the Department of Homeland Security (DHS) uses to verify employment eligibility. In particular, the Chairman asked that we assess the accuracy of SSA Numident fields that are relied on by the Basic Pilot. The Chairman specified that we determine Numident accuracy rates for each of the following populations: (1) native-born U.S. citizens, (2) foreign-born U.S. citizens, and (3) non-U.S. citizens.

BASIC PILOT

The Basic Pilot is a DHS initiative supported by SSA through a Memorandum of Understanding between the two agencies. The purpose of the Basic Pilot is to assist employers in verifying the employment eligibility of newly-hired employees. Participating employers register on-line with DHS to use the automated system. Information the employer submits to DHS is first sent to SSA to verify that the SSN, name, and date of birth match SSA data contained on the employee's Numident record.

If SSA verifies this information and no date of death is recorded on the Numident record, SSA provides DHS with U.S. citizenship information for the individual—as annotated on the numberholder's most recent Numident record. If the employee alleges U.S. citizenship and the Numident record also indicates the individual is a U.S. citizen, the Basic Pilot then notifies the employer that work authorization is confirmed. If a discrepancy is noted, the Basic Pilot sends the employer an "SSA tentative nonconfirmation" response.

After SSA verifies the SSN, name and date of birth of noncitizens, the Basic Pilot confirms current authorization to work in the United States with DHS. If a discrepancy occurs with an employee's work authorization, the Basic Pilot sends the employer a "DHS tentative nonconfirmation" response. In the case of either an SSA or DHS tentative nonconfirmation, the employee is provided an opportunity to correct the information contained in SSA and/or DHS records. See Appendix D for more information on the Basic Pilot.

SCOPE AND METHODOLOGY

To achieve our objective, we reviewed a total of 2,430 SSNs that SSA assigned from 1936 through November 2005. We recognize that our tests included SSNs that were assigned decades ago and some of these numberholders would no longer be working and/or attempting to correct their SSA and/or immigration records. However, we included all SSNs the Agency had assigned up to November 30, 2005, in our universe because SSA does not delete, destroy, rescind, inactivate or cancel SSNs once they are assigned. Accordingly, older SSNs could still be used—appropriately or inappropriately—for employment purposes.

We selected our samples from a segment of SSA's Numident file as of November 30, 2005. Specifically, as shown in Table 1, we reviewed 810 Numident records for SSNs within each of the following 3 populations: (1) native-born U.S. citizens, (2) foreign-born U.S. citizens, and (3) non-U.S. citizens.

Table 1: Details of Sample Selected for Review

Column A	Column B	Column C	Column D
Category	Sample Size	Number of SSNs in Segment 3 of Numident File (as of 11/30/05)	Estimate of Total SSNs In Numident File for Each Category (Column C x 20)
Native-Born U.S. Citizens	810	19,010,361	380,207,220
Foreign-Born U.S. Citizens	810	402,667	8,053,340
Non-U.S. Citizens	810	2,326,218	46,524,360
Total	2,430	21,739,246	434,784,920

Our tests compared the Numident data (name, SSN, date of birth and citizenship status) to copies of the original *Application for a Social Security Card* (Form SS-5) and, when applicable and available, copies of applications for replacement Social Security cards to ensure that SSA personnel accurately entered the information provided by the applicant. Additionally, we attempted to determine the legitimacy of any dates of death present on Numident records. Further, we attempted to verify noncitizens' and foreign-born U.S. citizens' "citizenship" status with DHS or the Department of State (State). We also submitted the 1,620 U.S. citizen SSNs through the Basic Pilot, using information provided by the numberholder on his or her Form SS-5. Finally, we submitted all noncitizen SSN records through the Basic Pilot when we could obtain DHS alien registration or admission numbers or when we identified any discrepancies between SSA and DHS information for the numberholder.

Underlying Assumptions

In performing our tests, we could not predict what proof of identity and work authorization a numberholder would present to an employer. Therefore, we made the following assumptions.

- The information provided by the numberholder on his or her Form SS-5(s) was correct and would be the same data provided to an employer.
- The information provided by DHS and/or State was correct.

See Appendix B for more information regarding our scope and methodology and Appendix C for our sample results.

RESULTS OF REVIEW

SSA's Numident file represents an extensive repository of personal information provided by hundreds of millions of SSN applicants throughout the Agency's history. The primary purpose in maintaining this information is to ensure that U.S. workers receive appropriate credit for the wages they earned and, ultimately, to provide full and accurate benefits to entitled individuals. Recently, the House and Senate each passed immigration reform bills that would mandate employers' use of an employment eligibility verification system similar to the Basic Pilot. Given the extent and significance of the proposed legislation, it is essential that the Numident file contain correct information.

We cannot predict what documentation every numberholder tested might present to an employer when attempting to prove their identities and authorization to work in the United States—as the current process allows a number of varying sources of this information. Accordingly, our audit conclusions only pertain to the accuracy of SSA's Numident file when compared to (1) information SSN numberholders provided to SSA when applying for their original and/or replacement Social Security

cards and, if applicable, (2) certain data elements DHS had for the Numident records tested. Despite these limitations, we found SSA's Numident file information to be generally accurate.

We identified some discrepancies that could result in incorrect feedback to employers attempting to verify employees' eligibility to work in the United States through the Basic Pilot. Specifically, of the 2,430 Numident records reviewed, 136 contained discrepancies that could result in inaccurate employment eligibility results—and, in most cases, additional work for SSA and DHS as employees attempt to correct their Numident and immigration records. As a result, we estimate that data discrepancies in approximately 17.8 million (4.1 percent) of the 435 million Numident records could result in incorrect feedback when submitted through the Basic Pilot. These discrepancies are outlined in Table 2.

Table 2: Data Discrepancies in SSA's Numident File

Population	Data Fields				Total
	Name	Date of Birth	Death Indication	Citizenship Status	
Native-Born U.S. Citizens	2	2	23	0	27
Foreign-Born U.S. Citizens	4	2	0	19	25
Non-U.S. Citizens	14	3	10	57	84
Total	20	7	33	76	136

NATIVE-BORN U.S. CITIZENS

Generally, SSA Numident records for native-born U.S. citizens were accurate. Of the 810 Numident records reviewed in this population, we identified 27 (3.3 percent) discrepancies that may result in inaccurate employment eligibility feedback from the Basic Pilot. Given this accuracy rate, we estimate that of the approximately 380 million native-born U.S. citizen records in the Numident file, about 12.7 million contain discrepant information that may result in incorrect Basic Pilot feedback. As shown in Table 3, these discrepancies involved name, date of birth, and death information that did not match or had not been annotated on SSA's Numident file. Additionally, we noted that 19 (2.3 percent) of the 810 U.S. born citizen records we tested were age 90 and over, had no indication of death on any SSA record and were not currently receiving SSA benefits. While these individuals may still be alive and, in some rare cases working, the Basic Pilot has no edit that would require additional contact with these individuals before confirming employment eligibility. We encourage SSA and DHS to incorporate a step in the Basic Pilot requiring further verification of potential employees who have reached a pre-determined age and/or have some indication of death on an SSA system of record.

Table 3: Native-Born U.S. Citizen Record Discrepancies that May Affect Basic Pilot Results

<i>Data Field</i>	<i>Number of Discrepancies</i>
Name	2
Date of Birth	2
Death Indication	23
Total	27

Name and Date of Birth Discrepancies that Affected Basic Pilot Results

Two (0.24 percent) of the 810 native-born U.S. citizen Numident records tested contained inaccurate spellings of the numberholders' names—when compared to the associated Form SS-5s. When the proper names were tested in the Basic Pilot, it returned an “SSA tentative nonconfirmation” for each. Additionally, 2 (0.24 percent) other Numident records lacked a date of birth for the numberholders. When we tested the dates of birth provided on the numberholders' Form SS-5s, the Basic Pilot returned an “SSA tentative nonconfirmation” response. As such, these individuals' employment eligibility may not be initially verified through the Basic Pilot and the numberholders may need to correct their information with SSA.

Death Indication Discrepancies that May Affect Basic Pilot Results

SSA provides a death indicator in its responses to the Basic Pilot. However, we determined that 23 (2.8 percent) of the 810 native-born U.S. citizens within our sample may be deceased according to SSA records, yet the Basic Pilot confirmed employment eligibility for these numberholders. In seven of these cases, the Numident records had no indication that the numberholder was deceased, but other SSA records (that is, the Master Beneficiary Record or Supplemental Security Income Record) provided a date of death for the individuals. In the other 16 cases, the Numident records were annotated with a transaction code of “D,” which indicates that a report of death was received by SSA, but the death was not confirmed.

Although SSA may not have verified the deaths of these numberholders, we do not believe the Basic Pilot should confirm employment eligibility without some additional contact with these individuals. If someone presented themselves as one of these 23 individuals to an employer and provided the correct name, SSN and date of birth, the employer could incorrectly verify the individual's employment eligibility through the Basic Pilot. Accordingly, we encourage SSA to reconcile the Numident with other SSA records and annotate Numident records when an indication of death is present. Additionally, we believe the Basic Pilot should issue a tentative nonconfirmation notice to employers that more investigation is necessary for individuals with a transaction code of “D” on the Numident record (and any other code SSA chooses to use for death indicators annotated from the aforementioned reconciliation). These suggestions are not intended to preclude verification entirely, but to require further inquiry and resolution before DHS confirms employment eligibility.

In response to a draft of this report, SSA requested that we note the following.

SSA is working with State governments to improve the current paper-based process which we believe will resolve some of the issues with the Numident record not being updated. However, the most efficient manner to improve timeliness and accuracy of State data is by using Electronic Death Reporting (EDR); a web-based automation of the death registration process. Our goal is to receive verified death data within 24 hours of receipt in the State repository and within 5 days of death. To achieve that goal we have currently awarded 31 State EDR development contracts. Fourteen States plus the District of Columbia and the jurisdiction of New York City have already implemented EDR. We expect that an additional 7 States in FY 2007 and 8 more States in FY 2008 should implement EDR. Additionally, for the longer term, the provisions of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 give grants to the States to cross match birth and death records within and among the States, and give the lead for the funding of EDR to the Department of Health and Human Services (HHS). We continue to work with HHS for the transition of funding for EDR beginning this fiscal year.

Numberholders Age 90 and Over Receive No Further Screening by Basic Pilot

Of the 810 native-born U.S. citizens reviewed, we identified 19 (2.3 percent) individuals age 90 and over who had no indication of death on his or her Numident record or any other SSA system of record and

were not currently receiving SSA benefits. The oldest of these numberholders would be 134 in 2006. While these are clearly old Numident records established before SSA implemented improved procedures for reporting and verifying deaths, we are concerned that the Basic Pilot has no control requiring additional investigation or contact with these numberholders before confirming employment eligibility. In fact, we tested these 19 individuals through the Basic Pilot and all were confirmed eligible for employment.

We acknowledge that an employer should raise their own concerns when an employee claims to have been born in 1872. However, to ensure that (1) no employee attempts to misuse the identity of a deceased or aged person and (2) the employer does not inadvertently or intentionally overlook the misuse of the aged person's name, SSN and date of birth, we believe the Basic Pilot should be revised to issue a notice to employers that more investigation is necessary when an employee is older than a pre-established age.

Informal comments SSA provided in response to a draft of this report pointed out that it is illegal for employers to discriminate on the basis of age and that use of an indicator for individuals over a specified age would require a new or amended routine under the *Privacy Act of 1974* to permit disclosure. Further, the Agency stated that its Memorandum of Understanding with DHS would need to be modified to provide such an indicator. Finally, SSA pointed out that DHS Form I-9 already requires employers to certify that the documents submitted by an employee appear to be genuine and relate to that employee.

While we are sensitive to the possibility of age discrimination and understand the legal and contractual modifications that would be required, we continue to believe that the Basic Pilot should not routinely confirm employment eligibility for a 134-year old person—without, at the very minimum, some further conversation with that individual. The determination whether such a control should be implemented rests with SSA, DHS and Congress. However, we would be remiss if we did not point out this vulnerability in the current process.

FOREIGN-BORN U.S. CITIZENS

Of the 810 foreign-born U.S. citizen Numident records reviewed, 25 (3.1 percent) contained discrepant information that could result in incorrect employment eligibility feedback from the Basic Pilot. As a result, we estimate that about 248,560 of the approximately 8 million foreign-born U.S. citizen records contain discrepancies that may result in incorrect employment eligibility results from the Basic Pilot. As shown in Table 4, differences were noted between the name, date of birth or citizenship status SSA annotated on the 25 Numident records and data provided by (1) the numberholder on his or her Form SS-5 or (2) DHS. Further, we also noted that SSA documented an incorrect citizenship code for 43 (5.3 percent) other foreign-born U.S. citizens within our sample (which are not listed in Table 4.)

However, these noncitizens were authorized to work in the United States, so the incorrect citizenship code did not impact the Basic Pilot results at the time of our review.

Table 4: Foreign-Born U.S. Citizen Record Discrepancies that May Affect Basic Pilot Results

<i>Data Field</i>	<i>Number of Discrepancies</i>
Name	4
Date of Birth	2
Citizenship Status	19
Total	25

Name and Date of Birth Discrepancies that Affected Basic Pilot Results

Of the 810 foreign-born U.S. citizen Numident records tested, we identified 4 (0.5 percent) discrepancies in the “name” field and 2 (0.2 percent) differences in the “date of birth” field that caused the Basic Pilot to issue “SSA tentative nonconfirmation” responses. In one case, when applying for an SSN, the numberholder documented on the Form SS-5 that her first name was “Sabrina.” However, SSA recorded the numberholder’s name as “Brina” in the Numident record. The Basic Pilot provides tolerances for some differences in the spelling of names. However, the Basic Pilot did not recognize these two names as the same individual. In five other cases, the name or date of birth SSA documented on the Numident record disagreed with information provided by DHS. These discrepancies also impacted Basic Pilot results and caused “SSA tentative nonconfirmation” responses.

Citizenship Status Discrepancies

Based on DHS information, we determined that 62 (7.7 percent) of the 810 foreign-born U.S. citizen records reviewed were not actually U.S. citizens. Because SSA does not maintain copies of documents SSN applicants present to the Agency, we were unable to determine whether these individuals presented false evidence of U.S. citizenship to SSA or Agency personnel simply miscoded the information. Despite the citizenship indications on SSA’s Numident records, these numberholders are not citizens and their work authorization status should be determined by DHS. We estimate that about 616,420 other numberholders in the foreign-born U.S. citizen population (which totals approximately 8 million) may have been improperly classified as U.S. citizens in SSA records.

Of the 62 misclassified numberholders, 43 are Legal Permanent Residents (LPR) and, as such, authorized to work in the United States. These 43 discrepancies did not result in incorrect Basic Pilot feedback because employers would have been accurately notified that these individuals were eligible for employment. However, if something changes with their LPR status (for example, emigration, deportation, or failure to renew their status), their permission to work in the United States may be taken away. In fact, one DHS study estimated that, between 1900 and 1990, one-quarter to one-third of all LPRs emigrated from the United States. Yet, the SSNs assigned to these individuals

remain active. Therefore, the numberholders—or anyone posing as the numberholders—could continue to use the SSNs to work in the United States long after they are authorized to do so. Accordingly, we caution SSA and DHS that improper employment eligibility confirmations may eventually result from the incorrect citizenship status currently shown on these SSA records.

According to DHS, the remaining 19 misclassified numberholders needed further investigation before their work authorization status could be verified. Specifically, if SSA’s citizenship codes had been correct for these numberholders, the Basic Pilot would have referred these records to DHS for review and possible contact with the numberholder before work authorization was established. Given the uncertainty of the numberholders’ employment eligibility, we considered the discrepancies in SSA’s citizenship codes to have caused improper Basic Pilot feedback and included these cases in Table 4.

NON-U.S. CITIZENS

Non-U.S. citizen (noncitizen) records within SSA’s Numident file contained a much higher degree of error than the U.S. citizen populations. Specifically, of the 810 noncitizen records tested, 84 (10.4 percent) contained discrepancies that may result in inaccurate employment eligibility results from the Basic Pilot. As shown in Table 5, these discrepancies resulted from differences in names, dates of birth, citizenship status and death indications. Many of these differences were caused because the numberholder did not update his or her information with SSA (for example, the noncitizen did not notify SSA when he or she became a U.S. citizen). As a result, we estimate that of the approximately 46.5 million noncitizen records contained in SSA’s Numident file, 4.8 million contain discrepancies that could require the numberholder to visit an SSA office to correct his or her Numident record before employment eligibility would be confirmed.

Additionally, as in the native-born U.S. citizen population, we identified 50 numberholders who were age 90 or over and had no indication of death present on their SSA records and were not currently receiving SSA benefits. As currently structured, the Basic Pilot would confirm employment eligibility for these individuals without any further contact or investigation.

Table 5: Non-U.S. Citizen Record Discrepancies that May Affect Basic Pilot Results

<i>Data Field</i>	<i>Number of Discrepancies</i>
Name	14
Date of Birth	3
Citizenship Status	57
Death Indication	10
Total	84

Name and Date of Birth Discrepancies that Affected Basic Pilot Results

Fourteen (1.7 percent) of the 810 Numident records tested contained numberholders' names that differed from either the individuals' Form SS-5 or DHS-provided data. When the alternate spellings were tested in the Basic Pilot, it returned an "SSA tentative nonconfirmation" for each. Additionally, 3 (0.4 percent) other Numident records contained a date of birth that differed from the Form SS-5 or DHS data. As such, these individuals' employment eligibility may not be initially verified through the Basic Pilot and the numberholders may have to correct their information with SSA.

Citizenship Status Discrepancies that Affected Basic Pilot Results

Based on DHS information, we determined that 57 (7.0 percent) of the 810 noncitizens tested were actually U.S. citizens—but had not updated their immigration/citizenship status with SSA. As a result, if these individuals alleged citizenship to an employer, the Basic Pilot would not initially confirm employment eligibility. Although SSA is not at fault for these misclassifications, we estimate that of the 46.5 million non-U.S. citizen records in SSA's Numident file, about 3.3 million contain incorrect citizenship status codes. As such, these individuals may need to visit an SSA office to correct their Numident records before they would be confirmed eligible for employment by the Basic Pilot.

Death Indication Discrepancies that May Affect Basic Pilot Results

Additionally, we determined that 10 (1.2 percent) of the 810 noncitizens within our sample may be deceased according to SSA records. However, the Basic Pilot confirmed employment eligibility for these numberholders. In seven of these cases, the Numident records had no indication the numberholder was deceased. Yet, other SSA records (that is, the Master Beneficiary Record) provided a date of death for the individuals. In the other three cases, the Numident records were annotated with a transaction code of "D," which indicates that a report of death was received by SSA, but the death was not confirmed.

As previously mentioned in this report, we do not believe the Basic Pilot should confirm employment eligibility without some additional contact with these individuals. Rather, we believe SSA should first reconcile its records and annotate any indications of death on the Numident—if an indicator is not already present. Secondly, we believe the Basic Pilot should issue a tentative nonconfirmation notice to employers that more investigation is necessary for individuals with a transaction code of "D" on the Numident record (and any other code SSA chooses to use for death indicators annotated from the aforementioned reconciliation).

Numberholders Age 90 and Over Receive No Further Screening by Basic Pilot

Within the sample of 810 noncitizens reviewed, we identified 50 (6.2 percent) individuals age 90 and over who had no indication of death on his or her Numident record or any other SSA system of record and were not currently receiving SSA benefits. The oldest of these numberholders would be 139 in 2006. As mentioned previously in this report, we are concerned that the Basic Pilot has no control requiring additional investigation or contact with these numberholders before confirming employment eligibility. In fact, we tested these 50 individuals through the Basic Pilot and all were confirmed eligible for employment. As such, we believe the Basic Pilot should be revised to issue a notice to employers that more investigation is necessary when an employee is older than a pre-established age.

CONCLUSION

Given the scope and breadth of information held in SSA's Numident file, we applaud the Agency on the accuracy of the data we tested. However, we estimate that about 17.8 million Numident records contain discrepancies that may result in incorrect Basic Pilot feedback to employers. As Congress considers legislation requiring mandatory verification of all U.S. workers' employment eligibility through a system such as the Basic Pilot, we believe it should also consider the significant workload that may result from the millions of numberholders whose Numident records may need to be corrected. Our review showed that the Numident records for these individuals have discrepancies in the numberholders' names, dates of birth, citizenship status and/or death indications that would result in inaccurate feedback from the Basic Pilot.

Because our tests included SSNs that were assigned decades ago, we recognize that some numberholders would no longer be working and would not attempt to correct their SSA and/or immigration records. However, if even a portion of the estimated numberholders whose Numident records contained discrepancies were required to visit an SSA office to correct their information, the Agency's workload may significantly increase until such time as the affected records were corrected.

OTHER MATTER

DHS' U.S. CITIZENSHIP AND IMMIGRATION SERVICES UNABLE TO LOCATE IMMIGRATION RECORDS FOR NONCITIZEN RECORDS

DHS' U.S. Citizenship and Immigration Services (USCIS) was unable to locate immigration records for 304 (37.5 percent) of the 810 noncitizen numberholders in our sample—through its computer data match. As such, for these numberholders, we could not determine whether SSA's Numident data matched DHS information (such as, name, date of birth and citizenship status). USCIS stated it could not match/locate these records through computer searches because of data compatibility problems. Specifically, USCIS' Central Index System records are organized by alien number (A-Number). Visitors or other noncitizens can be admitted under an I-94 Admission number. The records of these admissions are tracked in various DHS databases, primarily the Treasury Enforcement Communications System/Interagency Border Inspection System. We could only provide DHS with data SSA recorded on the noncitizen's Form SS-5 or in the Numident—which generally included the numberholder's name, date of birth, place of birth, parents' names, approximate date of entry to the United States (date of the SSN application) and, if SSA recorded it, the noncitizen's alien (A-number) or admission number.

We first requested immigration information from DHS for noncitizens in our sample on May 8, 2006. USCIS retained the services of a contractor, which used computer searches based on the numberholder's name and date of birth, in attempting to locate the records in USCIS' Central Index System. On occasion, USCIS also attempted to manually search its records for the individuals. On December 6, 2006, USCIS provided the following statement regarding its inability to match/locate some of these records.

Thank you for the opportunity to comment on those records USCIS was unable to match. The attached

file you provided contains the names and information of data either not found or not matched in entirety in the Central Index System (CIS) or in manual records located here. SSA provided names and dates of birth in order for USCIS to match data and locate an A-number within USCIS' Central Index System to determine the Class of Admission. Past attempts to match SSA and USCIS data have shown that it is difficult to match records without a common numerical identifier between the two systems (Numident and CIS). Since SSA uses SSN and CIS is A-number driven it can be difficult to match records based solely on name and date of birth because slightly different names may be used with each agency, and names may change. Moreover, birth dates may be incorrect or miskeyed in one system or the other. Additionally, there may be more than one person with the same name and date of birth, making it impossible to know which record is the correct match.

It should be noted that the lack of a match does not mean the CIS system is deficient. It may well be the case that non-citizens who are not known to USCIS because they are illegal entrants have obtained SSNs, and thus have a Numident record. Without knowing the specifics of each of the 304 cases, we cannot draw conclusions about whether the mismatch was due to inadequate information provided, or due to the fact that no USCIS record exists on the subject of the Numident record. The possibility that some are not known to USCIS because they are not lawful entrants should not be excluded.¹ USCIS Records Division has checked CIS to the best extent possible based on the names and information provided.

1 Footnote to USCIS Statement. We would also note that a significant percentage of the records worked with overall in this study were older ones, which are the ones most likely to lack a corresponding USCIS record because they related to SSN's issued pre-1974, when SSA did not require proof of identity or citizenship, and thus are more likely to pertain to an unlawful alien than newer Numident records.

APPENDICES

Appendix A -- Acronyms

DHS	Department of Homeland Security
EDR	Electronic Death Reporting
HHS	Department of Health and Human Services
IRTPA	<i>Intelligence Reform and Terrorism Prevention Act of 2004</i>
MEF	Master Earnings File
OIG	Office of the Inspector General
SSA	Social Security Administration
SSN	Social Security Number
State	Department of State
U.S.	United States
U.S.C.	United States Code
<u>Forms</u>	
I-9	<i>Employment Eligibility Verification</i>
I-94	<i>Arrival-Departure Record</i>
I-151	<i>Alien Registration Receipt Card</i>
I-551	<i>Permanent Resident Card</i>
I-766 and I-688B	<i>Employment Authorization Document</i>
SS-5	<i>Application for a Social Security Card</i>
W-2	<i>Wage and Tax Statement</i>

Appendix B -- Scope and Methodology

To accomplish our objective, we performed the following steps.

- Reviewed pertinent sections of the Social Security Administration’s (SSA) policies and procedures as well as other relevant Federal laws and regulations.
- Reviewed Office of the Inspector General, Government Accountability Office and Department of Homeland Security (DHS) reports and other relevant documents.
- Randomly selected a segment of SSA’s Numident file as of November 30, 2005. From the segment, we stratified the Social Security numbers (SSN) into three populations and randomly selected 810 Numident records for review from each: (1) native-born U.S. citizens, (2) foreign-born U.S. citizens and (3) non-U.S. citizens. Table 1 provides the actual number of SSNs in Segment 3, categorized by the aforementioned populations.

Table 1: Details of Sample Selected for Review

Column A	Column B	Column C	Column D
Category	Sample Size	Number of SSNs in Segment 3 of Numident File	Estimate of Total SSNs In Numident File for Each Category (Column C x 20)
Native-Born U.S. Citizens	810	19,010,361	380,207,220
Foreign-Born U.S. Citizens	810	402,667	8,053,340
Non-U.S. Citizens	810	2,326,218	46,524,360
Total	2,430	21,739,246	434,784,920

- For each sample item, we obtained copies of the original *Application for a Social Security Card* (Form SS-5) and any subsequent SS-5s that resulted in an update to the numberholder’s Numident record (for example, a name change or change in citizenship status.)
- We then compared the Numident data (name, SSN, date of birth, and citizenship status) to the SS-5s to ensure SSA personnel correctly recorded the information provided by the applicant.
- We attempted to determine the legitimacy of any dates of death present on the Numident records, if applicable, by (1) researching SSA and other records to determine what State and/or jurisdiction the death occurred and (2) if located, requesting a copy of the death certificate from that location.
- For numberholders age 90 and over, who did not have a date of death annotated on their Numident records, we reviewed SSA’s Master Beneficiary Record and Supplemental Security Income Record Display to determine whether a death indication was noted on these records for the individual and whether they were currently receiving SSA benefits.
- We verified foreign-born noncitizens’ and foreign-born U.S. citizens’ “citizenship” status with DHS and/or the Department of State (State).
- We obtained birth and, if applicable, marriage and/or death certificates for the first 50 sample items in each of the 3 populations.
- We submitted the 1,620 U.S. citizen SSNs through the Basic Pilot, using information provided by the numberholder on his or her Form SS-5. Further, we submitted all noncitizen SSN records through the Basic Pilot when we could obtain DHS alien or admission numbers or when we

identified any discrepancies between SSA and DHS information for the numberholder.

- We summarized and projected our results to the entire Numident universe (all 20 segments) as of November 30, 2005. See Appendix C for our sample results.

Underlying Assumptions

In performing our tests, we could not predict what proof of identity and employment eligibility a numberholder would present to an employer. Therefore, we made the following assumptions.

- The information provided by the numberholder on his or her Form SS-5 was correct and would be the same data provided to an employer.
- The information provided by DHS and/or State was correct.

Our review of internal controls was limited to obtaining an understanding of SSA's SSN assignment process, the Numident file and the SSA/DHS Basic Pilot—and conducting the tests outlined above. The objective of our review was to determine the reliability of the Numident file. Accordingly, we determined that the Numident file information was generally reliable. However, we did not test the information provided by DHS and State. Accordingly, we cannot opine to its reliability. Any conclusions discussed in this report, which were predicated on information provided by DHS or State, have been annotated with the appropriate qualification.

The SSA entities audited were the Offices of Operations, Systems, and Income and Security Programs. We conducted the audit between April and November 2006 in Birmingham, Alabama. We conducted our audit in accordance with generally accepted government auditing standards.

Appendix C -- Sample Results

Table 1: Sample Results and Projections for All Citizenship Categories

U.S. Citizens (Native- and Foreign-born) and Non-U.S. Citizens	
Population of SSNs assigned since 1936 from one segment of the Numident file	21,739,246
Sample Size	2,430
Attribute Projections	
Number of discrepancies in sample	136
Estimate of discrepancies in segment	887,344
Projection—Lower Limit	647,130
Projection—Upper Limit	1,127,558
Numident Estimate	
Estimate of discrepancies for the entire Numident file (887,344 x 20 segments)	17,746,880
<i>Projections made at the 95-percent confidence level.</i>	

Table 2: Sample Results and Projections For Individual Citizenship Strata

Native-Born U.S. Citizens	
Population of SSNs assigned 1936-November 2005 from one segment of the Numident	19,010,361
Sample size	810
Attribute Projection	
Number of discrepancies in sample	27

Estimate of discrepancies in segment	633,679
Numident Estimate	
Estimate of discrepancies for entire Numident file (633,679 x 20 segments)	12,673,580
Foreign-Born U.S. Citizens	
Population of SSNs assigned 1936-November 2005 from one segment of the Numident	402,667
Sample size	810
Attribute Projection	
Number of discrepancies in sample	25
Estimate of discrepancies in segment	12,428
Numident Estimate	
Estimate of discrepancies for entire Numident file (12,428 x 20 segments)	248,560
Non-U.S. Citizens	
Population of SSNs assigned 1936-November 2005 from one segment of the Numident	2,326,218
Sample size	810
Attribute Projection	
Number of discrepancies in sample	84
Estimate of discrepancies in segment	241,237
Numident Estimate	
Estimate of discrepancies for entire Numident file (241,237 x 20 segments)	4,824,740

Table 3: Other Projections for Foreign-Born U.S. Citizens

Foreign-Born U.S. Citizens—Misclassified in the Numident File	
Population of SSNs assigned 1936-November 2005 from one segment of the Numident	402,667
Sample size	810
Attribute Projection	
Number of individuals who were not citizens in sample	62
Estimate of number of individuals who are not citizens in segment	30,821
Numident Estimate	
Estimate of number of individuals who are not citizens in entire Numident file (30,821 x 20 segments)	616,420

Table 4: Other Projections for Non-U.S. Citizens

Non-U.S. Citizens—Misclassified in the Numident File	
Population of SSNs assigned 1936-November 2005 from one segment of the Numident	2,326,218
Sample size	810
Attribute Projection	
Number of instances in sample where citizenship was misclassified in sample	57

Estimate of discrepancies in segment	163,697
Numident Estimate	
Estimate of number of instances where citizenship was misclassified in entire Numident file (163,697 x 20 segments)	3,273,940

Appendix D -- Basic Pilot

The Basic Pilot is a Department of Homeland Security (DHS) initiative, supported by the Social Security Administration (SSA) through a Memorandum of Understanding between the two agencies.

The purpose of the Basic Pilot is to assist employers in verifying the employment eligibility of newly-hired employees. The President signed *The Basic Pilot Program Extension and Expansion Act of 2003* (Public Law Number 108-156) into law on December 3, 2003. This law extended the operation of the Basic Pilot for an additional 5 years (to a total of 11 years) and expanded the operation to all 50 States not later than December 1, 2004.

As discussed with SSA and DHS staff, the Basic Pilot involves using the information in Government databases (SSA databases and, if needed, DHS databases) to determine the employment eligibility of new hires. The Social Security number (SSN) and Alien Registration Number ("A" Number) or I-94 Number (Admission Number) are used for these checks. The employer must complete the DHS-issued *Employment Eligibility Verification Form* (Form I-9) for each employee and then enter elements of this data into the Basic Pilot within 3 days of hiring, including the employee's SSN, name, date of birth, and whether the new hire indicated he or she was a U.S. citizen and, if not, the "A" Number or I-94 Number.

The system first checks the information entered against SSA's database to verify the name, SSN, and date of birth of newly-hired employees, regardless of citizenship. When the Numident indicates United States citizenship for the newly-hired employee and the new-hire indicated that he/she is a U.S. citizen, the Basic Pilot automated system confirms employment eligibility. If the Basic Pilot system cannot confirm employment eligibility based on the information in SSA's database or an "A" Number or I-94 Number was entered, the Basic Pilot system checks the data against DHS' database.

The employer will receive notification of "SSA tentative nonconfirmation" of employment eligibility when the SSN, name, or date of birth does not match the information in SSA's database or if a death indicator is present. Also, employers will receive an "SSA tentative nonconfirmation" if the new hire indicated he or she was a U.S. citizen and SSA's records did not show that the person was a U.S. citizen.

The employer will receive notification of "DHS tentative nonconfirmation" of employment eligibility when DHS' database does not show the newly-hired noncitizen as authorized for employment. In these cases, the employer asks the employee whether he or she wishes to contest the tentative nonconfirmation. If contested, the employee must contact SSA or DHS within 8 Government working days of the notification. After the employee contacts SSA or DHS to correct the record, the employer resubmits the query through the Basic Pilot system. If the system does not confirm employment eligibility after the employer resubmits the query, the employer may terminate the new hire.

Appendix E -- Additional Discrepancies that Did Not Impact Basic Pilot Results

Discrepancies that Did Not Impact Basic Pilot	Native-born U.S. Citizens	Foreign-born U.S. Citizens	Non-U.S. Citizens
Name	13	167	160
Date of Birth	9	9	16
Citizenship	0	43	43
Totals:	22	219	219

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Social Security Advisory Board

Overview of the Office of the Inspector General

The Office of the Inspector General (OIG) is comprised of our Office of Investigations (OI), Office of Audit (OA), Office of the Chief Counsel to the Inspector General (OCCIG), and Office of Resource Management (ORM). To ensure compliance with policies and procedures, internal controls, and professional standards, we also have a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts and/or supervises financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations and projects on issues of concern to SSA, Congress, and the general public.

Office of Investigations

OI conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as OIG liaison to the Department of Justice on all matters relating to the investigations of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Office of the Chief Counsel to the Inspector General

OCCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Finally, OCCIG administers the Civil Monetary Penalty program.

Office of Resource Management

ORM supports OIG by providing information resource management and systems security. ORM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, ORM is the focal point for OIG's strategic planning function and the development and implementation of performance measures required by the Government Performance and Results Act of 1993.

-- FOOTNOTES FOLLOW --

Programs Operations Manual System, RM 00201.040.

Presently, up to 29 documents issued by various Federal, State and local awarding agencies are valid for completing the *Employment Eligibility Verification* (Form I-9), which is legally required for every newly-hired employee. Acceptable records include (1) DHS identity and work authorization documents; (2) U.S. passports; (3) SSN cards; (4) State and local Government records; and (5) records from schools, medical facilities and the military. See 8 C.F.R. § 274a.2; DHS Form I-9.

Of the 136 discrepancies, 42 (30.9 percent) were on Numident record entries dated before May 15, 1978, the date on which SSA began requiring all SSN applicants to provide proof of age, identity and U.S. citizenship. The remaining 94 (69.1 percent) Numident records were dated between May 15, 1978 and November 30, 2005.

This estimate was developed using a stratified sampling approach. We randomly selected 810 Numident records from each of the three populations. The three populations varied in size based on the citizenship status and place of birth annotated on the Numident records. See Appendix C for our sample results.

Foreign-born U.S. citizens are those individuals who (1) were born abroad to U.S. citizen parents or (2) became "naturalized" citizens after immigrating to the United States. 8 U.S.C. §§ 1401(c); 1421 *et seq.*

As explained on pages 10 and 11 of this report, only 19 of these cases were included in the total 136 discrepancies that impacted Basic Pilot results. Although the remaining 43 foreign-born U.S. citizens discussed were misclassified, DHS confirmed that they were Legal Permanent Residents and authorized to work. As such, the Basic Pilot feedback was correct – they were eligible for employment.

We believe this is a conservative estimate because DHS was only able to provide citizenship data for 506 of the 810 non-U.S. citizens in our sample.

Social Security Amendments of 1972, Pub. L. 92-603, 86 Stat. 1329 (1972).

Subject Counterfeiting and Misuse of the Social Security Card and State and Local Identity Documents: Hearing Before the House Committee on the Judiciary, Subcommittee on Immigration and Claims, 106th Cong., 1st Sess. 64 (1999) (statement of Glenna Donnelly, Assistant Deputy Commissioner, Office of Disability and Income Security Programs, SSA).

The MEF, formally known as the Earnings Recording and Self-Employment Income System, Social

Security Administration, Office of Systems, SSA/OS 60-0059, contains all earnings data reported by employers and self-employed individuals. SSA uses the data to determine eligibility for and the amount of Social Security benefits. 71 Federal Register (FR) 1796, 1819-1820 (January 11, 2006).

The *Social Security Act* § 205(c)(2)(A), 42 U.S.C. § 405(c)(2)(A) requires SSA to maintain records of wage amounts employers pay to individuals.

A third party would be a company or individual that submits or requests information on behalf of someone else.

While our review focuses on the Basic Pilot, SSA offers other types of employee verification services. These tools include SSA's Employee Verification Service for Registered Users, which allows employers to submit employees' names/SSNs via paper or magnetic media, and the Social Security Number Verification Service, an on-line verification system. Unlike the Basic Pilot, these tools do not allow employers to verify the work authorization status of employees.

The determination as to whether a noncitizen is currently authorized to work rests with DHS—the Basic Pilot places no reliance on work authorization information SSA has in its records in making this determination.

SSA stores Numident records in equal segments by arranging records in numerical order according to the last two digits of the SSN (for example, 80-84, 85-89, 90-94, etc). Each segment represents 5 percent of all Numident records and there are 20 segments in total. It is common practice for SSA to use a segment to estimate results to the entire file.

The alien registration (or "A") number is the 9-digit number following "A" that is shown on the "green card" or *Permanent Resident Card* (Form I-551, formerly Form I-151 *Alien Registration Receipt Card*), the *Employment Authorization Document* (I-766 and I-688B), and on certain other immigration documents and notices. For newly admitted immigrants, the "A" number is shown on the machine-readable immigrant visa affixed to the foreign passport. The admission number is the 11-digit number located on the *Arrival-Departure Record* (Form I-94). Form I-94 shows the date the individual arrived in the United States, the "Admitted Until" date, and the date when his or her authorized period of stay expires.

Form I-94 also usually shows the noncitizen's class of admission (for example, "F-1," which includes noncitizen academic students in colleges, universities, seminaries, conservatories, academic high schools, other academic institutions, or in language training).

S. 2611, 109th Cong., 2d Sess. § 301 (2006); H.R. 4437, 109th Cong., 2d Sess. Title VII (2006).

Of the 136 discrepancies impacting Basic Pilot results, 7 resulted from differences between the Numident and applicants' Form SS-5s; 33 resulted from death indications on the Numident or other SSA records, which did not preclude confirmation of employment eligibility; and 96 resulted from differences in information contained on the Numident file and data provided to us by DHS (that is, numberholder's name, date of birth, or citizenship status.)

This estimate was developed using a stratified sampling approach. We randomly selected 810 Numident records from each of the three populations. The three populations varied in size based on the citizenship status and place of birth annotated on the Numident records. See Appendix C for our sample results.

Additional minor discrepancies were identified between the names and dates of birth shown on the original Form SS-5s and the Numident records. However, Basic Pilot tolerances permitted employment eligibility confirmation of these records. Further information regarding these discrepancies is provided in Appendix E.

SSA establishes a Master Beneficiary Record for each Old-Age, Survivors and Disability Insurance claimant and a Supplemental Security Income Record for every Supplemental Security Income applicant. These reports maintain pertinent information necessary to accurately pay benefits to the individuals. The information maintained includes identification data (name, SSN, date of birth, address), type and date of any disability, monthly benefit amounts, and the reason for terminating or suspending benefit payments. The SSA published Privacy Act notices for the Master Beneficiary Record, SSA/ORSIS, 60-0090, and for the Supplemental Security Income Record Display and Special Veteran's Benefits, SSA/ODSSIS, 60-0103, in January 2006. 71 Federal Register (FR) 1796, 1826-1834 (January 11, 2006).

According to an SSA representative, the Agency last used the "D" transaction code in 1983.

In an October 2006 audit report *Effectiveness of the Young Children's Earnings Records Reinstatement Process* (A-03-05-25009), we made a similar recommendation regarding SSA's SSN verification service. Specifically, we recommended that, consistent with the Agency's disclosure policies, SSA modify the Employer Verification Service for Registered Users and SSN Verification Service to detect SSNs for children under age 7 to provide appropriate notice to employers and potentially reduce the number of future notices. SSA agreed with our recommendation.

In response to a draft of this report, SSA stated that in December 2005, the Agency began requiring noncitizens to show their legal name on the SSN card—as reflected on the immigration document. Before that date, noncitizens could use a name reflected on an identity document; however, the name on the immigration document should have been annotated on the Numident.

Only 4 of these 62 citizenship discrepancies occurred after September 2002, the month in which SSA began verifying all immigration documents with DHS.

LPRs are foreign nationals who have been granted the right to reside permanently in the United States. LPRs are often referred to simply as "immigrants," but they are also known as "permanent resident aliens" and "green card holders." LPRs are permitted to live and work anywhere in the United States, to own property, to attend public schools, to join certain branches of the Armed Forces, and they may also become U.S. citizens if they meet certain eligibility requirements.

DHS, Office of Immigration Statistics Policy Directorate, publication *Estimates of the Legal Permanent Resident Population and Population Eligible to Naturalize in 2004*, issued February 2006.

In response to a draft of this report, SSA stated that in December 2005, the Agency began requiring noncitizens to show their legal name on the SSN card—as reflected on the immigration document. Before that date, noncitizens could use a name reflected on an identity document; however, the name on the immigration document should have been annotated on the Numident.

We believe this is a conservative estimate because DHS was only able to provide citizenship data for 506 of the 810 non-U.S. citizens in our sample.

SSA stores Numident records in equal segments by arranging records in numerical order according to the last two digits of the SSN (for example, 80-84, 85-89, 90-94, etc). Each segment represents 5 percent of all Numident records and there are 20 segments in total. It is common practice for SSA to use a segment to estimate results to the entire file.

We estimate SSA assigned approximately 435 million SSNs between 1936 and November 2005 (21,739,246 in Numident segment 3 X 20 segments = 434,784,920).

Section 401 et seq. of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (8 U.S.C. §1324a), Pub. Law No. 104-208.

Exhibit G

Congressional Liaison Unit

U.S. Department of Homeland Security
 300 North Los Angeles Street
 Los Angeles, CA 90012



U.S. Citizenship
 and Immigration
 Services

Fax

To: Shental From: Mariana Gitomer
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 on the Basic Pilot program you
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REPORT TO CONGRESS ON THE BASIC PILOT PROGRAM JUNE 2004

PURPOSE OF THE REPORT

The desirability of automating the employment verification process established in the 1986 Immigration Reform and Control Act (IRCA) has been the subject of considerable debate. Proponents have argued that automating the process would make employment verification more effective in preventing unauthorized employment and, consequently, would act as a deterrent to illegal immigration to the United States. Opponents have raised concerns about potential negative impacts of automated employment verification on discrimination and privacy. Because of the uncertainty about the impacts of electronic employment verification, Congress and the former Immigration and Naturalization Service (INS)¹ approached implementing automated employment verification cautiously by establishing and evaluating voluntary pilot programs to explore the effects of such programs.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated that the former INS and the Social Security Administration (SSA) implement and evaluate three employment verification pilot programs over a 4-year period. In response to this legislation, INS implemented the Basic Pilot, the Citizen Attestation Verification Pilot (CAVP), and the Machine-Readable Document Pilot (MRDP) and arranged for their evaluation by independent contractors. Congress extended authorization for the pilots for an additional 2 years in 2001 and for another 5 years through the Basic Pilot Program Extension and Expansion Act of 2003, enacted on December 5, 2003. The CAVP and the MRDP programs were terminated on their initial expiration dates in 2003.

The Basic Pilot Program Extension and Expansion Act of 2003 also mandated the Secretary of Homeland Security to expand the Basic Pilot to all 50 States not later than December 1, 2004, and required that the Secretary submit a report to House and Senate Judiciary Committees by June 1, 2004. The June 1 report is required to address whether the problems identified in the pilot evaluation reports have been substantially resolved and describe the actions the Secretary of Homeland Security will take to resolve any outstanding problems raised in the pilot evaluation report before expanding the Basic Pilot to all 50 States.

This U.S. Citizenship and Immigration Services (CIS) report fulfills this legislative mandate. It discusses measures that DHS and SSA have already taken to address the major problems noted

¹ The evaluations were conducted under the auspices of the Immigration and Naturalization Service (INS) within the Department of Justice. Following establishment of the Department of Homeland Security on March 1, 2003, the relevant INS functions discussed in this report were incorporated into U.S. Citizenship and Immigration Services (CIS), part of DHS. However, some relevant databases were retained by other DHS agencies. In this report, reference will be made to INS when discussing events that occurred prior to March 1, 2003. Reference to DHS and CIS will be made when talking about the present and the future.

in the evaluation report and, where feasible, provides information on how successful the Federal government has been in these efforts. It also includes additional measures planned for implementation prior to the December 2004 program expansion to employers who volunteer to participate anywhere in the United States.

HOW THE BASIC PILOT VERIFICATION SYSTEM WORKS

The Basic Pilot program builds upon the employment verification procedures specified by the Immigration Reform and Control Act (IRCA) of 1986. Implementation of this legislation requires that all newly hired employees and their employers complete I-9 forms and that employers review specified documents establishing the identity and work-authorization status of new employees. In the Basic Pilot program, participating employers enter the I-9 form information about their newly hired employees into a computer and electronically transmit this information to the Federal government.

Information submitted by employers is automatically compared with information on SSA's primary database, the Numerical Identification File (NUMIDENT). This database contains information on name, date of birth, and citizenship status of persons issued Social Security cards, which enables SSA to confirm work authorization for U.S. citizens and some noncitizens who are permanently work authorized. If the information submitted by the employer matches SSA data, and SSA records confirm work-authorization status, the employer is immediately notified that the employee is verified. If the employer-submitted information is inconsistent with SSA information, the employer is immediately notified that the employee has received a tentative nonconfirmation finding. An SSA tentative nonconfirmation is also issued when the person attests to being a U.S. citizen but SSA records indicate that the person is a noncitizen with unknown work-authorization status.

If employer-submitted information and SSA data are consistent for employees attesting to being noncitizens but the SSA database does not permit confirmation of work-authorization, the employer-submitted information is next automatically matched against CIS's Customer Processing System (CPS). If the CIS automated match is adequate to establish work-authorization, the employee is verified immediately. If information on the CPS is inconclusive, Immigration Status Verifiers, who are field office records experts assigned to verify status, check other DHS² information to determine work-authorization status. If the Immigration Status Verifier is able to verify work-authorization, the employer is typically notified within 1 day of case submission that the employee has been verified. If the Immigration Status Verifier cannot verify work-authorization without additional information, CIS issues a tentative nonconfirmation.

When tentative nonconfirmations are issued, employers are required to notify their employees of the finding. The employees have the right to contest tentative nonconfirmation findings by contacting SSA or CIS, as appropriate, to resolve any inaccuracies in their records. This contesting process is normally limited to 10 Federal workdays. During this time, employers are

² DHS rather than CIS is used in the text when the information or databases referred to include those administered by other DHS agencies.

not permitted to take any adverse actions against employees, based on the finding. When employees contest their tentative nonconfirmation findings, CIS informs their employers of the employees' work-authorization status. When employees do not contest their findings within the allotted time, they receive final nonconfirmation findings. Employers are supposed to terminate the employment of employees in three circumstances: when employees indicate that they do not wish to contest the finding, when employees are found not to be work-authorized, or when employees receive final nonconfirmation findings.

PROBLEMS IDENTIFIED IN THE EVALUATION AND ACTIONS TO CORRECT THEM

The pilot program evaluations, conducted by external evaluators, concluded that the pilot reduced unauthorized employment among participating employers by permitting employers to determine whether the information provided by employees on I-9 forms is consistent with information on SSA and DHS databases. However, the evaluations also found a number of program deficiencies and recommended that the Federal government address them prior to expansion of the program.

Three primary problems were noted.³ First, the tentative nonconfirmation rate⁴ was unacceptably high for foreign-born *work-authorized* employees and was higher than desirable for U.S.-born employees. This created burdens for employees and employers, increased verification costs for the government, and led to unintentional discrimination against foreign-born persons. Second, lack of full employer compliance with pilot requirements reduced its effectiveness in deterring unauthorized employment and contributed to discrimination against foreign-born employees. Third, most employers did not consider the pilot programs to be attractive, limiting the extent to which a volunteer program could reduce unauthorized employment on a national basis.

ERRONEOUS TENTATIVE NONCONFIRMATION RATES

The most serious pilot deficiency noted by the evaluation of the electronic employment verification programs was that they too frequently resulted in work-authorized employees receiving tentative nonconfirmations. Employers, employees, and the Federal government incurred costs in the process of resolving these erroneous findings. Since foreign-born employees were more likely to receive erroneous tentative nonconfirmations than were U.S.-born employees, these accuracy problems were also a source of unintentional discrimination against foreign-born employees. The evaluations recommended against expansion of automated employment verification prior to addressing this problem.

The evaluations discussed three factors contributing to erroneous tentative nonconfirmations. First, some erroneous tentative nonconfirmations resulted from inaccuracies in the Federal

³ The list of problems reflects results from the Basic Pilot evaluation as well as subsequent evaluation efforts on the pilot programs.

⁴ Tentative nonconfirmation of work authorization is the initial electronic response returned by the pilot system when an employee's work authorization status cannot be immediately confirmed.

databases used to verify work-authorization due, in large part, to delays in entering data on newly arriving aliens with work authorization and updating the databases to reflect changes in relevant employee information, such as name changes or changes in work-authorization status. Second, reliance on Immigration Status Verifiers to re-input employer-submitted information when checking multiple INS databases other than the primary verification database created the potential for additional data entry errors. Third, employers sometimes made errors inputting data into the automated system. Although some data input errors are inevitable, the use of commonly available editing software could prevent some of these errors.

MEASURES TO ADDRESS ERRONEOUS TENTATIVE NONCONFIRMATION RATES

Improving Federal Database Accuracy

Since the completion of the Basic Pilot evaluation data collection in 1999, both SSA and DHS have taken steps to improve the accuracy of the Federal databases used in the Basic Pilot program to verify employer-entered data. This section describes these improvements.

SSA Improvements

Over time, SSA has increased the amount of information it collects that is relevant to verifying work-authorization status. In November 1980, SSA started collecting citizenship status of applicants for Social Security Numbers (SSN) and, in 1990, started collecting information on whether noncitizens were lawful permanent residents.⁵ Due to these changes, increased information about the work-authorization status of foreign-born employees is continually becoming available in the SSA database.

In early FY 2002, SSA focused improvement on processing Social Security numbers in two areas: encouraging their field offices to make better use of systems screening capabilities by processing enumeration applications online, and conducting a variety of training initiatives which focused on preventing the most frequent errors made by SSA employees in the enumeration process. SSA quality control data indicates that their efforts have resulted in increased data accuracy. In 1998, of the 12.5 million SSN applications processed, 91 percent were found to be free from error. In 2001, over 93 percent of the 14.6 million SSN applications processed were found to be free from error.⁶

Recent analyses of the Basic Pilot transaction database confirmed that SSA efforts have resulted in increased accuracy of the SSA automated database check. Among cases that were authorized at any point by the Basic Pilot, the percent of cases authorized by SSA during the SSA automated matching process increased from 83.7 percent in 1999 to 88.4 percent in 2003.⁷ The improvement was most dramatic for foreign-born noncitizen employees. Among foreign-born

⁵ In 1995, SSA began notating its systems for refugees and in 2001, asylees. Both of these classifications, like lawful permanent residents, are work-authorized incident to status.

⁶ SSA changed the method by which their quality reports were done in FY2002, so that comparable data for FY02 and FY03 do not exist.

⁷ This report examines Basic Pilot results for cases ever authorized rather than all cases in order that database accuracy trends are not confounded by any trends in the percentage of non-authorized workers verified.

noncitizens authorized at some point by the Basic Pilot, the percentage electronically authorized by SSA increased from 37.2 percent to 48.8 percent, while the corresponding percentages for foreign-born citizens increased from 83.6 percent to 88.6 percent and the percentages for U.S.-born employees increased from 99.5 to 99.8 percent.

SSA is currently piloting a method of verifying SSNs for employers called Social Security Number Verification Service (SSNVS) that may prove useful in further improving data accuracy. While SSA has provided verification services for employers by phone, diskette, and paper for over a decade, SSNVS is Internet-based and stems in part from the employers' request for an online service available 7 days a week. If evaluation of the SSNVS pilot indicates it is successful, expansion of this program will provide SSA with more updated employee information.

DHS Improvements

DHS systems were designed before status verification was an operational need, and substantial efforts have been required to adapt these systems for verification purposes. The former INS instituted a number of efforts to ensure that the data about noncitizens is current, complete, and input into relevant agency systems quickly. These efforts were intensified following the terrorist attacks of September 11, 2001, and DHS continues this work. Many of these efforts have focused on improving the quality of the data available in the DHS databases that provide the information used in the verification process, by increasing the accuracy of existing DHS records, expediting data entry for new lawful permanent residents and arriving nonimmigrants, and expediting data entry about changes in work-authorization status. In addition, CIS has made improvements in how information from operational databases is incorporated into the CPS, which is used for the automated Basic Pilot verification check.⁸

Increasing the accuracy of existing CIS records

CIS has taken major steps to increase the completeness of its paper and electronic records system. In FYs 2000 and 2001, the former INS consolidated its current paper A-file records at a new National Records Center. CIS is presently augmenting this effort by transferring all nonclassified retired A-files to the National Records Center. As part of these consolidation efforts, files are reviewed and missing or inaccurate information is added or corrected in the core CIS database used for verification. Additionally, special efforts have been made to interfile loose documents that belong in these files and update the automated records accordingly. Since the inception of these consolidation efforts, more than 5 million records have been updated.

DHS has also taken steps to increase the accuracy of its electronic records. The accuracy of NIS has been improved by developing a capability to correct errors in the database, which previously had not been possible. Initiatives have also been taken to ensure that status codes used in DHS databases translate into current work-authorization status in the CPS. These changes facilitate immediate electronic verification.

⁸ The CPS replaces the ASVI database referred to in the evaluation report. As was true for ASVI, data in the CPS are extracted from core DHS databases to ensure the security and confidentiality of information not needed for verification purposes.

Expediting data entry for persons entering the United States

DHS has mounted efforts to expedite submission of data on immigrants and nonimmigrants from ports of entry and field offices for data entry into its automated systems. At the time the pilot evaluations were conducted, there was typically a 6 to 9 month lag between an immigrant's arrival in the United States or adjustment to permanent resident status and availability of data for verification purposes. Post 9/11 instructions to field offices require that immigrant visas or adjustment documentation be sent immediately to the appropriate CIS service center for data entry. Once the case is received at the service center, the contractor responsible for data entry is required to input the data within 3 days. Data on new immigrants are now typically available for verification within 10 to 12 days of an immigrant's arrival in the United States. This summer CIS is testing changes to expedite the adjustment of status process for many family-based immigrants. The changes being tested are expected to make data for those cases available for verification purposes almost immediately.

Similarly, efforts have been made to accelerate data entry on nonimmigrant arrivals. When the Basic Pilot evaluation was conducted, nonimmigrant data were taking in excess of a month to be input into the nonimmigrant (NIIS) database. New timeliness and quality standards put into place in a November 2001 contract has resulted in these data being available for verification within 11 to 14 days of arrival. Work is underway to reduce this time to a week or less. For many cases this standard has already been met by use of scanning technology and secure electronic transmission of nonimmigrant records deployed at contract facilities located near the largest volume airports in Miami, Los Angeles, New York, San Francisco, and Honolulu which account for over half of nonimmigrant admissions.

Expediting data entry for changed work-authorization status

CIS has also worked to increase the timeliness and availability of temporary work-authorization information in its systems, which was one of the most problematic areas identified by the evaluations. Timeliness of data entry is quickest for work-authorization documents processed at service centers, since these centers enter information into the database as part of the work-authorization case processing. While in 1999 less than half of all employment authorization documents were issued by service centers, over three-quarters of these cards are now issued through this centralized process, and this proportion is continuing to rise.

CIS has also increased the timeliness and completeness of data entry for the smaller portion of work-authorization cards processed in local field offices. Information on these work-authorization approvals is now sent electronically for data entry rather than being sent through the mail on computer disks. Beginning this summer, further improvements will expedite processing of many field office work authorizations and make employment authorization information available for verification purposes within 1 to 2 days of action on the case.

Improving how data are incorporated into the Customer Processing System

Recently, CIS has made changes to the CPS to increase the proportion of verifications that will clear electronically. Data corrections made to NIIS are now downloaded to the CPS on a daily basis. Additionally, logic errors recently found in the old verification software have been

corrected, which will substantially increase the proportion of automatic verifications of persons with employment authorization documents.

Effects of changes addressing data accuracy

Analysis of the Basic Pilot database confirms that the accuracy of the automated CIS database check has improved. Among the cases that went to CIS for authorization and were authorized at some point in the process⁹, the percent of cases authorized by the database match increased from 58.0 percent in 1999 to 82.6 percent in 2003. Combining the improved SSA and CIS accuracy checks indicates that among cases found to be work-authorized at some point in the process, the percent found work-authorized through an automated match increased from 92.6 percent in 1999 to 97.4 percent in 2003.

Reducing Immigration Status Verifier Data Entry Errors

The evaluation recommendation to provide Immigration Status Verifiers with a means to electronically check databases without manually reentering Form I-9 data each time is in the process of being implemented. In 2002, CIS provided Integrated Common Interface browsers to Immigration Status Verifiers conducting pilot verifications. This permits them to query multiple databases with a single entry screen. CIS is currently working to ensure that browsers will be uniformly available to all Immigration Status Verifiers by this summer.

Reducing Employer Data Entry Errors

CIS has incorporated measures expected to substantially reduce employer input errors into a new approach to the Basic Pilot using the Internet, the Web-Basic Pilot program, currently scheduled for implementation this summer. These features include real-time edit checks that will alert employers to obvious or probable mistakes as they are being made. For example, the Web-Basic Pilot program creates an error message if the employer does not input the correct number of digits into the SSN and alien number fields. Other useful features of the Web-Basic Pilot program include clearer instructions, links to instructions for data entry, and links to on-line resources such as the employer handbook.

REDUCING ERRONEOUS TENTATIVE NONCONFIRMATION RATES

As expected, the increase in the percent of cases authorized automatically resulted in a decrease in the estimated percent of work-authorized employees who received tentative nonconfirmations. This percent declined from 2.0 percent in 1999 to 1.4 percent in 2003. Among U.S.-born employees authorized by the Basic Pilot, there was an improvement in the percent of cases authorized without a tentative nonconfirmation between 1999 and 2003 from 99.5 percent to 99.8 percent. The corresponding rates for foreign-born citizens and noncitizens were also both higher in 2003 than in 1999.

⁹ Matched either automatically, through a manual search by an Immigration Status Verifier, or verified during the process of resolving a tentative nonconfirmation.

EMPLOYER NONCOMPLIANCE

A second deficiency identified in the IIRIRA pilot program evaluations was that employers did not consistently comply with pilot requirements. Noncompliance can decrease the effectiveness of the pilot programs in preventing unauthorized employment, result in violations of employee privacy and due process rights, and contribute to discrimination against foreign-born employees. The evaluations identified two sources of employer noncompliance – employer confusion about pilot procedures and employers' willful noncompliance with burdensome requirements. The evaluations recommended addressing employer confusion by improving the training materials provided to employer staff and by providing Management Information System (MIS) reports that permit employers to monitor themselves. To address willful noncompliance, the evaluations recommended consideration of Federal compliance measures, such as monitoring employers using MIS reports and on-site auditing of employers.

MEASURES TO ADDRESS EMPLOYER NONCOMPLIANCE

Improving Employer Training

CIS has modified the Web-Basic Pilot employer training materials in ways expected to reduce employer compliance problems attributable to their misunderstanding of the program requirements. These modifications include system-generated reminders to employers of their responsibilities under the pilot program. For example, users are required to confirm that they have notified employees of tentative nonconfirmation findings before they are permitted to input a referral date. These reminders should reinforce the more formal on-line training provided to employers. The Web-Basic Pilot also requires users to complete the on-line training prior to being given access to the system.

Instituting MIS Reports for Employers

The Web-Basic Pilot includes production of MIS reports that participating establishments can use to monitor themselves. This use should reduce inadvertent employer noncompliance. For example, employers can request information on the status of tentative nonconfirmation cases or information on closed cases. These reports should permit staff to identify and fix potential problems, such as multiple transmissions of cases or cases that have not been properly closed.

Starting this fall, headquarters staff of multi-site employers will be able to obtain reports for all of their establishments, permitting them to monitor and spot misunderstandings or misuse of the system. For example, employer headquarters should be able to determine whether the number of verifications made by an establishment is consistent with its screening of all newly hired employees and only newly hired employees. This new capability is expected to reduce employer non-compliance.

Enhancing Federal Monitoring of Establishments

In addition to providing MIS reports for employers, the Web-Basic Pilot provides CIS with MIS reports that permit the agency to monitor establishments. For example, CIS can use the "User Audit Report" to identify employers with unusually low rates of referral to SSA or CIS or unusually high "no show" rates of referred employees. Such employers may not be properly following pilot requirements on treatment of employees receiving tentative nonconfirmation

findings. These monitoring reports will be especially useful if used in conjunction with other compliance measures. Such measures include making the existence of the Federal monitoring reports known to employers, contacting employers that appear to frequently violate procedures to inform them of the problems encountered and to explain the correct procedures, and terminating participation in the program for employers with flagrant procedural violations.

PILOT ATTRACTIVENESS TO EMPLOYERS

The more attractive employers find the Basic Pilot, the more likely they are to participate. The greater the participation, the more effective the program will be at reducing unauthorized employment. The IIRIRA pilot evaluations, however, indicated that among the employers having an opportunity to sign up for the Basic Pilot, only a small percent actually did so. Furthermore, some employers that signed up for the program did not install the software needed for participation, installed the software but never used it, or used the software only sporadically. These observations, combined with reports of similar problems from SSA and former INS staff involved with recruitment for the CAVP and MRDP, led to the conclusion that only a minority of all employers consider electronic employment verification, as implemented in these pilot programs, to be an attractive option.

The pilot evaluations indicated that the pilot programs could be made attractive to more employers by making the software more user-friendly, including incorporating edit checks so that errors could be detected at the time of initial submission, and by providing management information reports. Other measures likely to improve attractiveness of the pilot program include improving database accuracy, thereby reducing the time employers need to devote to verifying employees and other problems engendered by inaccurate findings.

MEASURES TO ADDRESS PILOT ATTRACTIVENESS TO EMPLOYERS

The Web-Basic Pilot program design incorporates many of the specific software and hardware recommendations included in the evaluation reports. By the very nature of its Web-based access, it is more user-friendly and does not require specialized hardware. It will also be available 23 hours a day,¹⁰ 7 days a week to accommodate the needs expressed by some employers. A preliminary indication that these changes make the Basic Pilot program more attractive to employers is seen in the fact that when CIS contacted employers using the Basic Pilot system, 85 percent of them reported that they wanted to switch to the Web-Basic Pilot immediately. Many of the remaining 15 percent were waiting for a response from their corporate Headquarters or were waiting until there was time for CIS to work out any initial implementation problems.

ADDITIONAL CIS PLANNED IMPROVEMENTS

CIS is currently assessing whether it would be cost effective to reduce erroneous tentative nonconfirmations by modifying the pilot verification procedures. Currently, if the system cannot match information for employees attesting to being work-authorized noncitizens against the SSA database, the Basic Pilot system issues a tentative nonconfirmation without checking CIS data.

¹⁰ The system is shut down for 1 hour each day for maintenance.

However, a check of the CIS data for these employees would permit electronic verification of some of them. For example, if the employer made a data input error in entering the SSN but not in entering the alien number, CIS would be able to verify the case. This analysis will be completed this summer.

In addition, CIS is working to increase the number of databases feeding into the CPS in order to increase the number of cases that can be verified immediately and eliminate the need for Immigration Status Verifiers to conduct independent checks of these systems to determine whether certain employees are work-authorized. CIS will add the Student and Exchange Visitor Information System (SEVIS) and an extract of the Computer-Linked Application Information Management Systems (CLAIMS) to the CPS. These modifications are scheduled for completion this winter.

Over the next year, CIS will continue adding technical enhancements to the Web-Basic Pilot making it more attractive and user-friendly for employers. One way to make the pilot more attractive to employers is to reduce the amount of data entry required. Currently, most employers key-in information on their newly hired employees twice, once into their human resources personnel system and then again into the Basic Pilot program. By the spring of 2005, a new CIS enhancement will eliminate the need for duplicate data entry. Following technical guidance issued by CIS, employers can organize their personnel system to arrange multiple employee records in a format that they can then import directly into the Basic Pilot system for verification by SSA and CIS. Also, by the summer of 2005, CIS plans to test electronic signatures to allow CIS, SSA, and employers to electronically sign such documents as the Memorandum of Understanding. This will significantly reduce the amount of paperwork required for participation in the Basic Pilot.

CIS PILOT EXPANSION PLAN

CIS anticipates a relatively modest increase in verification workload when the Basic Pilot becomes available to all U.S. employers in December. IIRIRA pilot programs have already operated in 12 designated States accounting for about half the U.S. population and about three-quarters of the foreign-born and estimated undocumented populations. Additionally, employers are currently participating in the pilot in most States, since companies are permitted to use the pilot in all of their establishments, assuming that at least one of the establishments is in a designated pilot State. CIS has verification capacity to accommodate the anticipated volume of new verifications that will result from expansion of the Basic Pilot to all 50 States.

CIS plans to increase interest for volunteer participation in the Basic Pilot within new areas by announcing its availability in a Federal Register notice well in advance of the December 1 start date. Additionally, CIS will use press releases, Website and Internet announcements, faxes and emails targeted to employer groups and chambers of commerce, and participation in payroll and other employer-related conferences to advertise the expansion of the program. SSA will advertise the program on its Website and in its publications as well.

CIS also plans to arrange for an independent evaluation of the revised Basic Pilot program. This evaluation is expected to include assessments of the Web-based approach to employment verification, the impact of the 50-State expansion, whether the recommended program changes

described in this and prior evaluation reports have had the desired effects, and whether additional programmatic improvements would further strengthen the program.

SUMMARY

Available information shows that CIS and SSA have made considerable progress toward ameliorating the problems identified in the Basic Pilot evaluation. SSA and CIS have made large strides in addressing the data accuracy problems noted by the pilot evaluations. Inaccuracies in existing records have been substantially reduced and data entry for new information has been expedited. Immigration Status Verifiers are being provided with the ability to query multiple databases more efficiently. To reduce data input errors, the Web-Basic Pilot program incorporates edit checks to detect common employer input errors. Between 1999 and 2003, there has been a significant increase in the percentage of work-authorized employees verified during the automated matching process and a decrease in the percent of work-authorized employees receiving tentative nonconfirmations. Further improvements are expected after the implementation of the Web-Basic Pilot program this summer.

Improving employer compliance with pilot requirements is expected from modifications implemented in the Web-Basic Pilot program and from management information reports that will be added to the Web-Basic Pilot in the fall. CIS also anticipates that the new Web-Basic Pilot program will make the program more attractive to employers, since it addresses many of the major complaints voiced by employers in the Basic Pilot evaluation.

Over the next year, CIS plans to add additional technical and process improvements to the Web-Basic Pilot. CIS also plans to increase the number of databases available on the Customer Processing System, thereby increasing the number of cases verified immediately. In addition, CIS and SSA are looking at ways of modifying current pilot verification procedures to reduce the number of erroneous tentative nonconfirmations issued to foreign-born employees.

The program enhancements discussed in this report go a long way towards addressing the problems noted in the Basic Pilot evaluation. No problems are currently anticipated that would prevent CIS from opening the Basic Pilot program to all U.S. employers by December 1. Notwithstanding the program enhancements that have been made or are planned for implementation in the near future, CIS and SSA will continue their efforts to increase data quality and make other operational improvements in the Web-Basic Pilot program. This future work will be guided by an independent evaluation of the progress and performance of the Web-Basic Pilot.

Exhibit H

**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**IMPACT OF UNAUTHORIZED
EMPLOYMENT ON
SOCIAL SECURITY BENEFITS**

December 2006

A-14-05-14042

AUDIT REPORT



Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.



SOCIAL SECURITY

MEMORANDUM

Date: December 21, 2006

Refer To:

To: The Commissioner

From: Inspector General

Subject: Impact of Unauthorized Employment on Social Security Benefits (A-14-05-14042)

OBJECTIVE

The objectives of our review were to assess: (1) the accuracy of unauthorized employment information recorded on the Social Security Administration's (SSA) Numident Master File (NUMIDENT),¹ and (2) the impact of unauthorized employment on Social Security benefits.

BACKGROUND

Each year, SSA uses NUMIDENT and earnings information to inform the Department of Homeland Security (DHS) about noncitizens who may be working illegally. SSA sends DHS information about individuals who have earnings recorded under Social Security numbers (SSN) that SSA assigned for nonwork purposes.² The information is sent to DHS in the form of an electronic data file called the NonWork Alien (NWALIEN) file as required by law.³ The file is sent approximately 6 to 18 months after earnings are first reported to SSA.

¹ The NUMIDENT is a result of SSA's enumeration process. When individuals apply for an SSN, SSA staff assigns an SSN and records information from the application on the NUMIDENT.

² As of October 2003, nonwork SSNs are assigned when DHS has not authorized employment and the noncitizen needs the SSN to qualify for benefits that rely on Federal funding such as food stamps, or where a State or local government requires an SSN for a noncitizen legally in the United States to receive benefits from a State public assistance program. See 20 C.F.R. §§ 422.104 and 422.107. SSA requires noncitizens who apply for an SSN to present proof of age, identity, and work authorization status, and SSA verifies all immigration documents (i.e., visas, employment authorization status, and permanent resident alien cards, etc.) with DHS' US Citizen and Immigration Services (formerly Immigration and Naturalization Services) before assigning an SSN. For an individual eligible for a nonwork SSN, SSA assigns a number and issues an SSN card bearing the legend, "NOT VALID FOR EMPLOYMENT."

³ Pursuant to § 414 of Pub. L. 104-208, 110 Stat. 3009, (1996) the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, SSA is required to include in the file the names and addresses of nonwork numberholders and employers reporting the earnings, as well as the amount of the earnings.

According to DHS, resource priorities, data compatibility and possible data accuracy problems have prevented it from making effective use of the unauthorized earnings information. While SSA notifies DHS of possible unauthorized employment, DHS is not required to tell SSA when it changes a person's work authorization status from unauthorized to authorized. Unless the person informs SSA directly of such a change, NUMIDENT records continue to show the person as not authorized for employment and SSA includes his or her earnings on the NWALIEN file.⁴

The *Social Security Protection Act of 2004* (SSPA) Section 211, prevents SSA from giving noncitizens credit toward future SSA benefits under Title II of the Social Security Act if they were never authorized to work in the United States (after this referred to as nonwork SSNs). The law only applies to individuals who were assigned original nonwork SSNs January 1, 2004 or later.⁵ These individuals have to later obtain work authorization to be insured for Title II benefits.⁶ Individuals assigned an original nonwork SSN before January 1, 2004 are not subject to SSPA's restrictions.

From a representative 5 percent segment of the NUMIDENT,⁷ we identified 57,720 individuals who had prior earnings and, according to their most recent SSN application, were not work authorized. From this universe, we randomly selected 250 individuals for review. Our sample represented all individuals recorded on the NUMIDENT file over the past 3 decades who had earnings but, according to SSA's records, were never assigned an SSN for employment purposes. We obtained comprehensive earnings and benefit information for each sample case and, when available, current immigration and work authorization status from DHS' Immigration and Customs Enforcement (ICE).⁸ Further information concerning the scope and methodology of this audit can be found at Appendix B.

⁴ Id.

⁵ PL 108-203 § 211, "Prohibition on Payment of Title II Benefits to Persons Not Authorized to Work in the United States."

⁶ The restrictions of Section 211 of the SSPA also do not apply to the individual who was admitted to the U. S. as a nonimmigrant visitor for business, or as an alien crewman under specified provisions of the Immigration and Nationality Act, Section 101(a) (15)(B) and (D).

⁷ SSA stores NUMIDENT records in equal segments by arranging records in numerical order according to the last two digits of the SSN (i.e. 80-84, 85-89, 90-94, etc.). Each segment represents 5 percent of all NUMIDENT records and there are 20 total segments. It is common practice for SSA to use a segment to estimate results to the entire file. For our population, we randomly selected NUMIDENT Segment 17 and, as of November 1, 2004, it had 21,406,075 records. As of that date, SSA had assigned nonwork SSNs to 373,600 individuals in Segment 17, and 57,720 of these individuals had prior earnings.

⁸ ICE is the DHS component that reviewed our 250 sample cases. ICE agents manually researched immigration and employment status for each case.

RESULTS OF REVIEW

Based on our review of information obtained from DHS, we estimate that more than a third of work authorization information contained in SSA's NUMIDENT file for nonwork SSNs was no longer accurate. DHS found that work authorization status had changed from unauthorized to authorized for over a third of our 250 sample cases. The remaining cases were either still unauthorized or DHS could not locate immigration information for the individuals. Although data that no longer reflects current work authorization status reduces the usefulness of the NWALIEN file for DHS, we found that SSA could use data mining techniques and the information it now records on SSN applications to increase the usefulness of the NWALIEN file records.

We found that SSPA may have minimal impact on future SSA benefits to noncitizens since most noncitizens provided nonwork SSNs were enumerated prior to implementation of SSPA. Based on our sample results, we estimate that 378,640 individuals in the NUMIDENT (1) were assigned nonwork SSNs before January 2004, (2) have never been work authorized, (3) had \$25.4 billion in Social Security earnings, and (4) because they were assigned original nonwork SSNs before January 1, 2004, will not be affected by SSPA's restrictions (see Appendix B for details).

INTEGRITY OF WORK AUTHORIZATION INFORMATION ON THE NUMIDENT

The information we received from DHS in January 2006 showed that, over time, work authorization status changed from unauthorized to authorized for more than one-third of our 250 sample cases. Those changes were not shown as reported to SSA and/or recorded on SSA's records. Work authorization status for the remaining cases was either still unauthorized as shown on SSA's records or could not be confirmed. DHS indicated that:

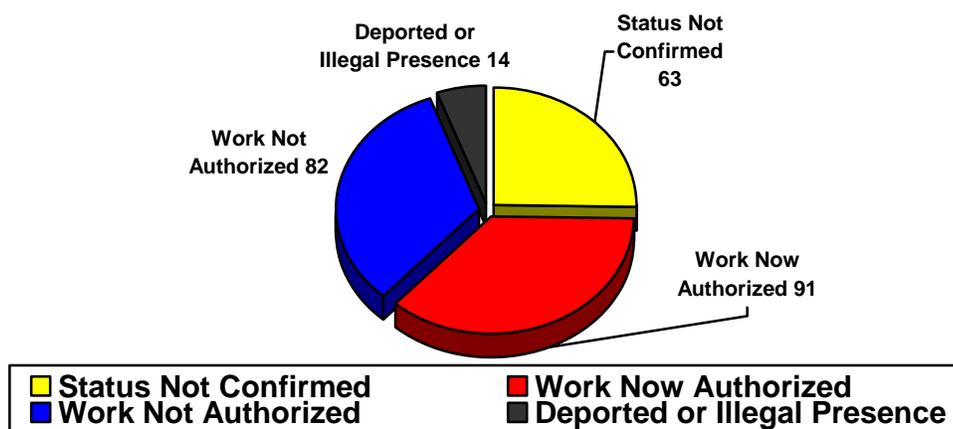
- ✓ Employment was now authorized in 91 of the 250 cases (36.4 percent). These individuals had become Legal Permanent Residents⁹ (LPR), naturalized citizens or nonimmigrants with a current Employment Authorization Document (EAD).¹⁰
- ✓ Employment was still not authorized in 82 of the 250 cases (32.8 percent). These individuals were either temporary visitors, foreign students or nonimmigrants with expired EADs.

⁹ A LPR is a noncitizen who has been given permission by DHS to make his or her permanent home in the U. S. Individuals who have permanent residence are issued a green card and can travel as much as they like. Their place of residence must be the U.S. and kept on a permanent basis.

¹⁰ Noncitizens who are temporarily in the U.S. may apply for an EAD. An EAD permits work in the U.S. and the specific categories that require an EAD include (but are not limited to) asylum seekers, refugees, students seeking particular types of employment, applicants for permanent residence status, people in or applying for temporary protected status, fiancés of U.S. citizens, and dependents of foreign government officials. An EAD is not required for a LPR.

- ✓ Individuals in 14 of the 250 sample cases were shown as deported or in the U.S. illegally (5.6 percent).¹¹
- ✓ Immigration status could not be confirmed in 63 of the 250 cases (25.2 percent). DHS could not locate a record for 54 of the 63 cases. Additionally, for 9 of the 63 cases, DHS could locate the record but could not determine current immigration status. For example, in 3 of the 9 cases, immigration status had not been recorded.

Current DHS Work Authorization Status Compared to SSA's NUMIDENT file



We found that work authorization information is no longer correct for at least 36.4 percent of the NUMIDENT records in our sample. Therefore, the same information may be incorrect for 420,000 of the estimated 1.15 million NUMIDENT nonwork records associated with employment.¹²

When SSA combined unauthorized employment and annual earnings information to create the 2004 NWALIEN file and inform DHS of illegal employment, it would have included 109 of the 250 cases in our NUMIDENT sample. Sample results showed that work authorization information was either incorrect or could not be confirmed for three fourths of the 109 NWALIEN records.¹³ Additional data analysis showed that the unconfirmed cases have characteristics similar to those where work is not authorized.

¹¹ We referred these 14 individuals to our Office of Investigations (OI) for additional review. OI has referred the cases to DHS.

¹² The estimated 1.15 million nonwork NUMIDENT records with recorded earnings is based on multiplying our sample population—57,720 nonwork records with earnings in 1 of 20 segments of the NUMIDENT—by 20 segments. The 420,000 potentially incorrect nonwork records associated with earnings is based on multiplying the 1.15 million records by 36.4 percent, the percentage of sample cases where employment authorization changed and SSA was not notified of the change.

¹³ The 109 cases included 59 cases where authorized employment information was incorrect, 21 where employment status was not confirmed, and 29 where employment was still not authorized.

For example, we found that the average length of work history for both the unauthorized and unconfirmed cases in our 250-case sample is 4 years, and about 30 percent of the workers had Calendar Year (CY) 2004 earnings. In contrast, the average length of work history for those now authorized to work is 11 years, and 65 percent had CY 2004 earnings. Based on the similarities of these two groups, DHS may want to use both unauthorized and unconfirmed records to determine which employers listed on the NWALIEN file are most likely to engage in illegal hiring practices.

We believe that SSA and DHS should explore the use of data analysis to evaluate NWALIEN data and make it more useful for monitoring possible unauthorized employment. Such data mining would allow DHS to identify employers who appear to use a high number of illegal workers.¹⁴ For example, if resource limits impact the number of NWALIEN records that DHS can examine, data mining would help DHS prioritize its work. DHS could use data mining to identify and concentrate on only those employers who appear to use a disproportionate number of unauthorized or unconfirmed employees, or operate in sensitive industries.¹⁵

USE OF DHS NUMBERS

Starting in March 2005, SSA required personnel to use new software procedures known as *SS-5 Assistant* to help complete SSN applications.¹⁶ The *SS-5 Assistant* helps personnel enter the correct information for SSN applications, by collecting and documenting the required evidence, including the DHS Alien or Admission Numbers for all noncitizens and naturalized citizens. The *SS-5 Assistant* uses the DHS numbers to automatically query on-line immigration records and verify immigration status.

We reviewed the evidence that 158 noncitizens submitted with their applications for original nonwork SSNs in March, April and May 2005 (See Appendix B for details). In our review of the 158 applications, we determined that SSA now captures the Alien or Admission Number 60 percent of the time.¹⁷ Over time, SSA could improve the value of the NWALIEN file for workplace enforcement by including DHS Alien or Admission numbers captured in the SSN application process on the NWALIEN file. This would help DHS locate corresponding records.¹⁸

¹⁴ Employers who report unauthorized earnings are identified on the NWALIEN record.

¹⁵ Sensitive industries would include airlines, seaport management, etc.

¹⁶ The *SS-5 Assistant* is a set of computer screens and logic designed to guide Social Security staff in completing applications for an SSN. It enhances the SSN application process by helping users follow existing policies and collect the correct evidence.

¹⁷ In cases where the Alien or Admission Number was not recorded, the SSN information was taken outside the regular SS-5 process, usually in conjunction with applications for Social Security benefits.

¹⁸ Pursuant to § 414 of Pub. L. 104-208, 110 Stat. 3009, (1996) the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, SSA is required to include in the file the names and addresses of nonwork number holders and employers reporting the earnings, as well as the amount of the earnings. The inclusion of additional fields would require legislative action.

IMPACT OF UNAUTHORIZED EMPLOYMENT ON BENEFITS

SSPA prohibits SSA from giving noncitizens credit for benefits under Title II of the Social Security Act if SSA neither assigned them original SSNs prior to 2004, nor authorized work.¹⁹ We analyzed nonwork SSN NUMIDENT records and Social Security earnings records to assess the potential impact that SSPA and trends in unauthorized employment might have on future SSA benefits. Between January 1972 and November 2004, in one segment of the NUMIDENT, SSA assigned 373,600 individuals a nonwork SSN. In the course of those 32 years, we found:

- ✓ 35.4 percent of the 373,600 applicants acquired work authorization status and changed their status on SSA's records;
- ✓ 49.2 percent of the 373,600 applicants did not have recorded earnings or change their work authorization status on SSA's records; and
- ✓ 15.4 percent of the 373,600 applicants had recorded earnings and did not change their work authorization status on SSA's records. We sampled this group to evaluate the accuracy of employment authorization information as recorded on the NUMIDENT and NWALIEN files. We also used the group to delineate the number of individuals on SSA's records who are shown as unauthorized to work and potentially eligible for benefits.

Since the late 1990s, SSA has increased restrictions on who can receive a nonwork SSN.²⁰ This policy change has resulted in a significant decrease in the number of nonwork SSNs that SSA assigns each year. Between Fiscal Years (FY) 1998 and 2005, the number of nonwork SSNs assigned decreased by nearly 89 percent, from 132,865 in FY 1998 to 14,686 in FY 2005. This decrease happened to coincide with SSPA restrictions and will significantly reduce the impact SSPA will have on SSA benefits.

If current trends continue, only a small percentage of individuals assigned a nonwork SSN in 2005 will eventually find employment, remain unauthorized to work and be subject to SSPA's restrictions. This is especially true if we consider that only 15.4 percent of the individuals in our sample population who were originally assigned a nonwork SSN and found employment, remained unauthorized to work on SSA's records over time. In addition, in our sample, we found that one-third of the 15.4 percent did not report to SSA when their work authorization status changed.

¹⁹ The prohibition does not apply to the individual admitted to the U. S. as a nonimmigrant visitor for business, or as an alien crewman under specified provisions of the Immigration and Nationality Act, Section 101(a) (15)(B) and (D).

²⁰ POMS RM 00203.510. To compare current and past policies for the assignment of nonwork SSNs, see current and prior versions of RM 00203.510, especially November 2, 2001 – February 24, 2002.

Based on our sample results, we estimate there are 378,640 individuals on the NUMIDENT with earnings who have never been authorized to work. All were assigned nonwork SSNs before 2004 and are not subject to SSPA’s restrictions. Since 1972, these individuals have earned an estimated \$25.4 billion in unauthorized employment (see Appendix B for further details). The average age for this group in our 250 sample is 44, and no one was receiving benefits at the time of our fieldwork.

As shown in the following table, we reviewed the future benefit eligibility for the 159 sample cases DHS indicated were not authorized to work or their work status was not confirmed.²¹ Specifically, we determined whether these 159 individuals had accumulated sufficient periods of unauthorized employment to be potentially eligible for Social Security benefits.

Benefit Earned – Individuals in Our Sample Not Authorized for Employment or Employment Status Was Unconfirmed by DHS

Employment Status Per DHS	Retirement Benefit	Survivor Benefit	Disability Benefit	No Benefit	Total
Not Authorized	5	17	5	55	82
Illegal Presence	0	2	3	9	14
Status Unconfirmed	5	10	11	37	63
Total	10	29	19	101	159

- ✓ Of the 82 individuals in our sample who were not authorized to work on DHS’ records, 27 had an average of 8 years’ employment and were potentially eligible for some type of Title II benefit. Twenty-one of the 27 had recent earnings and therefore are probably still working.
- ✓ Five of the 14 individuals classified as in the U.S. illegally had an average of 9 years’ employment and enough earnings to be potentially eligible for survivor or disability benefits. Four of the five had recent earnings.
- ✓ Although the work authorization status of 63 individuals was unconfirmed, 26 had an average of 8 years’ employment and enough earnings to be potentially eligible for Title II benefits. Nineteen of the 26 had recent earnings.

Although individuals in our sample who were not authorized for employment and continued to work may eventually earn a Title II retirement benefit, some may change to an authorized work status with DHS or leave the U.S. before receiving benefit payments.

²¹ We determined future benefit eligibility based on date of birth, Social Security earnings through 2004 and the onset of death, retirement or disability. We did not include nonearning factors that could prevent benefit eligibility, such as an illegal immigration status.

CONCLUSION AND RECOMMENDATIONS

Work authorization information was incorrect or could not be verified for 61.6 percent of the records in our 250 case sample.²² Also, 38.4 percent of the individuals sampled were not authorized to work in the U.S.²³ In addition, although DHS could not determine work authorization status for one out of every four individuals in our sample, we could still identify their employer and this gives those records potential enforcement value. SSA would make employer work authorization programs more effective if it could correct immigration and employment status recorded on nearly 36.4 percent of all nonwork records.

To improve the integrity of work authorization information, SSA should consider using the DHS Alien and Admission numbers it collects in the SSN application process to check immigration and work authorization status as part of the NWALIEN process. If work authorization status changed during the past year, SSA could record the change and exclude the individual from the NWALIEN file. In discussions with DHS, SSA could consider different NWALIEN file characteristics to determine whether there are ways to classify or group NWALIEN records to show the likelihood that work authorization may have changed. This information would help DHS prioritize records for review and make more efficient use of its resources. Lastly, since an estimated 6 percent of the records in our sample involved individuals who were in the U.S. illegally, SSA could work with DHS to identify these records as priority cases for DHS.

We recommend SSA consider:

1. Working with DHS to determine what information could be added to the NWALIEN file to improve its usefulness.
2. Working with DHS to determine the types of data mining techniques that would improve the usefulness of unauthorized employment information.

²² We found employment now authorized (i.e. incorrect on Social Security records) in 91 of the 250 sample cases (36.4 percent), and DHS could not confirm or determine employment status in 63 cases (25.2 percent). This totals 61.6 percent.

²³ We found employment still not authorized in 82 of the 250 sample cases (32.8 percent) and individuals in 14 sample cases were shown as deported or in the U.S. illegally (5.6 percent). This totals 38.4 percent not authorized to work.

AGENCY COMMENTS

SSA agreed with the intent of our recommendations. SSA stated that it has worked with DHS in the past to refine the NWALIEN file to meet DHS' requirements. However, SSA stated that neither SSA nor DHS is in a position to know what additional information might be helpful. As a result, SSA does not consider our recommendations feasible under current circumstances and considers them closed. The Agency's comments are included in Appendix C.

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr.", with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – Agency Comments

APPENDIX D – OIG Contacts and Staff Acknowledgments

Acronyms

CY	Calendar Year
DHS	Department of Homeland Security
EAD	Employment Authorization Document
FY	Fiscal Year
ICE	Immigration and Customs Enforcement
LPR	Legal Permanent Resident
NUMIDENT	Numident Master File
NWALIEN	Nonwork Alien
OI	Office of Investigations
SSA	Social Security Administration
SSN	Social Security Number
SSPA	Social Security Protection Act

Scope and Methodology

In November 2004, we randomly selected a 5 percent segment of the Social Security Administration's (SSA) Numident Master File (NUMIDENT) and collected summary earnings information for each segment record.¹ From the segment, we copied records for 57,720 individuals with earnings who, according to their last Social Security number (SSN) application, were not work authorized.

From the 57,720 records, we randomly selected a sample of 250 individuals for review. For each individual record sampled, we obtained comprehensive earnings and benefit information and, where available, current immigration status from the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE). We also researched key laws, regulations, policies and procedures pertaining to immigration status and employment authorization. We spoke with SSA and DHS staff about the impact the rules and regulations have on Agency programs.

To obtain a second audit population, we copied Segment 17 of the NUMIDENT records for all 954 individuals who were assigned original nonwork SSNs from January 1, 2004 through August 19, 2005. We collected summary benefit and earnings information for each of the 954 records. We also reviewed the documentation that 158 of the 954 individuals submitted with their SSN applications. SSA processed the 158 applications from March 2005 through May 2005.

We conducted our review in accordance with generally accepted government auditing standards. Our audit work was performed between March 2005 and February 2006 at DHS' headquarters in the District of Columbia and at SSA's headquarters in Baltimore, Maryland. Our work focused on the Office of Systems.

¹ SSA stores NUMIDENT records in equal segments by arranging records in numerical order according to the last two digits of the SSN (i.e. 80-84, 85-89, 90-94, etc). Each segment represents 5 percent of all NUMIDENT records and there are 20 segments in total. It is common practice for SSA to use a segment to estimate results to the entire file. For our population, we randomly selected NUMIDENT Segment 17 and, as of November 1, 2004, it contained 21,406,075 records.

**SAMPLE RESULTS – Estimated Earnings for Individuals in the Sample
who are not Authorized to Work**

Population and Sample Size		Attributes
Sample Universe – 1 segment of the NUMIDENT		21,406,075
Sample Population – Individuals in the Segment Who Have Earnings and are Not Authorized to Work		57,720
Sample Size		250
Sample Results – Estimate of Individuals Not Authorized to Work and Had Earnings Prior to January 2004	Number of Individuals	Amount of Earnings
Sample Individuals who are Not Authorized to Work and had Earnings Prior to January 2004	82	\$5,509,389
Point Estimate (for 1 segment)	18,932	\$1,272,007,732
Projection lower limit	16,102	\$635,045,106
Projection upper limit	21,939	\$1,908,970,359
Sample Results (Point Estimate x 20 segments)	378,640	\$25,440,154,640

Note: Projections were calculated at 90-percent confidence level.

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: December 13, 2006 **Refer To:** S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: Larry W. Dye /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Impact of Unauthorized Employment on Social Security Benefits" (A-14-05-14042)--INFORMATION

Please accept our "revised" response to the subject draft report. After a discussion with your staff, we have reconsidered our response to the recommendations and would like our original comments dated December 6, 2006 disregarded.

Please let me know if you have any questions. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at extension 54636.

Attachment:
SSA Revised Response

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL’S (OIG) DRAFT REPORT, “IMPACT OF UNAUTHORIZED EMPLOYMENT ON SOCIAL SECURITY BENEFITS”(A-14-05-14042)

Thank you for the opportunity to review and provide comments on this draft report. The Social Security Administration (SSA) is committed to ensuring that individuals who are authorized to work are provided proper credit and proper benefits based on an accurate work record. The report does not identify any fraud, waste or abuse in the administration of SSA programs. Rather, the report suggests that SSA undertake activities outside the scope of its mission without regard to SSA’s current budget environment. In this light, we are further concerned that the report states SSA should consider undertaking such activities in order to assist the Department of Homeland Security (DHS) given DHS’ limited resources. While SSA could “consider working with DHS” to find ways to improve the usefulness of the Nonwork Alien (NWALIEN) file, it is not SSA’s mission to verify employment authorization status. Updating employment authorization status in the Numident or performing any extensive data analysis before submitting the NWALIEN file could be labor intensive. Any costs incurred from providing services that are not part of SSA’s mission cannot be borne by the Social Security trust funds without the proper reimbursement.

There are additional concerns regarding the two objectives of the report. The first objective is, “to assess the accuracy of unauthorized employment information recorded on SSA’s Numident Master File.” The report incorrectly states that the work authorization data as recorded in SSA records is inaccurate. When a noncitizen applies for an original or replacement Social Security number (SSN) card, SSA verifies with DHS all immigration documents presented in support of the SSN application. Thus, the Numident serves as a “snapshot in time” as it records the individual’s work authorization status at the time the SSN card was issued. OIG did not assess the accuracy of the work authorization status at the time the SSN card was issued; rather, OIG assessed whether the work authorization status as recorded in SSA’s records reflected the individual’s current work authorization status. The Numident, however, is not intended and does not act as a repository of work authorization status or contain earnings information. Only DHS can determine current work authorization for a noncitizen. Therefore, to suggest that the Numident file does not accurately record the “unauthorized” work status of an individual at a certain date, other than the date that the file is created, misrepresents the function and purpose of the Numident file.

The second objective of the report is “to assess the impact of unauthorized employment on Social Security benefits.” It is not clear why OIG believes that payment of benefits to noncitizens who qualify for those benefits under current law is an area of concern. SSA administers the law as written. Further, we note that a citizen who is not authorized to work today may well become eligible to work at a future time; conversely, a noncitizen who is authorized to work today may lose that authorization at a future time. Thus, under current law, work authorization or lack of work authorization—or even lawful or unlawful presence in the United States—at any point in time is not a predictor of eligibility for benefits at retirement age.

In the report, OIG suggests that SSA annually re-verify work authorization status in preparation of the NWALIEN file in order to assist DHS in targeting worksite enforcement. SSA currently verifies and, if needed, updates the work authorization status of all noncitizens at the time the noncitizen applies for Social Security benefits to ensure that he or she meets certain factors of benefit entitlement, such as lawful presence and work authorization. (At any time, an individual may notify SSA of a change in work authorization status.) Given that the Numident information has no adverse impact on SSA operations or on the expenditure of trust fund monies, it is not clear why SSA should expend trust fund resources to make changes that have no benefit to the Agency or the public. SSA is very concerned about the finding that DHS could not determine immigration/work status on 25 percent of OIG's sample for this review. This in itself would seem to be an impediment to enforcement action that should be addressed by DHS. DHS has indicated it is working on improving its databases. When their work is complete, it should make it easier for them to track the status of noncitizens.

Another OIG conclusion in the report was that if SSA captured the DHS Alien or Admission numbers through SS-5 Assistant, SSA would be able to use that information when developing the NWALIEN file and exclude those individuals that had a change in employment status. The inclusion of the DHS Alien or Admission number would not change the immigration and employment status on SSA's records. (Currently, an individual must notify SSA of a change in work authorization status; SSA cannot accept the change from any other source.)

Finally, the recommendations made in this report may be moot in the near future, as the House and Senate-passed immigration reform bills (H.R. 4437 and S. 2611, respectively) both include provisions to make mandatory an employment eligibility verification system and S. 2611 would repeal the requirement that SSA provide the NWALIEN file to DHS, so using limited resources to explore changes would be of questionable value. Although the 109th Congress has adjourned, similar proposals may be introduced in the 110th Congress. As the report indicates, SSA has acted to reduce the number of nonwork SSNs to an insignificant number; therefore, the problem of noncitizens employed based on an SSN issued for nonwork purposes is of limited duration.

Recommendation 1

SSA should consider working with DHS to determine what information could be added to the NWALIEN file to improve its usefulness.

Comment

We agree with the intent of this recommendation. SSA has worked with DHS in the past to refine the file to meet its requirements. SSA works cooperatively with DHS in a number of areas and is certainly willing to continue to consider any proposal for reimbursable work that DHS might offer. However, DHS has not attempted to use the NWALIEN file in any meaningful way, so neither SSA nor DHS is in a position to know what additional information might be helpful. We also note that currently, SSA only has the legislative authority via 8 U.S.C. 1360(c)(2) to provide the following data from the earnings record: 1) the name and address of the alien; 2) the name and address of the person reporting the earnings; and 3) the amount of earnings. SSA cannot disclose additional data from the earnings record (which is tax return data)

unless there is an expressed authorization within section 6103 of the IRC (26 U.S.C. § 6103). DHS would have to seek legislation which would authorize SSA to provide additional data from its earnings records to the NWALIEN file.

Therefore, based on our concerns and given that work authorization status information in SSA's files is never going to be as current as that in DHS' own files, we do not believe that there is any additional action SSA could take to improve DHS capabilities. Having completed its consideration of this recommendation, SSA does not consider this recommendation feasible under current circumstances and considers it closed.

Recommendation 2

SSA should consider working with DHS to determine the types of data mining techniques that would improve the usefulness of unauthorized employment information.

Comment

We agree with the intent of the recommendation; however DHS has purview over the collection and maintenance of information related to work eligibility and would be in the best position to identify effective data mining techniques of its records concerning unauthorized employment information. Moreover, SSA would need to ensure that any proposal for disclosing additional information from SSA records to DHS would be authorized by applicable statutes and regulations. There would also be concerns as the work authorization information SSA has on record may not be updated and data mining information that may not be up to date could raise significant concerns about accuracy.

SSA works cooperatively with DHS in a number of areas and is certainly willing to continue to consider any proposal for reimbursable work that DHS might offer. However, as stated in our response to recommendation 1, DHS has not attempted to use the current unauthorized employment information (NWALIEN file) that we provide in any meaningful way, so neither SSA nor DHS is in a position to know what additional information or data mining might be helpful.

Therefore, based on our concerns and given that DHS is fully capable of undertaking data mining techniques with its files of current work authorization status, we do not believe that there is any additional action SSA could take to improve DHS capabilities. Having completed its consideration of this recommendation, SSA does not consider this recommendation feasible under current circumstances and considers it closed.

OIG Contacts and Staff Acknowledgments

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For additional copies of this report, please visit our web site at www.socialsecurity.gov/oig or contact the Office of the Inspector General's Public Affairs Specialist at (410) 965-3218. Refer to Common Identification Number A-14-05-14042.

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Social Security Advisory Board

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Office of Audit

OA conducts and/or supervises financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations and projects on issues of concern to SSA, Congress, and the general public.

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OI conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as OIG liaison to the Department of Justice on all matters relating to the investigations of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

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OCCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Finally, OCCIG administers the Civil Monetary Penalty program.

Office of Resource Management

ORM supports OIG by providing information resource management and systems security. ORM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, ORM is the focal point for OIG's strategic planning function and the development and implementation of performance measures required by the Government Performance and Results Act of 1993.

Exhibit I

INS BASIC PILOT EVALUATION

SUMMARY REPORT

January 29, 2002

Report Submitted to:

U.S. Department of Justice
Immigration and Naturalization Service
Washington, DC

Prepared by:

Institute for Survey Research
Temple University
Washington, DC

Westat
Rockville, Maryland

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EXECUTIVE SUMMARY

A. BACKGROUND

In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated that the Immigration and Naturalization Service (INS) – in conjunction with the Social Security Administration (SSA) – test and evaluate a series of voluntary pilot programs to electronically verify the employment authorization of newly hired employees. These small-scale IIRIRA pilots include the Basic Pilot, the Citizen Attestation Verification Pilot, and the Machine Readable Document Pilot.

The Basic Pilot program was implemented in 1997 in five states estimated to have the largest undocumented immigrant populations: California, Florida, Illinois, New York, and Texas. The goal of the Basic Pilot verification program is to determine, on a test basis, whether pilot verification procedures can improve on the existing I-9 system by reducing false claims to U.S. citizenship and document fraud, discrimination, violations of civil liberties and privacy, and employer burden.

INS selected two firms, the Institute for Survey Research at Temple University and Westat, to conduct an independent evaluation of each of the IIRIRA pilots. The evaluation of the Basic Pilot is the first of these efforts. The evaluation addresses the extent to which the Basic Pilot program is operating as intended and whether it has achieved its intended policy goals. The evaluation design includes the use of multiple sources of information to examine the program from three different perspectives - employers, employees, and Federal agencies. These data sources included pilot and matched non-pilot employer mail surveys, on-site interviews with pilot and non-pilot employers and pilot employees, observations, INS I-9 forms, government databases that record work status transactions, and interviews with Federal officials.

B. EVALUATION FINDINGS

1. IS THE BASIC PILOT PROGRAM WORKING AS INTENDED?

As might be expected since they were volunteers, an overwhelming majority of employers participating found the Basic Pilot to be an effective and reliable tool for employment verification. The Basic Pilot system confirmed the vast majority of employees (87 percent) as work-authorized, of which almost all (90 percent) were immediately and automatically confirmed by the computerized comparison of data. Employees were also largely satisfied with the services provided by INS and SSA. The greatest Federal shortfall relates to the lack of timely INS data, which results in delayed verification in almost one-third of the cases going to INS for verification.

There is evidence that employers do not always follow Federally mandated safeguards specified in the Memorandum of Understanding (MOU) signed when they agree to participate in the Basic Pilot program. Some of these prohibited employment practices

include pre-employment screening, taking adverse action against employees who receive tentative nonconfirmations, failing to safeguard access to the pilot system, inconsistently protecting employees' privacy, missing pilot deadlines, failing to inform employees of their rights, and failing to terminate or report employees with final nonconfirmation.

2. DID THE BASIC PILOT PROGRAM ACHIEVE ITS PRIMARY POLICY GOALS?

Impact of the Basic Pilot on employment of unauthorized workers and the reduction of fraudulent claims of citizenship. Less than one-tenth of one percent of the employment verification attempts resulted in a finding of "unauthorized." However, it is likely that a substantial proportion of those employees whose work-authorization status was not definitively determined by the Basic Pilot system were unauthorized workers who did not contest a tentative nonconfirmation finding. The evaluation team's estimate is that 10 percent of all cases submitted to the Basic Pilot system for determination of work-authorization status were unauthorized workers. Further, it is likely that some unauthorized workers simply avoid applying to Basic Pilot employers. The Basic Pilot database did not yield conclusive data on the use of fraudulent documents and cannot identify imposter fraud. However, the level of false attestation to U.S. citizenship appears to be low.

Impact on reducing discrimination. Employers claim that the Basic Pilot program makes them more comfortable in recruiting and hiring immigrants; however, the evaluation was not able to confirm that this resulted in an actual increase in the employment of work-authorized immigrants among Basic Pilot employers. Further, the evaluation found that employers do not always follow Basic Pilot procedures designed to prevent discrimination, such as not taking adverse actions against employees who are trying to resolve an initial finding of tentative nonconfirmation. Because the evidence points to both decreases and increases in discrimination caused by the Basic Pilot program, the evaluation could not determine whether the net effect of the program was discriminatory. However, it is clear that discrimination resulting from improper employer use of the Basic Pilot program could have been mitigated if Federal databases were more accurate and up-to-date.

Impact on employee privacy. Because safeguards are built into the Basic Pilot system, there is little increased risk of misuse by Federal employees. However, because of the current design of the system, there is potential for unauthorized access to employee information at pilot establishments. Some employers also failed to protect employee privacy when notifying employees of their tentative non-confirmation status.

Impact on employer burden and cost. A majority of employers indicated that the Basic Pilot process is easier than the current I-9 verification process. Further, they reported that it did not overburden their staff. INS officials estimate that the Federal government spent approximately \$9.6 million (\$2.3 million for start-up costs and \$7.3 million for operating costs) on the Basic Pilot program between November 1997 and April 2000. A majority of employers reported spending under \$500 for start-up costs and another \$500 annually for operating costs.

C. OPTIONS FOR THE FUTURE

Various possibilities exist for continuing or expanding the Basic Pilot. Four alternative approaches were explored: a mandatory national program for all employers, a mandatory national program only for large employers, a voluntary national program open to all employers, and an improved voluntary program open to all employers in selected States. Each of these alternative programs has advantages and disadvantages.

D. RECOMMENDATIONS

Based on the evaluation findings, electronic verification of employment authorization as tested in the Basic Pilot, while potentially a valid concept, is not ready for larger-scale implementation at this time. However, INS and SSA should continue to test pilot program improvements that would retain program advantages while mitigating current problems with the program. These include specific INS data system enhancements and technical improvements such as enhancing system software and training, incorporating quality control measures, and providing additional employer technical support.

CHAPTER I. BACKGROUND

A. PURPOSE OF THE REPORT

1. LEGISLATIVE OBJECTIVES

In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted. In this law Congress mandated that the Immigration and Naturalization Service (INS) – in conjunction with the Social Security Administration (SSA) – test a series of voluntary pilot programs to electronically verify the employment authorization of newly hired employees. Section 405 of IIRIRA further required that the Attorney General submit reports on these programs to the House and Senate Judiciary Committees. These reports were to:

- Assess the degree of fraudulent attestation of U.S. citizenship.
- Assess the benefits of the pilot program to employers and the degree to which they assist in the enforcement of employer sanctions.
- Include recommendations on whether the pilot program should be continued or modified.

2. EVALUATION QUESTIONS

This report presents the results of an extensive evaluation of the Basic Pilot, the first of the three small-scale IIRIRA pilot programs to be implemented. The Executive Branch and the many nongovernmental groups interested in employment verification viewed an extensive evaluation as an essential part of the implementation of the employment verification pilots. These groups also agreed that the evaluation needed to address a full range of issues to inform recommendations and decision making on the future of electronic verification of employment authorization in the workplace.

The issues to be addressed in the evaluation included input from a wide variety of stakeholders, taking into account the importance and difficulty of developing the information. The most important issues were retained regardless of their difficulty, but with the knowledge that it would be a challenge to collect good information in some of these areas. In mid-1997, INS selected two firms, the Institute for Survey Research at Temple University and Westat, to conduct an extensive independent evaluation of each of the IIRIRA pilot programs. The evaluation of the Basic Pilot is the first of these efforts.

3. REPORT ORGANIZATION

The report is divided into five chapters – background, operational findings, policy findings, options for the future, and recommendations. The background begins with a discussion of the legislative history of employer sanctions and employment verification, which is important for understanding the issues addressed in the evaluation. The

remainder of the background section describes the Basic Pilot, the context in which the Basic Pilot was conducted, and the methodology for conducting the evaluation.

The remainder of the report comports with the highest priority evaluation questions addressed throughout the study. The findings of the evaluation are presented from two perspectives. The first perspective describes the extent to which the pilot program is operating as intended. The second perspective looks at costs and whether the Basic Pilot program has achieved its four intended policy goals:

- Does the Basic Pilot reduce employment of unauthorized workers?
- Does the Basic Pilot reduce discrimination?
- Does the Basic Pilot protect employee civil liberties and privacy?
- Does the Basic Pilot reduce employer burden?

The final two chapters provide an analysis of options for the future expansion or continuation of employment verification programs similar to the Basic Pilot and recommendations from the evaluation.

B. LEGISLATIVE BACKGROUND

1. PASSAGE OF EMPLOYER SANCTIONS

Congress passed employer sanctions legislation in late 1986, making it unlawful for the first time for U.S. employers to hire undocumented workers. This law was passed in response to increases in undocumented immigration and recommendations by a series of Congressional and Executive Branch task forces and commissions – ranging from the small, bilateral Special Study Group on Illegal Immigrants from Mexico (1973) to the blue-ribbon Select Commission on Immigration and Refugee Policy (1981).

From the outset employer sanctions legislation had been controversial because of concern that it would lead to privacy violations, discrimination against persons who appeared or sounded foreign, and a national identity document. Many of the groups studying the issue had attempted to develop ways of administering employer sanctions and accompanying work authorization verification that would protect privacy and be nondiscriminatory.

2. EMPLOYMENT VERIFICATION AND CIVIL RIGHTS PROTECTIONS

Accompanying the new employer sanctions provision, with its civil and criminal penalties for hiring undocumented workers, were two related provisions. The first prohibited discrimination on the basis of national origin or citizenship status and established a new agency, the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in the Department of Justice, to enforce this provision. The second required that the Immigration and Naturalization Service implement an employment verification system for all newly hired employees.

The universal employment verification system specified in IRCA was a paper-based system (implemented by INS as the I-9 form) that requires all newly hired employees to attest to being a U.S. citizen or national, a lawful permanent resident, or other work-authorized noncitizen. The system also requires employees to present documentation establishing their identity and work authorization. Employers are required to examine this documentation and attest that it appears to be genuine and that it belongs to the employee.

In addition, Congress authorized the Executive Branch to develop tests of alternative employment verification systems. Such systems had to be reliable, secure, and limited to use for employment verification. Specific additional requirements were levied before such a system could be implemented, and none was to include a national identity document. IRCA also required INS to establish a verification program known as Systematic Alien Verification for Entitlements (SAVE) to verify authorization of noncitizens for certain benefit and entitlement programs. INS developed a special extract of its main database for this purpose.

3. EVALUATION OF THE IMPACT OF EMPLOYER SANCTIONS IMPLEMENTATION

Because of the widespread concern for unintended impacts, many prominent groups studied the implementation of employer sanctions and the employment verification system. Most prominent among such studies were the three IRCA-mandated reports by the General Accounting Office (GAO). In its final report in 1990, GAO found that the implementation of employer sanctions had resulted in a widespread pattern of discrimination against eligible workers. However, instead of repealing employer sanctions, GAO recommended mitigating employer confusion by reducing the number of acceptable documents and making them more secure.

The GAO findings triggered further inquiry on the discriminatory and other negative impacts of employer sanctions and employment verification by the Federal government, State and local areas with sizeable foreign-born populations, and private organizations such as the Urban Institute and RAND. Although some studies called for the repeal of employer sanctions, others believed that the problems could largely be remedied by simplifying and clarifying the I-9 employment verification system. Legislation was introduced to repeal employer sanctions, but it was not passed.

The Immigration Act of 1990 established the Commission on Immigration Reform, which continued study of employment verification. The Commission recommended testing a national registry-type system under which all newly hired workers, citizen and noncitizen alike, would be electronically verified for employment authorization through a unified database comprised of SSA and INS information. Although INS and SSA found that they did not have a way to link the information in their databases, the two agencies developed a voluntary pilot program that tested the basic concept of the Commission recommendation on a small scale by having all newly hired employees electronically verified through SSA. For those noncitizens for whom SSA data could not determine current work authorization status, a further check was made through INS.

4. IMPLEMENTATION OF ELECTRONIC VERIFICATION PILOTS

INS had begun testing a telephone-based employment verification system with a few employers using the database developed for SAVE for benefit verification. INS then expanded this test in 1992 to personal computer-based verification for noncitizen hires. The recommended two-step SSA-INS pilot for all new hires was a logical next step.

With renewed discussion of larger scale employment verification systems, civil rights groups expressed concern about further testing of alternative electronic employment verification systems and the impact on workplace discrimination and privacy. Additional recommendations followed from the Federal civil rights community as well as non-governmental organizations that dealt with worker rights problems first hand.

Legislative debate to consider the Commission's recommendations and to gain greater control over undocumented immigration ensued. Although several bills had proposed national implementation of an electronic verification system, the final legislation, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted in 1996, provided for small-scale testing, evaluation, and reporting on three voluntary pilot programs before a national system was considered. Testing on a pilot basis was considered to be especially important because of the limitations of Federal data for verification purposes, the potential for workplace discrimination and privacy violations, and practical logistical considerations about full-scale implementation.

The three IIRIRA pilots included:

- The Basic Pilot, under which all newly hired employees are verified through SSA and, if necessary, INS;
- The Citizen Attestation Pilot, under which U.S. citizens show more secure identity documents, requires electronic verification only for non-citizens; and
- The Machine Readable Pilot, which is identical to the Basic Pilot except that the data input for some employees is through a machine-readable driver's license or State-issued ID card.

C. DESCRIPTION OF THE BASIC PILOT

1. GOALS OF EMPLOYMENT VERIFICATION AND THE BASIC PILOT

The goals of employment verification and the goals of the verification pilots are somewhat different. The primary goal of employment verification is to ensure that all workers are authorized to work in the United States and thus to deter unauthorized employment and undocumented immigration. Studies by GAO, the Commission on Immigration Reform, and others found that the I-9 paper verification system used by all employers at present is confusing and easily circumvented. In contrast, the goal of the Basic Pilot verification program is to determine, on a test basis, whether pilot verification procedures can improve on the I-9 system by reducing false claims to U.S. citizenship

and document fraud, discrimination, violations of civil liberties and privacy, and employer burden.

2. DOCUMENTATION REQUIREMENTS

The Basic Pilot program is predicated on a system of documentation that has existed since the implementation of employer sanctions. At the time of employment, workers are required to document their identity and authorization to work. Employment authorization can be established through documents such as a U.S. birth certificate or passport, a nonrestricted Social Security card, or an INS-issued document showing employment authorization. If the document showing work authorization does not include a photograph, employees are also required to document their identity, usually by showing a driver's license or State-issued ID card.

3. BASIC PILOT STATES

INS and SSA implemented the Basic Pilot program in November 1997 in California, Florida, Illinois, New York, and Texas. Nebraska was added to the pilot in March 1999 to assist employers in the meatpacking industry. Establishments in other States may participate in the Basic Pilot if there is a participating establishment from the same employer in one of the six Basic Pilot States.

4. BASIC PILOT PROCEDURES

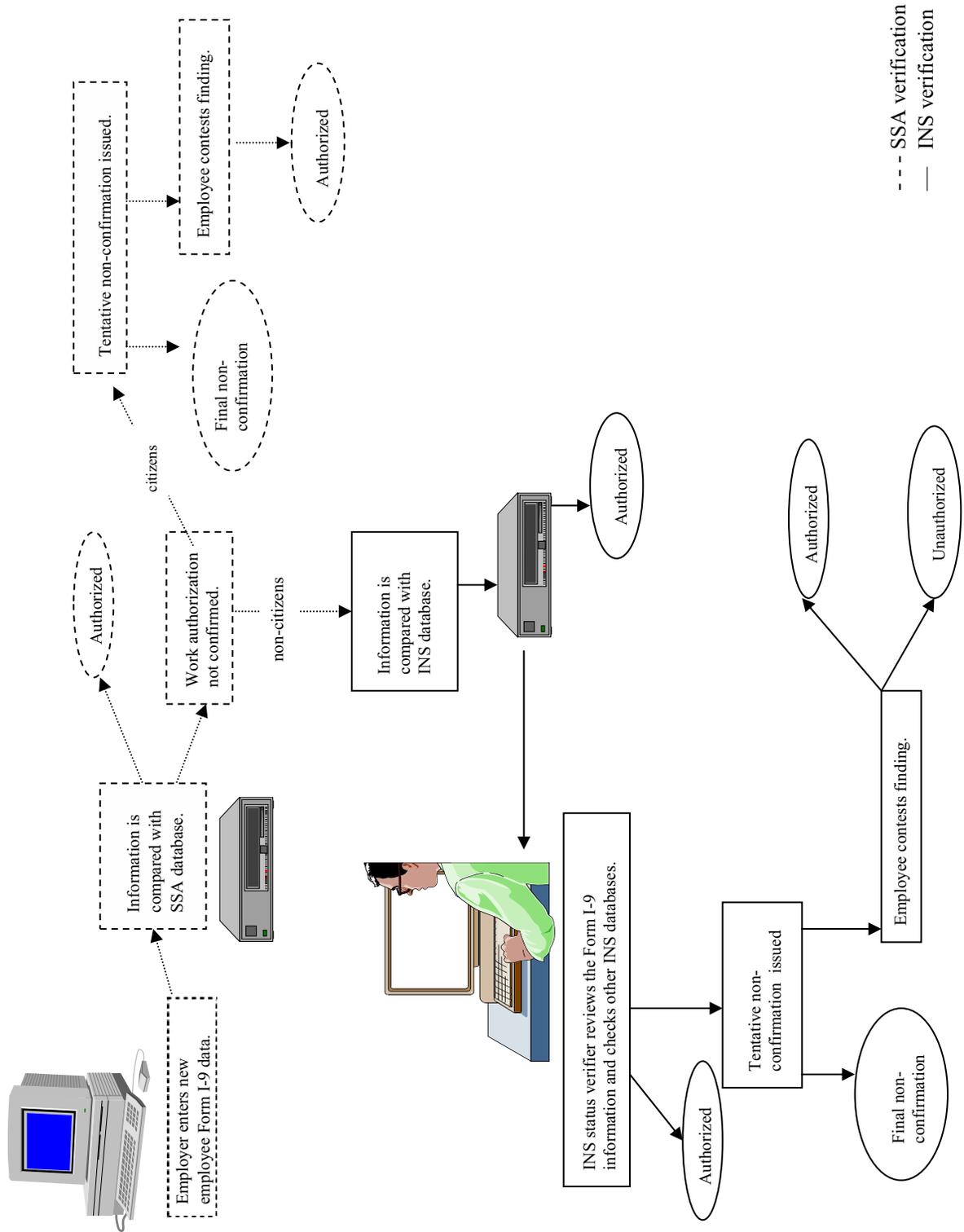
Employers wishing to participate in the Basic Pilot sign a Memorandum of Understanding (MOU) with INS and SSA promising to follow all pilot procedures. INS sends the employer the system software, manuals, and other materials needed to use the pilot program.

The Basic Pilot process is based on the existing employment verification system required of employers. The procedures were designed to provide employers with greater confidence in their ability to verify their employees, while safeguarding employee rights. They begin with the completion of the INS Form I-9, both by the employee, who provides personal information and attests to citizenship or immigration status, and by the employer, who records the type of documents examined for identity and employment authorization (see Exhibit 1).

The major additional steps required by the Basic Pilot program are:

- Employers send information about all new employees electronically to the Federal government;
- The Federal government checks the information submitted by the employer against relevant databases to determine if their records indicate that the employee is work-authorized;

Exhibit 1: Basic Pilot Program Verification Process



- If the Federal records do not verify the work authorization of an employee, the employee is given an opportunity to “straighten out” their records;
- While employees are trying to “straighten out” their records, employers are not permitted to take adverse actions against employees; and
- If the final determination of the Basic Pilot system is that the employee is not work-authorized, the employer is required to terminate the employee.

D. CONTEXT OF THE BASIC PILOT

This section describes how pilot employers and States are similar or different from non-pilot States and employers. The Basic Pilot was originally implemented on a voluntary basis in the five States with the largest undocumented immigrant populations – California, Florida, Illinois, New York, and Texas.¹ These States and the employers and employees within them are not representative of the nation as a whole. Therefore, care must be taken in generalizing from the experiences of the pilot employers who volunteered to participate to all employers nationwide about how a verification system might work on a larger-scale basis.

1. STATE CHARACTERISTICS

The five original Basic Pilot States are unique in many ways. They have larger populations, are more densely populated, and have larger foreign-born populations than the non-pilot States. Based on INS estimates, nearly 80 percent of undocumented immigrants reside in the five original Basic Pilot States, perhaps creating a greater incentive for some employers to participate in the pilot. Moreover, these five States contain 35 percent of the nation’s business establishments and employees. The population of these States are more diverse than the nation overall, having over twice the percentage of Hispanics (23 versus 11 percent) and slightly higher Asian/Pacific Islander populations (6 versus 4 percent).

Basic Pilot establishments are clustered in and around large urban areas in the five States. Although INS did not formally target urban areas in its advertising campaign soliciting participants for the Basic Pilot program, it did focus on metropolitan area newspapers and radio stations and hold seminars in urban areas, which likely affected the establishments that chose to participate. Additionally, many employers learned about the pilot from other employers, further tilting participation toward urban establishments.

¹ Nebraska was subsequently named a Basic Pilot State, but because of its late implementation date, Nebraska was not included in the on-site phase of the evaluation.

2. EMPLOYER SIZE AND INDUSTRY

Not surprisingly, since larger employers probably have more to gain by participating in the pilot program, pilot employers tend to be larger than non-participating employers. Fifty-nine percent of pilot establishments had 50 or more employees, compared with 4 percent of establishments nationwide. Conversely, few pilot employers (12 percent) reported fewer than 5 employees, compared with 63 percent of establishments nationwide. These smaller employers have considerably lower verification needs, are less likely to have the necessary computer equipment and staff to run the pilot, and may believe they are less vulnerable to employer sanctions. To the extent that these factors affect the usefulness of the Basic Pilot, it would be less cost-effective for small employers.

Pilot establishments are also more likely to be concentrated in just a few industries. Over 38 percent of pilot establishments are in manufacturing, compared with only 4 percent of establishments nationwide. Moreover, two-thirds of the pilot establishments in manufacturing are in food and kindred product manufacturing – particularly meat packing and poultry processing. These establishments, which often rely on recent immigrants to do unpleasant, unskilled work, received special emphasis in recruitment for the Basic Pilot. Although pilot establishments are under represented in the service industry overall, they are heavily over represented among help-supply services and temporary and employment agencies.

3. FOREIGN-BORN STATUS AND ETHNICITY OF EMPLOYEES

As might be expected, employees working for pilot establishments are more likely to be foreign-born – even more so than the population of the five original Basic Pilot States. Among transaction database cases for whom foreign- versus native-born status was indicated, 31 percent of the database entries were for foreign-born employees, compared with 15 percent foreign-born populations in the pilot States. For those cases where race/ethnicity was available, Hispanics were over represented among pilot establishments, while Asians and non-Hispanic whites and blacks were under represented.

E. RESEARCH METHODS

The evaluation of the Basic Pilot is based on multiple sources of information that examine the program from three different perspectives: employers, employees, and Federal agencies. The data sources include:

- Pilot and non-pilot employer mail surveys
- Employer on-site interviews and observation
- Employee interviews
- INS I-9 forms
- Pilot databases that record work authorization transactions

- Semi-structured interviews with Federal officials
- System testing
- Secondary data sources

1. STRENGTHS AND LIMITATIONS OF METHODOLOGY

To strengthen confidence in the conclusions that could be drawn from the findings, the evaluation of the Basic Pilot used multiple data sources. The main benefit of such a design is that it provides a strong basis upon which to derive conclusions. Conclusions were reached by comparing the results of the analysis of multiple data sources and reconciling or explaining inconsistencies among the findings. First, hypotheses about the research issues were developed, followed by analysis of the separate data sources. Then the results from all of the data sets on a given issue were compared to determine whether the findings supported the hypothesis. When results were contradictory, the evaluation team explored possible reasons and when feasible performed additional analyses to resolve the discrepancy.

Another major strength of the research design is use of a matched comparison group for employers. Such a comparison group helps to control for factors outside the scope of the program such as fluctuations in the labor market that may be affecting both pilot and non-pilot sites. Thus, matching increases the likelihood that differences in evaluation data between pilot and non-pilot employers have to do with the pilot experience and not extraneous factors.

As confident as the evaluation team is about the conclusions, the data sources used in the evaluation have limitations. First, self-selection of pilot establishments limits generalization to employers beyond those establishments that used the system. Since participation in the Basic Pilot program is voluntary, pilot establishments account for a very small proportion of all establishments in the country,² and a number of establishments that originally signed up to use the pilot ultimately did not use it. Second, as is true in all voluntary data collection efforts, nonresponse is present.

To statistically adjust for known differences between respondents and nonrespondents, weighting was used for all surveys conducted. For example, weighting may adjust for differences between responding and nonresponding employers due to size of establishment. However, weighting does not totally eliminate nonresponse bias. The kind of bias that cannot be controlled for by weighting is the bias from unknown and thus uncontrolled factors, such as attitudes toward employment verification.

Surveys also have limitations, particularly in capturing complex information. In the employer questionnaires, some of the questions involved estimates of detailed information and others were sensitive or potentially self-incriminating. The questions on the employee questionnaire often involved concepts and terminology that employees

² Establishments volunteering to participate in the Basic Pilot comprise less than one-tenth of 1 percent of establishments in the five original pilot States.

found difficult and potentially incriminating. Although in-person interviews and on-site observations provided valuable in-depth information on employer performance in pilot employment verification procedures, the semi-structured interviews and qualitative nature of some of the data collected in the site visits limits its generalizability.

2. EMPLOYER MAIL SURVEY

A mail survey was sent in February 2000 to all 1,189 pilot establishments that had volunteered to participate in the program by July 31, 1999 (see Exhibit 2). Of those, 714 had used the pilot by the time the sample for the mail survey was selected. Based on information in a national employer database, a similar non-pilot establishment was selected to match each of these 714 employers, based on industry, size, and county.

Response rate. Of the initial population of 1,189 pilot establishments, 637 completed the mail survey, resulting in a response rate of 67 percent of the establishments still in business.³ Among non-pilot establishments, 235 establishments completed the mail survey, resulting in a response rate of 44 percent.

Exhibit 2: Summary of Sampling and Completion Statistics for Pilot and Non-Pilot Establishments

No. of Establishments	Pilot	Non-pilot	Total
Establishments selected for mail survey	1,189	714	1,903
Completed mail survey	637	235	872
Mail survey response rate	67%	44%	59%
Selected for on-site survey	352	200	552
Completed on-site survey	317	93	410
On-site survey response rate	90%	47%	74%
Provided sample employment application forms	264	58	322
Provided Forms I-9 at on-site visit	253	30	283

3. EMPLOYER ON-SITE VISIT

The on-site pilot employer sample was restricted to the five original pilot States (California, Illinois, Florida, New York, and Texas),⁴ and consisted of 352 establishments that had 10 or more database transactions at the time of sample selection. The evaluation team also selected a random sample of 200 non-pilot establishments with similar

³ The response rate is computed as: $100 \times (\text{number of respondents}) / (\text{number of eligibles})$; out-of-business establishments are ineligible.

⁴ The limitation of the on-site interviews to these five States means that the sample is not representative of employers outside these States. For example, most of the participating meat-packers were located outside the original Basic Pilot States.

characteristics to those of the selected on-site establishments. For pilot establishments, the on-site visits consisted of a structured interview, a records review that included the selection of I-9 forms, and observation related to pilot implementation issues. The non-pilot on-site visit included only the first two components.

Response rate. Researchers were able to conduct site visits at 317 of the 352 Basic Pilot establishments (90 percent response rate) and 93 of the 200 non-pilot establishments (47 percent response rate).

4. EMPLOYEE IN-PERSON INTERVIEWS

The employee interviews targeted current and former employees hired by pilot establishments. Employees were selected from among those hired and verified by pilot employers selected for the on-site visit. The sample was drawn from all verifications conducted within a 6-month study period, from July through December 1999. The sample was stratified by the agency making the work authorization decision (SSA or INS) and the outcome of the verification (authorized on first try, authorized after tentative nonconfirmation, unauthorized, or verification outcome never resolved). In general, strata with the fewest cases were sampled at a higher rate than strata with larger numbers of cases, to ensure that adequate information on each group would be obtained (see Exhibit 3).

However, subgroup estimates based on small samples are of relatively lower precision and yield lower statistical power than those based on larger samples. Conclusions drawn from interviews with employees told about work authorization problems (n=101) and the experiences of those who contacted SSA or INS to resolve work authorization problems (n=67) are based on small samples and must therefore be interpreted with caution. Further, care must be taken in interpreting the employee interview findings related to individuals found to be not work-authorized, since this group was very small to start with and the evaluation team was able to locate and interview only five persons in this group.

Response rate. The evaluation team selected 4,710 Social Security numbers from the transaction database to serve as the basis for the employee sample. Multiple attempts were made to locate all of the sampled persons. While cooperation with the survey was overwhelming (95 percent of those located were interviewed), ultimately less than a quarter of the sampled persons were located and resided in areas accessible by field interviewers, resulting in 970 interviews with pilot employees. Weighting by sampling strata and citizenship status compensates for some of the potential bias for known differences between the original sample and the interviewed sample, but it is reasonable to assume some non-response bias related to differences among employees who were located and those who were not.

Exhibit 3: Employee Sample Sizes and Sampling Percentage, by Verification Outcome and Agency

Sampling Stratum	Approximate Population Size	Selected Sample Size	Number Interviewed
SSA			
Initially authorized by SSA	40,026	800	176
Eventually authorized by SSA	11,929	800	182
Self-terminated or quit – SSA	4,448	350	30
Unconfirmed – SSA	2,448	350	61
INS			
Initially authorized by INS	5,362	600	172
Authorized by INS – 2nd stage	2,655	763	189
Eventually authorized by INS – 3rd stage	142	142	18
Self-terminated or quit – INS	348	348	64
Unauthorized by INS	114	114	14
Inconsistent authorization results	443	443	64
Total	67,915	4,710	970

5. REVIEW OF I-9 FORMS

The evaluation team attempted to collect I-9 forms from all pilot and non-pilot employers that participated in the on-site visits. Up to 20 I-9 forms were selected from each employer’s records during the visits. The random sample of I-9 forms from pilot employers was used for comparison with information in the verification databases and to identify any pilot employees who were hired but never verified through the Basic Pilot. Estimates based on the sample of I-9 forms are not weighted because the storage and record keeping procedures on-site presented challenges in capturing the information that was necessary to construct weights.

Response rate. I-9 forms were collected from approximately 80 percent of the participating on-site pilot establishments and one-third of visited non-pilot establishments.

6. BASIC PILOT TRANSACTION DATABASE ANALYSIS

The Basic Pilot transaction database captures information submitted by employers through the Basic Pilot system. The SSA and/or INS system responses are also captured, along with entries from Immigration Status Verifiers (ISVs) involved with each case.⁵ The transaction database used in the analysis was a census of approximately 365,000

⁵ For the purposes of this study, the SSA and INS transaction databases as well as the independent databases each agency keeps on employers participating in this study were merged into one database that was analyzed for this study and is referred to in this report as the Basic Pilot transaction database.

employee records over a 2-year period, from November 1997 through December 1999. Since this was a census, the analyses are highly reliable.

7. INTERVIEWS WITH FEDERAL OFFICIALS AND CONSULTATION WITH STAKEHOLDERS

The evaluation team identified 20 senior officials and contractors from SSA, INS, and other offices within the Department of Justice who had current or previous responsibility for designing and/or implementing the pilot programs. Senior evaluation staff conducted semi-structured interviews with Federal officials in a one-on-one or very small group setting. The information captured in these interviews represents the informed opinions of individuals who have experience with the pilot programs and with electronic verification systems. Federal cost information was also obtained through this mechanism. In addition, consultations with stakeholders from several advocacy groups representing a wide range of perspectives on the pilots were conducted at two group meetings as part of the development phase of the study.

8. SYSTEM TESTING

The evaluation team tested the Basic Pilot system by trying to circumvent systems protections to access the system and program databases. Tests of the security and fraud resistance of the Basic Pilot system were performed by research assistants with intermediate knowledge of computer operations. The test for security consisted of determining whether unauthorized users can operate the Basic Pilot system without knowing the user ID and password combination. The test for fraud consisted of trying to manipulate the system to provide false documentation of work authorization.

9. SECONDARY SOURCES

A number of secondary data sources were used in the evaluation to describe the characteristics of the nation, pilot States, employers, and employees and to calculate cost figures and projections. Since most of these data were taken from large Federal databases such as the Census Bureau's Current Population Survey or Federal reports such as INS's *Statistical Yearbook*, they can be considered to be reliable.

10. REASON TESTERS WERE NOT USED

The evaluation team also considered the possibility of using "testers" to provide additional information on the probable effect of the pilot program on discrimination. However, to provide comprehensive information on discrimination related to the Basic Pilot program, it would be necessary to have the testers go through the full hiring process and the first 2 or 3 weeks of employment. The team was concerned that using testers in this way would place an unfair burden on employers who might invest resources in hiring and training the employees. A more limited use of testers would place fewer burdens on employers but would provide more limited information. Given the sensitivity of such an approach, the evaluation team decided not to use testers.

CHAPTER II. IS THE BASIC PILOT PROGRAM OPERATING AS INTENDED?

Generally, the first step in a program evaluation is to determine whether the program was implemented as intended, since deviations from intended implementation often point to areas where the program needs modification to be effective. It also helps in identifying whether the intended results occurred or did not occur because of implementation issues or because of program design. This section focuses on how well the Federal Government, employers, and employees have done in meeting their obligations, as detailed in the Basic Pilot Memorandum of Understanding (MOU) signed by INS, SSA, and each participating employer.⁶ The INS and SSA jointly developed the MOU to specify the Basic Pilot program requirements and responsibilities and to protect all parties from miscommunication and misunderstanding that may lead to unfair business practices and discrimination.

A. IS THE FEDERAL GOVERNMENT FULFILLING ITS OBLIGATIONS?

The MOU places a number of explicit obligations on INS and SSA. To determine if the Federal agencies are complying with the requirements of the Basic Pilot program, the evaluation reviewed the MOU for specific agency requirements. These requirements, as stated in the MOU, include:

- Providing Basic Pilot employers with available information that will allow the employer to confirm the accuracy of Social Security numbers and the employment authorization of newly hired employees.
- Providing assistance with operational problems that arise.
- Safeguarding information provided by the employer, and limiting access to such information.
- Establishing a means of automated verification that is designed to provide confirmation or tentative nonconfirmation of employees' employment authorization within 3 Federal Government work days of the initial inquiry.
- Establishing a means of secondary verification for employees who contest tentative nonconfirmations designed to provide confirmation or final nonconfirmation of the employees' authorization within 10 Federal Government work days of the date of referral, unless additional time is needed.
- Providing participating employers with the information needed to implement the Basic Pilot program. Required information from INS includes an instruction manual for the system, notice of employer participation in the Basic Pilot, anti-

⁶ The full MOU is available through INS's Web site (<http://www.ins.usdoj.gov/graphics/services/basic.pdf>).

discrimination notices, and information needed to access the system. Although the MOU does not explicitly specify the quality of the services INS and SSA should supply, it is reasonable to expect the employment verification services to be accurate, easy to use, and provided promptly and courteously.

1. FEDERAL ROLE IN IMPLEMENTING THE PILOT

Most employees were automatically confirmed by the Basic Pilot system. The analysis of the Basic Pilot database indicated that an overwhelming majority (90 percent) of employees found to be work-authorized were immediately confirmed by the computerized comparison of data. That is, the employee's work authorization status was returned immediately after the employer submitted the query.

An overwhelming majority of employers found the Basic Pilot to be an effective and reliable tool for employment verification. An overwhelming majority of employers who had used the Basic Pilot system reported positive experiences with it. Ninety-six percent of employers believed that the Basic Pilot is an effective tool for employment verification. Similarly, a high percentage of employers (94 percent) also believed that the Basic Pilot verification process is more reliable than the process they used previously and that it is feasible to fulfill their obligations under the Basic Pilot program. These highly positive results may reflect, in part, that these employers volunteered to participate in the Basic Pilot.

As part of INS efforts to ensure the effectiveness and reliability of the Basic Pilot system, employers were provided the necessary tools to assist them in their use of the Basic Pilot system. Employers were provided a computer-based tutorial on the proper use of the system, a manual for future reference, and technical support. Almost all employers (96 percent) found the Basic Pilot manual useful. The majority of users (approximately 80 percent) also reported that they were always or often able to receive assistance from INS and SSA in resolving technical problems.

Employees were also largely satisfied with the services provided by INS and SSA. The small number of employees who contacted a local SSA or INS office to resolve verification problems generally provided positive feedback about their experience. Almost all employees who visited SSA (95 percent) and INS (90 percent) said that Federal staff was able to resolve their work authorization problem in a timely, courteous, and efficient manner.⁷ Further, an overwhelming majority of employees (90 to 98 percent) said that SSA and INS provided them with assistance in a language they could understand, office hours were convenient, and INS and SSA staff were helpful. Employees who were provided with services by telephone or fax reported similar satisfaction with their experiences.

⁷ Although the Basic Pilot does not require in-person visits to a local INS office, some individuals choose to resolve their work authorization problems in person.

Federal agencies usually met the specified time limits when verifying employee work authorization. The MOU signed by INS and SSA allows each agency 10 Federal working days to resolve tentative nonconfirmations. Employers report that this deadline was generally met.

2. NEEDED BASIC PILOT IMPROVEMENTS

The accuracy and timeliness of INS data need to be improved. Most Federal officials interviewed agreed that the efficient operation of the pilot program was hindered by inaccuracies and outdated information in INS databases. One major contributory problem identified by INS officials is loss of data and delays in data entry for persons recently issued a new or replacement employment authorization document (EAD) and for new immigrants and refugees.

Part of the issue with timeliness of INS data entry results from large increases in workload associated with new groups of noncitizens becoming eligible to work in the United States as a result of new legislation and administrative actions. This growth is reflected in the more than doubling of the number of requests for work authorization documents INS has received in the past 8 years. INS is addressing its data entry delays through both policy and operational changes that are intended to significantly reduce the delay between the time a person becomes authorized to work and when the information is entered into the INS database and INS documentation is issued. Although some improvements have been made since the pilot evaluation concluded, others will take longer to implement.

When the INS database is not current and, therefore, cannot automatically confirm the work authorization of employees, the pilot relies on Immigration Status Verifiers (ISVs) to resolve the status of these cases. For cases that were not automatically verified by the system, the use of INS personnel was more expensive than automatic verification and allowed the possibility for human error. Indeed there were cases screened by multiple ISVs who made different work authorization determinations.

When government databases are inaccurate and outdated, the greatest burden falls on employees. Without reliable data with which to immediately determine work authorization, employees may be penalized by employers who are unsure of their work status. This issue will be discussed in more detail in the next chapter.

There have been complaints to the Office of Special Counsel claiming actual or potential harm to individuals. If Federal employees are not well informed about the Basic Pilot program they may adversely affect the post-hiring status of employees who attempt to resolve work authorization problems. Although employees were largely satisfied with the services provided by INS and SSA, they have occasionally made complaints to the Office of Special Counsel (OSC) in the Civil Rights Division of the Department of Justice about INS implementation of the pilots. The OSC reported having received four such complaints at the time the evaluation was concluding. These included three cases in which an INS employee was misinformed about proper procedures for pilot

employees to follow, and one case in which the employee went to an INS district office several times and waited all day but was unable to get help.

The Basic Pilot system needs computer and technical support improvements.

Successful implementation of the Basic Pilot also depends on the soundness of the Basic Pilot technical system. Although employers found the Basic Pilot to be an effective verification tool, they also identified technical problems with it. These shortcomings may discourage or even prevent employers from successfully using the pilot. One-third of employers said they encountered difficulties in setting up the Basic Pilot program. Most of the problems involved modem connection, software, hardware, and telephone lines. Many employers also mentioned these same problems once the system was online. Further, 39 percent of employers reported that SSA never or sometimes returned their calls promptly and 43 percent reported a similar experience with INS.

3. FACTORS AFFECTING SATISFACTION WITH THE BASIC PILOT PROGRAM

The usefulness of the Basic Pilot system is not the same for all employers. The differential appeal of the program to different employers is most likely one of the reasons that Federal officials found it difficult to recruit employers to the Basic Pilot program. An especially important factor affecting usefulness of the program is company size. Large pilot establishments were more likely to use the Basic Pilot than were small establishments. Establishments that used the system had, on average, hired over six times more employees in the 6 months preceding the survey than had non-users.

B. ARE EMPLOYERS FULFILLING THEIR OBLIGATIONS?

1. EMPLOYER OBLIGATIONS

The MOU specifies obligations for employers participating in the Basic Pilot. The MOU states that employers must verify all new employees within 3 business days. This means the Basic Pilot system should not be used for pre-employment screening of job applicants, screening of existing employees, or selective screening of new employees. Employers also agree to safeguard information received from SSA and INS, limit access to the computer containing the pilot system, post the Basic Pilot program notice in a prominent place, and inform employees of their rights, including the employer's commitment not to discriminate based on national origin and citizenship status.

When an employee receives a tentative nonconfirmation, employers agree to provide employees with a notice that describes their right to contest this initial finding along with a referral form to take with them to SSA or INS. During this time, employers may not take any adverse action against an employee such as delaying the start of work or training or reducing pay. Finally, the employer must check the Basic Pilot system for final resolution and must terminate employees who receive final nonconfirmation or inform INS or SSA that they are choosing not to terminate these employees. The employer is also required to file the final pilot verification results with the employees' I-9 forms.

2. FINDINGS

Employers who sign an MOU with SSA and INS to use the Basic Pilot do not always use it. Of the employers who responded to the mail survey, only 75 percent reported that they were actually using the system at the time they completed the survey, while the remainder reported that they were not. The actual usage rate is probably even lower than this, since employers using the system were more likely to respond to the survey than were non-users. Large pilot establishments and those that hired more workers were generally more likely to use the Basic Pilot than were small establishments, suggesting that electronic verification may not be equally attractive to all employers.

Employers do not always follow Federally mandated safeguards for the Basic Pilot program. There is evidence that employers are engaging in practices specifically prohibited by the Basic Pilot MOU. Some evidence of these problems is described in this section. Additional information is described in more detail in the next chapter.

Pre-employment screening. Some pilot employers are prescreening job applicants. Among a sample of individuals classified on the transaction database as unresolved tentative nonconfirmations, 28 percent said that they did not receive a job offer from the pilot employer. These applicants were not informed that the employer was electronically verifying their employment authorization status. Consequently, they were denied not only jobs, but also the opportunity to resolve any inaccuracies in their Federal records.

Adverse action. Employers sometimes take adverse actions against employees who receive tentative nonconfirmations. Thirty percent of pilot employers reported restricting work assignments while employees contest a tentative nonconfirmation. Among the 67 employees who decided to contest a tentative nonconfirmation, 45 percent reported one or more of the following adverse actions: were not allowed to continue working while they straightened out their records, had their pay cut, or had their job training delayed.

Failing to safeguard pilot system information. The evaluation data indicated considerable differences among employers in their efforts to implement computer security. Over half of Basic Pilot employers had computers in rooms that could be locked, although many of these employers did not lock the room during business hours. Employers were generally more cautious about password security. At 70 percent of the establishments, the staff member responsible for verifying employees under the pilot had either memorized the password or stored it in a locked drawer or other secure location.

Protecting employee privacy. Although the majority of employers appear to safeguard their employees' privacy, some employers did not exhibit the same level of concern. For instance, 15 percent of employees who were told about problems with their work authorization reported that they were not told in a private setting. Breaches in computer security and privacy may be attributable to a lack of training or employer concern for employee privacy or the impractical nature of the required level of security and privacy protections at that employer site.

Missing Basic Pilot deadlines. One complaint mentioned by 16 percent of employers about the Basic Pilot is that at times the number of employees hired is so great that it is impossible to submit the information required by the deadline of 3 business days from hire. This problem is exacerbated by the fact that some large companies with several locations conduct all pilot verifications at a central site.

Failure to inform employees of their rights. Employers do not always follow procedures designed to inform employees and prospective employees of their rights. Only half of establishments posted the required Basic Pilot program notice where job applicants could easily see it.

Basic Pilot procedures were also designed to protect employee rights to resolve verification problems. However, not all employers inform their employees of verification problems. It appears that 73 percent of the employees who should have been informed of work authorization problems were not. These employees were not aware that they had verification problems and were thus precluded from resolving these problems.

Further, employers did not always provide the printed Notice of Tentative Nonconfirmation that informs employees of their rights and responsibilities to resolve discrepancies under the Basic Pilot program. Nineteen percent of pilot employers reported that they did not always provide employees with a printed Notice of Tentative Nonconfirmation. Of the 67 employees who decided to clear up their work authorization problems, only 61 percent remember having received at least one of the Basic Pilot referral forms to visit SSA or INS. The differences in behavior reported by employers and employees may be attributable to employer reluctance to report that they were not following procedures and/or to employees forgetting they had received the written notice.

Not terminating employment after receiving final nonconfirmation. INS officials were not aware of any cases where an employer reported continuing the employment of persons receiving a final nonconfirmation. Yet, 44 percent of employees receiving a final nonconfirmation were still working for the employer when the survey was conducted, more than 6 months after they were hired. In some cases, there may be an explanation for this apparent discrepancy. Federal officials indicate that sometimes accurate closure information on an employee eventually found to be work-authorized is not entered into the transaction database. This is often because the case was resolved after the 10 Federal working day period, after which time cases cannot be updated on the system. In this situation, the system automatically classifies the case as a final nonconfirmation even if the employee eventually contacts the appropriate Federal agency and resolves the work authorization problem.

C. ARE EMPLOYEES FULFILLING THEIR OBLIGATIONS?

1. EMPLOYEE OBLIGATIONS

While participation in the pilot is voluntary for employers, it is not voluntary for employees. However, employees have fewer obligations under the Basic Pilot program than do employers. All newly hired employees, whether working for a pilot or a non-pilot employer, are required to complete Section 1 of the I-9 form and to show the employer one or two pieces of the documentation listed on the I-9 as evidence of identity and authorization to work in the United States. This documentation must be valid and relate to the employee.

The 82 percent of employees verified under the Basic Pilot program without employee interaction are probably unaware of the pilot program, and there is no required pilot-related action on their part. Those employees for whom a finding of tentative nonconfirmation is returned to the employer must follow the instructions in the Notice of Tentative Nonconfirmation if they wish to resolve the discrepancy. This requires visiting a local SSA office or calling, faxing, or visiting an INS office within 8 Federal working days to resolve the discrepancies.

Separate from the pilot, Social Security number card holders have a responsibility to provide information to SSA to update any change in name and to correct errors in their record concerning date or place of birth or parents' names. The employment pilot programs as well as welfare reform provisions have also made it desirable that card holders notify SSA of changes in citizenship status. Failure to report these changes would presumably be reduced if the pilot were widely known or instituted on a larger scale.

2. FINDINGS

Most employees present documentation that agrees with Federal databases. The Basic Pilot system confirmed the vast majority of employees (87 percent) as work-authorized. Only 1 percent of employees admitted to presenting a fraudulent document or a document that belonged to someone else. Cases determined to be unauthorized represented only 0.04 percent of the approximately 365,000 employees verified through the Basic Pilot system since the start of the pilot in November 1997. Therefore, the evaluation cannot say with any degree of confidence that all or even a large portion of cases that were unresolved due to lack of employer or employee action were due to the use of fraudulent documents. This issue will be discussed further in the following chapter.

Most employees contacting SSA or INS receive work authorization. New employees with tentative nonconfirmation verification findings need to follow the instructions the employer provides to resolve the discrepancies identified in the Basic Pilot verification process. Only 1 percent of the employees who contacted SSA or INS were found to be not work-authorized.

CHAPTER III. DID THE BASIC PILOT PROGRAM ACHIEVE ITS PRIMARY POLICY GOALS?

The intent of the employment verification provisions of the Immigration Reform and Control Act of 1986 was to establish a means through which employers can determine the work authorization status of persons they hire. This system was intended to be effective, nondiscriminatory, protective of privacy, and non-burdensome. The extent to which the Basic Pilot has met these four policy goals has been touched upon in the preceding chapter. This chapter discusses in more detail how well the Basic Pilot has achieved its policy goals.

A. IMPACT OF THE BASIC PILOT ON EMPLOYMENT OF UNAUTHORIZED WORKERS AND THE REDUCTION OF FRAUDULENT CLAIMS OF CITIZENSHIP

1. BACKGROUND

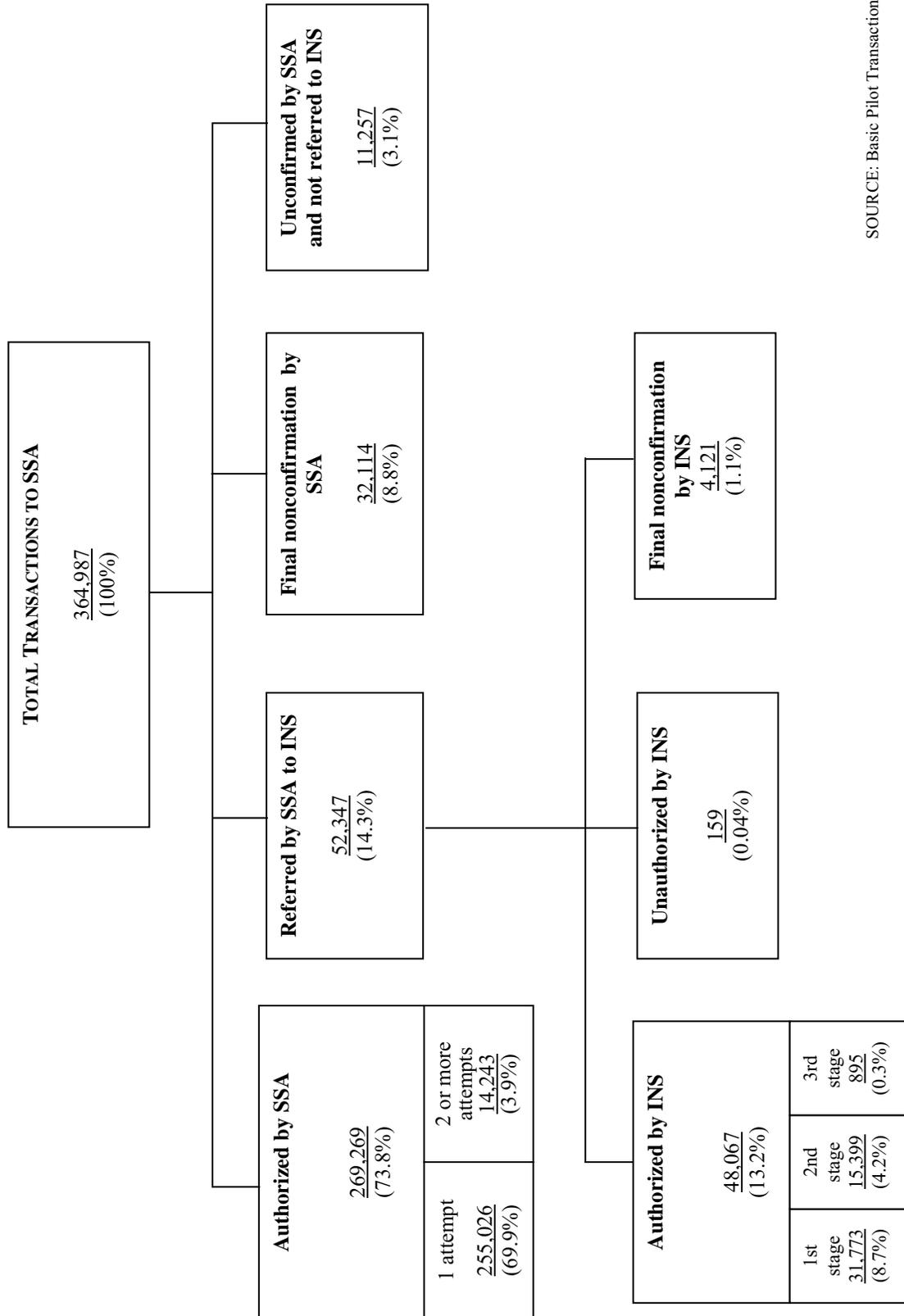
Since the Basic Pilot compares employee information with Federal database information, it would be expected to be better at deterring the employment of persons who present fraudulent documents and who make false claims to U.S. citizenship than the I-9 paper verification process alone. However, since the Basic Pilot is not designed to detect unauthorized workers who use either counterfeit or borrowed documents with valid information, the pilot would not likely be better than the I-9 system in this respect.

To obtain information on the effectiveness of the Basic Pilot at deterring the employment of unauthorized workers, the evaluation relied on several sources of information. These sources included analyses of the Basic Pilot database, the surveys of employers and employees, and SSA and INS record reviews for a small group of cases. The evaluation team also used these sources and assumptions about them to develop independent estimates of the number of undocumented workers in the pilot transactions. The results of Basic Pilot employment verification for the period November 1997 to December 1999 are presented in Exhibit 4.

2. FINDINGS

Some unauthorized workers were undoubtedly deterred from applying to pilot employers; however, the evaluation cannot provide good estimates of how often this occurs. Employers participating in the Basic Pilot are required to prominently display pilot program and anti-discrimination notices in locations where job applicants and new employees will see them. It is reasonable to believe that some unauthorized workers see these notices or otherwise hear about pilot participation and avoid applying to Basic Pilot employers.

Exhibit 4: Employment Verification Results for the Basic Pilot Program (November 1997-December 1999)



SOURCE: Basic Pilot Transaction Database

There is no practical way to identify workers who would have applied to pilot employers if the Basic Pilot program had not been in effect, making it impossible to estimate the effect of the program on job applicants. In the mail survey, 64 percent of pilot employers agreed or strongly agreed with the following statement: “The number of unauthorized workers who apply for jobs decreases when the Basic Pilot verification system is used.”

The Basic Pilot is able to confirm employment authorization for a majority of cases, but it does not capture the specific number of unauthorized workers among cases that were not resolved. The Basic Pilot confirmed the work authorization status of approximately 87 percent of all employees for whom employers entered information and found .04 percent of the individuals to be unauthorized. The 13 percent of cases that did not receive a final determination of authorizations status consisted of a sizeable number of workers who were authorized but for a variety of reasons did not straighten out their records with SSA and/or INS as well as others who were not authorized to work in the United States.

Having conclusive data on unauthorized workers from the Basic Pilot system would be a major benefit. However, the Basic Pilot is based on data systems that have inaccuracies and missing data, and it relies on voluntary compliance and cooperation from all pilot participants. As discussed in the previous chapter, there are many points in the verification process where employers, employees, and government officials introduce errors or fail to follow pilot procedures. When any one of these persons does not follow pilot procedures, the outcome of a particular case often cannot be determined. The cumulative effect of these inconsistencies is that the employment authorization status for most of the 13 percent of transactions with a final non-confirmation status is uncertain. These numbers also do not include impostors using either borrowed or counterfeit documents with valid information since such persons would appear to be work authorized in the Basic Pilot system.

Additional detailed record checks on a portion of interviewed employees who had unresolved INS verifications from the Basic Pilot system provided information on their employment authorization status. In an attempt to obtain a better understanding of the cases for which the verification outcome was unclear, a sample of 95 cases of interviewed employees who had unresolved INS verifications (called final nonconfirmations by INS) was examined. This analysis found that a sizeable portion of these employees (42 percent) were work-authorized at the time of the verification. In close to half of those cases, employers had made keying errors. The analysis also found that the worker was most likely not authorized to work in the United States in almost a quarter of the cases. The status of the remaining third of the 95 cases could not be established using the information available from the Basic Pilot, usually because INS-issued identification numbers (“A-numbers”) were missing. Although this analysis confirms that the final nonconfirmation categories include both work-authorized and non-work-authorized cases, it cannot be used to estimate the percent of all final confirmation cases that are work-authorized because it is only representative of a small sub-group of the unresolved cases and thus not representative of all unresolved cases. Most importantly, it excludes the 91 percent of unresolved cases that were never sent to INS.

The evaluation team estimated the number of unauthorized workers that would have been found by the Basic Pilot if the work authorization status of all employees had been resolved. The evaluation team developed a procedure to estimate the total number of unauthorized workers verified by Basic Pilot employers. To do this, the team used data from the transaction database, as well as information on employer and employee behavior from evaluation surveys, to reassign cases that were not resolved by SSA or INS into the employment authorized and unauthorized categories.

Using reasonable assumptions about the rate at which employers notified employees of the tentative nonconfirmation finding and the percentage of employees that contested the finding, the model estimates the total number of work-authorized individuals among the final nonconfirmation cases. Through this methodology, the model assigns outcomes for those final nonconfirmation cases where employees never contacted SSA or INS. Once the number of work-authorized employees is estimated, the number of unauthorized employees is readily derived since there are only two possible outcomes when all cases are resolved – work authorized or not work-authorized.

Using this model, the evaluation team estimates that 10 percent of all cases submitted to the Basic Pilot system for determination of work-authorization status represented individuals who were not authorized to work at the time they were hired. As expected from the 95-case review that indicated some final nonconfirmation cases are work-authorized, this is lower than the 13 percent final nonconfirmation outcomes reported by the Basic Pilot system. However, this estimate relates only to Basic Pilot employer verifications at the time of the evaluation. Because employers participating in the Basic Pilot are in States and industries with greater than average numbers of undocumented immigrants, the percentage of unauthorized workers elsewhere would likely be considerably lower. On the other hand, this estimate does not include workers using counterfeit or borrowed documentation with valid information, which would not be detected by the Basic Pilot system.

The evaluation found evidence that workers with fraudulent documents containing valid information were confirmed as work-authorized by the Basic Pilot. Only 1 percent of pilot employees admitted to presenting a false document or a document that belonged to someone else. Based on information from the employee interview, 11 foreign-born employees who received a confirmation of work authorization through the Basic Pilot system reported that they were not authorized to work in the United States. Of these, eight employees reported that they presented fraudulent documents containing valid documentation to the employer.

Employers reported encountering more fraudulent documents than documents that do not belong to the person presenting them. Almost three-quarters of pilot employers (73 percent) reported that they had encountered at least some counterfeit documents over the past year, while 59 percent reported detecting identity fraud. It is impossible to know whether these numbers accurately reflect different rates of these activities or the relative difficulty of detecting identity fraud compared to fraudulent documents that will not check out through the Basic Pilot verification.

The level of false attestation to U.S. citizenship detected is low. Of the 2,933 I-9 forms sampled from pilot employers and matched to the basic Pilot transaction database, close to 97 percent showed the same citizenship status as the transaction database. One percent of cases showed noncitizen on the I-9 but U.S. citizen in the transaction database; these cases most likely reflect mistakes in checking the citizenship box. Two percent of the I-9 forms indicated U.S. citizenship while the transaction database showed noncitizen status. This discrepancy between the I-9 form and the transaction database may have several causes, including a change in citizenship status not reflected in the SSA database, an honest mistake in checking the wrong citizenship box, or false attestation to U.S. citizenship. However, the very fact that the Basic Pilot checks employee information for all workers, citizen and noncitizen alike, may serve as a deterrent to employees who might otherwise try to falsely claim citizenship.

B. IMPACT ON REDUCING DISCRIMINATION

1. BACKGROUND

As noted above there is evidence that some Basic Pilot employers violate the MOU provision that they will not discriminate “unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin, or in the case of a protected individual ...because of his or her citizenship status.” However, this provision does not impose new restrictions on pilot employers. It simply reiterates laws applicable to all, which non-pilot employers undoubtedly also violate. This section, therefore, focuses on the question of whether pilot employers are more or less likely to discriminate than are non-pilot employers. Related issues such as determining the level of employment discrimination in this country and the impact of I-9 employment verification on discrimination are beyond the scope of this evaluation.

Discrimination is defined as adverse treatment of individuals based on group identity. In employment, discrimination refers to differential treatment based on characteristics, such as citizenship status, that are unrelated to productivity or performance. Discrimination can occur because the employer intentionally treats members of a protected group differently than others. However, it can also occur unintentionally if employers’ actions have disparate impact on protected group members.⁸

Employment discrimination can occur at all stages of employment, including recruitment, hiring, placement, compensation, training, evaluation, disciplinary action, treatment on the job, and dismissal. Since the Basic Pilot procedures primarily affect recruiting, hiring, and the initial post-hiring period, this section of the report focuses on the effect of the Basic Pilot program during these initial stages of the process.

⁸ Title VII of the 1964 Civil Rights Act defines two major types of employment discrimination, *disparate treatment* and *disparate impact*. This report refers to these as *intentional* and *unintentional*.

The Basic Pilot program was intended to reduce discrimination that was occurring in the I-9 verification process. Based on the recommendations of the General Accounting Office (GAO), the Commission on Immigration Reform, and others, policymakers designed the Basic Pilot system to treat employees as equally as possible regardless of citizenship or immigration status. Additionally, policymakers decided that naturalized citizens should be treated exactly the same as native-born citizens. For example, if someone claims on an I-9 form to be a citizen and SSA records do not provide verification of the claim, the person is asked to resolve the tentative nonconfirmation with SSA rather than with INS.

Notwithstanding the intent of the framers of the Basic Pilot program to reduce discrimination, there were concerns that the Basic Pilot would, in fact, have the opposite effect. For instance, inaccuracies in the SSA and INS databases could result in some work-authorized persons being incorrectly identified as not work-authorized. Since these persons would most likely be disproportionately foreign-born, this would result in unintentional discrimination against foreign-born individuals. The failure of some employers to follow pilot system procedures could also result in increased discrimination. For example, employers could take adverse actions against employees who receive tentative nonconfirmations.

2. FINDINGS

As detailed below, there is evidence from the evaluation supporting both the contention of the pilot program framers that the pilot would reduce discrimination by making employers more comfortable in hiring foreign-born or foreign-appearing individuals and the concern that the pilot program is likely to introduce discrimination into the hiring process and the treatment of new employees.

Employers report that the Basic Pilot program makes them more confident in their ability to determine the work authorization status of new employees and more willing to recruit and hire immigrants, thus reducing discrimination. Underlying the view that the Basic Pilot would decrease discrimination is the premise that the Basic Pilot program would result in employers being more confident in their ability to determine the work authorization status of new employees. This premise was supported by the results of the employer mail survey. Ninety-four percent of employers agreed or strongly agreed that “Work authorizations obtained through the Basic Pilot verification system are more reliable than the earlier process.” Forty-five percent of Basic Pilot employers interviewed on-site said that the Pilot program makes employers more willing to hire immigrants, compared to 5 percent who claimed that the pilot made them less willing. The remaining pilot employers said the program made employers neither more nor less willing.

Pilot employers also reported greater representation of immigrants in their hourly work force than did non-pilot employers. However, it is quite likely that at least some of the difference between pilot and non-pilot employers is attributable to pre-existing differences in the immigrant workforce, since employers with a large number of immigrant workers are more likely to find the Basic Pilot program attractive.

The evaluation did not find conclusive evidence that documented increased hiring of immigrants. In the mail survey, pilot and non-pilot employers were asked whether they target recent immigrants and specified racial/ethnic minorities. Although 11 percent of pilot employers claimed that they recruited new immigrants compared to 7 percent of non-pilot employers, the difference was not statistically significant. There was also not a statistically significant difference in the percentage of pilot and non-pilot employers who reported an increase in the percentage of immigrants in their workforces (8 percent compared to 14 percent) during the preceding year.

Failure to follow Basic Pilot procedures resulted in increased discrimination in the treatment of foreign-born individuals compared to native-born individuals. One source of increased discrimination was failure to comply with the MOU provision prohibiting employers from taking adverse actions against employees while they are resolving tentative nonconfirmations. Employees receiving tentative nonconfirmations are disproportionately foreign-born. Non-pilot employees do not go through a similar verification process to resolve a tentative nonconfirmation.

As discussed above, 30 percent of pilot employers reported that they limited work assignments during this time period. Similarly, a substantial percentage of interviewed employees who contested a tentative nonconfirmation finding said that their employers had not allowed them to continue working while they straightened out their records or had taken other adverse actions against them. According to staff of the Office of Special Counsel (OSC) at the time the evaluation was concluding, they had received nine recent complaints that included a charge that an employee was harmed or would potentially have been harmed because of post-hiring practices at a Basic Pilot company. In four of these cases, the complaint focused on problems pilot employees had with Federal employees.

Although failure to comply with the MOU provision prohibiting employers from prescreening employees leads to discrimination, the level of discrimination does not necessarily increase due to the pilot, since non-pilot employers may also be prescreening. Since employers are not supposed to verify anyone until after they are hired, there should be no cases in which employees reported that they were never offered a job. Among interviewed individuals who received a tentative nonconfirmation from the Basic Pilot system, 23 percent said that they were not offered a job, compared to 13 percent among those who were confirmed immediately.

OSC staff also told the evaluators about a Basic Pilot employer case in which pre-employment screening was alleged. However, it is difficult in examining these cases to distinguish between discrimination caused by the Basic Pilot and discriminatory activity that would have existed without the program.

The evaluation found no evidence that Basic Pilot employers were using the pilot to selectively verify new employees on the basis of citizenship, or employees other than new hires. Comparison of I-9 form data with information on the transaction database indicates little difference in citizenship attestation between employees whose I-9 forms were

verified through the Basic Pilot system (62 percent were U.S. citizens) and employees whose forms were not verified through the system (64 percent were U.S. citizens). Based on the analysis of I-9 forms, there was also no evidence that employers were verifying existing employees.

The evaluation found no evidence of differences between pilot and non-pilot employers on other types of employment-related discrimination. The evaluation did not find differences on items such as asking discriminatory questions, requesting I-9 forms prior to hire, or requesting extra documents to verify work authorization.

3. NET IMPACT OF THE BASIC PILOT ON DISCRIMINATION

Given the contradictory effects of the Basic Pilot program on discrimination, it is not possible to determine whether the net effect of the current Basic Pilot program on discrimination is an increase or a decrease in discrimination. The dilemma is perhaps best illustrated by hypothetical examples. First, consider an employer who has discriminated against immigrants in the past out of fear that INS may penalize him if foreign-appearing employees with ostensibly valid documents are, in fact, unauthorized. This employer believes that the Basic Pilot system makes it unlikely that he will inadvertently hire someone without work authorization. Because of this increased confidence, he hires a foreign-looking person whom he would not previously have hired. This person happens to be a work-authorized individual whose INS record has not been updated to reflect a recent extension of work authorization. When this employee is not immediately authorized by the system, the employer restricts his training until the employee contacts INS and his record is updated.

Suppose now that the employee in the preceding example had been fired rather than having his training postponed. Further, suppose he had turned down another job in order to take this one. In this scenario, the employee is probably disadvantaged because of the Basic Pilot program.

There is, of course, not a simple metric that can be used to determine how much discrimination was actually experienced by the individual in each of the two scenarios. This prevents the evaluation from determining the net impact of these contradictory effects.

Discrimination engendered by the Basic Pilot program would have been less if Federal databases were more up-to-date and accurate. In the above example, if the person's INS records had been up-to-date, the employee would have reaped the benefits from the program without the subsequent discrimination and the net result of the Basic Pilot program would clearly have been a decrease in discrimination. Similarly, the number of work-authorized prescreened employees not offered jobs after receiving a tentative nonconfirmation would have been lower if the Federal databases were more up-to-date and accurate.

C. IMPACT ON EMPLOYEE PRIVACY

1. BACKGROUND

Another goal of the Basic Pilot was to provide a verification system that protects the privacy and confidentiality of employees. The Basic Pilot system was, therefore, designed to protect the confidentiality and privacy of employee information entered into and accessed from the pilot system and against unauthorized use of the system at both the Federal and work site levels. These protections are in addition to the multiple barriers both SSA and INS employ to prevent unauthorized external access to their systems. This section summarizes the findings of the evaluation on privacy and confidentiality of information.

2. FINDINGS

There is little increased risk of misuse of information in the Basic Pilot program by Federal employees. It is unlikely that Federal employees or contractors will misuse pilot information for unauthorized purposes since they already have access to other databases with considerably more information. Therefore, use of the pilot system increases the risk of improper disclosure or use at the Federal level only to the extent that it slightly increases the number of Federal employees and contractors who have access to systems information.

Safeguards are built into the Basic Pilot system to protect against employer abuses of the system. Significant attention was given in the design of the Basic Pilot to safeguard against unauthorized employer access to the Basic Pilot system. This protection is realized through a series of requirements. First, employers must install the pilot system on a non-networked computer. Second, employers are assigned an establishment-level access code and individual user IDs. Each person trained and authorized to verify employees using the pilot system must change passwords regularly. By these means, the authentication of user information can be tied to a specific employer and user.

Employers are given minimum information through their access to the Basic Pilot. The only new information the Basic Pilot provides is current work authorization status. Employers actually input from the I-9 form all the other information the system returns along with the work authorization status. Moreover, employer access to the Basic Pilot system is through a “read only” file, making it impossible for an employer to access or change any information contained in a Federal database.

There is greater risk of unauthorized disclosure of employee information at pilot establishments. Failure of employers to follow all of the computer security procedures is a concern. Although most Basic Pilot employers maintain password security and limit access to authorized users, evidence from on-site visits to a sample of establishments as part of the evaluation suggests that not all employers follow the basic security procedures. Although 60 percent of employers kept the computer used for the pilot in a room that could be locked, over a third of those (38 percent) were not locked during normal business hours.

Almost half of employers kept the instructions for using the pilot in plain sight; only 22 percent kept them in a locked or secured location. Although in 70 percent of the cases the person using the pilot system had memorized the password or kept it in a secure location, in 9 percent of establishments the password was in clear view. Therefore, in a small proportion of establishments, access to the computer with the pilot system along with availability of the pilot instructions and password allowed potential use of the computer by unauthorized persons. Although there was no direct evidence of breaches of this type, the potential exists for unauthorized access and violations of employee confidentiality.

Employers may also violate employees' privacy by not being sensitive to the need to be discreet in discussing verification problems with their employees. Based on interviews with a sample of pilot employees, 61 percent reported that they were informed of problems with their employment documents in private with no one else around. Among employees who were told they had a tentative nonconfirmation finding, 84 percent said they were informed in private with no one else around. Although the majority of employers would appear to be following good fair-information practices, the above information suggests that some employers are violating employees' rights to privacy.

Previous pilot system design made it possible for unauthorized access and manipulation of employee information at the employer's site. Security checks conducted as part of the evaluation found that a user with an intermediate knowledge of computers could access a file maintained on an employer's computer and obtain the user ID and password needed to access the Basic Pilot system. Access to this unencrypted information could allow an unauthorized user to gain access to confidential information.

Additionally, the evaluation found that a moderately competent computer user could open the database on the employer's computer that stores the unencrypted information from system queries on new hires. Not only could this information be viewed, but evaluation testing also found that the information either input by the employer or the work authorization status provided by the Basic Pilot system could be changed and saved in the employer's computer. Through such means, an unauthorized worker's record could be altered from unauthorized to authorized, or vice versa, and a printed record with the misinformation could be recorded in the employee's file as the official verification record. Although the information would be changed only on the employer's computer and not on the Basic Pilot database or in the SSA or INS records, the lack of encryption of information provided an opportunity for falsification of employer records. There is no indication that such breaches occurred. INS corrected this problem immediately upon being informed.

D. IMPACT ON BURDEN AND COST

One of the objectives of the Basic Pilot program is to avoid unnecessary burden on employers.

1. EMPLOYER BURDEN

Employers characterize the I-9 process and employment verification procedures as less burdensome after they implemented the Basic Pilot. Employers were asked to rate the I-9 process and employment verification procedures they had used before the pilot and those used at the time of completing the survey under the Basic Pilot program. The reported burden under the Basic Pilot program was significantly less than it had been prior to implementing the pilot. The percentage of employers who rated the Form I-9 process and the employment verification procedures as “not at all burdensome” increased from 36 percent before they implemented the pilot to 60 percent after they had implemented it because of the greater certainty it provided them. Ninety-three percent of employers indicated that the Basic Pilot process is easier than the I-9 process, and 92 percent reported that it did not overburden their staff. These results should be interpreted with caution since it is likely that employers were predisposed to be favorable to the pilot program since they had volunteered to participate.

The Basic Pilot removes uncertainty regarding work authorization. Eighty-three percent of employers reported that the Basic Pilot reduced uncertainty regarding work authorization. By maintaining a workforce made up of authorized employees, employers are less burdened by loss of unauthorized employees if they are faced with an INS worksite enforcement action.

2. CURRENT BASIC PILOT PROGRAM COST

In the preceding sections, the report discussed the extent to which the pilot was implemented as planned and whether it met its intended goals. Also relevant to any overall assessment of the Basic Pilot program are the costs incurred, which will be examined in this section.

All the cost figures in this section must be viewed as estimates. Although much of the cost information provided by Federal officials is based on actual financial records, subjective judgments often had to be made in how to allocate costs between the Basic Pilot program and other related programs. The cost information provided by employers is sometimes based on actual records and sometimes on best estimates. Most of the employee estimates are best-guess estimates.

a. FEDERAL GOVERNMENT COSTS

INS officials estimate that the Federal government spent approximately \$9.6 million on the Basic Pilot program between November 1997 and April 2000. These costs can be broken into two broad types:

- Start-up costs, such as development of manuals and software, of \$2.3 million; and
- Annual operating costs of slightly less than \$2.3 million or \$7.3 million in total.

Annual operating costs were further broken down into fixed annual costs and costs that vary with the size of the Basic Pilot program. The single largest operating expense to date has been annual fixed expenses of nearly \$1 million dollars for INS Headquarters staff responsible for developing policy and technical systems for the Basic Pilot program. Variable costs were estimated at \$212 for each new establishment recruited into the program, plus \$47 ongoing expenses per year for each participating establishment.

The second largest annual operating expense to date has been INS field office costs that were estimated to be \$825,000 for the pilot period. This breaks down to estimated costs of \$1,000 per INS district office to manage the Basic Pilot, \$6 for each case sent to INS for manual verification, and \$2 per participating establishment to answer employer questions.

The third most costly component of Federal operating costs was for SSA salaries and expenses. The evaluation team estimated annual fixed costs to be \$50,000. Costs per case and costs per establishment were estimated to be the same as for INS, \$6 per case referred to SSA and \$2 per participating employer.

Another category of cost is related to the automated system and varies directly with the number of queries to the database. Each query costs \$0.28. Annual fixed costs are estimated to be approximately \$2,600.

b. EMPLOYER COSTS

On average, employers reported that they spent a little under \$800 for start-up costs, with 62 percent spending less than \$500. Over 90 percent of employers reported that they spent less than \$2,500. The most frequently mentioned specific start-up costs were for training, telephone hook-up, and computer hardware costs.

Not all costs associated with a new system are easily quantifiable. Employers also incur indirect costs such as reassignment of employees, additional recruitment, and delayed production. Nearly 90 percent of the establishments reported that these indirect costs were either not a burden or were only a slight burden.

Employer annual operating costs for the Basic Pilot averaged approximately \$1,800, with about 85 percent of employers spending less than \$3,500, and over half spending less than \$500. Most costs were related to telephone charges, computer maintenance, wages for verification staff, and training for replacement staff.

c. EMPLOYEE COSTS

Based on analysis of the transaction database and confirmed by employee interviews, approximately 4 percent of pilot employees (67) contacted SSA or INS to resolve problems with their work authorization status. Few of these employees reported spending money to clear up their work authorization problems. For these, the estimated average costs was approximately \$335. These monetary costs are relatively low and reflect resolution of problems that may have needed to be done even if there was no pilot. Nevertheless, resolving work authorization status is a tangible cost for employees usually

involving a visit to an SSA office or contacting INS by telephone or fax. Nearly all (approximately 95 percent) used personal time or time off from work, of which almost half reported resolution taking about a half a day.

Some employee burden appears to have occurred because employers did not follow required procedures. As discussed earlier, employees reported three major problems in interviews:

Loss of work. Some work-authorized individuals were screened through the pilot prior to hire and denied employment after the employer received a tentative nonconfirmation. Also, 45 percent of pilot employees who contacted SSA or INS to resolve work authorization problems reported that they were not allowed to continue working while they corrected the problems.

Pay cuts and training delays. Eighteen percent of pilot employees who were told they had work authorization problems reported that their pay was cut while they corrected them, and 29 percent reported that their job training was delayed.

Not providing appropriate follow-up forms. Pilot employees and employers both reported that referral forms for resolving status questions are not always given to individuals who decide to resolve work authorization problems. Fewer than half of the employees who were informed of tentative nonconfirmations remember being shown the notice.

CHAPTER IV. OPTIONS FOR THE FUTURE

Recommendations on whether the Basic Pilot should be continued or modified are a part of the IIRIRA mandate for responding to Congress. Before presenting such recommendations, this section explores various possibilities for continuation or expansion of electronic verification of work authorization and their relative advantages and disadvantages.

A. COSTS FOR CONTINUING OR EXPANDING THE BASIC PILOT PROGRAM

In considering how electronic verification could be expanded, four alternative approaches were explored:

- *A mandatory national program for all employers,*
- *A mandatory national program for large employers only,*
- *A voluntary national program open to all employers, and*
- *A voluntary enhanced pilot program open to employers in selected States.*

The cost estimates developed for these alternative systems are based on the current costs for the Basic Pilot as reported earlier. Thus, both the current and projected figures are based on data collected and best-guess estimates. These costs would change as the projected numbers of participating employers change. Small changes in cost elements could produce large differences in total costs if the verification program were to undergo a significant expansion.

The number of establishments expected to be involved and the estimated *annual operating costs* for these alternative programs are summarized in Exhibit 5.

Exhibit 5: Summary of Estimated Annual Operating Costs of Alternative Programs

Program	Expected No. of Establishments (in thousands)	Expected No. of Employees (in thousands)	Total Costs (in millions)
Current Basic Pilot program	0.7	826	\$6
Mandatory national, for all employers	6,228.3	108,118	\$11,725
Mandatory national, for large employers with			
10+ employees	2,533.1	95,890	\$4,949
50+ employees	1,425.0	76,525	\$2,863
1,000+ employees	812.2	47,506	\$1,646
Voluntary national, for all employers	1.4	1,672	\$11
Voluntary enhanced, in selected States	1.4	1,672	\$10

SOURCE: Estimated by the evaluation team.

B. ADVANTAGES AND DISADVANTAGES OF ALTERNATIVES

Each of the above alternative programs has advantages and disadvantages, which were assessed by the following common criteria: their likely effects on undocumented immigration and employment, system capabilities, likely compliance, acceptability, and cost.

1. EFFECTS ON UNDOCUMENTED MIGRATION AND EMPLOYMENT

Limited scope programs could reduce the employment of unauthorized workers at participating establishments. However, the impact of these limited programs is likely to be small as long as there are alternate employment opportunities with non-participating employers.

2. SYSTEM LIMITATIONS

SSA and INS are currently capable of handling either of the voluntary programs described here, or some other program of limited scope. Neither agency is currently capable of enrolling and administering a program for the hundreds of thousands of employers in any of the large mandatory programs explored here. It is estimated that it would take several years to develop and implement such a system.

3. LIKELY EMPLOYER COMPLIANCE

Employer compliance would be expected to be highest for the voluntary programs, since employers would be choosing to participate. Employers reported that companies that employ a large number of immigrants or unskilled laborers, or large companies, are likely to benefit the most from the pilot. Compliance for the mandatory programs would most likely be poor unless there was a high probability of being monitored and penalized for noncompliance. As noted in the sections above, lack of compliance is a major source of discriminatory impacts and risks to the confidentiality of employee work status information in the current pilot.

4. ACCEPTABILITY

Currently, participating employers in the voluntary programs would likely be very receptive to the programs. Small employers are likely to be more resistant to electronic verification, because the perceived need is less and the cost is unlikely to be justified. The mandatory programs in particular are likely to meet with high resistance from employers and others opposed to Federal regulation of business and from employee rights groups concerned about the possible infringement of immigrant civil rights.

5. COST

The cost of the national and large employer programs is extremely high for the government, employers, and employees based on current cost estimates of approximately \$11.7 billion annually for a mandatory national system for all employers. Although the cost for the program involving only the very largest employers with over 1,000 employees would be significantly lower than a national mandatory program, any theoretical impact on undocumented migration would also be lower. System efficiencies and other recommended program modifications can be expected to reduce the cost of the programs from the projections in this report. If recommended modifications are made to increase the accuracy and timeliness of the databases, cost per employee will decrease.

CHAPTER V. RECOMMENDATIONS

Based on the evaluation findings, the Basic Pilot program should not be expanded to a mandatory or large-scale program. However, INS and SSA should continue to test, on a pilot basis, effective ways to address the deficiencies of the current Basic Pilot program and the data supporting it. Most employers using the Basic Pilot program claimed it made them more confident of their ability to identify unauthorized workers without placing significant burdens on employers. However, it is likely that pilot employers were predisposed to be favorable toward the program since they had volunteered to participate. The level of acceptance observed in the pilot would not be anticipated if the program were made mandatory for any segment of employers.

The evaluation uncovered sufficient problems in the design and implementation of the current program to preclude recommending that it be significantly expanded. Some of these problems could become insurmountable if the program were to be expanded dramatically in scope. The question remains whether the program can be modified in a way that will permit it to maintain or enhance its current benefits while overcoming its weaknesses. The evaluation team therefore recommends that INS and SSA test a revised version of the Basic Pilot program designed to meet these goals. Although the original legislative authority for the pilot ended on November 30, 2001, 4 years after implementation, Congress extended this authority for an additional 2 years.⁹

INS is developing the capability to use Web-based technology in benefit program verification. This approach should be explored for use with an enhanced Basic Pilot system. Increased use of Web technology has the potential to reduce Federal and employer costs significantly and to lead to a more cost-effective system. Further, such an approach could presumably solve some of the problems employers have had with the hardware and software required by the current Basic Pilot system. INS and SSA should, therefore, continue to develop such an approach for testing with employment verification. However, implementation of the other improvements emanating from the evaluation is also important.

DATA QUALITY IMPROVEMENTS

All pilot queries first go to SSA for verification. INS is then involved in approximately 14 percent of all Basic Pilot verifications, and because the INS electronic database is not current, about one-third of these INS cases require manual verification by specially trained personnel. These manual searches are expensive, do not always yield reliable results, and lengthen the time needed to complete the employment verification process. Moreover, data inaccuracies exacerbate the problems that arise when employers deviate from acceptable Basic Pilot procedures by using the electronic verification system to prescreen job applicants, by not informing employees of a tentative nonconfirmation finding, and by

⁹ The President signed P.L. 107-128 on January 16, 2002.

taking inadequate precautions to safeguard the security of the pilot system and the privacy of employees.

An important requirement for improving INS data systems is to provide for more timely and reliable entry of status information into INS databases. Some of the current systems are antiquated, inefficient, and error prone. INS is currently taking both policy and operational steps to improve the accuracy and timeliness of data and its entry into databases.

BASIC PILOT SYSTEM IMPROVEMENTS

An effective automated employment verification system would also require improvements in training and system software, quality assurance mechanisms, and technical support to employers.

Improving Training and System Software. Improvements need to be incorporated into the Basic Pilot to reduce discretion in how employers use the system and the extent to which they follow pilot procedures designed to protect employee rights. These improvements can be made in part by more effective employer training. Additional feedback mechanisms and a training program incorporating Web-based approaches could incorporate mechanisms to make employers aware of common problems that lead to work authorized employees receiving tentative nonconfirmations and ways to avoid them. System program changes are also needed to increase checks on name variations and perform edit and consistency checks of the data entered by the employer.

Incorporating Quality Assurance Measures. The analysis and monitoring of information from the transaction database for quality control purposes is critical. Periodic reports are needed to identify information that suggests that employers may not be using the system correctly and to summarize general trends in verification requests. A mechanism providing feedback of these findings to employers is also essential.

Improving Employer Technical Support. Additional technical support and customer service is needed. The problems encountered with printing, connecting to the system, passwords, problematic software, and slow connections need to be resolved. Moreover, technical support to employers could be conducted more efficiently.

GLOSSARY

Term	Definition
Authorized worker	An individual who is allowed to work legally in the United States.
Basic Pilot program	The first of three pilot projects for employment verification mandated by Congress in the Illegal Immigration Reform and Immigrant Responsibility Act. It verifies the status of all newly hired employees employed by participating employers in six States.
Citizen	A person owing loyalty to the protection of a particular State, usually by virtue of birth or naturalization. Generally used in the report to mean a U.S. citizen.
Citizen Attestation Verification Pilot (CAVP)	The second of three pilot employment verification projects mandated by Congress in the Illegal Immigration Reform and Immigrant Responsibility Act. The CAVP differs from the Basic Pilot in that employees who attest to being U.S. citizens are not verified by the pilot system.
Database	An electronic catalogue of information.
Discrimination	Adverse treatment of individuals based on group identity. In employment situations, discrimination is defined as differential treatment based on individual characteristics, such as race or gender, that are unrelated to productivity or performance.
Employment authorized	The designation that an employee is authorized to work in the United States. Persons authorized to work include U.S. citizens and nationals and noncitizens in various employment-authorized statuses.
Employment verification	Process of verifying authorization to work in the United States.
Employment Verification Pilot (EVP)	One of the early verification pilot programs instituted under the demonstration authority of the Immigration Reform and Control Act of 1986, as authorized under Executive Order 12781, dated November 20, 1991. This pilot verified the employment status of noncitizens only.
Establishment	A location where an employer's business is conducted. A single employer can have many establishments.
Final nonconfirmation	A result on the transaction database indicating that the employee's work eligibility was not established because the employee or the employer did not take the necessary action to resolve a tentative nonconfirmation. This result is only issued by the Basic Pilot system after the employer has been notified of a tentative nonconfirmation response.
Foreign-born	An individual who was born outside of the United States. American citizens can be foreign-born, either because they were born abroad to at least one parent of U.S. citizenship or because they were naturalized or derived U.S. citizenship through their parents.

GLOSSARY (continued)

Term	Definition
Fraudulent documents	Identity and/or employment authorization documents that are counterfeit or are legitimate but have been altered to change the identifying information or images to represent another person.
I-9 form	The INS form employers use to verify the work authorization status of all newly hired workers in the United States. The form was developed following passage of the Immigration Reform and Control Act of 1986.
Illegal alien	A noncitizen who has not been lawfully admitted to the United States or who has violated the terms of his/her lawful admission. (See also Undocumented immigrant .)
Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)	A major immigration law enacted on September 30, 1996. Among other things, IIRIRA mandated that INS conduct and evaluate three pilot verification programs, including the Basic Pilot program.
Immigrant	A noncitizen who has been granted permanent lawful residence in the United States. Immigrants either obtain immigrant visas at consular offices overseas or, if a visa number is immediately available, adjust status at INS offices in the United States. Also refers to an individual who has moved to a new country with the intent of remaining there for 1 year or more. (See also Lawful permanent resident alien .)
Immigration Reform and Control Act of 1986 (IRCA)	A major immigration law enacted on November 6, 1986, to gain control over legal immigration. It provided for the legalization of certain long-term undocumented aliens and agricultural workers, increased border enforcement, and made it unlawful to hire undocumented workers. It also required that U.S. employers verify the identity and work authorization status of all persons they hire.
Immigration Status Verifiers (ISVs)	The group of INS field office employees who verify immigration status for benefits agencies and pilot employers. One of their functions is to verify the status of individuals receiving a tentative nonconfirmation from INS.
Indirect costs	A cost that is not identifiable with a specific function, product, or activity. For example, indirect costs associated with setting up the employment verification program can include reassignment of employees, additional recruitment, and delayed production.
Lawful permanent resident	A noncitizen who is a permanent legal resident of the United States. A green card holder. (See also Immigrant .)
Machine-Readable Document Pilot (MRDP)	Pilot mandated by the Illegal Immigration Reform and Immigrant Responsibility Act. The MRDP is identical to the Basic Pilot except that a machine-readable driver's license is used to enter employee information into the computer. The pilot is being tested only in Iowa.

GLOSSARY (continued)

Term	Definition
Memorandum of Understanding (MOU)	A signed document in which an employer agrees to abide by the provisions of the pilot program and in which INS and SSA agree to provide certain materials and services.
Non-pilot employer	An employer who is not participating in the Basic Pilot program.
Notice of tentative nonconfirmation	The printed form a pilot employer provides notifying the employee that a tentative nonconfirmation has been issued by the verification system and informing the employee of his/her rights and responsibilities with respect to resolving the problem. The employee must sign the form, indicating whether he/she wishes to contest the finding.
Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC)	Office established in the U.S. Department of Justice by the Immigration Reform and Control Act of 1986 to provide remedies for immigration-related discrimination related to employer sanctions and employment verification. The office provides a mechanism for dealing with discriminatory employment practices, including hiring and discharge from employment based on citizenship status or national origin.
Operating costs	Recurring costs associated with program operations.
Operator error	An entry incorrectly keyed into an employment verification database by an employer.
Pilot employee	An individual working for a Basic Pilot employer.
Pilot employer	An employer that has signed a Memorandum of Understanding agreeing to participate in the Basic Pilot program. Not all of these employers are actively using the system at any point in time.
Pilot non-users	Employers who signed the Memorandum of Understanding but are not actually using the Basic Pilot system. In this report, pilot non-users are employers who reported in the employer mail survey that they were not using the system.
Pilot State	A State in which a pilot program is operating. For the Basic Pilot program, the pilot States are California, Florida, Illinois, New York, Texas, and Nebraska.
Pilot users	Pilot employers who are actually using the Basic Pilot system. In this report, pilot users are employers who reported in the employer mail survey that they are using the system.
Prescreen	To evaluate the employment authorization status of an individual before hiring him/her. This practice is prohibited by the Immigration Reform and Control Act of 1986.

GLOSSARY (continued)

Term	Definition
Referral notice	The official notice an employer provides to an employee who wishes to contest a tentative nonconfirmation finding in the verification process. It explains what procedures the employee must take to resolve his/her case.
Sanctions (of employers)	A prohibition in Section 274A of the Immigration and Nationality Act that makes it unlawful to hire or continue to employ workers who are not authorized to work in the United States. It provides for fines and imprisonment for employers who knowingly hire workers who are not work-authorized.
Secondary verification	The second stage of employment verification under the pilot programs. For INS, Immigration Status Verifier reviews the case to determine the availability of additional information relevant to an employee's work authorization status. This step is required if there is a mismatch between the INS and SSA databases and the employee information entered by the employer.
Secure documents	Documents that have special features such as holograms, embedded images, biometric identifiers, or other security features that make them difficult to counterfeit. Such documents are typically issued through processes that are also secure.
Stakeholders	Individuals and organizations with an interest in a program or issue.
Start-up cost	The costs incurred by a business or the Federal Government to initiate and implement a new program
Systematic Alien Verification for Entitlements (SAVE)	An intergovernmental information-sharing program administered by INS and used by benefit-issuing agencies and employment verification pilot employers to determine a noncitizen's immigration status.
Tentative nonconfirmation (of work authorization)	The initial response from the employment verification pilot system when an employee's work authorization cannot be immediately confirmed. There are many possible reasons that an employee may receive a tentative nonconfirmation, ranging from employer keying errors to an employee's lack of authorization for work.
Transaction database	The administrative database that captures all Basic Pilot transactions by employers, SSA, and INS.
U.S. citizen	An individual who is born in the United States or attains U.S. citizenship by being born abroad to U.S citizen parents, by being naturalized, or by deriving citizenship following his/her parents' naturalization.
Unauthorized worker	A noncitizen who does not have legal permission to work in the United States because of his/her immigration status or because he/she has applied and been found ineligible for work authorization.

GLOSSARY (continued)

Term	Definition
Undocumented immigrant	A noncitizen who does not have permission to enter or reside in the United States. (See also Illegal alien.)
Verification transaction record	A record in the Basic Pilot transaction database capturing employer-entered information to determine an employee's work authorization.

Exhibit J

CONGRESSIONAL RESPONSE REPORT

Employer Feedback on the Social Security Administration's Verification Programs

A-03-06-26106



December 2006

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.



SOCIAL SECURITY

December 14, 2006

The Honorable Jim McCrery
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. McCrery:

I am pleased to provide you with the enclosed report addressing your April 7, 2006 letter, requesting information related to the employee verification programs administered by the Social Security Administration (SSA) and the Department of Homeland Security (DHS). This report contains information related to the experience of employers who have used the Social Security Number Verification Service and the Basic Pilot program.

Thank you for bringing your concerns to my attention. My office is committed to combating fraud, waste, and abuse in SSA's operations and programs. To ensure DHS is aware of the information provided to your office, we are forwarding a copy of this report to the Inspector General for DHS.

If you have any questions or would like to be briefed on this issue, please call me or have your staff contact H. Douglas Cunningham, Assistant Inspector General for Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr.", written in a cursive style.

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Jo Anne B. Barnhart

OBJECTIVE

Our objective is to assess employers' satisfaction with the Social Security Administration's (SSA) verification programs.

BACKGROUND

To assist employers with accurate wage reporting,¹ in June 2005 SSA implemented the Social Security Number Verification Service (SSNVS), which is an on-line program that allows employers to validate the names and Social Security numbers (SSN) of employees.² The purpose of SSNVS is to ensure employees' names and SSNs match SSA records prior to the submission of their *Wage and Tax Statements* (Form W-2) to SSA.³ After applying to use SSNVS, employers can either verify up to 10 names and SSNs (per screen) on-line and receive immediate results or upload batch files of up to 250,000 names and SSNs and usually receive results the next Government business day. SSNVS allows employers to have multiple users registered to use the service on their behalf. As of Calendar Year (CY) 2005, there were approximately 21,000 registered users of SSNVS representing about 19,600 employers. In CY 2005, SSNVS processed over 25.7 million verifications for about 12,000 employers. See Appendix B for more information on SSNVS.

SSA also participates with the Department of Homeland Security (DHS) in the Basic Pilot program, a verification service that validates newly-hired employees' employment-authorization. Participating employers register on-line with DHS to use the automated system. The information the employer submits to DHS is sent to SSA to verify that the SSN, name, and date of birth (DoB) match SSA's records. SSA also provides DHS with U.S. citizenship information, as recorded in SSA records. When SSA records indicate U.S. citizenship and the employee has alleged U.S. citizenship, employment authorization is confirmed. DHS confirms the current employment-authorization for noncitizens. As of Fiscal Year (FY) 2005, there were about 14,000 registered users of the Basic Pilot representing about 8,000 employers. In FY 2005, the Basic Pilot processed about 980,000 verifications for approximately 3,700 employers. See Appendix C for more information on the Basic Pilot.

¹ The Social Security Act § 205(c)(2)(A), 42 U.S.C. § 405(c)(2)(A), requires SSA to maintain records of wage amounts employers pay to individuals.

² SSNVS is one of the services offered by SSA's Business Services Online (BSO). BSO is a suite of Internet services for businesses and employers to exchange information with SSA. For further information, see the BSO homepage at www.socialsecurity.gov/bsowelcome.htm.

³ While our focus in this report is on-line verification programs, SSA also offers other forms of employee verification. For instance, employers can register for the Agency's Employee Verification Service (EVS) for Registered Employers, which allows employers to submit employee names/SSNs via paper or magnetic media. SSA also allows employers to verify up to 5 names/SSNs via a toll-free number, or submit a paper listing to the local Social Security office to verify up to 50 names/SSNs.

CHARACTERISTICS OF SAMPLE EMPLOYERS

We interviewed program users at 100 employers—50 each from SSNVS and the Basic Pilot—to assess their satisfaction with the 2 programs.⁴ We concentrated on those employers that submitted a large volume of verification requests during 2004 and 2005.⁵ The 100 employers were in industries such as temporary employment, service, food, retail, and government.⁶ See Tables 1 and 2 for a complete listing of the industries.

Social Security Number Verification Service

During CYs 2004 and 2005, the 50 sample SSNVS employers submitted verification requests ranging from about 65,000 to 5.3 million.⁷ In total, these employers submitted approximately 18.3 million of the 33 million verification requests, or 55 percent, during the 2-year period. Of the 18.3 million verification requests, about 1.8 million items could not be verified, and the employers received responses such as “SSN is not in file” or “Name does Not Match.” Furthermore, the 50 employers had 1 to 12 users registered to use SSNVS on their behalf. We attempted to interview the registered user that submitted the largest volume of verification requests at each of the 50 employers.

**Table 1: Verification Statistics for 50 Sample SSNVS Employers
(Calendar Years 2004 and 2005)**

Employer Industry	Number of Employers	Total Verifications	Total Verified Items	Total Unverified Items
Service	20	4,052,567	3,838,211	221,144
Retail	10	1,700,919	1,630,653	70,844
Government	7	9,062,335	8,610,926	1,237,385
Temporary Employment	5	2,440,850	2,188,842	257,098
Manufacturing	3	239,551	235,000	5,442
Restaurant	2	245,460	232,928	12,566
Transportation	2	166,019	164,355	2,519
Entertainment	1	369,007	363,913	5,231
Total	50	18,276,708	17,264,828	1,812,229

Note: *Total Verifications* do not equal the sum of *Total Verified Items* and *Total Unverified Items* since (a) death indicator responses are treated differently in the batch process versus the online process (only the batch process treats a death indicator as an unverified item) and (b) resubmissions are not included in the *Total Verifications* but are included in the other two totals.

⁴ We contacted two users employed at the same company, one using SSNVS and the other using the Basic Pilot, because the employer submitted a large volume of verification requests under each program.

⁵ The verification data for the two programs covered two different periods since SSA captures SSNVS data by CY and DHS captures the Basic Pilot data by FY.

⁶ Since the employers were selected based on volume of verifications, our findings in this report may not be representative of all SSNVS and Basic Pilot users.

⁷ Prior to June 2005, SSNVS was a pilot that was restricted to a limited number of employers. We found that 8 of the 50 sample employers participated in the pilot.

Basic Pilot Program

During FYs 2004 and 2005, the 50 sample Basic Pilot employers submitted verification requests ranging from about 2,800 to 65,000. As shown in Table 2, these employers submitted approximately 485,000 of the 1.7 million verification requests, or 28 percent, during the 2-year period.⁸ Of the 485,000 verification requests submitted by the 50 employers, SSA verified 384,000 individuals, or 79 percent, as authorized to work. SSA provided tentative nonconfirmation responses for about 70,000 individuals, or 15 percent. For these cases, the reported information did not match SSA records due to (1) invalid SSNs, (2) unmatched names and/or DoBs, (3) dates of death on file, or (4) citizenship status could not be confirmed. The remaining 31,000 items (6 percent) were referred to DHS for employment authorization. In these remaining cases, the names and SSNs matched SSA records, but DHS had to verify the noncitizens' current work authorization. Further, the 50 employers had more than one user registered under the Basic Pilot on their behalf. We found the number of registered users ranged from 3 to 2,433.⁹ We attempted to interview the registered user that submitted the largest volume of verification requests at each of the 50 employers.

**Table 2: Verification Statistics for 50 Sample Basic Pilot Employers
(Fiscal Years 2004 and 2005)**

Employer Industry	Number of Employers	Total Verification Requests	Total Employment Authorized	Total SSA Tentative Non-Confirmation Responses	Total Referred to DHS
Temporary employment	27	285,045	223,398	45,164	16,483
Food industry	11	127,664	105,966	10,921	10,777
Service	4	14,830	11,327	2,412	1,091
Restaurant	3	29,458	19,809	8,922	727
Hotel	2	11,317	9,783	934	600
Agriculture	1	6,773	5,521	500	752
Construction	1	6,312	5,285	593	434
Government	1	3,452	2,884	368	200
Total	50	484,851	383,973	69,814	31,064
Percentage		100%	79%	15%	6%

Note: SSA Tentative Nonconfirmation Responses relate to SSA data only. If an SSA Tentative Nonconfirmation Response is later resolved by the employee and the work authorization is still in question, the employee's information is referred to DHS for further verification. We provide more information on the overall verification process in Appendix C. We discussed the employers' responses to SSA and DHS nonconfirmation responses in the body of the report.

⁸ See Appendix C for details on the verification statistics for the Basic Pilot for FYs 2004 and 2005.

⁹ The employer with 2,433 registered users is a national temporary employment agency that has offices located throughout the United States.

Results of Review

Overall, a majority of the SSNVS and Basic Pilot users we interviewed rated their satisfaction with the programs as “Excellent,” “Very Good,” or “Good.” In addition, many of the SSNVS employers verified their entire payroll, which SSA encourages to ensure accurate wage reporting. However, we found that approximately 42 percent of the Basic Pilot users we interviewed were not using the program as intended. While the Basic Pilot requires employers to verify the employment authorization of newly-hired employees within 3 days after they are hired, some users indicated their employers conducted the verifications before hiring individuals. Most of the users in our review stated their employers took the appropriate actions when they received unverified responses from SSNVS and nonconfirmation responses from the Basic Pilot, such as notifying affected employees about unverified results and terminating employees when they declined to contest tentative nonconfirmation responses or received final nonconfirmation responses from the Basic Pilot. However, a number of users reported problems in using each of the programs. Finally, at least 40 percent of the users interviewed under each program indicated their employers used multiple programs or services to verify the names and SSNs of their employees.

OVERALL SATISFACTION WITH THE PROGRAM

We found that 92 percent of the SSNVS users and 100 percent of the Basic Pilot users interviewed rated the programs as “Excellent,” “Very Good,” or “Good.” In addition, at least 98 percent of the users from both programs indicated their employers were very likely to continue using the programs.

Social Security Number Verification Service

Of the 50 SSNVS users we interviewed, about 92 percent (46 users) rated the application, verification, and feedback phases of SSNVS as “Excellent,” “Very Good,” or “Good.”¹⁰ The users believed SSNVS was an effective and reliable tool for verifying employees’ names and SSNs. For example, one user stated, “SSNVS was easy to use and it met their needs.” The remaining 8 percent (4 users) rated the application or verification phases of SSNVS as “Fair.” One user representing an employer in the retail industry explained that SSNVS would have been more beneficial to his company if it allowed batch submissions because his company employed over 100,000 employees. This user appeared to be unaware that SSNVS allowed employers to upload files containing up to 250,000 employee names and SSNs at a time for verification.¹¹

¹⁰ These results were similar to those reported in a July 2004 study conducted by SSA’s Office of Quality Assurance and Performance Assessment (OQA), now the Office of Quality Performance. In that study, 93 employers rated their experience with SSNVS as “Excellent,” “Very Good,” or “Good.” See OQA, *Findings from the Social Security Number Verification Service (SSNVS) Users Survey-INFORMATION*, July 2004.

¹¹ The remaining three employers did not indicate why they rated the program as “Fair.”

Furthermore, 49 of 50 users indicated they were very likely to continue using SSNVS. Only the user who was unaware that SSNVS accepted batch files indicated his employer might discontinue use of the program. We informed this user that SSA accepted batch files and he stated he would investigate the matter.

Although a majority of the users were satisfied with SSNVS, a few users suggested changes to the program. One user in the retail industry stated his company would like to be informed when a transposed SSN is submitted for verification. According to SSA staff, the Agency decided not to provide corrected SSNs through SSNVS because of the concern with disclosing a valid name/SSN combination on-line.¹²

Another user from a government agency commented that he would like to conduct a mass correction of employee records related to unverified responses received from SSNVS. The user explained his employer had received numerous unverified responses that could not be timely resolved because the employees were located overseas. Due to the location of the employees, they were not able to seek SSA assistance in resolving the unverified responses.¹³ The user stated it would be beneficial for his employer to meet with SSA officials so they could develop a process to resolve these types of discrepancies.

Basic Pilot Program

All 50 Basic Pilot users we interviewed rated the application, verification, and feedback phases of the Basic Pilot as “Excellent,” “Very Good,” or “Good.” One user commented the program was “great and it met their needs.” While 98 percent (49 users) indicated they would continue using the program, only 1 user indicated his company had decided to stop using the Basic Pilot. The user could not explain why the fast food restaurant had decided to discontinue using the Basic Pilot, and we did not find any evidence that the employer was registered to use other SSA verification programs or services.

Furthermore, one user who had rated the Basic Pilot as “Excellent” indicated that a potential weakness of the Basic Pilot is the failure to detect identity fraud. The user noted that he did not always have assurance the individuals who walked into his office were in fact the individuals issued the employment authorization documents. The user suggested the Basic Pilot program provide employers with additional information, such as prior employment history, to assist employers in verifying that the person in front of them is actually the numberholder and is authorized to work.¹⁴

¹² The Agency’s Employee Verification Service (EVS) for Registered Users will inform employers, in some cases, when they have provided a transposed SSN by providing them with the correct SSN. Under this program, the Agency runs the Single Select edit process, which generates 89 possible SSNs based on the input SSN and then attempts to match the input data to the database of assigned SSNs. If only one item matches, EVS will provide the employer with the corrected SSN. If more than one item matches, then EVS informs the employer the name and SSN does not match SSA’s records.

¹³ To resolve the no-match responses, SSA instructs employers to tell their employees to visit a local field office.

¹⁴ Such disclosure of prior employment history under the Basic Pilot would most likely be restricted under the Privacy Act of 1974 (5 U.S.C. § 552a as amended) and Section 6103 of the Internal Revenue Code (26 U.S.C. § 6103), which limit the amount of personal information that can be disclosed.

SSNVS EMPLOYER VERIFICATION PRACTICES

We found 45 of the 50 SSNVS users we interviewed, or 90 percent, indicated that their employers verified the names and SSNs of their entire payroll. About two thirds of these users (30 users) stated their employers conducted the verifications on a weekly, monthly, or quarterly basis.¹⁵ SSA encourages employers to run their entire payroll to improve overall wage reporting. Moreover, by verifying the entire payroll, it allows SSA to properly credit employees' earnings records, which will be important information in calculating their future Social Security benefits. The remaining five users reported that their employers used SSNVS to verify the names and SSNs of new or existing employees, but not both. However, several of these employers used other SSA programs or services for employer verification, as discussed later in the report.

USE OF THE BASIC PILOT PROGRAM

We learned that a significant number of the Basic Pilot employers in our sample verified individuals outside the scope of the signed agreement between the employer, SSA and DHS. The agreement requires that employers use the program to verify the employment authorization of newly-hired employees within 3 days of being hired, but we found that 42 percent of users reported that their employers conducted verifications before hiring individuals, and 30 percent conducted verifications of existing employees.

Potential Pre-Employment Screening of Individuals

According to 21 of the 50 Basic Pilot users, or 42 percent, their employers were conducting verifications before hiring individuals, which is a form of pre-employment screening. The Memorandum of Understanding (MOU) signed by employers, SSA and DHS when the employer agrees to participate in the Basic Pilot program, prohibits employers from using the Basic Pilot as a pre-screening tool. Specifically, it states, “the employer agrees not to use the Basic Pilot procedures for pre-employment screening of job applicants” and “employers are prohibited from initiating verification procedures before the employee has been hired.” Seven users from the temporary employment industry and one user from the food industry admitted their companies would not hire individuals when their employment authorization could not be confirmed through the Basic Pilot. A similar finding was reported in a January 2002 Immigration and Naturalization Service (INS) evaluation of the Basic Pilot program.¹⁶ The report noted that some employers were using the Basic Pilot to pre-screen job applicants. The report stated that 28 percent of individuals who had received a tentative nonconfirmation from the Basic Pilot program did not receive a job offer from the employers.

¹⁵ We did not independently verify these statements.

¹⁶ The January 2002 report, *INS Basic Pilot Evaluation Summary Report*, was prepared by two INS contractors. The objective of the report was to evaluate whether the Basic Pilot was operating as intended and whether it had achieved its intended policy goals. In March 2003, the INS was transitioned to DHS and was renamed the United States Citizenship and Immigration Service.

Verification of Existing Employees

About 30 percent (15 users) of the Basic Pilot users we interviewed admitted they had verified the employment authorization of existing employees. Users in the temporary employment industry stated their companies' policies were to re-verify the employment authorizations of existing employees after a certain period of time (6 months to 2 years). A user in the service industry admitted his company verified the employment authorization of its clients' existing employees as part of background investigations. The MOU prohibits employers from verifying the employment authorization of existing employees. Specifically, it states that "the employers agree not to use the Basic Pilot for re-verification or for employees hired before the date of the MOU is in effect."

We could not determine whether these employers misunderstood the Basic Pilot requirements or just simply ignored the policy. DHS tried to address employers' confusion about the Basic Pilot requirements when they developed a web-based tutorial. As employers register for the Basic Pilot, they must review the tutorial to help them become familiar with the program's policies and procedures. However, to ensure compliance with the Basic Pilot requirements, DHS would need to monitor employers' use of the program.¹⁷ If DHS determines this practice of verifying pre-employment individuals or existing employees should be allowable, DHS may need to seek legislative changes to include this practice.¹⁸

UNVERIFIED RESPONSES

Many of the users we interviewed stated their employers took appropriate actions when they received unverified responses from SSNVS and nonconfirmation responses from the Basic Pilot. We found 40 of the SSNVS users we interviewed, or 80 percent, indicated they verified unmatched data with employees, compared unmatched data with personnel records, or contacted SSA to resolve the unverified responses as instructed by SSA.¹⁹ Additionally, 43 of the Basic Pilot users we interviewed, or 86 percent, asserted they notified employees about tentative nonconfirmation responses or contacted SSA to resolve tentative nonconfirmation responses.²⁰ In addition, the majority of the Basic Pilot users stated their employers terminated employees if the

¹⁷ In our September 2006 *Congressional Response Report: Monitoring the Use of Employee Verification Programs* (A-03-06-36122), we noted that the Basic Pilot program lacked effective monitoring controls. In the report, DHS staff stated that their Agency was planning to increase monitoring efforts over the Basic Pilot program.

¹⁸ Section 403 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. Law No. 104-208 as amended, 8 U.S.C. § 1324a note.

¹⁹ The remaining SSNVS users stated their employers followed alternate procedures or did not answer the question. See Appendix E for a full explanation of employer steps under this program.

²⁰ The remaining Basic Pilot users stated their employers followed alternate procedures or did not answer the question. See Appendix E for a full explanation of employer steps under this program.

employees decided not to contest tentative nonconfirmation responses or if they received final nonconfirmation responses,²¹ as is allowed by law.²² See Appendix E for a full explanation of employer steps under each program.

PROBLEMS ENCOUNTERED WITH THE PROGRAMS

About 14 percent of the SSNVS users and 10 percent of the Basic Pilot users we interviewed reported they experienced minor problems using the two programs.²³ In most of these cases, the users reported that SSA and/or DHS staff were able to resolve their problems.

SSNVS users reported: (1) difficulties uploading response data into the company's system; (2) rejection of data files; and (3) erroneous expiration of passwords. For example, an SSNVS user in the service industry stated that he had received a message from SSNVS that his password would expire in 2 weeks, but in fact the password expired within a couple days. The user notified SSA about the problem and an SSA official informed him that this occurred because of a system glitch. According to the user, SSA immediately provided him with a new password and he was able to access the system.

Basic Pilot users reported: (1) periodic lack of access to the Basic Pilot system; (2) password problems; and (3) lack of a timely system response from DHS. For example, a user in the food processing industry stated that DHS had taken more than 14 days to confirm the work authorization of an employee. The user notified DHS about the delay and the issue was timely resolved.

EMPLOYERS USING OTHER VERIFICATION SERVICES

Many of the users stated their employers used more than one type of program or service to verify employee identity and/or employment authorization. Of the 50 employers using SSNVS, 30 used SSNVS exclusively while the remaining 20 used 1 or more additional verification services (i.e. SSA's EVS for Registered Users, telephone or fax service, and/or third-party providers for employee verification). For example, an SSNVS user at a temporary employment agency located in Oklahoma indicated his company also used EVS for Registered Users, the Basic Pilot, and SSA's telephone service for employee verification. Of the 50 employers using the Basic Pilot, 30 used the Basic Pilot exclusively while the remaining 20 used 1 or more additional verification services. The use of multiple verification services could increase the number of employees subject to verification. Whereas the Basic Pilot is limited to the verification of new hires, SSNVS is able to verify all existing employees.

²¹ We did not independently verify this information.

²² Section 403 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. Law No. 104-208 as amended, 8 U.S.C. § 1324a note.

²³ We were unable to confirm these statements with SSA or DHS, but we plan to provide both agencies with more details on each problem so they can appropriately review and, if necessary, modify their systems.

Conclusion

The vast majority of the users interviewed were very satisfied with the two on-line verification programs. The users stated these two programs were reliable and effective tools to verify employees' identity and employment authorization. Furthermore, 90 percent of the SSNVS users stated their employers verified the entire company payroll, which should ensure improved accuracy of reported wages. Nonetheless, we discovered that a significant number of Basic Pilot employers may not have been using the program in accordance with their agreements. If DHS determines this practice of verifying pre-employment individuals or existing employees should be allowable, DHS may need to seek legislative changes. In addition, most of the users indicated their employers were taking the appropriate actions when they received feedback from either program that an employee's information could not be verified. Finally, we learned that a considerable number of these employers were using multiple programs to conduct employee verifications, which may increase the verification coverage of all employees.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Social Security Number Verification System

APPENDIX C – Basic Pilot Program

APPENDIX D – Scope and Methodology

APPENDIX E – Employer Handling of Unverified Employees

Acronyms

BSO	Business Services Online
CY	Calendar Year
DHS	Department of Homeland Security
DoB	Date of Birth
EIF	Employer Identification File
EIN	Employer Identification Number
EVS	Employee Verification Service
FY	Fiscal Year
INS	Immigration and Naturalization Service
MEF	Master Earnings File
MOU	Memorandum of Understanding
NWALIEN	Nonwork Alien
OIG	Office of the Inspector General
PIN	Personal Identification Number
SSA	Social Security Administration
SSN	Social Security Number
SSNVS	Social Security Number Verification Service
U.S.C.	United States Code

Forms

"A" Number	<i>Alien Registration Number</i>
I-94 Number	<i>Arrival/Departure Number</i>
Form I-551	<i>Alien Registration Receipt Card</i>
Form I-9	<i>Employment Eligibility Verification Form</i>
Form I-94	<i>Arrival/Departure Record</i>
Form SS-5	<i>Application for a Social Security Number</i>
Form W-2	<i>Wage and Tax Statement</i>
Forms I-766 and I-688B	<i>Employment Authorization Document</i>

Social Security Number Verification Service

The Social Security Number Verification Service (SSNVS) is a free, on-line program available to employers and third party submitters to verify employees' names and Social Security numbers (SSN). The purpose of SSNVS is to ensure employees' names and SSNs match the Social Security Administration's (SSA) records prior to the submission of their wage reports to SSA.¹ Employers and third parties must first register on-line at SSA's Business Services Online (BSO) website to use this service. Employers may allow multiple users to register to use SSNVS on their behalf. Following registration, SSA will mail an activation code² directly to the company's address shown in SSA's Employer Identification File (EIF).³ Once the registered employers activate SSNVS using their Personal Identification Number (PIN)⁴ and the activation code, they can start submitting verifications. Registered employers can:

- Submit up to 10 employee names and SSNs (per screen) via the on-line SSNVS and receive immediate results; and
- Upload files containing up to 250,000 employee names and SSNs and usually receive verification results the next Government business day. This bulk procedure allows employers to verify an entire payroll database or verify in one submission the names and SSNs of a large number of newly-hired workers.

SSA will return a verification code to the employer for each employee whose information does not match SSA's records. In addition to the verification code, SSA provides a death indicator if the employee's Numident⁵ record includes a date of death.⁶ Table B-1 provides descriptions for the SSNVS verification codes.

¹ Prior to June 2, 2005, SSNVS was a pilot that was restricted to a limited number of employers.

² The activation code is an alphanumeric code sent by SSA to the employer or registered PIN holder (if self-employed) when access to certain services is requested. This code must be entered on the *Activate Access to BSO Service* web page to enable the employer to access the requested service.

³ The EIF is an Internal Revenue Service file that contains the Employer Identification Number (EIN) of a business and the employer name and address associated with each EIN.

⁴ The PIN is a unique value issued by SSA to the applicant at registration, which must be entered to gain access to SSNVS.

⁵ The Numident is a record of identifying information (such as name, date of birth, date of death, mother's maiden name, etc.) provided by the applicant on his or her *Application for a Social Security Number* (Form SS-5) for an original SSN and subsequent applications for replacement SSN cards. Each record is housed in the Numident Master File in SSN order.

⁶ In our September 2006 report, *Effectiveness of the Young Children's Earnings Records Reinstatement Process (A-03-05-25009)*, we recommended SSA modify SSNVS to detect SSNs for children under age 7 to provide appropriate notice to employers and potentially reduce the number of future Young Children's Earnings Record notices. The Agency agreed to implement this recommendation.

Table B-1: SSNVS Verification Codes Provided to Employers

SSNVS Code	Description of Code
1	SSN not in file (never issued to anyone)
2	Name and date of birth match; gender code does not match
3	Name and gender code match; date of birth does not match
4	Name matches; date of birth and gender code do not match
5	Name does not match; date of birth and gender code not checked
Y	Death indicator

Basic Pilot Program

The Basic Pilot is an ongoing joint initiative between the Social Security Administration (SSA) and the Department of Homeland Security (DHS).¹ The purpose of the Basic Pilot is to assist employers in verifying the employment eligibility of newly-hired employees. The President signed *The Basic Pilot Program Extension and Expansion Act of 2003* (Public Law Number 108-156) into law on December 3, 2003. This law extended the operation of the Basic Pilot for an additional 5 years (to a total of 11 years) and expanded the operation to all 50 States not later than December 1, 2004.

Employers and third parties must register on-line to gain access to the Basic Pilot program. In addition, they must complete and sign a Memorandum of Understanding, which sets forth the points of agreement between SSA, DHS, and the employer regarding the employer's participation in the Basic Pilot. Employers and third parties may have multiple users registered to use the Basic Pilot on their behalf.

As discussed with SSA and DHS staff, the Basic Pilot involves using the information in government databases (SSA databases and, if needed, DHS databases) to determine the employment eligibility of new hires. The Social Security number (SSN) and Alien Registration Number ("A" Number)² or I-94 Number (Admission Number)³ are used for these checks. When verifying a new employee, the employer must complete the DHS-issued *Employment Eligibility Verification Form* (Form I-9) for each employee and then enter elements of this data into the Basic Pilot within 3 days of hiring, including the employee's SSN, name, date of birth (DoB), and whether the new hire indicated he or she was a United States (U.S.) citizen and, if not, the "A" Number or I-94 Number.

The system first checks the information entered against SSA's database to verify the name, SSN, and DoB of newly-hired employees, regardless of citizenship.⁴ When the Numident shows the U.S. as the place of birth for the newly-hired employee or a code indicating the number holder is a U.S. citizen and the new hire indicated that he/she is a U.S. citizen, the Basic Pilot confirms employment eligibility. If the Basic Pilot system

¹ Sections 401 and 404 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. Law No. 104-208 as amended, 8 U.S.C. § 1324a note.

² The "A" number is the 9-digit number following "A" which is shown on the "green card" or *Permanent Resident Card* (formerly the I-551 *Alien Registration Receipt Card*), the *Employment Authorization Document* (I-766 and I-688B), and on certain other immigration documents and notices. For newly admitted immigrants, the "A" number is shown on the machine-readable immigrant visa affixed to the foreign passport.

³ The I-94 Number is the 11-digit number located on the *Arrival-Departure Record* (Form I-94). The Form I-94 shows the date the individual arrived in the United States, the "Admitted Until" date, and the date when his or her authorized period of stay expires.

⁴ In our December 2006 audit, *Congressional Response Report: Accuracy of the Social Security Administration's Numident File (A-08-06-26100)*, we addressed the accuracy of the Numident File. This file is relied on by the Basic Pilot for verification of identity and work authorization.

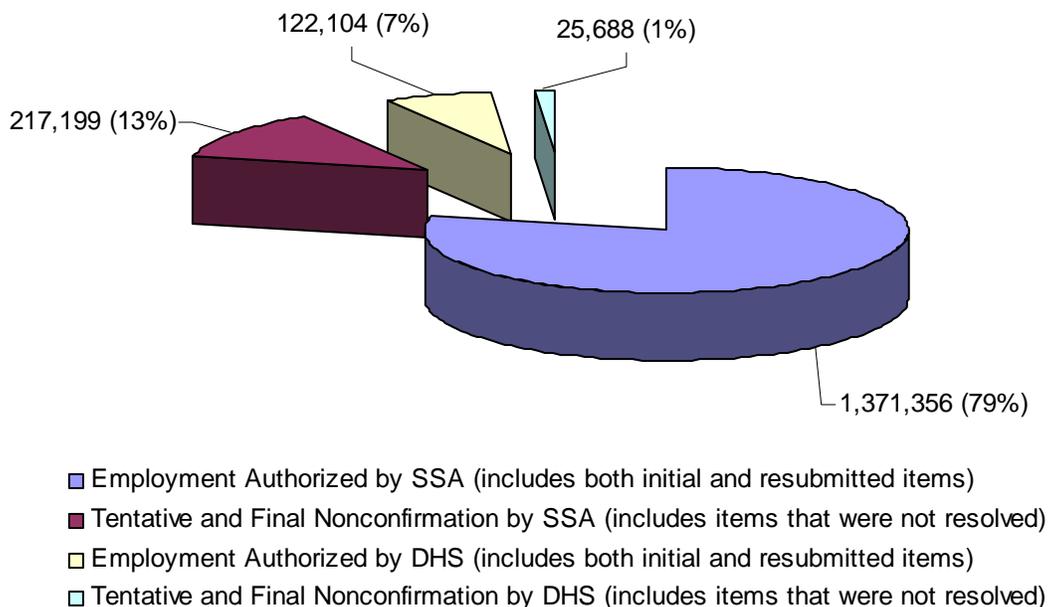
cannot confirm employment eligibility based on the information in SSA's database or an "A" Number or I-94 Number was entered, the Basic Pilot system checks the data against DHS' database.

The employer will receive notification of "SSA tentative nonconfirmation" of employment eligibility when the SSN, name, or DoB does not match the information in SSA's database or if a death indicator is present. Also, employers will receive an "SSA tentative nonconfirmation" if the new hire indicated he or she was a U.S. citizen and SSA's records did not show that the person was a U.S. citizen. The employer will receive notification of "DHS tentative nonconfirmation" of employment eligibility when DHS' database does not show the newly-hired noncitizen as authorized for employment. In these cases, the employer asks the employee whether he or she wishes to contest the tentative nonconfirmation. If contested, the employee must contact SSA or DHS within 8 Government working days of the notification. After the employee contacts SSA or DHS to correct the record, the employer resubmits the query through the Basic Pilot system. If the system does not confirm employment eligibility after the employer resubmits the query, the employer may terminate the new hire's employment.

Basic Pilot Verification Statistics

The Basic Pilot processed approximately 1.7 million verification requests during Fiscal Years 2004 and 2005. The figure below shows the results of this verification process.

**Basic Pilot Verification Statistics for
Fiscal Years 2004 and 2005**



Scope and Methodology

To accomplish our objective, we:

- Reviewed pertinent sections of the Social Security Administration's (SSA) policies and procedures, as well as, other relevant Federal laws and regulations.
- Reviewed Office of the Inspector General, Government Accountability Office, and Department of Homeland Security (DHS) reports, and other relevant documents.
- Established accounts with the Social Security Number Verification Service (SSNVS) and the Basic Pilot program to gain an understanding of the registration process.
- For SSNVS, we:
 - ✓ Obtained a list of registered employers as of May 2006;
 - ✓ Obtained employer feedback data;
 - ✓ Identified the number of registered employers using the service in Calendar Years (CY) 2004 and 2005; and
 - ✓ Identified the number of verifications submitted in CYs 2004 and 2005.
- For the Basic Pilot program, we:
 - ✓ Obtained a list of registered employers as of July 2006;
 - ✓ Obtained employer feedback data;
 - ✓ Identified the number of registered employers using the service in Fiscal Years (FY) 2004 and 2005; and
 - ✓ Identified the number of verifications submitted in FYs 2004 and 2005.
- For both SSNVS and the Basic Pilot, we selected a sample of 50 employers from each program to assess their satisfaction with the programs. We concentrated on those employers that submitted a large volume of verification requests during 2004 and 2005.
- We obtained the following for the 100 sample employers:
 - ✓ Data extract from SSA's Nonwork Alien (NWALIEN) file for Tax Years (TY) 2003 and 2004;¹
 - ✓ Data extract from SSA's Earnings Suspense File for TY 2003;² and
 - ✓ Data extract of earnings reporting data for TYs 2003 and 2004.

¹ The NWALIEN file contains wage items for individuals who have worked with a nonwork SSN. SSA issues nonwork SSNs to individuals who lack DHS work authorization, but have valid reasons for the SSNs. SSA sends the NWALIEN file to DHS on an annual basis.

² The Earnings Suspense File is a repository of unmatched wage items that could not be posted to individuals' earnings records.

- After reviewing the summary verification results and earnings data associated with each of the 100 employers, we interviewed 100 program users on issues related to their experiences with the application, submission, and feedback processes under the programs. In addition, we asked questions related to (1) the employer component responsible for verification, (2) the type of employee documents reviewed, (3) experiences with resolving unverified employee information, and (4) use of other verification services.

We did not perform a full review of internal controls and data reliability due to the limited scope of our review. The purpose of our review was to assess employers' satisfaction with SSNVS and the Basic Pilot programs. The entities audited were the Office of Earnings, Enumeration and Administrative Systems under the Deputy Commissioner for Systems; the Office of Central Operations under the Deputy Commissioner for Operations; and the Employer Wage Reporting and Relations Staff under the Deputy Commissioner for Budget, Finance, and Management. We conducted the audit between April and November 2006 in Philadelphia, Pennsylvania. We conducted our audit in accordance with generally accepted government auditing standards.

Employer Handling of Unverified Employees

Based on our interviews with Social Security Number Verification Service (SSNVS) and Basic Pilot users, we found that many of the employers appeared to have taken appropriate actions when they received indications of verification problems from SSNVS and the Basic Pilot. We found 40 of the SSNVS users we interviewed indicated when they received the unverified response, they verified the unmatched data with employees, compared the unmatched data with personnel records, or contacted SSA to resolve the unverified responses as outlined in the SSNVS user manual. Additionally, we found 43 Basic Pilot users we interviewed asserted they notified employees about tentative nonconfirmation responses or contacted SSA to help resolve tentative nonconfirmation responses. In addition, as authorized by the Basic Pilot program, at least 26 users admitted their employers terminated employees if the employees decided not to contest the tentative nonconfirmation responses.

SSNVS Unverified Responses

Table E-1 summarizes the actions taken by SSNVS employers, as explained to us by the 50 users, to resolve unverified responses.¹ As shown in the table, 40 employers stated that to resolve unverified responses, they (1) verified the unmatched data with the affected employees, (2) compared the unmatched data with information included in the employer's personnel records, or (3) contacted a SSA field office for assistance. These actions appeared consistent with SSA's guidance to employers on what to do if a SSN fails to verify.²

While 12 users indicated their employers did not take any actions against affected employees if the unverified responses could not be resolved, 6 users asserted their company had terminated employees in certain instances. SSA advises employers that an unverified response from SSNVS is not a basis, in and of itself, to take any adverse action against employees, such as termination. Further, SSA cautions employers that if they use unverified responses to take inappropriate adverse actions against workers they may violate State or Federal law.

¹ We were not able to confirm whether the employers took the actions noted in the table.

² The *SSNVS User Handbook* provides employers with the policies and procedures for using the service.

**Table E-1: Actions Taken by SSNVS Employers
for Unverified Responses**

Actions Taken by SSNVS Employers	Number of Responses
Actions taken to resolve unverified responses	
✓ Verified data with employee	37
✓ Referred cases to clients ⁽¹⁾	4
✓ Referred to another department for resolution	3
✓ Checked personnel records	2
✓ Contacted SSA	1
Total	47⁽²⁾
Actions taken if unverified responses were not resolved	
✓ No action taken	12
✓ Unknown to user	13
✓ Terminated employee	6
✓ Referred to another department	6
✓ Re-contacted employee	4
✓ Referred case to clients ⁽¹⁾	3
✓ Assigned dummy SSN (9s)	1
✓ Resubmitted the data	1
✓ Contacted SSA	1
Total	47

Notes: (1) These employers were third party providers that verify their clients' payroll.
(2) Three of the users did not respond to this question.

Basic Pilot Nonconfirmation Responses

Table E-2 summarizes the actions taken by Basic Pilot employers, as explained to us by the 50 users, when they received nonconfirmation responses.³ Based on their responses, it appeared 42 employers were following the Basic Pilot requirements as they provided employees with the *Tentative Nonconfirmation Notice*, which informs employees of their rights under the program to contest the verification results.⁴ Moreover, 26 of the users asserted their employers terminated employees if the employees decided not to contest the tentative nonconfirmation responses.⁵ Furthermore, 28 of the users stated their employers terminated employees when they received the final nonconfirmation response from the program. Under the Basic Pilot program, employers can terminate an employee if the employee elects not to contest the tentative nonconfirmation results or if they receive a final nonconfirmation response.⁶

³ We were not able to confirm whether the employers took the actions noted in the table.

⁴ As outlined in Appendix C, employers must provide employees with the *Tentative Nonconfirmation Notice* so the employees can decide whether they want to contest the verification results.

⁵ If an employee decides not to contest a *Tentative Nonconfirmation Notice*, the Basic Pilot system automatically converts the response to a Final Nonconfirmation.

⁶ Section 403 of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. Law No. 104-208 as amended, 8 U.S.C. § 1324a note.

**Table E-2: Actions Taken by Basic Pilot Employers
for Nonconfirmation Responses**

Action Taken By Basic Pilot Employers	Number of Responses
Action taken for tentative nonconfirmation responses	
✓ Provided referral notice to employee	41
✓ Referred case to clients ⁽¹⁾	2
✓ Provided referral notice to employee and contacted SSA	1
✓ Contacted SSA	1
✓ No action taken	1
Total	46⁽²⁾
Actions taken if tentative nonconfirmations were not contested	
✓ Terminated employee	26
✓ Resolved case while employee continued to work	1
Total	27⁽²⁾
Actions taken if final nonconfirmations were received	
✓ Terminated employee	28
✓ Denied employment ⁽³⁾	8
✓ Referred employee to SSA	2
✓ Documented employee file	1
✓ Referred case to client ⁽¹⁾	1
Total	40⁽²⁾

- Notes:**
- (1) These employers were third party providers that verify their clients' payroll.
 - (2) The responses did not total 50 because some users did not answer all questions.
 - (3) We discussed earlier in the report that using the Basic Pilot as a pre-screening tool is prohibited.

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The Office of the Inspector General (OIG) is comprised of our Office of Investigations (OI), Office of Audit (OA), Office of the Chief Counsel to the Inspector General (OCCIG), and Office of Resource Management (ORM). To ensure compliance with policies and procedures, internal controls, and professional standards, we also have a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts and/or supervises financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations and projects on issues of concern to SSA, Congress, and the general public.

Office of Investigations

OI conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as OIG liaison to the Department of Justice on all matters relating to the investigations of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Office of the Chief Counsel to the Inspector General

OCCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Finally, OCCIG administers the Civil Monetary Penalty program.

Office of Resource Management

ORM supports OIG by providing information resource management and systems security. ORM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, ORM is the focal point for OIG's strategic planning function and the development and implementation of performance measures required by the Government Performance and Results Act of 1993.

Exhibit K

GAO

Testimony

Before the Subcommittee on Immigration,
Border Security, and Citizenship,
Committee on the Judiciary, U.S. Senate

For Release on Delivery
Expected at 2:00 p.m. EDT
Monday, June 19, 2006

IMMIGRATION ENFORCEMENT

Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts

Statement of Richard M. Stana, Director
Homeland Security and Justice





Highlights of [GAO-06-895T](#), a testimony before the Subcommittee on Immigration, Border Security, and Citizenship, Committee on the Judiciary, U.S. Senate

Why GAO Did This Study

The opportunity for employment is one of the most important magnets attracting illegal immigrants to the United States. The Immigration Reform and Control Act (IRCA) of 1986 established an employment eligibility verification process and a sanctions program for fining employers for noncompliance. Few modifications have been made to the verification process and sanctions program since 1986, and immigration experts state that a more reliable verification process and a strengthened worksite enforcement capacity are needed to help deter illegal immigration. This testimony is based on GAO's August 2005 report on the employment verification process and worksite enforcement efforts. In this testimony, GAO provides observations on (1) the current employment verification process and (2) U.S. Immigration and Customs Enforcement's (ICE) priorities and resources for the worksite enforcement program and the challenges it faces in implementing that program.

What GAO Recommends

We recommended that the Department of Homeland Security (DHS) set time frames for completing its review of the Form I-9 and that U.S. Citizenship and Immigration Services in DHS assess the costs and feasibility of addressing Basic Pilot Program weaknesses. DHS agreed with these recommendations and is taking steps to assess the pilot program's weaknesses.

www.gao.gov/cgi-bin/getrpt?GAO-06-895T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

IMMIGRATION ENFORCEMENT

Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts

What GAO Found

The current employment verification (Form I-9) process is based on employers' review of documents presented by new employees to prove their identity and work eligibility. On the Form I-9, employers certify that they have reviewed documents presented by their employees and that the documents appear genuine and relate to the individual presenting the documents. However, document fraud (use of counterfeit documents) and identity fraud (fraudulent use of valid documents or information belonging to others) have undermined the employment verification process by making it difficult for employers who want to comply with the process to ensure they hire only authorized workers and easier for unscrupulous employers to knowingly hire unauthorized workers with little fear of sanction. In addition, the large number and variety of documents acceptable for proving work eligibility has hindered employer verification efforts. In 1998, the former Immigration and Naturalization Service (INS), now part of DHS, proposed revising the Form I-9 process, particularly to reduce the number of acceptable work eligibility documents, but DHS has not yet finalized the proposal. The Basic Pilot Program, a voluntary program through which participating employers electronically verify employees' work eligibility, shows promise to enhance the current employment verification process, help reduce document fraud, and assist ICE in better targeting its worksite enforcement efforts. Yet, several weaknesses in the pilot program's implementation, such as its inability to detect identity fraud and DHS delays in entering data into its databases, could adversely affect increased use of the pilot program, if not addressed.

The worksite enforcement program has been a relatively low priority under both INS and ICE. Consistent with the DHS mission to combat terrorism, after September 11, 2001, INS and then ICE focused worksite enforcement efforts mainly on detecting and removing unauthorized workers from critical infrastructure sites. Since fiscal year 1999, the numbers of employer notices of intent to fine and administrative worksite arrests have generally declined. According to ICE, this decline is due to various factors, such as the prevalence of document fraud that makes it difficult to prove employer violations. ICE officials told us that the agency has previously experienced difficulties in proving employer violations and setting and collecting fine amounts that meaningfully deter employers from knowingly hiring unauthorized workers. In April 2006, ICE announced a new interior enforcement strategy to target employers who knowingly hire unauthorized workers by bringing criminal charges against them, and ICE has reported increases in the number of criminal arrests and indictments since fiscal year 2004. However, it is too early to tell what effect, if any, this new strategy will have on enhancing worksite enforcement efforts and identifying unauthorized workers and their employers.

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here today to participate in this hearing on immigration enforcement at the workplace. As we and others have reported in the past, the opportunity for employment is one of the most important magnets attracting unauthorized immigrants to the United States. To help address this magnet, in 1986 Congress passed the Immigration Reform and Control Act (IRCA),¹ which made it illegal for individuals and entities to knowingly hire, continue to employ, or recruit or refer for a fee unauthorized workers. The act established a two-pronged approach for helping to limit the employment of unauthorized workers: (1) an employment verification process through which employers verify all newly hired employees' work eligibility and (2) a sanctions program for fining employers who do not comply with the act. Efforts to enforce these sanctions are referred to as worksite enforcement and are conducted by U.S. Immigration and Customs Enforcement (ICE).

As the U.S. Commission on Immigration Reform reported, immigration contributes to the U.S. national economy by providing workers for certain labor-intensive industries and contributing to the economic revitalization of some communities.² Yet, the commission also noted that immigration, particularly illegal immigration, can have adverse consequences by helping to depress wages for low-skilled workers and creating net fiscal costs for state and local governments. Following the passage of IRCA, the U.S. Commission on Immigration Reform and various immigration experts have concluded that deterring illegal immigration requires, among other things, strategies that focus on disrupting the ability of illegal immigrants to gain employment through a more reliable employment eligibility verification process and a more robust worksite enforcement capacity. In particular, the commission report and other studies have found that the single most important step that could be taken to reduce unlawful migration is the development of a more effective system for verifying work authorization. In the nearly 20 years since passage of IRCA, the employment eligibility verification process and worksite enforcement program have remained largely unchanged. Moreover, in previous work, we reported that employers of unauthorized aliens faced little likelihood that the

¹Pub. L. No. 99-603, 8 U.S.C. 1324a et seq.

²U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy* (Washington, D.C.: September 1997).

Immigration and Naturalization Service (INS)³ would investigate, fine, or criminally prosecute them, a circumstance that provides little disincentive for employers who want to circumvent the law.⁴ The legislative proposals currently under consideration would revise the current employment verification process and the employer sanctions program.

My testimony today is based on our August 2005 report to Congress on the employment verification process and ICE's worksite enforcement program.⁵ Specifically, I will discuss our observations on (1) the current employment verification process and (2) ICE's priorities and resources for the worksite enforcement program and the challenges it has faced in implementing that program.

To address these objectives, we reviewed federal laws and information obtained from ICE, U.S. Citizenship and Immigration Services (USCIS), and Social Security Administration (SSA) officials in headquarters and selected field locations. We examined regulations, guidance, past GAO reports, and other studies on the employment verification process and the worksite enforcement program. We also analyzed the results and examined the methodology of an independent evaluation of the Basic Pilot Program, an automated system through which employers electronically check employees' work eligibility information against information in Department of Homeland Security (DHS) and SSA databases, conducted by the Institute for Survey Research at Temple University and Westat in June 2004.⁶ Furthermore, we analyzed data on employer use of the Basic Pilot Program and on worksite enforcement and assessed the data reliability by reviewing them for accuracy and completeness, interviewing agency officials knowledgeable about the data, and examining documentation on how the data are entered, categorized, and verified in

³In March 2003, INS was merged into the Department of Homeland Security, and its immigration functions were divided between U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection. U.S. Immigration and Customs Enforcement is responsible for managing and implementing the worksite enforcement program.

⁴GAO, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist*, [GAO/GGD-99-33](#) (Washington, D.C.: Apr. 2, 1999).

⁵GAO, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, [GAO-05-813](#) (Washington, D.C.: Aug. 31, 2005).

⁶Institute for Survey Research and Westat, *Findings of the Basic Pilot Program Evaluation* (Washington, D.C.: June 2004).

the databases. We determined that the independent evaluation and these data were sufficiently reliable for the purposes of our review. We conducted the work reflected in this statement from September 2004 through July 2005 in accordance with generally accepted government auditing standards.

Summary

The employment verification process is primarily based on employers' review of work eligibility documents presented by new employees, but various weaknesses, such as the process' vulnerability to fraud, have undermined this process. Employers certify that they have reviewed documents presented by their employees and that the documents appear genuine and relate to the individual presenting the documents. However, document fraud (use of counterfeit documents) and identity fraud (fraudulent use of valid documents or information belonging to others) have made it difficult for employers who want to comply with the employment verification process to ensure that they hire only authorized workers and have made it easier for unscrupulous employers to knowingly hire unauthorized workers with little fear of sanction. In addition, the large number and variety of documents acceptable for proving work eligibility have hindered employers' verification efforts. In 1998, the former INS proposed revising the verification process and reducing the number of acceptable work eligibility documents; that proposal was never acted upon. DHS, however, at the direction of Congress, introduced the Basic Pilot Program, an automated system for employers to electronically check employees' work eligibility information with information in DHS and SSA databases, that may enhance this process. This program shows promise to help reduce document fraud and assist ICE in better targeting its worksite enforcement efforts. Yet, a number of weaknesses in the pilot program's implementation, including its inability to detect identity fraud and DHS delays in entering data into its databases, could adversely affect increased use of the pilot program, if not addressed. In addition, USCIS officials told us the current Basic Pilot Program may not be able to complete timely verifications if the number of employers using the program significantly increased. About 8,600 employers have registered to use the Basic Pilot Program, and a smaller number of these employers are active users.

Under both INS and ICE, worksite enforcement has been a relatively low priority. Consistent with the DHS mission to combat terrorism, after September 11, 2001, INS and then ICE focused worksite enforcement resources mainly on identifying and removing unauthorized workers from critical infrastructure sites, such as airports and nuclear power plants, to help address vulnerabilities at those sites. In fiscal year 1999, INS devoted

about 240 full-time equivalents (or about 9 percent of its total investigative agent work-years) to worksite enforcement, while in fiscal year 2003 it devoted about 90 full-time equivalents⁷ (or about 4 percent of total agent work-years). Furthermore, between fiscal years 1999 and 2003 the number of notices of intent to fine issued to employers for knowingly hiring unauthorized workers or improperly completing employment verification forms and the number of administrative worksite arrests generally declined. ICE has attributed this decline to various factors, including the widespread use of counterfeit documents that make it difficult for ICE agents to prove that employers knowingly hired unauthorized workers. In addition, INS and ICE have faced difficulties in setting and collecting fine amounts from employers and in detaining unauthorized workers arrested at worksites. In April 2006 ICE announced a new interior enforcement strategy as part of the Secure Border Initiative. Under this strategy, ICE plans to target employers who knowingly employ unauthorized workers by bringing criminal charges against them. While ICE has taken some steps to address difficulties it has faced in implementing worksite enforcement efforts and has announced a new interior enforcement strategy, it is too early to tell what effect, if any, these steps will have on identifying the millions of unauthorized workers and the employers who hired them.

In our August 2005 report, we recommended that DHS establish specific time frames for completing its review of the Form I-9 process to help strengthen the current employment verification process. We also recommended that USCIS include an assessment of the feasibility and costs of addressing the Basic Pilot Program's weaknesses in its evaluation of the program. DHS agreed with our recommendations and plans to include information on addressing the pilot program's weaknesses in the evaluation.

Background

IRCA provided for sanctions against employers who do not follow the employment verification (Form I-9) process. Employers who fail to properly complete, retain, or present for inspection a Form I-9 may face civil or administrative fines ranging from \$110 to \$1,100 for each employee for whom the form was not properly completed, retained, or presented. Employers who knowingly hire or continue to employ unauthorized aliens may be fined from \$275 to \$11,000 for each employee, depending on whether the violation is a first or subsequent offense. Employers who

⁷One full-time equivalent is equal to one work-year or 2,080 non-overtime hours.

engage in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens are subject to criminal penalties consisting of fines up to \$3,000 per unauthorized employee and up to 6 months imprisonment for the entire pattern or practice.

Basic Pilot Program Employment Verification Process

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)⁸ of 1996 required INS and SSA to operate three voluntary pilot programs to test electronic means for employers to verify an employee's eligibility to work, one of which was the Basic Pilot Program.⁹ The Basic Pilot Program was designed to test whether pilot verification procedures could improve the existing employment verification process by reducing (1) false claims of U.S. citizenship and document fraud; (2) discrimination against employees; (3) violations of civil liberties and privacy; and (4) the burden on employers to verify employees' work eligibility.

The Basic Pilot Program provides participating employers with an electronic method to verify their employees' work eligibility. Employers may participate voluntarily in the Basic Pilot Program, but are still required to complete Forms I-9¹⁰ for all newly hired employees in accordance with IRCA. After completing the forms, these employers query the pilot program's automated system by entering employee information provided on the forms, such as name and social security number, into the pilot Web site within 3 days of the employees' hire date. The pilot program then electronically matches that information against information in SSA and, if necessary, DHS databases to determine whether the employee is eligible to work, as shown in figure 1. The Basic Pilot Program electronically notifies employers whether their employees' work authorization was confirmed. Those queries that the DHS automated check cannot confirm are referred to DHS immigration status verifiers

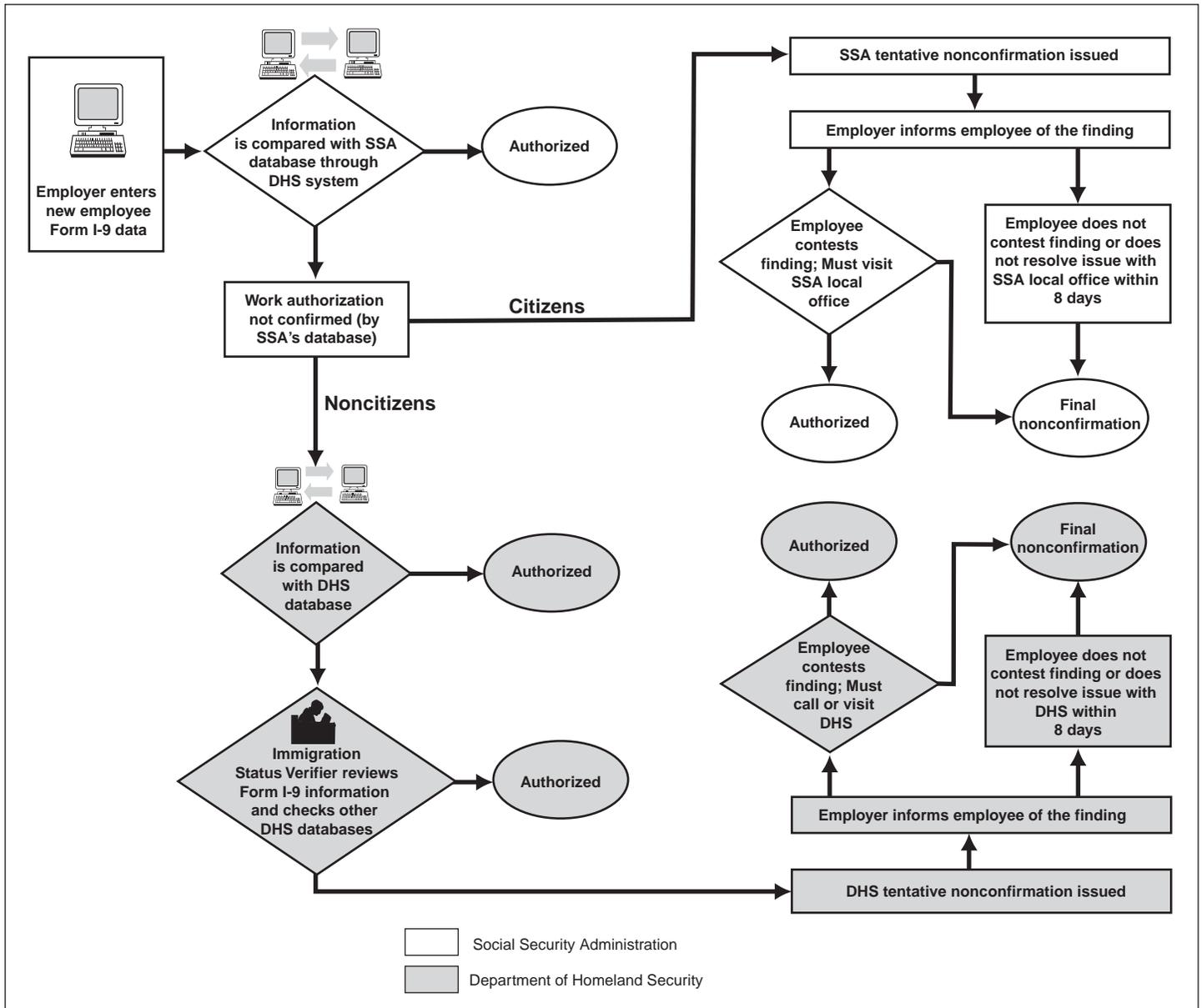
⁸8 U.S.C. 1324a(b). IIRIRA was enacted within a larger piece of legislation, the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208.

⁹The other two pilot programs mandated by IIRIRA—the Citizen Attestation Verification Pilot Program and the Machine-Readable Document Pilot Program—were discontinued in 2003 due to technical difficulties and unintended consequences identified in evaluations of the programs. See Institute for Survey Research and Westat, *Findings of the Citizen Attestation Verification Pilot Program Evaluation* (Washington, D.C.: April 2003) and Institute for Survey Research and Westat, *Findings of the Machine-Readable Document Pilot Program Evaluation* (Washington, D.C.: May 2003).

¹⁰The Form I-9 is completed by employers in verifying the work eligibility of all newly hired employees.

who check employee information against information in other DHS databases.

Figure 1: Basic Pilot Program Verification Process



Source: GAO analysis based on USCIS information.

In cases when the pilot system cannot confirm an employee's work

authorization status either through the automatic check or the check by an immigration status verifier, the system issues the employer a tentative nonconfirmation of the employee's work authorization status. In this case, the employers must notify the affected employees of the finding, and the employees have the right to contest their tentative nonconfirmations by contacting SSA or USCIS to resolve any inaccuracies in their records within 8 days. During this time, employers may not take any adverse actions against those employees, such as limiting their work assignments or pay. Employers are required to either immediately terminate the employment, or notify DHS of the continued employment, of workers who do not successfully contest the tentative nonconfirmation and those who the pilot program finds are not work-authorized.

Various Weaknesses Have Undermined the Employment Verification Process, but Opportunities Exist to Enhance It

Current Employment Verification Process Is Based on Employers' Review of Documents

In 1986, IRCA established the employment verification process based on employers' review of documents presented by employees to prove identity and work eligibility. On the Form I-9, employees must attest that they are U.S. citizens, lawfully admitted permanent residents, or aliens authorized to work in the United States. Employers must then certify that they have reviewed the documents presented by their employees to establish identity and work eligibility and that the documents appear genuine and relate to the individual presenting them. In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent. Employers are deemed in compliance with IRCA if they have followed the Form I-9 process, including when an unauthorized alien presents fraudulent documents that appear genuine.

Form I-9 Process Is Vulnerable to Document and Identity Fraud

Since passage of IRCA in 1986, document and identity fraud have made it difficult for employers who want to comply with the employment verification process to ensure they hire only authorized workers. In its 1997 report to Congress, the Commission on Immigration Reform noted that the widespread availability of false documents made it easy for

unauthorized aliens to obtain jobs in the United States. In past work, we reported that large numbers of unauthorized aliens have used false documents or fraudulently used valid documents belonging to others to acquire employment, including at critical infrastructure sites like airports and nuclear power plants.¹¹ In addition, although studies have shown that the majority of employers comply with IRCA and try to hire only authorized workers, some employers knowingly hire unauthorized workers, often to exploit the workers' low cost labor. For example, the Commission on Immigration Reform reported that employers who knowingly hired illegal aliens often avoided sanctions by going through the motions of compliance while accepting false documents. Likewise, in 1999 we concluded that those employers who do want to comply with IRCA can intentionally hire unauthorized workers under the guise of having complied with the employment verification requirements by claiming that unauthorized workers presented false documents to obtain employment.¹²

The Number and Variety of Acceptable Documents Hinders Employer Verification Efforts

The large number and variety of documents that are acceptable for proving work eligibility have complicated employer verification efforts under IRCA. Following the passage of IRCA in 1986, employees could present 29 different documents to establish their identity and/or work eligibility. In a 1997 interim rule, INS reduced the number of acceptable work eligibility documents from 29 to 27.¹³ The interim rule implemented changes to the list of acceptable work eligibility documents mandated by IIRIRA and was intended to serve as a temporary measure until INS issued final regulations on modifications to the Form I-9. In 1998, INS proposed a further reduction in the number of acceptable work eligibility documents to 14, but did not finalize the proposed rule.

Since the passage of IRCA, various studies have addressed the need to reduce the number of acceptable work eligibility documents to make the employment verification process simpler and more secure. For example, we previously reported that the multiplicity of work eligibility documents contributed to (1) employer uncertainty about how to comply with the

¹¹GAO/GGD-99-33, and GAO, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82 (Washington, D.C.: May 21, 2004).

¹²GAO/GGD-99-33.

¹³Eight of these documents establish both identity and employment eligibility (e.g., U.S. passport or permanent resident card); 12 documents establish identity only (e.g., driver's license); and 7 documents establish employment eligibility only (e.g., social security card).

employment verification requirements and (2) discrimination against authorized workers.¹⁴ In 1998, INS noted that, when IRCA was first passed, a long inclusive list of acceptable work eligibility documents was allowed for the Form I-9 to help ensure that all persons who were eligible to work could easily meet the requirements, but as early as 1990, there had been evidence that some employers found the list confusing.

According to DHS officials, the department is assessing possible revisions to the Form I-9 process, including reducing the number of acceptable work eligibility documents, but has not established a target time frame for completing this assessment and issuing regulations on Form I-9 changes. DHS released an updated version of the Form I-9 in May 2005 that changed references from INS to DHS but did not modify the list of acceptable work eligibility documents on the Form I-9 to reflect changes made to the list by the 1997 interim rule. Moreover, DHS recently issued interim regulations on the use of electronic Forms I-9, which provide guidance to employers on electronically signing and storing Forms I-9.¹⁵

The Basic Pilot Program Shows Promise to Enhance Employment Verification, but Current Weaknesses Could Undermine Increased Use

Various immigration experts have noted that the most important step that could be taken to reduce illegal immigration is the development of a more effective system for verifying work authorization. In particular, the Commission on Immigration Reform concluded that the most promising option for verifying work authorization was a computerized registry based on employers' electronic verification of an employee's social security number with records on work authorization for aliens. The Basic Pilot Program, which is currently available on a voluntary basis to all employers in the United States, operates in a similar way to the computerized registry recommended by the commission, and shows promise to enhance employment verification and worksite enforcement efforts. Only a small portion—about 8,600 as of June 2006—of the approximately 5.6 million

¹⁴GAO, *Immigration Reform: Employer Sanctions and the Question of Discrimination*, GAO/GGD-90-62 (Washington, D.C.: Mar. 29, 1990).

¹⁵In October 2004, Congress authorized the electronic Form I-9 to be implemented by the end of April 2005. See Pub. L. No. 108-390.

employer firms nationwide have registered to use the pilot program, and about 4,300 employers are active users.¹⁶

The Basic Pilot Program enhances the ability of participating employers to reliably verify their employees' work eligibility and assists participating employers with identification of false documents used to obtain employment by comparing employees' Form I-9 information with information in SSA and DHS databases. If newly hired employees present counterfeit documents, the pilot program would not confirm the employees' work eligibility because their employees' Form I-9 information, such as the false name or social security number, would not match SSA and DHS database information when queried through the Basic Pilot Program.

Although ICE has no direct role in monitoring employer use of the Basic Pilot Program and does not have direct access to program information, which is maintained by USCIS, ICE officials told us that program data could indicate cases in which employers do not follow program requirements and therefore would help the agency better target its worksite enforcement efforts toward those employers. For example, the Basic Pilot Program's confirmation of numerous queries of the same social security number could indicate that a social security number is being used fraudulently or that an unscrupulous employer is knowingly hiring unauthorized workers by accepting the same social security number for multiple employees. ICE officials noted that, in a few cases, they have requested and received pilot program data from USCIS on specific employers who participate in the program and are under ICE investigation. However, USCIS officials told us that they have concerns about providing ICE broader access to Basic Pilot Program information because it could create a disincentive for employers to participate in the program, as employers may believe that they are more likely to be targeted for a worksite enforcement investigation as a result of program participation. According to ICE officials, mandatory employer participation in the Basic

¹⁶The approximately 8,600 employers who registered to use the Basic Pilot Program do not reflect the number of worksites or individual business establishments using the program. The about 5.6 million firms in the United States was the number of firms in 2002, which is the most current data available. Under the Basic Pilot Program, one employer may have multiple worksites that use the pilot program. For example, a hotel chain could have multiple individual hotels using the Basic Pilot Program, but the hotel chain would represent one employer using the pilot program. A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control.

Pilot Program would eliminate the concern about sharing data and could help ICE better target its worksite enforcement efforts on employers who try to evade using the program. Moreover, these officials told us that mandatory use of an automated system like the pilot program, could limit the ability of employers who knowingly hired unauthorized workers to claim that the workers presented false documents to obtain employment, which could assist ICE agents in proving employer violations of IRCA.

Although the Basic Pilot Program may enhance the employment verification process and a mandatory program could assist ICE in targeting its worksite enforcement efforts, weaknesses exist in the current program. For example, the current Basic Pilot Program cannot help employers detect identity fraud. If an unauthorized worker presents valid documentation that belongs to another person authorized to work, the Basic Pilot Program would likely find the worker to be work-authorized. Similarly, if an employee presents counterfeit documentation that contains valid information and appears authentic, the pilot program may verify the employee as work-authorized. DHS officials told us that the department is currently considering possible ways to enhance the Basic Pilot Program to help it detect cases of identity fraud, for example, by providing a digitized photograph associated with employment authorization information presented by an employee.

Delays in the entry of information on arrivals and employment authorization into DHS databases can lengthen the pilot program verification process for some secondary verifications. Although the majority of pilot program queries entered by employers are confirmed via the automated SSA and DHS verification checks, about 15 percent of queries authorized by DHS required secondary verifications by immigration status verifiers in fiscal year 2004.¹⁷ According to USCIS, cases referred for secondary verification are typically resolved within 24 hours, but a small number of cases take longer, sometimes up to 2 weeks, due to, among other things, delays in entry of data on employees who received employment authorization documents generated by a computer and

¹⁷In fiscal year 2004, only about 8 percent of total Basic Pilot Program queries were referred to DHS for verification. Of these queries referred to DHS for verification, about 85 percent were confirmed via the DHS automated verification check.

camera that are not directly linked to DHS databases.¹⁸ Secondary verifications lengthen the time needed to complete the employment verification process and could harm employees because employers might reduce those employees' pay or restrict training or work assignments, which are prohibited under pilot program requirements, while waiting for verification of their work eligibility.¹⁹ DHS has taken steps to increase the timeliness and accuracy of information entered into databases used as part of the Basic Pilot Program and reports, for example, that data on new immigrants are now typically available for verification within 10 to 12 days of an immigrant's arrival in the United States while, previously, the information was not available for up to 6 to 9 months after arrival.²⁰

Furthermore, employer noncompliance with Basic Pilot Program requirements may adversely affect employees queried through the program. The Temple University Institute for Survey Research and Westat evaluation of the Basic Pilot Program concluded that the majority of employers surveyed appeared to be in compliance with Basic Pilot Program procedures. However the evaluation and our review found evidence of some noncompliance with these procedures, such as those that prohibit screening job applicants or limiting of employees' work assignments or pay while contesting tentative nonconfirmations. The Basic Pilot Program provides a variety of reports that may help USCIS determine whether employers follow program requirements, but USCIS officials told us that their efforts to review employers' use of the pilot program have been limited by lack of staff available to oversee and examine employer use of the program.

According to USCIS officials, due to the growth in other USCIS verification programs, current USCIS staff may not be able to complete timely secondary verifications if the number of employers using the program significantly increased. In particular, these officials said that if a significant number of new employers registered for the program or if the

¹⁸Information on employment authorization documents generated through this process is electronically sent to USCIS headquarters for entry, but is sometimes lost or not entered into databases in a timely manner. By contrast, employment authorization documents issued at USCIS service centers are produced via computers that are used to update data in USCIS databases, which USCIS officials told us represent the majority of employment authorization documents currently issued by USCIS.

¹⁹Institute for Survey Research and Westat.

²⁰DHS, *Report to Congress on the Basic Pilot Program* (Washington, D.C.: June 2004).

program were mandatory for all employers, additional staff would be needed to maintain timely secondary verifications. USCIS has approximately 38 Immigration Status Verifiers allocated for completing Basic Pilot Program secondary verifications, and these verifiers reported that they are able to complete the majority of manual verification checks within their target time frame of 24 hours. However, USCIS officials said that the agency has serious concerns about its ability to complete timely verifications if the number of Basic Pilot Program users greatly increased.

Competing Priorities and Implementation Challenges Have Hindered Worksite Enforcement Efforts

Worksite Enforcement Has Been a Relatively Low Priority

Worksite enforcement is one of various immigration enforcement programs that competes for resources and among INS and ICE responsibilities, and worksite enforcement has been a relatively low priority. For example, in the 1999 INS Interior Enforcement Strategy, the strategy to block and remove employers' access to undocumented workers was the fifth of five interior enforcement priorities.²¹ In that same year, we reported that, relative to other enforcement programs in INS, worksite enforcement received a small portion of INS's staffing and enforcement budget and that the number of employer investigations INS conducted each year covered only a fraction of the number of employers who may have employed unauthorized aliens.²²

In keeping with the primary mission of DHS to combat terrorism, after September 11, 2001, INS and then ICE focused investigative resources primarily on national security cases. In particular, INS and then ICE focused available resources for worksite enforcement on identifying and removing unauthorized workers from critical infrastructure sites, such as airports and nuclear power plants, to help reduce vulnerabilities at those sites. We previously reported that, if critical infrastructure-related businesses were to be compromised by terrorists, this would pose a

²¹INS, *Interior Enforcement Strategy* (Washington, D.C.: Jan. 1999).

²²[GAO/GGD-99-33](#).

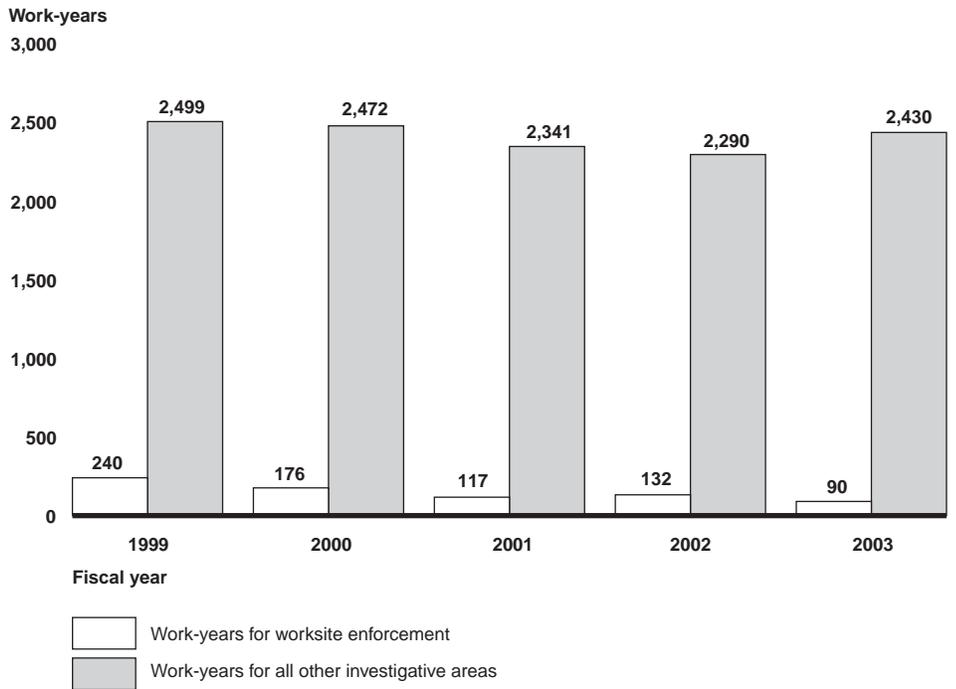
serious threat to domestic security. According to ICE, the agency adopted this focus on critical infrastructure protection because the fact that unauthorized workers can obtain employment at critical infrastructure sites indicates that there are vulnerabilities in those sites' hiring and screening practices, and unauthorized workers employed at those sites are vulnerable to exploitation by terrorists, smugglers, traffickers, and other criminals. ICE has inspected Forms I-9 and employer records at hundreds of critical infrastructure sites, including at about 200 airports as part of Operation Tarmac and at more than 50 nuclear power plants as part of Operation Glow Worm.²³ More recently, ICE announced conducting worksite enforcement operations at other critical infrastructure sites, including at an airport, chemical plants, and a water and power facility.

Since fiscal year 1999, INS and ICE have dedicated a relatively small portion of overall agent resources to the worksite enforcement program. As shown in figure 2, in fiscal year 1999 INS allocated about 240 full-time equivalents to worksite enforcement efforts, while in fiscal year 2003, ICE allocated about 90 full-time equivalents. Between fiscal years 1999 and 2003, the percentage of agent work-years spent on worksite enforcement efforts generally decreased from about 9 percent to about 4 percent.²⁴

²³Operations Tarmac and Glow Worm were ICE initiatives to detect and remove unauthorized workers from airports and nuclear power plants, respectively.

²⁴More recent data on investigative agent work-years cannot be shared publicly.

Figure 2: Investigative Agent Work-years Spent on Worksite Enforcement Efforts and Agent Work-years Spent on Other Investigative Areas for Each Fiscal Year from 1999 through 2003



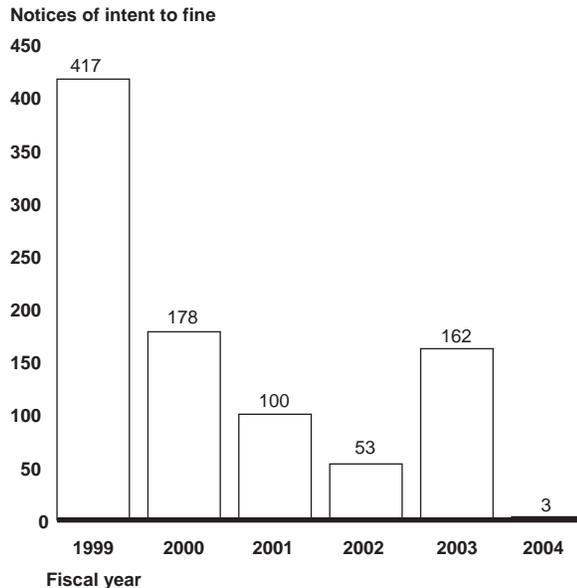
Source: GAO analysis of INS case management data.

Although worksite enforcement has been a low priority relative to other programs, ICE has proposed increasing agent resources for the worksite enforcement program. For example, in its fiscal year 2007 budget submission, ICE requested funding for 206 additional positions for worksite enforcement. Yet, at this point, it is unclear what impact, if any, these additional resources would have on worksite enforcement efforts.

ICE Attributes Decline in Numbers of Employer Fine Notices and Worksite Arrests to Document Fraud and Resource Allocation Decisions

The number of notices of intent to fine issued to employers as well as the number of unauthorized workers arrested at worksites have generally declined.²⁵ Between fiscal years 1999 and 2004, the number of notices of intent to fine issued to employers for improperly completing Forms I-9 or knowingly hiring unauthorized workers generally decreased from 417 to 3. (See fig. 3.)

Figure 3: Number of Notices of Intent to Fine Issued to Employers for Each Fiscal Year from 1999 through 2004

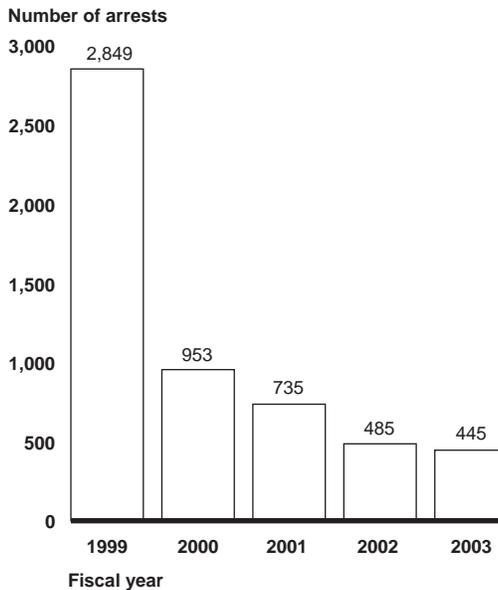


Source: GAO analysis of INS and ICE case management data.

The number of unauthorized workers arrested during worksite enforcement operations has also declined since fiscal year 1999. As shown in figure 4, the number of worksite arrests for administrative violations of immigration law, such as for violating the terms of a visa, declined by about 84 percent from 2,849 in fiscal year 1999 to 445 in fiscal year 2003.

²⁵If warranted as a result of a worksite enforcement operation, ICE may issue a notice of intent to fine to an employer that specifies the amount of the fine ICE is seeking to collect from the employer. This amount may be reduced after negotiations between ICE attorneys and the employer.

Figure 4: Number of Administrative Worksite Enforcement Arrests for Each Fiscal Year from 1999 through 2003



Source: GAO analysis of INS case management data.

ICE attributes the decline in the number of notices of intent to fine issued to employers and number of administrative worksite arrests to various factors including the widespread availability and use of counterfeit documents and the allocation of resources to other priorities. Various studies have shown that the availability and use of fraudulent documents have made it difficult for ICE agents to prove that employers knowingly hired unauthorized workers. ICE officials also told us that employers who agents suspect of knowingly hiring unauthorized workers can claim that they were unaware that their workers presented false documents at the time of hire, making it difficult for agents to prove that the employer willfully violated IRCA.

In addition, according to ICE, the allocation of INS and ICE resources to other priorities has contributed to the decline in the number of notices of intent to fine and worksite arrests. For example, INS focused its worksite enforcement resources on egregious violators who were linked to other criminal violations, like smuggling, fraud or worksite exploitation, and de-emphasized administrative employer cases and fines. Furthermore, ICE investigative resources were redirected from worksite enforcement activities to criminal alien cases, which consumed more investigative hours by the late 1990s than any other enforcement activity. After

September 11, 2001, INS and ICE focused investigative resources on national security cases, and in particular, focused worksite enforcement efforts on critical infrastructure protection, which is consistent with DHS's primary mission to combat terrorism. According to ICE, the redirection of resources from other enforcement programs to perform national security-related investigations resulted in fewer resources for traditional program areas like fraud and noncritical infrastructure worksite enforcement. Additionally, some ICE field representatives, as well as immigration experts, noted that the focus on critical infrastructure protection does not address the majority of worksites in industries that have traditionally provided the magnet of jobs attracting illegal aliens to the United States.

As part of the Secure Border Initiative, in April 2006 ICE announced a new interior enforcement strategy to target employers of unauthorized aliens, immigration violators, and criminal networks. Under this strategy, ICE plans to target employers who knowingly employ unauthorized workers by bringing criminal charges against them. ICE has reported increases in the numbers of criminal arrests, indictments, and convictions between fiscal years 2004 and 2005 as a result of these efforts.²⁶ Between fiscal years 2004 and 2005, ICE reported that the number of criminal arrests increased from 160 to 165. Furthermore, in fiscal year 2005 ICE reported that the number of criminal indictments and convictions were 140 and 127, respectively, and in fiscal year 2004 the number of indictments and convictions were 67 and 46, respectively. In addition, ICE reported arresting 980 individuals on administrative immigration violations in fiscal year 2005 as a result of its worksite enforcement efforts.

²⁶Data from fiscal years 2004 and 2005 cannot be compared with data for previous fiscal years because the way INS agents entered data on investigations into the INS case management system differs from the way ICE agents enter such data into the ICE system. Following the creation of ICE in March 2003, the case management system used to enter and maintain information on immigration investigations changed. With the establishment of ICE, agents began using the legacy U.S. Customs Service's case management system, called the Treasury Enforcement Communications System, for entering and maintaining information on investigations, including worksite enforcement operations. Prior to the creation of ICE, the former INS entered and maintained information on investigative activities in the Performance Analysis System, which captured information on immigration investigations differently than the Treasury Enforcement Communications System.

INS and ICE Have Faced Difficulties in Setting Fine Amounts and in Detaining Unauthorized Workers, but Have Taken Steps to Address Difficulties

INS and ICE have faced difficulties in setting and collecting fine amounts that meaningfully deter employers from knowingly hiring unauthorized workers and in detaining unauthorized workers arrested at worksites. ICE officials told us that because fine amounts are so low, the fines do not provide a meaningful deterrent. These officials also said that when agents could prove that an employer knowingly hired an unauthorized worker and issued a notice of intent to fine, the fine amounts agents recommended were often negotiated down in value during discussion between agency attorneys and employers. The amount of mitigated fines may be, in the opinion of some ICE officials, so low that they believe that employers view the fines as a cost of doing business, making the fines an ineffective deterrent for employers who attempt to circumvent IRCA. According to ICE, the agency mitigates employer fine amounts because doing so may be a more efficient use of government resources than pursuing employers who contest or ignore fines, which could be more costly to the government than the fine amount sought.

An ICE official told us that use of civil settlements and criminal charges instead of pursuit of administrative fines, specifically in regard to noncritical infrastructure employers, could be a more efficient use of investigative resources. In 2005, ICE settled a worksite enforcement case with a large company without going through the administrative fine process. As part of the settlement, the company agreed to pay \$11 million and company contractors agreed to pay \$4 million in forfeitures—more than an administrative fine amount ever issued against an employer for ICE violations. ICE officials also said that use of civil settlements could help ensure employers' future compliance by including in the settlements a requirement to enter into compliance agreements, such as the Basic Pilot Program. In addition, as part of ICE's new interior enforcement strategy, the agency plans to bring criminal charges against employers who knowingly hire unauthorized workers, rather than using administrative fines to sanction employers. The practice of using civil settlements and criminal charges against employers is in the early stages of implementation; therefore, the extent to which it may help limit the employment of unauthorized workers is not yet known.

The former INS also faced difficulties in collecting fine amounts from employers, but collection efforts have improved. We previously reported that the former INS faced difficulties in collecting fine amounts from employers for a number of reasons, including that employers went out of

business, moved, or declared bankruptcy.²⁷ In 1998, INS created the Debt Management Center to centralize the collections process, and the center is now responsible for collecting fines ICE issued against employers for violations of IRCA, among other things. The ICE Debt Management Center has succeeded in collecting the full amount of final fines on most of the invoices issued to employers between fiscal years 1999 and 2004.²⁸

In addition, ICE's Office of Detention and Removal has limited detention space, and unauthorized workers detained during worksite enforcement investigations have been a low priority for that space.²⁹ In 2004, the Under Secretary for Border and Transportation Security sent a memo to the Commissioner of U.S. Customs and Border Protection and the Assistant Secretary for ICE outlining the priorities for the detention of aliens. According to the memo, aliens who are subjects of national security investigations were among those groups of aliens given the highest priority for detention, while those arrested as a result of worksite enforcement investigations were to be given the lowest priority. ICE officials stated that the lack of sufficient detention space has limited the effectiveness of worksite enforcement efforts. For example, they said that if investigative agents arrest unauthorized aliens at worksites, the aliens would likely be released because the Office of Detention and Removal detention centers do not have sufficient space to house the aliens and they may re-enter the workforce, in some cases returning to the worksites from where they were originally arrested. Congress has provided funds to the Office of Detention and Removal for additional bed spaces. Yet, given competing priorities for detention space, the effect, if any, these additional bed spaces will have on ICE's priority given to workers detained as a result of worksite enforcement operations cannot currently be determined.

²⁷[GAO/GGD-99-33](#).

²⁸The Debt Management Center issues invoices to employers for collecting fine amounts. According to ICE, multiple invoices can be issued for each final order for an employer fine, as a payment plan is typically established for employers as part of the final order for the fine amount.

²⁹The Office of Detention and Removal is primarily responsible for identifying and removing criminal aliens from the United States. The office is also responsible for managing ICE's space for detaining aliens.

Concluding Observations

Efforts to reduce the employment of unauthorized workers in the United States necessitate a strong employment eligibility verification process and a credible worksite enforcement program to ensure that employers meet verification requirements. The current employment verification process has not fundamentally changed since its establishment in 1986, and ongoing weaknesses have undermined its effectiveness. Although DHS and the former INS have been contemplating changes to the Form I-9 since 1997, DHS has not yet issued final regulations on these changes, and it has not yet established a definitive time frame for completing the assessment. We recommended that DHS set a target time frame for completing this assessment and issuing final regulations to strengthen the current employment verification process and make it simpler and more secure. Furthermore, the Basic Pilot Program shows promise for enhancing the employment verification process and reducing document fraud if implemented on a much larger scale. However, current weaknesses in pilot program implementation would have to be fully addressed to help ensure the efficient and effective operation of an expanded or mandatory pilot program, or a similar automated employment verification program, and the cost of additional resources would be a consideration. USCIS is currently evaluating the Basic Pilot Program to include, as we have recommended, information on addressing the program's weaknesses to assist USCIS and Congress in addressing possible future use of the Basic Pilot Program.

Even with a strengthened employment verification process, a credible worksite enforcement program would be needed because no verification system is foolproof and not all employers may want to comply with IRCA. ICE's focus of its enforcement resources on critical infrastructure protection since September 11, 2001, is consistent with the DHS mission to combat terrorism by detecting and mitigating vulnerabilities to terrorist attacks at critical infrastructure sites which, if exploited, could pose serious threats to domestic security. This focus on critical infrastructure protection, though, generally has not addressed noncritical infrastructure employers' noncompliance with IRCA. As a result, employers, particularly those not located at or near critical infrastructure sites, who attempted to circumvent IRCA have faced less of a likelihood that ICE would investigate them for failing to comply with the current employment verification process or for knowingly hiring unauthorized workers. ICE is taking some steps to address difficulties it has faced in its worksite enforcement efforts, but it is too early to tell whether these steps will improve the effectiveness of the worksite enforcement program and help ICE identify the millions of unauthorized workers and the employers who hired them.

This concludes my prepared statement. I would be pleased to answer any questions you and the Subcommittee Members may have.

GAO Contact and Staff Acknowledgments

For further information about this testimony, please contact Richard Stana at 202-512-8777.

Other key contributors to this statement were Frances Cook, Michelle Cooper, Orlando Copeland, Michele Fejfar, Rebecca Gambler, Kathryn Godfrey, Eden C. Savino, and Robert E. White.

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Social Security Numbers: Coordinated Approach to SSN Data Could Help Reduce Unauthorized Work. [GAO-06-458T](#). February 16, 2006.

Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts. [GAO-05-813](#). August 31, 2005.

Immigration Enforcement: Preliminary Observations on Employment Verification and Worksite Enforcement Efforts. [GAO-05-822T](#). June 21, 2006.

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Exhibit L

EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEMS

HEARING BEFORE THE SUBCOMMITTEE ON SOCIAL SECURITY OF THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS

FIRST SESSION

—————
JUNE 7, 2007
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**EMPLOYMENT ELIGIBILITY
VERIFICATION SYSTEMS**

THURSDAY, JUNE 7, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:01 a.m., in Room B-318, Rayburn House Office Building, Hon. Michael R. McNulty (Chairman of the Subcommittee) presiding.
[The Advisory of the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE
June 07, 2007
SS-3

CONTACT: (202) 225-1721

McNulty Announces A Hearing on Employment Eligibility Verification Systems

Congressman Michael R. McNulty (D-NY), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on current and proposed employment eligibility verification systems and the role of the Social Security Administration in authenticating employment eligibility. **The hearing will take place on Thursday, June 7, in room B-318 Rayburn House Office Building, beginning at 10 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

BACKGROUND:

Since 1986, United States immigration law has prohibited employers from knowingly hiring or continuing to employ aliens who are not authorized to work under the Immigration and Nationality Act (INA). All employers are required to request that employees, once hired, produce documents that show they are authorized to work in the United States. Verification of the validity of the documents is not mandatory. The Social Security card is one of a number of items that an employee may use in combination with other identity documents to demonstrate work authorization.

While the Department of Homeland Security (DHS) is responsible for enforcing the INA prohibitions on unauthorized employment, the Social Security Administration (SSA) plays a key role in the verification process. Since 1996, employers have had the option of verifying names and Social Security numbers (SSNs) of new hires against SSA's database through an employment eligibility verification system (EEVS, formerly known as the Basic Pilot) operated jointly by SSA and DHS. Until 2003, the Basic Pilot was restricted to operate in only five states, but has since been expanded nationally. Currently, about 16,700 employers at 73,000 hiring sites (less than 1 percent of all establishments) participate in the EEVS. Most participating employers do so voluntarily, but some are required to use the EEVS by law or because of prior immigration violations.

In 2006, the system received over 1.6 million requests for verification. Of these, 1.4 million cases were resolved by SSA. The bulk of the remaining cases were referred to DHS for further verification of work-eligibility.

The Government Accountability Office (GAO) and the SSA Inspector General have found that the current system is hampered by inaccuracies in the records maintained by DHS and SSA. GAO and other auditors also have found that the current EEVS is vulnerable to identification document fraud, prohibited and privacy-violating uses by employers, as well as discriminatory abuse.

Recent immigration reform proposals have included provisions to expand some version of an employment eligibility verification system. Some of the proposals would build on the current EEVS and require employers to verify all new hires,

making the system mandatory for all 7.4 million private and 90,000 public sector employers in the United States. These employers account for 60 million hires per year, according to SSA. Other proposals include a requirement that the Social Security card be enhanced with tamper-proof, counterfeit-resistant or biometric features.

In announcing the hearing, Chairman McNulty stated **“If employment eligibility verification is to be a key enforcement tool for immigration policy, we must ensure the system is effective, efficient and feasible. We need a better understanding of the possible consequences and impact on the Social Security Administration if they are to undertake this expanded responsibility without compromising their core mission of administering Social Security.”**

FOCUS OF THE HEARING:

The hearing will examine the current EEVS system and proposed expansions, including the potential costs and increased workloads that would be faced by SSA. The hearing also will examine the potential impact on workers and employers; how it would interact with REAL ID and other identification methods; and the privacy implications, especially in light of proposed data-sharing arrangements between agencies.

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1. All submissions and supplementary materials must be provided in Word or WordPerfect format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

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Chairman MCNULTY. I want to welcome all of our witnesses and all of our guests here today. Our hearing today will focus on current and proposed systems for verifying the employment eligibility of American workers under immigration law.

We are particularly interested in the impact of these proposals on the Social Security Administration, an agency in which this Subcommittee has a keen interest, and which already is very busy administering retirement, disability, and survivor benefits.

The employment eligibility verification process relies heavily on SSA to confirm the validity of Social Security numbers assigned to workers. We currently have a modest employment eligibility verification system, formerly called Basic Pilot and now called EEVS. It is used by about 17,000 employers at 73,000 hiring sites.

The major immigration reform proposals being considered all envision a massive expansion of the system to cover all employers, at an estimated 7½ million hiring sites. These employers account for about 60 million hiring decisions per year.

This expansion would present a very substantial new burden on SSA, which would receive upward of 60 million queries per year. If an employee's information does not match SSA's records, he or she must contact SSA, often in person, to present documentation and correct the record in order to keep their job.

We will hear from SSA and other experts about how there are errors and discrepancies in the databases that would be used by the system. Even a low error rate of 4 percent, the estimated percentage of errors in a key SSA database, would result in millions of American workers having to contact SSA before they can be hired. Most of them would be U.S. citizens.

We will also hear from an EPR panel of witnesses who will testify on how the proposed system would impact workers, their employers, and the privacy rights of American taxpayers, all of whom will be affected by the proposed EEVS legislation.

Finally, we must also be wary of proposals that depend on the Social Security Administration to create a new national ID card, which is very costly and runs counter to efforts here and in the states to combat identity theft.

If EEVS is to be a key enforcement tool for immigration policy, we must ensure that the system is effective, efficient, and feasible for SSA, for employers, and for employees. We must also ensure that if SSA is going to be given a major new role in enforcing immigration law, it must be provided with adequate resources to fulfill this new charge without compromising its core duty to administer Social Security.

At this time I would like to yield to my very good friend, distinguished veteran, and colleague, Sam Johnson, for an opening statement.

Mr. JOHNSON. Thank you, Mr. Chairman. I thank my colleague from New York. With New York and Texas on board, we can probably get it done. What do you think, Sandy?

Mr. LEVIN. I think so. That is called power.

Mr. JOHNSON. I appreciate you holding this hearing on current and proposed employment eligibility verification systems. I support helping employers who want to do the right thing and obey our immigration laws. I want to see our immigration laws enforced to deter those employers from knowingly breaking the law and hiring illegal immigrants.

Because ID verification is an essential component of worksite enforcement, I want to protect workers from having their identities stolen by someone working under their name and their Social Security number.

Right now the Social Security Administration works with the Department of Homeland Security to help employers voluntarily verify the identifying information and employment eligibility of their new hires. This verification system, known as the Employment Eligibility Verification System, or EEVS, formerly referred to as the Basic Pilot Program. Now any employer can use it for free if they choose.

Our colleagues in the Senate are now debating immigration overhaul. One section of the Senate bill would require employers to verify that all their employees are work-authorized. In other words, for the first time, businesses would be required to obtain Federal approval for their employees from a law enforcement agency.

I find this to be a little chilling, and I think most Americans would oppose having to go through a law enforcement agency to gain work authorization. Also, this new and unfunded employer mandate would place significant burdens on employers, particularly small business, and the Social Security Administration.

GAO and others have raised concerns regarding the accuracy of the underlying databases this system would rely on and whether responses would be timely if all employers were required to use the system, as opposed to less than 1 percent of employers using the system today.

Worse, the current system relies on a number of so-called identity documents which don't stop identity thieves or the creation of false documents. We need to find common sense solutions to these problems.

The lure of employment opportunities in the United States has long been acknowledged as a major reason for immigration, both legal and illegal. Cutting off the demand for illegal workers through enforcement of employment laws will help us secure our borders.

This Subcommittee has had eight hearings in the past 4 years focusing on Social Security number verification as well as ID issues. It is now time for us to improve the employment eligibility verification process so that American employers can confidently hire people to work. Today's witnesses will help us determine the best way how.

Thank you, Mr. Chairman.

Chairman MCNULTY. I thank the distinguished Ranking Member. Without objection, any additional opening statements by Mem-

bers of the Committee will be included in the record. Of course, the statements by the witnesses will be included in the record in their entirety. We would ask, as usual, that in your testimony, you summarize your testimony within about 5 minutes so that we can allow for a maximum amount of time for the various questions.

Panel No. 1 consists of Frederick Streckewald, Assistant Deputy Commissioner for Program Policy, Office of Disability and Income Security Programs, of SSA; Steve Schaeffer, Assistant Inspector General for the Office of Audit, Social Security Administration, Office of the Inspector General; and Richard Stana, Director of Homeland Security and Justice, Government Accountability Office.

I thank all of you for being here today. We will start with Mr. Streckewald, and take all of your testimony together, and then proceed to questions.

Mr. Streckewald.

STATEMENT OF FREDERICK G. STRECKEWALD, ASSISTANT DEPUTY COMMISSIONER FOR PROGRAM POLICY, OFFICE OF DISABILITY AND INCOME SECURITY PROGRAMS, SOCIAL SECURITY ADMINISTRATION

Mr. STRECKEWALD. Mr. Chairman and Members of the Subcommittee, thank you for inviting me here today to discuss SSA's role in helping to administer the Department of Homeland Security's Employment Eligibility Verification System or EEVS. This system, formerly known as the Basic Pilot Program, allows employers to verify the employment eligibility information provided by newly hired employees.

Worksite enforcement is key to successful immigration reform, and a critical component of worksite enforcement is a strong employer verification system. The Administration supports mandatory participation in an employment eligibility verification system by all United States employers. We are pleased that you are holding the hearing today to discuss the impact of the expansion of EEVS on SSA, employers, and their employees.

Let me begin with a little background on the current system. In 1996, Congress enacted the Immigration Reform and Immigrant Responsibility Act, which required testing three alternative methods of providing an effective, nondiscriminatory employment eligibility confirmation process. The current EEVS was one of these methods.

Today there are more than 17,000 employers participating in EEVS at more than 77,000 worksites. So, far in 2007, we have handled more than 1.8 million queries, an increase of 96 percent over the same period last year.

Employers participate voluntarily, and they register with DHS to use the automated system to verify an employee's Social Security number and work authorization status. The employer submits to the system information from the employee Form I-9. DHS then sends this information to SSA to verify for all new employees that the Social Security number, name, and date of birth match SSA records.

For individuals alleging U.S. citizenship, SSA will also confirm citizenship status, thereby confirming work authorization. For all non-citizens, if there is a match with SSA, DHS then determines

the current work authorization status. DHS then notifies the employer of the result. Ninety-two percent of initial verification queries are confirmed within seconds.

Proposals pending in Congress would require all employers in the United States to use the EEVS to verify employment eligibility and the identity of all new hires. These proposals would phase in participation over a period of time. Every year, however, approximately 60 million individuals start a new job. Therefore, we would expect mandatory participation to have a substantial effect on our Agency.

SSA's role in EEVS relies upon the information in our Numident database, which houses the name, date of birth, and Social Security number of more than 441 million individuals. We have great confidence in the integrity of the Numident, but in any large system of records there will be some that require updating or correcting.

Our current experience with voluntary EEVS shows that for every 100 queries submitted to the system, SSA field offices or phone representatives are contacted three times. We anticipate that in a mandatory system, the percentage of individuals coming to us will be higher than in the current voluntary system.

If Congress enacts a mandatory EEVS, it is crucial that the tools and resources be in place to ensure that the system works efficiently and effectively, and that the proper safeguards are built in to guarantee that United States citizens and work-authorized non-citizens receive prompt confirmation of their work authorization status.

Again, thank you for inviting me here today. We are grateful for your ongoing efforts to ensure the Agency has the funding it needs to accomplish its mission. On behalf of SSA, I want to thank you for your continuing support for the Agency, for our mission, and for our dedicated workforce.

I will be happy to answer any questions you may have.

[The prepared statement of Mr. Streckewald follows:]

Chairman MCNULTY. Thank you.

Prepared Statement of Frederick G. Streckewald, Assistant Deputy Commissioner for Program Policy, Office of Disability and Income Security Programs, Social Security Administration

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the Social Security Administration's (SSA's) role in helping to administer the Department of Homeland Security's (DHS) Employment Eligibility Verification System (EEVS). This system, formerly known as the Basic Pilot Program, allows employers to verify the employment eligibility information provided by newly hired employees.

Worksite enforcement is key to successful immigration reform, and a critical component of worksite enforcement is a strong employer verification system. The Administration supports—and proposals currently pending before Congress incorporate—mandatory participation in an employment eligibility verification system by all United States employers. We are pleased that you are holding this hearing today to discuss the impact of the expansion of EEVS on SSA, employers and their employees. We are keenly aware of the need to ensure that the system works the way it is intended.

The History of the Current Voluntary System

The Immigration Reform and Control Act (IRCA) of 1986 required employers for the first time to examine worker documents to check the employment eligibility of newly hired employees. Ten years later, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which required testing

three alternative methods of providing an effective, nondiscriminatory employment eligibility confirmation process; the current EEVS was one of the three methods.

The law required the voluntary EEVS to be implemented in a minimum of 5 of the 7 States with the highest estimated population of noncitizens not lawfully present in the United States. The five states were California, Florida, Illinois, New York and Texas.

In March 1999, Nebraska was added to assist employers in the meatpacking industry. Employers in those six states were also allowed to include their work sites located in other states. In 2002, Congress extended authorization for the system for an additional 2 years. In 2003, Congress again extended the EEVS and expanded the voluntary participation to include employers in all 50 States. The system will expire in 2008 under current law.

In December 2004, before the nationwide expansion, there were 2,924 participating employers. Today, there are more than 17,000 employers participating in the EEVS at more than 77,000 sites, and participation is growing by more than 1,000 employers every month. As the number of participating employers has grown, so has the number of queries we handle. In Fiscal Year (FY) 2005, SSA handled approximately 980,000 queries; in FY 2006, we handled over 1,740,000. So far, in FY 2007, we have handled more than 1,800,000 queries, an increase of 96 percent over the same period last year.

The Process

Employers participate voluntarily and register with DHS to use the automated system to verify an employee's SSN and work authorization status. The employer inputs information into the system from the Form I-9, the Employment Eligibility Verification Form. DHS then sends this information to SSA to verify for all new employees that the Social Security number, name, and date of birth submitted match information in SSA records. For individuals alleging United States citizenship, SSA will also confirm citizenship status, thereby confirming work authorization. For all non-citizens, if there is a match with SSA, DHS then determines the current work authorization status. Within three to five seconds, through the system, DHS notifies the employer of the result; employment authorized, SSA tentative nonconfirmation, DHS verification in progress, or DHS tentative nonconfirmation.

Ninety-two percent of initial verification queries are confirmed within seconds. If SSA cannot confirm that the information matches SSA records or cannot confirm United States citizenship, DHS will notify the employer of the SSA tentative nonconfirmation. The employer must notify the employee of the tentative nonconfirmation in order to provide the employee the opportunity to contest that finding. If the employee contests the tentative nonconfirmation, he or she has eight days to visit an SSA office with the required documents to correct the SSA record. The employer must re-query the system to verify that the tentative nonconfirmation has been resolved.

SSA has a good ongoing working relationship with DHS. Together, we continue to work to improve upon the operation of the current system—to make it work more efficiently and more smoothly for employers and their employees. We have begun laying the groundwork to increase our capacity to handle substantially heavier volumes of verification transactions, as the voluntary program continues to grow. If Congress mandates the use of the system, these improvements will facilitate nationwide expansion.

Mandatory Participation

There are several proposals now pending in Congress that would require all employers in the United States to use the EEVS to verify the employment eligibility and identity of all new hires. The bills we have seen provide for some kind of phased-in approach to mandatory participation and require employers operating in the Nation's critical infrastructures to be the first participants. Some proposals also require employers to verify the employment eligibility and identity of their entire workforce and to periodically re-verify the work authorization status of individuals whose temporary work authorization is set to expire.

As I mentioned earlier, SSA and DHS are already working to lay the groundwork for broader employer participation in the current EEVS. Every year, approximately 60 million individuals start a new job. Therefore, we would expect mandatory participation to have a substantial effect on our Agency. It is vitally important that, when Congress makes a decision regarding the implementation of a mandatory program, we have adequate lead-time and resources. With these tools, we can effectively expand the EEVS and ensure that it works successfully without impinging on our ability to handle our other workloads.

SSA Records

SSA matches information submitted by the employer against the information in our Numident database, which houses the identifying information, including name, date of birth, and SSN of more than 441 million individuals. We have great confidence in the integrity of the Numident information. In fact, in a December 2006 report issued to Congress, SSA's Office of Inspector General (OIG) commended the accuracy of Numident information.

Of course, in any large system of records, there will be records that require updating or correcting. For example, the OIG found discrepancies in 4.1 percent of Numident records that might lead to tentative nonconfirmations and that 7 percent of naturalized citizens had not updated their Numident records to reflect their new citizenship status. In the administration of our programs, we update or correct our records at the time an individual applies for a replacement card, requests a change in the record—a name change, for example—or applies for a Social Security benefit. As part of the process to correct our records, we need to verify the identity of the individual whose records we are updating and the information we are adding to the individual's records. That is why virtually all of these changes are made during a face-to-face interview in our field offices.

One way we provide individuals the opportunity to review and, if necessary, correct their wage records is the annual Social Security Statement that goes to each worker 25 years or older. The Statement provides individuals with an annual report of wages recorded. In FY 2006, SSA mailed approximately 145 million Statements.

Our current experience with voluntary EEVS shows that for every 100 queries submitted to the System, SSA field offices or phone representatives are contacted three times. As the number of participating employers increases, the number of related contacts with SSA will also increase. We anticipate that in a mandatory system the percentage of individuals coming to us will be higher than in the current voluntary system.

As you know, the Agency is currently facing substantial challenges in meeting the workloads of our core programs. With timely and adequate funding, we will be able to meet the demands of a phased-in approach to mandatory participation. We are grateful for your ongoing efforts to ensure the Agency has the funding it needs to accomplish its missions.

Conclusion

At SSA, we have a proven performance record and can and will do what we are called upon to do. The Administration supports a strong employer verification system as a critical element of a successful and comprehensive approach to immigration reform. As increasing numbers of employers participate in the current voluntary EEVS, and considering the even greater number that will participate if mandated by Congress, it is crucial that the tools and resources be in place to ensure that the system works efficiently and effectively and that the proper safeguards are built in to guarantee that United States citizens and work authorized noncitizens receive prompt confirmation of their work authorization status.

I want to thank the Chairman and members of the Subcommittee for inviting me here today. On behalf of SSA, I want to thank the Subcommittee for its continuing support for the Agency, for our mission, and for our dedicated workforce.

I will be happy to answer any questions you might have.

Mr. Schaeffer.

STATEMENT OF STEVEN L. SCHAEFFER, ASSISTANT INSPECTOR GENERAL FOR THE OFFICE OF AUDIT, SOCIAL SECURITY ADMINISTRATION OFFICE OF THE INSPECTOR GENERAL

Mr. SCHAEFFER. Good morning, Chairman McNulty, Mr. Johnson, and Members of the Subcommittee. It is a pleasure to be here today to provide the Social Security Administration's Office of Inspector General's perspective on Employment Eligibility Verification Systems, or EEVS.

Each agency involved in EEVS has its own contribution to make to the system's success. The SSA OIG's role is to evaluate the use of SSA data within the EEVS process and recommend improvements with respect to the accuracy and the security of such data.

SSA's information constitutes the foundation of EEVS. The purpose of our evaluations and reviews is to assist SSA in improving

the accuracy of the employer wage reporting and reducing SSN misuse and identity theft.

In 2006, the former Chairman of this Subcommittee, Mr. McCrery, asked us to conduct several reviews relative to EEVS. First, to assess the accuracy of the data used by EEVS, we turned to SSA's Numident file. This file contains relevant information about Social Security number holders, including name, date of birth, place of birth, and citizenship status, and these data are used in the EEVS.

Although we found SSA's information to be generally accurate, we identified discrepancies in an estimated 18 million, or 4 percent, of the Numident records that could result in incorrect feedback to employers attempting to determine the employment eligibility of their workers.

This incorrect feedback could lead to both false positives and false negatives for employees. In addition, verification problems may delay the hiring process and lead to an increase in visits to SSA's field offices.

In our second review, to assess the functionality of EEVS, we gathered information on the experience of employers who had used EEVS, as well as those who had used SSA's Social Security number verification service or SSNVS. We found that 100 percent of the EEVS users interviewed rated the programs as excellent, very good, or good. In addition, at least 98 percent of the users indicated that their employers were very likely to continue to use the programs.

About 10 percent of the EEVS users reported that they experienced minor problems using the two programs. In most of the cases, the user reported that SSA and/or DHS staff were able to resolve their problems timely.

We also found, however, that approximately 42 percent of EEVS users were not using the program as intended. While the program is intended to verify the work authorization of newly hired employees within 3 days after they are hired, some employers conducted verifications for longstanding employees or individuals who were not yet hired. Monitoring appropriate use should be part of any enhanced system.

In the third review conducted at the Subcommittee's request, we assessed controls over EEVS and SSA's SSNVS to monitor potential abuse by employers, as well as SSA and DHS's experience to date with this monitoring. We found that SSA had established effective controls over access and use of sensitive data in its SSNVS program, as well as effective controls to detect anomalies in SSNVS usage and potential misuse of the program.

While we found that EEVS did not have the same level of controls, we reported that DHS officials were meeting with counterparts from SSA and the IRS to discuss potential enhancements to EEVS, avenues for greater cooperation, and the potential for adopting some of the monitoring and applicant verification activities already being performed under SSNVS.

We are now completing a fourth review where we are assessing controls over all of SSA's employee verification programs as well as EEVS. This review will also highlight best practices, and as a part of the audit, we will determine whether employers are receiving a

consistent reply from all of these services. We expect to issue this report in the next few months, and as always, will share a copy with the Committee.

Through reports such as these, our efforts to ensure the reliability of the data used by EEVS and the functionality and security of EEVS helps employers report accurate wages to SSA and minimize the improper use of SSNs.

Thank you, and I will be happy to answer any questions.

Chairman MCNULTY. Thank you, Mr. Schaeffer.

Mr. Stana.

STATEMENT OF RICHARD M. STANA, DIRECTOR OF HOMELAND SECURITY AND JUSTICE, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STANA. Thank you, Chairman McNulty, Mr. Johnson, Members of the Subcommittee. I appreciate the opportunity to participate in today's hearing on EEVS. As we and others have reported in the past, the opportunity for employment is a key magnet attracting illegal aliens to the United States. In 1986, Congress passed the Immigration Reform and Control Act, which established an employment verification process for employers to verify all new hired employees' work eligibility, and a sanctions program for fining employers who do not comply with the Act. The availability and use of counterfeit documents, and the fraudulent use of valid documents belonging to others, have made it difficult for employers who want to comply with current employment verification processes to ensure that they hire only authorized workers. Counterfeit documents have also made it easier for employers who don't want to comply and knowingly hire unauthorized workers to do so without fear of sanction.

Over the years, immigration experts have said that the single most important step that could be taken to manage lawful immigration and reduce unlawful migration is to develop an effective system for verifying work authorization. DHS and SSA currently operate the EEVS program, which is a voluntary automated system authorized by the 1996 Immigration Act, for employers to electronically check employees' work eligibility information against information in DHS and SSA databases. Of the 5.9 million employers in the U.S., about 17,000 employers are now registered to use the program, and only about half of these are active users. This program shows promise to help identify the use of counterfeit documents and assist U.S. Immigration and Customs Enforcement in better targeting its worksite enforcement efforts, but the following areas would need to be addressed before it is expanded to all employers and is effectively implemented as envisioned in various immigration reform proposals.

First, program capacity would need to be expanded. DHS estimated that increasing EEVS capacity could cost it \$70 million annually for program management and \$300 million to \$400 million annually for compliance activities and staff. SSA officials estimated that expansion of the EEVS program to 100,000 participants from the current 17,000 would cost \$5 to \$6 million, and noted that the cost of a mandatory EEVS would be much higher and driven by in-

creased workload of its field office staff who resolve queries that SSA cannot immediately confirm.

Second, data reliability issues would need to be addressed. The majority of EEVS queries entered by employers, about 92 percent, are confirmed within seconds that the employee is work-authorized. About 7 percent of the queries cannot be immediately confirmed by SSA, and about 1 percent cannot be immediately confirmed by DHS. Resolving these nonconfirmations can take several days, or in a few cases even weeks. DHS and SSA are considering options for using additional automated checks to immediately confirm work authorization, which may be important should EEVS be made mandatory for all employers.

Third, while EEVS may help to reduce document fraud, it cannot yet fully address identity fraud issues, for example, when employees present borrowed or stolen genuine documents. The current EEVS program is piloting a photograph screening tool, whereby an employer can more easily identify fraudulent documentation. DHS expects to expand the use of this tool to all participating employers by September 2007. Although mandatory EEVS and the associated use of the photograph screening tool offer some remedy, limiting the number of acceptable work authorization documents and making them more secure would help to better address identity fraud issues.

Finally, EEVS is vulnerable to employer fraud, such as entering the same identity information to authorize multiple workers. EEVS is also vulnerable to employer misuse that adversely affects employees, such as employers limiting work assignments or pay while employees are undergoing the verification process. Currently there is no formal mechanism for sharing compliance data with ICE agents. DHS is establishing a new compliance and monitoring program to help reduce employer fraud and misuse by, for example, identifying patterns in employer noncompliance with program requirements. Information suggesting employers' fraud and misuse of the system could be useful in targeting limited worksite enforcement resources and promoting employer compliance with employment laws.

As an aside, our report last summer on selected countries' experiences with foreign worker programs found that while different approaches were used, and no country we studied did everything perfectly or effectively, many of the same issues existed in these countries as exist here. These include ensuring only that those authorized to work could obtain employment; that employers comply with laws governing worksite conditions; that taxes and social insurance payments are collected; and that appropriate mechanisms are available, including data matching and sharing among agencies, to help reduce immigration and labor law violations.

In closing, both DHS and SSA have taken a number of steps to address weaknesses in the current EEVS program, but much more needs to be done if this is going to be expanded to all employers. This will require a substantial investment in staff and other resources, at least in the near term, in both agencies. Implementing an EEV program that ensures that all individuals working in the country are doing so legally, and that undue burdens are not

placed on employers or employees, will not be an easy task within the timelines suggested in immigration reform proposals.

This concludes my oral statement, and I would be happy to answer any questions that Members of the Subcommittee may have. [The prepared statement of Mr. Stana follows:]

Prepared Statement of Richard Stana, Director of Homeland Security and Justice, Government Accountability Office

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here today to participate in this hearing on electronic employment verification. As we and others have reported in the past, the opportunity for employment is one of the most powerful magnets attracting unauthorized immigrants to the United States. To help address this issue, in 1986 Congress passed the Immigration Reform and Control Act (IRCA),¹ which made it illegal for individuals and entities to knowingly hire, continue to employ, or recruit or refer for a fee unauthorized workers. The act established a two-pronged approach for helping to limit the employment of unauthorized workers: (1) an employment verification process through which employers verify all newly hired employees' work eligibility and (2) a sanctions program for fining employers who do not comply with the act.²

Following the passage of IRCA, the U.S. Commission on Immigration Reform and various immigration experts indicated a number of problems with the implementation of immigration policies and concluded that deterring illegal immigration requires, among other things, strategies that focus on disrupting the ability of illegal immigrants to gain employment through a more reliable employment eligibility verification process. In particular, the commission report and other studies found that the single most important step that could be taken to reduce unlawful migration is the development of a more effective system for verifying work authorization. In the over 20 years since passage of IRCA, the employment eligibility verification process has remained largely unchanged. The House and Senate are considering legislation to reform immigration laws and strengthen electronic employment verification. Some of this legislation includes proposals that would require implementing a mandatory, functional electronic employment verification program for all employers before other immigration-related reforms could be initiated. Currently, the U.S. Citizenship and Immigration Services (USCIS) administers, and Social Security Administration (SSA) supports, a voluntary electronic employment verification program, called the Employment Eligibility Verification (EEV) program.

My testimony today is an update of our prior work regarding employment verification and worksite enforcement. Specifically, I will discuss our observations on the current electronic employment verification program and challenges to making the program mandatory for all employers.

In preparing this testimony, we reviewed our past work on employment verification and worksite enforcement efforts.³ We analyzed updated information provided by U.S. Immigration and Customs Enforcement (ICE), USCIS, and SSA officials on steps they are taking to address weaknesses identified in our prior work, as well as challenges their agencies may face if an electronic employment verification program were made mandatory. We examined regulations, guidance, and other studies on the employment verification process. We also analyzed a report on the results of an independent evaluation of the electronic employment eligibility verification program, then known as the Basic Pilot program, conducted by the Institute for Survey Research at Temple University and Westat in June 2004.⁴ Fur-

¹ Pub. L. No. 99-603, 8 U.S.C. § 1324a.

² IRCA provided for sanctions against employers who do not follow the employment verification (Form I-9) process. Employers who fail to properly complete, retain, or present for inspection a Form I-9 may face civil or administrative fines ranging from \$110 to \$1,100 for each employee for whom the form was not properly completed, retained, or presented. Employers who knowingly hire or continue to employ unauthorized aliens may be fined from \$275 to \$11,000 for each employee, depending on whether the violation is a first or subsequent offense. Employers who engage in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens are subject to criminal penalties consisting of fines up to \$3,000 per unauthorized employee and up to 6 months' imprisonment for the entire pattern or practice.

³ GAO, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, GAO-05-813 (Washington, D.C.: Aug. 31, 2005).

⁴ Institute for Survey Research and Westat, *Findings of the Basic Pilot Program Evaluation* (Washington, D.C.: June 2004).

thermore, we received updated data on employer use of the current electronic employment eligibility verification system. We reviewed these data for accuracy and completeness and determined that these data were sufficiently reliable for the purposes of our review. We conducted the work reflected in this statement from September 2004 through July 2005 and updated this information in May and June 2007 in accordance with generally accepted government auditing standards.

Summary

A mandatory EEV would necessitate an increased capacity at both USCIS and SSA to accommodate the estimated 5.9 million employers in the United States.⁵ As of May 2007, about 17,000 employers have registered for the EEV program, about half of which are active users. USCIS has estimated that a mandatory EEV could cost USCIS \$70 million annually for program management and \$300 million to \$400 million annually for compliance activities and staff, depending on the method for implementing the program. The costs associated with other programmatic and system enhancements are currently unknown. SSA is currently refining its estimates and was not yet able to provide estimates for the cost of a mandatory EEV. According to SSA officials, the cost of a mandatory EEV would be driven by the field offices' increased workload required to resolve queries that SSA cannot immediately confirm.

USCIS and SSA are exploring options to reduce delays in the EEV process. According to USCIS, the majority of EEV queries entered by employers—about 92 percent—confirm within seconds that the employee is authorized to work. About 7 percent of the queries cannot be immediately confirmed by SSA, and about 1 percent cannot be immediately confirmed by USCIS. With regard to the SSA-issued tentative nonconfirmations,⁶ USCIS and SSA officials told us that the majority occur because employees' citizenship or other information, such as name changes, is not up to date in the SSA database. Resolving some DHS nonconfirmations can take several days, or in a few cases even weeks. USCIS and SSA are examining ways to improve the system's ability to use additional automated checks to immediately confirm work authorization.

EEV may help reduce document fraud, but it cannot yet fully address identity fraud issues, for example, when employees present borrowed or stolen genuine documents. The current EEV program is piloting a photograph screening tool, whereby an employer can more easily identify fraudulent documentation. This tool is currently being used by over 70 employers, and USCIS expects to expand the use of the tool to all participating employers by the end of summer 2007. Although mandatory EEV and the associated use of the photograph screening tool offer some remedy, further actions, such as limiting the number of acceptable work authorization documents and making them more secure, may be required to more fully address identity fraud.

EEV is vulnerable to employer fraud that diminishes its effectiveness and misuse that adversely affects employees. ICE officials stated that EEV program data could indicate cases in which employers may be fraudulently using the system and therefore would help the agency better target its limited worksite enforcement resources toward those employers. EEV is also vulnerable to employer misuse that adversely affects employees, such as limiting work assignments or pay while employees are undergoing the verification process. USCIS is establishing a new Compliance and Monitoring program to help reduce employer fraud and misuse by, for example, identifying patterns in employer compliance with program requirements. Information suggesting employers' fraud or misuse of the system could be useful to other DHS components in targeting limited worksite enforcement resources and promoting employer compliance with employment laws.

Background

In 1986, IRCA established the employment verification process based on employers' review of documents presented by employees to prove identity and work eligibility. On the Form I-9, employees must attest that they are U.S. citizens, lawfully

⁵In 2004, the most recent year for which data are available, there were approximately 5.9 million firms in the United States. A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control. Under EEV, one employer may have multiple worksites that use the system. For example, a hotel chain could have multiple individual hotels using EEV. This hotel chain would represent one employer using the pilot program.

⁶In general, in cases when the EEV system cannot confirm an employee's work authorization status through the initial automatic check, the system issues the employer either an SSA or a DHS tentative nonconfirmation of the employee's work authorization status, which requires the employee to resolve any data inaccuracies if he or she is able or chooses to do so.

admitted permanent residents, or aliens authorized to work in the United States. Employers must then certify that they have reviewed the documents presented by their employees to establish identity and work eligibility and that the documents appear genuine and relate to the individual presenting them. In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent. Employers generally are deemed in compliance with IRCA if they have followed the Form I-9 process in good faith, including when an unauthorized alien presents fraudulent documents that appear genuine. Following the passage of IRCA in 1986, employees could present 29 different documents to establish their identity and/or work eligibility. In a 1997 interim rule, the former U.S. Immigration and Naturalization Service (INS) reduced the number of acceptable work eligibility documents from 29 to 27.⁷

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)⁸ of 1996 required the former INS and SSA to operate three voluntary pilot programs to test electronic means for employers to verify an employee's eligibility to work, one of which was the Basic Pilot Program.⁹ The Basic Pilot Program was designed to test whether pilot verification procedures could improve the existing employment verification process by reducing (1) false claims of U.S. citizenship and document fraud, (2) discrimination against employees, (3) violations of civil liberties and privacy, and (4) the burden on employers to verify employees' work eligibility.

In 2007, USCIS renamed the Basic Pilot Program the Employment Eligibility Verification (EEV) program. EEV provides participating employers with an electronic method to verify their employees' work eligibility. Employers may participate voluntarily in EEV, but are still required to complete Forms I-9 for all newly hired employees in accordance with IRCA. After completing the forms, these employers query EEV's automated system by entering employee information provided on the forms, such as name and Social Security number, into the EEV Web site within 3 working days of the employees' hire date. The program then electronically matches that information against information in SSA's NUMIDENT database and, for non-citizens, DHS databases to determine whether the employee is eligible to work. EEV electronically notifies employers whether their employees' work authorization was confirmed. Those queries that the DHS automated check cannot confirm are referred to DHS immigration status verifiers, who check employee information against information in other DHS databases. The EEV process is shown in figure 1.

⁷ Eight of these documents establish both identity and employment eligibility (e.g., U.S. passport or permanent resident card); 12 documents establish identity only (e.g., driver's license); and 7 documents establish employment eligibility only (e.g., Social Security card).

⁸ U.S.C. 1324a(b). IIRIRA was enacted within a larger piece of legislation, the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009.

⁹ The other two pilot programs mandated by IIRIRA—the Citizen Attestation Verification Pilot Program and the Machine-Readable Document Pilot Program—were discontinued in 2003 due to technical difficulties and unintended consequences identified in evaluations of the programs. See Institute for Survey Research and Westat, *Findings of the Citizen Attestation Verification Pilot Program Evaluation* (Washington, D.C.: April 2003) and Institute for Survey Research and Westat, *Findings of the Machine-Readable Document Pilot Program Evaluation* (Washington, D.C.: May 2003).

mated that employer registration is expected to greatly increase by the end of fiscal year 2007. If participation in the EEV program were made mandatory, the program may have to accommodate all of the estimated 5.9 million employers in the United States. USCIS officials estimate that to meet a December 2008 implementation date, this could require about of 30,000 employers to register with the system per day. The mandatory use EEV can affect the capacity of the system because of the increased number of employer queries.

USCIS has estimated that a mandatory EEV could cost USCIS \$70 million annually for program management and \$300 million to \$400 million annually for compliance activities and staff. The costs associated with other programmatic and system enhancements are currently unknown. According to USCIS, cost estimates will rise if the number of queries rises, although officials noted that the estimates may depend on the method for implementing a mandatory program. SSA officials told us they have estimated that expansion of the EEV program to levels predicted by the end of fiscal year 2007 would cost \$5 to \$6 million, but SSA was not yet able to provide us estimates for the cost of a mandatory EEV. According to SSA officials, the cost of a mandatory EEV would be driven by the increased workload of its field office staff due to resolving SSA tentative nonconfirmations.¹¹

A mandatory EEV would require an increase in the number of USCIS and SSA staff to operate the program. For example, USCIS had 13 headquarters staff members in 2005 to run the program and 38 immigration status verifiers available for secondary verification.¹² USCIS plans to increase staff levels to 255 to manage a mandatory program, which includes increasing the number of immigration status verifiers who conduct secondary verifications.¹³ USCIS officials expressed concern about the difficulty in hiring these staff due to lengthy hiring processes, which may include government background checks. In addition, according to SSA officials, a mandatory EEV program would require additional staff at SSA field offices to accommodate an increase in the number of individuals visiting SSA field offices to resolve tentative nonconfirmations. According to SSA officials, the number of new staff required would depend on both the legislative requirements for implementing mandatory EEV and the effectiveness of efforts USCIS has under way to decrease the need for individuals to visit SSA field offices. For this reason, SSA officials told us they have not yet estimated how many additional staff they would need for a mandatory EEV.

USCIS and SSA Are Exploring Options to Reduce Delays in the EEV Process

In prior work, we reported that secondary verifications lengthen the time needed to complete the employment verification process. The majority of EEV queries entered by employers—about 92 percent—confirm within seconds that the employee is authorized to work. About 7 percent of the queries are not confirmed by the initial automated check and result in SSA-issued tentative nonconfirmations, while about 1 percent result in DHS-issued tentative nonconfirmations. With regard to the SSA-issued tentative nonconfirmations, USCIS and SSA officials told us that the majority occur because employees' citizenship status or other information, such as name changes, is not up to date in the SSA database. SSA does not update records unless an individual requests the update in person and submits the required evidence to support the change in its records. USCIS officials stated that, for example, when aliens become naturalized citizens, their citizenship status is often not updated in the SSA database. In addition, individuals who have changed their names for various reasons, such as marriage, without notifying SSA in person may also be issued an SSA tentative nonconfirmation. According to SSA officials, although SSA instructs individuals to report any changes in name, citizenship, or immigration status, many do not do so. When these individuals' information is queried through EEV, a tentative nonconfirmation would be issued, requiring them to go to an SSA field office to show proof of the change and to correct their records in SSA's database.

USCIS and SSA are exploring some options to improve the efficiency of the verification process. For example, USCIS is exploring ways to automatically check

¹¹In general, in cases when the EEV system cannot confirm an employee's work authorization status through the initial automatic check, the system issues the employer a tentative nonconfirmation of the employee's work authorization status.

¹²Thirty-eight immigration status verifiers were available for completing secondary verifications. According to USCIS, at any one time about 3 to 5 immigration status verifiers work to resolve tentative nonconfirmations. The other immigration status verifiers work on other verification programs, such as the Systematic Alien Verification for Entitlements Program.

¹³USCIS officials noted that this does not include staff for monitoring and compliance functions.

for naturalized citizens' work authorization using DHS databases before the EEV system issues a tentative nonconfirmation. Furthermore, USCIS is planning to provide naturalized citizens with the option, on a voluntary basis, to provide their Alien Number or Naturalization Certification Number so that employers can query that information through the EEV system before referring the employees to SSA to resolve tentative nonconfirmations.¹⁴ SSA is also coordinating with USCIS to develop an automated secondary verification capability, which may reduce the need for employers to take additional steps after the employee resolves the SSA tentative nonconfirmation.¹⁵ USCIS and SSA officials told us that the agencies are planning to provide SSA field office staff with access to the EEV system so that field office staff can resolve the SSA tentative nonconfirmation directly in the system at the time the employee's record is updated at the field office. According to SSA officials, the automated secondary verification capability is tentatively scheduled to be implemented by October 2007. While these steps may help improve the efficiency of the verification process, including eliminating some SSA tentative nonconfirmations, they will not entirely eliminate the need for some individuals to visit SSA field offices to update records when individuals' status or other information changes.

USCIS and SSA officials noted that because the current EEV program is voluntary, the percentage of individuals who are referred to SSA field offices to resolve tentative nonconfirmations may not accurately indicate the number of individuals who would be required to do so under a mandatory program. SSA and USCIS officials expressed concern about the effect on SSA field offices' workload of the number of individuals who would be required to physically visit a field office if EEV were made mandatory.

May Help Reduce Employee Document Fraud, but Cannot Yet Fully Address Identity Fraud Issues

In our prior work, we reported that EEV enhances the ability of participating employers to reliably verify their employees' work eligibility and assists participating employers with identification of false documents used to obtain employment.¹⁶ If newly hired employees present false information, EEV would not confirm the employees' work eligibility because their information, such as a false name or social security number, would not match SSA and DHS database information. However, the current EEV program is limited in its ability to help employers detect identity fraud, such as cases in which an individual presents borrowed or stolen genuine documents.

USCIS has taken steps to reduce fraud associated with the use of documents containing valid information on which another photograph has been substituted for the document's original photograph. In March 2007, USCIS began piloting a photograph screening tool as an addition to the current EEV system. According to USCIS officials, the photograph screening tool is intended to allow an employer to verify the authenticity of a Lawful Permanent Resident card (green card) or Employment Authorization Document that contain photographs of the document holder by comparing individuals' photographs on the documents presented during the I-9 process to those maintained in DHS databases. As of May 2007, about 70 employers have been participating during the pilot phase of the photograph screening tool, and EEV has processed about 400 queries through the tool. USCIS expects to expand the program to all employers participating in EEV by the end of summer 2007.

The use of the photograph screening tool is currently limited because newly hired citizens and noncitizens presenting forms of documentation other than green cards or Employment Authorization Documents to verify work eligibility are not subject to the tool. Expansion of the pilot photograph screening tool would require incorporating other forms of documentation with related databases. In addition, efforts to expand the tool are still in the initial planning stages. For example, according to USCIS officials, USCIS and the Department of State have begun exploring ways to include visa and U.S. passport documents in the tool, but these agencies have not yet reached agreement regarding the use of these documents. USCIS is also exploring a possible pilot program with state Departments of Motor Vehicles.

In prior work we reported that although not specifically or comprehensively quantifiable, the prevalence of identity fraud seemed to be increasing, a development that may affect employers' ability to reliably verify employment eligibility in a mandatory EEV program. The large number and variety of acceptable work authoriza-

¹⁴ According to USCIS, providing these data to employers would be voluntary to help ensure that naturalized citizens are not subject to discrimination.

¹⁵ Currently, once an individual resolves the reason for the SSA tentative nonconfirmation, the employer must then re-query the EEV system in order to finalize the verification.

¹⁶ GAO-05-813.

tion documents—27 under the current employment verification process—along with inherent vulnerabilities to counterfeiting of some of these documents, may complicate efforts to address identity fraud. Although mandatory EEV and the associated use of the photograph screening tool offers some remedy, further actions, such as reducing the number of acceptable work eligibility documents and making them more secure, may be required to more fully address identity fraud.

Most Employers Complied with EEV Procedures, the Program Is Vulnerable to Employer Fraud That Diminishes Its Effectiveness and Misuse That Adversely Affects Employees

While Most Employers Complied with EEV Procedures, the Program Is Vulnerable to Employer Fraud That Diminishes Its Effectiveness and Misuse That Adversely Affects Employees.

EEV is vulnerable to acts of employer fraud, such as entering the same identity information to authorize multiple workers. Although ICE has no direct role in monitoring employer use of EEV and does not have direct access to program information, which is maintained by USCIS, ICE officials told us that program data could indicate cases in which employers may be fraudulently using the system and therefore would help the agency better target its limited worksite enforcement resources toward those employers. ICE officials noted that, in a few cases, they have requested and received EEV data from USCIS on specific employers who participate in the program and are under ICE investigation. USCIS is planning to use its newly created Compliance and Monitoring program to refer information on employers who may be fraudulently using the EEV system, although USCIS and ICE are still determining what information is appropriate to share.

Employees queried through EEV may be adversely affected if employers violate program obligations designed to protect the employees, by taking actions such as limiting work assignments or pay while employees are undergoing the verification process. The 2004 Temple University Institute for Survey Research and Westat evaluation of EEV concluded that the majority of employers surveyed appeared to be in compliance with EEV procedures. However, the evaluation and our prior review found evidence of some noncompliance with these procedures. In 2005, we reported that EEV provided a variety of reports that could help USCIS determine whether employers followed program requirements, but that USCIS lacked sufficient staff to do so. Since then, USCIS has added staff to its verification office and created a Compliance and Monitoring program to review employers' use of the EEV system. However, while USCIS has hired directors for these functions, the program is not yet fully staffed. According to USCIS officials, USCIS is still in the process of determining how this program will carry out compliance and monitoring functions, but its activities may include sampling employer usage data for evidence of noncompliant practices, such as identifying employers who do not appear to refer employees contesting tentative nonconfirmations to SSA or USCIS. USCIS estimates that the Compliance and Monitoring program will be sufficiently staffed to begin identifying employer noncompliance by late summer 2007.

USCIS's newly created Compliance and Monitoring program could help ICE better target its worksite enforcement efforts by indicating cases of employers' egregious misuse of the system. Currently, there is no formal mechanism for sharing compliance data between USCIS and ICE. ICE officials noted that proactive reduction of illegal employment through the use of functional, mandatory EEV may help reduce the need for and better focus worksite enforcement efforts. Moreover, these officials told us that mandatory use of an automated system like EEV could limit the ability of employers who knowingly hired unauthorized workers to claim that the workers presented false documents to obtain employment, which could assist ICE agents in proving employer violations of IRCA.

Concluding Observations

Although efforts to reduce the employment of unauthorized workers in the United States necessitate a strong employment eligibility verification process and a credible worksite enforcement program and other immigration reforms may be dependent on it, a number of challenges face its successful implementation. The EEV program shows promise for enhancing the employment verification process and reducing document fraud if implemented on a much larger scale, and USCIS and SSA have undertaken a number of steps to address many of the weaknesses we identified in the EEV program. USCIS has also spent the last several years planning for an expanded or mandatory program, and has made progress in several areas, but it is unclear at this time the extent to which USCIS's efforts will be successful under mandatory EEV. It is clear, however, that a mandatory EEV system will require a substantial investment in staff and other resources, at least in the near term, in

both agencies. There are also issues, such as identity fraud and intentional misuse, that will remain a challenge to the system. Implementing an EEV system to ensure that all individuals working in this country are doing so legally and that undue burdens are not placed on employers or employees will not be an easy task within the timelines suggested in reform proposals.

This concludes my prepared statement. I would be pleased to answer any questions you and the subcommittee members may have.

Chairman MCNULTY. We thank all of the witnesses for their testimony. Let me just begin by generally framing the issue, and then we will go to some of my colleagues for questions.

This Committee has been working for some time, and as a matter of fact for some years, on the whole issue of the backlog in the disability claims and so on, and all of the problems related to that. And the situation as it exists right now I believe is a national embarrassment. When people are legitimately entitled to a government benefit and come to the government to apply for that benefit, and are told, you have to wait a year and a half or two years just to get an answer, I think that is a disgrace.

So we are working on that as a separate issue, and we made some progress in the budget resolution this year, and we hope to have some results during the appropriations process.

With that as a backdrop, when I look at this issue I see a massive new undertaking here that is going to cost an awful lot of money and require an awful lot of additional backup. I just want to elicit from you your views as to how effective you think we can be in a reasonable timeframe in setting up such a new system.

Now, Mr. Schaeffer, you mentioned additional visits to field offices. If we were to expand this program to the estimated 60 million new hires this year, how many additional field office visits do you think that would entail?

Mr. SCHAEFFER. I would hesitate to put an exact number, but it would be a substantial increase on the visits that are now taking place, and without increased staff, would obviously lead to the disability backlog problem probably being exacerbated as opposed to being addressed timely.

Chairman MCNULTY. Based upon how past Administrations and Congresses have addressed the backlog issue, how confident are you that the resources would be there?

Mr. SCHAEFFER. I would refer to Mr. Streckewald to answer that question.

Chairman MCNULTY. That is fine.

Mr. STRECKEWALD. I really can't hazard a guess, but our position is that we can do whatever Congress asks us. We always have, but need to be funded for it. This, as you said, Mr. Chairman, is a huge new workload for us if we go to mandatory EEVS. I think the estimate of 2 or 3,000 more work years, more people, hundreds of millions of dollars of more money each year, is in the ballpark.

We need time to hire, equip and train new people so that they can do this. We don't know if we would expand our field offices. We would probably try to fit them into the existing field offices and tele-service centers. Our position is we hope Congress does see the need to fund us for this workload so that it doesn't disrupt our

other critical workloads. As you mentioned, one of them is a top priority—the disability hearings.

Chairman MCNULTY. Could you be any more specific with regard to the additional number of work years that would be involved?

Mr. STRECKEWALD. We are still working on our final figures. We are looking at a couple of key elements that get us to that figure. One critical element is the fallout rate. Right now, for every 100 queries, we have three contacts to the field office or the tele-service centers.

So, we are trying to use these key elements as a base and think through what a mandatory system would look like instead of a voluntary system because our assumption is that companies that volunteer for EEVS probably have fewer people trying to pass off as legal workers.

So, we have roughly, in our estimates for mandatory EEVS that we are working on now, doubled the full-out rate. So, we figured it may be as high as 6 percent fallout rate. That fallout rate means that 6 percent of, let's say, 60 million new hires per year will be 3.6 million extra visits or phone calls to our field offices.

Each one of those takes 15 to 20 minutes to resolve, and most of them will be resolved, as my colleague said, in probably just a short period of time. Some of them may take a little longer if we have to go through some additional verification processes.

That is the business process that we already are set up to do. It would just greatly increase the volume of that business process. That is why the funding is so critical.

Chairman MCNULTY. As we move along further in this process and you do your additional analysis, can you give us more specific information?

Mr. STRECKEWALD. I would be glad to do that, and work with the Committee to do that.

Chairman MCNULTY. Great.

Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

I would like to follow up on that, Mr. Streckewald. Why do you need more money and employees if it is all computerized? Theoretically, according to the way I am told it operates, you punch a button and a guy gets an instant response. You just said that.

Mr. STRECKEWALD. Now, 92 percent of the time, you are right. Employers get an instant response. What we are looking at is the ones that don't have an instant response, the ones that don't match our records. It is about 7 percent for our records, I think 1 percent for DHS records.

So, if you look at 7 percent, out of that, some people would never contact SSA because they are illegal workers. A lot of them are legal workers, are citizens, where their records just don't match our records. So, they come into our offices. They show us the proofs that they need to show. We change our records to make sure that they are up to date and then they fit what the employer has. Then employees are authorized to work, and life goes on.

There is a lot of work, depending on the volume, if we go to a mandatory EEVS.

Mr. JOHNSON. How do you report the ones that don't check out? Do you report them to—

Mr. STRECKEWALD. The ones that come through the system and are verified?

Mr. JOHNSON. That aren't verified.

Mr. STRECKEWALD. Well, we do have a system for reporting those, and we are working on a system that allows us to report back to the employer to tell them the status of the resolution of the mis-match. So, we are building that system so that the employers will know and we will know and DHS will know how many cases we get and what the resolution of each case is.

Mr. JOHNSON. Thank you. It is amazing to me that MasterCard and Visa can do it instantly all over the world, and you can't do it here.

Mr. Stana, Mr. Rotenberg, a witness on our next panel, tells us last month the Department of Homeland Security lost the employment records of 100,000 Federal employees containing names, Social Security numbers, dates of birth, and bank account information.

At a time when we are considering a massive expansion of the collection of personal information by DHS, how can we be sure that DHS can adequately safeguard workers' personal information?

Mr. STANA. Well, let me say right up front that GAO has not done a stress test, a privacy test, or we haven't done any penetration testing of the system. We have spoken with DHS about their system, and they capture this sensitive information on an Oracle database. They have done privacy testing, and they are of the opinion that they can safeguard the records. They have done the privacy checks in accordance with law.

Now, having said that, any time you collect data on hundreds of thousands or millions of people, there is always the chance that something may go awry. By the way, the 100,000 example you used, I believe, was a TSA laptop. This is a little bit different. This is a mainframe application, mainly.

Now, we have watched—as Members of the Subcommittee may have—watched USCIS test the EEVS system using a phony name to see what happens. The EEVS system is password protected, and it does have the certain kinds of protections that you would expect to see in remote applications.

So, I guess it would remain to be seen exactly how safe it is. They do need to keep information in these databases because they do want to do pattern testing over time. So, another issue is how long do they keep the information? and DHS hasn't really resolved that yet, either.

Mr. JOHNSON. Well, thank you. According to what I understand, less than 1 percent of the employers are participating in that program now. On page 8 of your testimony, you say that according to DHS, in order to begin implementation for all employers beginning in December 2008, you need 30,000—or 30,000 employers would be required to register with the system per day.

With that, substantial investment will be needed in staffs, systems, resources. Can you assure the Congress that such an enormous data collection processing system can be established?

Mr. STANA. If you ask them to put something in place, something will be in place. Something is in place right now, and it has 17,000 registrants, and 8800 consistent users.

Mr. JOHNSON. Is the “something” going to work? Is that system going to work?

Mr. STANA. They are trying to expand EEVS to about 6 million businesses. It is a very hard thing to do. If I could just put it into perspective, everyone on the dais is working on a two-year term, and there are approximately 18 months left in your term.

So, if you figure it that way, by the end of your term of office for this term—whether you go on to the next term is another thing—DHS has to hire 255 program staff, 1800 monitoring staff, procure office space, develop operating procedures, inform employers how to work the system, support worksite enforcement areas, register approximately 30,000 businesses per day starting now. The longer you wait—

Mr. JOHNSON. Well, how did you get those figures? You said GAO hasn’t even looked at it yet.

Mr. STANA. Oh, no. We looked at the program. We did not look at the stress testing on the computer system. These are all things that would have to be done so that by December 2008, it is ready to service 5.9 million employers.

Now, there are ways to manage that. You can phase it in, or you could enroll certain industries first, perhaps those involving critical infrastructure. That is what it would take.

Mr. JOHNSON. I am over my time. Thank you, Mr. Chairman. Chairman MCNULTY. Thank you, Mr. Johnson.

Mr. Levin may inquire.

Mr. LEVIN. So, what would be the cost of what you just read?

Mr. STANA. What USCIS estimated for the first year of operation, I believe, was \$70 million in management costs and about \$300 to \$400 million for compliance and investigative staff. That doesn’t include computer upgrades that would be necessary. It doesn’t include ICE investigators that follow up on any leads of employer abuse of employees or misuse. It is going to be substantial.

Now, having said that, any immigration expert would probably tell you that of the handful of things that are must-haves in an immigration reform proposal, this would be one of them. So, it is probably more a question of what type of a verification program you have, not whether you would have one.

Mr. LEVIN. I think the Senate is going to be acting. They may act this week. And the odds seem to be that they are going to pass a bill. And so the odds are that we are going to need to address this in the House. And so we need to begin to prepare for the possibility, if not the probability.

To pick up what the Chairman said, who is doing the hard work of itemizing the costs of this? Who is doing that?

Mr. STRECKEWALD. In Social Security, we have a budget shop that works with the systems people and the programs people, and our field office people, everybody that has a role in this. They have a process they go through for any new workload. They try to budget it and figure what the total cost would be. They are just now revising those figures, so we don’t have them here today. We will be happy to, again, submit them when they are available.

Mr. LEVIN. When is that going to be?

Mr. STRECKEWALD. When is that going to be?

Mr. LEVIN. More or less?

Mr. STRECKEWALD. More or less, it should be shortly. I don't know exactly when, but in the next few weeks or shorter, I would guess.

Mr. LEVIN. No. I think if it is a few weeks, it will be before we pass the bill.

Mr. STRECKEWALD. What has been very helpful to us in getting ready for this has been the expansion of the system that DHS and SSA have partnered in. DHS is registering more employers onto the system, which means we both have to build greater capacity, and we have to make sure our business processes are sound, and we have to move forward on building additional functionality into the system.

So, that is in essence preparing us for great expansion, just by preparing for moderate expansion.

Mr. LEVIN. Yes, but there is a cost to that, too. Right?

Mr. STRECKEWALD. Yes, there is. We have a reimbursable agreement that we have developed between DHS and SSA that is not yet signed, but at this point I think it is with the lawyers from each agency, looking to make sure everything is right from their agency's perspective.

Mr. LEVIN. And it has a cost estimate?

Mr. STRECKEWALD. It has a cost estimate in there for this year. It is based upon——

Mr. LEVIN. When you say for this year, you mean——

Mr. STRECKEWALD. 2007.

Mr. LEVIN. This fiscal year?

Mr. STRECKEWALD. Right.

Mr. LEVIN. And who is making the projection for next fiscal year?

Mr. STRECKEWALD. Well, that is the budget shop that I was talking about a little bit earlier. They are waiting to see what the exact elements of a bill will be, and then they will plug in those provisions and do the math and come up with an estimate.

Mr. LEVIN. So, you would expect that there will be available to the Congress within the next short period a detailed itemization of what this would cost, assuming there is complete coverage. What kind of timeline is being assumed, and which bill?

Mr. STRECKEWALD. For getting it implemented, from our perspective? I think the timeline—the ramp-up approach—that is in the current bill is probably sufficient for us. It kind of starts slowly, then builds up.

Mr. LEVIN. When you say the current bill, you mean?

Mr. STRECKEWALD. The Senate bill.

Mr. LEVIN. The Senate bill.

Mr. STRECKEWALD. It starts over a several-year period, starts with critical infrastructure, moves to new hires, and then moves to everybody, your whole payroll. So, that allows us—as long as we get the money early in the fiscal year—it allows us to hire, train, and equip new employees to deal with the increased business and increased workload.

As that ramps up, so will our efforts to hire, train, and equip new employees. So, we think that that is very doable with the appropriate funding at the beginning of each year.

Mr. LEVIN. The appropriate funding is going to be major, is it not?

Mr. STRECKEWALD. Well, as I mentioned, in the neighborhood, if you will, without giving any specific figures yet because they are not done with our estimates, it could be in the peak years as much as 2 to 3,000 work years or, as I say, people, extra people, new hires, and up to \$300 million a year during the peak years. So, that is significant for us.

Mr. LEVIN. Two to 3,000? That is included in the figure you gave?

Mr. STRECKEWALD. Yes. I tried to convert it to millions of dollars. Basically—the major cost of that is people.

Mr. LEVIN. As I close, Mr. Chairman, I think that underlines the need for this Congress and the Administration to face up to the additional costs, because we do not want it to deter the effort to get hold of the disability issue. You are going to be very blunt and direct about what is needed, right?

Mr. STRECKEWALD. We are going to have our estimates shortly, and I will make sure that everybody is aware of them.

Mr. LEVIN. Thank you.

Chairman MCNULTY. Mr. Streckewald, what about the old estimate I saw here of the agency estimating that it would cost approximately \$10 billion to issue these new cards?

Mr. STRECKEWALD. That estimate—

Chairman MCNULTY. That estimate is in the budget of Social Security.

Mr. STRECKEWALD. Yes. We were talking about a different process here. If we are talking about issuing new cards—I think the \$10 billion was reference to new cards—

Chairman MCNULTY. Right.

Mr. STRECKEWALD [continuing]. What we had been talking about was the fallout from the employer verification system. If we go to issuing new cards to all new workers of all people in the United States over 14 years of age. Yes, that figure is still approximately right. If you did it over 2 years or 5 years, it is going to take about \$10 billion to issue new cards to most of the people in the United States. I don't think it is much different today. It might be a little higher today than when that was estimated a year ago.

Chairman MCNULTY. And I would again state for the record that is more than the entire SSA operating budget right now.

Mr. STRECKEWALD. That is right.

Chairman MCNULTY. Mr. Lewis may inquire.

Mr. LEWIS. Thank you, Mr. Chairman.

I just want to go back to the privacy issue just for a minute here. Mr. Schaeffer, your office supports data sharing and disclosure restrictions between the Social Security Administration and the Department of Homeland Security. At the same time, I am sure you would agree that the importance of protecting the privacy of taxpayers is important.

So, what information should be shared with the Department of Homeland Security?

Mr. SCHAEFFER. Well, currently there is a limit on the information that we can share because of IRS rules and regulations. Some of the information that may be useful to share if you really want to get a handle on people working in the country illegally would be to focus on the employers that consistently have a large number of items going into the earnings suspense file, which means that the name and the Social Security number could not match up within SSA's records to a legitimate number holder; and then have the appropriate enforcement action take place.

It is really difficult to try to go after the individuals because you are really talking about millions of items that are going into the ESF. So, the number of employers are much more finite, and that is where it starts with. These employers are giving individuals a job where their name and Social Security number do not match up to SSA's records.

Mr. LEWIS. Mr. Stana, would you like to comment?

Mr. STANA. You know, I would be a little cautious about sharing a lot of data quickly with DHS if I were in SSA's shoes. The reasons are that, first, we haven't had the full certification testing of the databases, and we'd just want to make sure that they are in good shape security-wise.

Second, the data that has been available to DHS in the past, hasn't been used. So, why would you want to release a lot of information that they are not likely to use? Certainly SSA would want to, on a case by case basis, at least, start out and to DHS say, what is most useful to you, how can we help you, and let's limit it to that initially.

Once, DHS ramps up its compliance units, maybe there will be opportunities for more broadly sharing information. I think the kind of information that would be most useful to them, knowing how their worksite and employer/employee compliance efforts work, the kind of information that would be most useful would be information dealing with Social Security numbers over time that keep being used again and again by workers or employers.

Information about patterns over 10 years of noncompliance might be in the earnings suspense file, maybe in other documents or databases. I would be very carefully initially about opening it up wholesale until we really had a better sense of what is useful.

Mr. LEWIS. Very good. Thank you.

Chairman MCNULTY. Thank you.

Mr. Becerra may inquire.

Mr. BECERRA. Thank you, Mr. Chairman. Thank you to all of you for your testimony. And Mr. Chairman, thank you for this timely hearing. I think it is important for us to move on this as quickly as we can in the event there is comprehensive immigration reform.

Gentlemen, let me ask a question, and first focus on the cost of the current EEVS system. I suspect I should probably first ask Mr. Streckewald this: How much did the EEVS system cost the SSA to administer or to conduct last year, in 2006?

Mr. STRECKEWALD. It cost us \$891,000.

Mr. BECERRA. Under an agreement you have with DHS, Homeland Security, you are to be reimbursed for those costs of doing those inquiries?

Mr. STRECKEWALD. Yes.

Mr. BECERRA. Have you yet been reimbursed?

Mr. STRECKEWALD. No. Not for that money.

Mr. BECERRA. Are you expecting to be reimbursed?

Mr. STRECKEWALD. We hope to be reimbursed.

[Laughter.]

Mr. STRECKEWALD. I assume our lawyers are still working to resolve it, but that is almost a million dollars. That is a lot of money. Actually, it is a million if you count a little bit of money left over from 2005 that they weren't able to pay us. So, approximately a million dollars, and to us every million counts. So, we do hope to get that money reimbursed.

Mr. BECERRA. You mentioned a scary word, lawyers. Is there a reason why a Federal Government agency, SSA, is having to employ its lawyers to talk to another Federal Government agency, the Department of Homeland Security, when it has an agreement, a document, that says that it is to be reimbursed?

Mr. STRECKEWALD. I can't speak to that. I know that DHS felt that it didn't get the funding in order to be able to reimburse us, and we said, well, we are doing work here. So there has been a friendly, so far, exchange of arguments. I hope that it does get resolved where we are reimbursed for the money. I don't disagree with the point you are making.

Mr. BECERRA. Mr. Chairman, we may want to inquire of DHS when we have that opportunity.

My understanding is, and you can correct me, Mr. Streckewald, if I am wrong, but that for every million dollars, you could conduct some 565 additional disability hearings to help reduce that backlog of over 1.3 million cases of Americans waiting to have their disability claim processed through SSA.

Mr. STRECKEWALD. That is true.

Mr. BECERRA. So for every million dollars that DHS doesn't reimburse you, under which they have an agreement to do so, then you have to either cut back on services or allow those individuals to wait even longer as they wait for their hearing to determine if they should be receiving disability benefits.

Mr. STRECKEWALD. You are right.

Mr. BECERRA. How much have you spent so far to date doing the inquiries that are required under the EEVS system, the employment verification system, for DHS?

Mr. STRECKEWALD. This year?

Mr. BECERRA. Yes.

Mr. STRECKEWALD. We have had 1.8 million inquiries, or queries. So, what we are doing is setting up a reimbursable agreement for the rest of the year because this was—

Mr. BECERRA. If you could try to just give me the answer. I apologize. It is just that I am going to run out of time. How much do you estimate you have spent to date conducting EEVS services for DHS?

Mr. STRECKEWALD. Well, I think it would be in the neighborhood of \$2 million that SSA has not been reimbursed because last year it was nearly a million. This year, so far, we are about the pace of last year. So, approximately \$2 million. We could probably submit the exact number for the record. [INSERT]

Mr. BECERRA. Could you do that? My understanding from some of the information we received from Committee staff was that it was now exceeding \$5 million.

Mr. STRECKEWALD. \$5.9 million is the amount for all of FY 2007. We have a reimbursable agreement that we are working on with DHS. They say they are going to sign it and that they have the money this year. So, for FY 2007, it is about \$5.9 million, and that would cover us.

Mr. BECERRA. I see. So, that is the projection for the entire year 2007?

Mr. STRECKEWALD. Yes. Yes.

Mr. BECERRA. Maybe we can help because I think it is outrageous that you are conducting a service that is outside the core mission of your work for an agency under which you have an agreement to do this, which is essential work, yet you are having to underfund your programs that are helping lots of Americans who are in desperate need in some cases of this assistance.

So, perhaps, Mr. Chairman, we can try to lend a hand to SSA to try to get reimbursed for the monies it is due for the work that it is done.

Let me ask a question with regard to error rates. I know this has always been an issue with regard to the SSA and the Social Security card because the Social Security number was never meant to be a data-confirming number other than for purposes of Social Security benefits.

Tell me when I am wrong. I understand from an inspector general report that was done back in December 2006—and Mr. Schaeffer, please tell me if I am incorrect on this—I understand that there are about 17.8 million employees who are erroneously categorized as nonconfirmed in these checks that are done simply as a result of discrepancies that are related to their name, birth date, or citizenship status.

So, if someone gets married, the current file doesn't reflect that that individual has changed his or her her name as a result of marriage. There are 17.8 million employees who don't check out. That is about 4.1 percent.

Mr. SCHAEFFER. That is basically correct. I wouldn't say they are all employees. That is of the active Social Security numbers in SSA's database, which theoretically they all could be employees, but they all may not be employees.

Mr. BECERRA. Thank you for that correction. There are approximately about 5 million new hires per month in this country, more or less?

Mr. SCHAEFFER. Right.

Mr. BECERRA. So, if you take that 4 percent error rate and apply it to the 5 million or so new hires that occur every year, and you are talking about somewhere close to—or over 200,000 Americans on a monthly basis, about 2.5 million people on a yearly basis, who could, based on discrepancies, be misidentified as not eligible to work using the current Social Security database with its current list of errors. Have I said anything wrong here?

Mr. SCHAEFFER. No. That is theoretically possible. One would hope that things would get better over time.

Mr. BECERRA. And, of course the error rate is higher, my understanding is, for foreign-born U.S. citizens. So, if you happen to be born in another country but you have citizenship by birthright, by your parentage, or for individuals who have come to this country and have since become citizens, the error rates are even higher for them.

Mr. SCHAEFFER. That is correct.

Mr. BECERRA. Mr. Streckewald, you wanted to say something?

Mr. STRECKEWALD. Yes. I don't disagree with your figures. I would maybe just clarify by saying that it is tentative nonconfirmation. You are right, they are going to be told tentatively it looks like you don't have authorization to work. They come in to us, we straighten it out, and then they are authorized to work.

So, it is not pleasant to have to do that, but it gets updated and they get to work.

Mr. BECERRA. Mr. Chairman, I know my time has expired so I won't ask any more questions other than to just make the following point. My understanding is that your field offices serve some 42 million visitors a year. You have lost—Social Security Administration has lost—some 2,400 positions in the past 19 months, and you are at your lowest staffing level now that you have been since the 1970s.

Your processing time in most cases in most offices takes over 900 days. You requested a budget of President Bush totaling \$10.4 billion. The President's budget allotted Social Security Administration \$9.6 million. That is an \$800 million loss right there.

With all of these tasks that are placed upon you and with the burdens fiscally that you have, Mr. Chairman, I think it becomes very obvious that we have to really examine this and try to help make sure that SSA not only gets reimbursed from DHS for money that it is due, but also that we get the resources to the agency to make sure that if we do move forward on immigration reform, they are able to do this, and not at the expense of Social Security applicants for disability benefits or Social Security benefits.

Thank you.

Chairman MCNULTY. Mr. Ryan may inquire.

Mr. RYAN. Thank you. First of all, Mr. Chairman, I want to thank you for having this hearing. Very good timing on this. We need to do this.

As I look at this and I see this immigration bill most likely passing the Senate, it seems, and probably next week, is what we hear, and then coming our way, we really have to get our hands around this. I think most Members of Congress believe we need comprehensive immigration reform.

Then when you look at comprehensive immigration reform, most people conclude a central premise of that is an airtight worker verification system. So, we all kind of agree that that is necessary.

Then when we look at this system, the word fiasco comes to my mind, to be honest with you. I guess here is the couple questions I want to ask. Number one, do you really believe we could get this thing up and running in 18 months and have a minuscule error rate? Do you really believe that?

Mr. STRECKEWALD. From Social Security's perspective, I think we will. Again, the funding is critical, but we have risen to challenges that we have been faced with. We will get it done.

I can't speak to what the error rate will be, but right now it is at about three contacts for every hundred queries. We would like to get that down, but it is unknown in the future what that will be if all employees must go through the system. We can get it done with the proper funding.

Mr. RYAN. Then what pieces of personal information does Homeland Security think they are going to need at the end of the day to make this work?

Mr. STANA. First, if I might address the question this way.

Mr. RYAN. Sure. I would appreciate that.

Mr. STANA. To say the least, this is going to be a tremendous challenge. You are talking about signing up 30,000 employers per day from now until December 2008. What if employers wait until fall 2008 to enroll? Then there's the need to hire staff. Do background checks. Get office space. Procure new computer equipment. You never say never, and something will probably be available in December 2008. Is it going to be something that 5.9 million employers can use? It is going to be a challenge for DHS.

Now, your other question was dealing with the—

Mr. RYAN. The pieces of information, all the pieces you think they need.

Mr. STANA. The information that goes to Social Security for EEVS, I believe, are name, Social Security number, and date of birth. That is what goes, and it is checked against the Numident database. The information for checking against DHS databases include the name and the A number, alien number, or the employment authorization number. That is the extent of the information used. They get either a confirm or nonconfirm.

Mr. RYAN. The goal of the system is twofold. Right? You are who you say you are, and you are eligible to work in this country.

Mr. STANA. Also you are work-authorized.

Mr. RYAN. Right?

Mr. STANA. Yes.

Mr. RYAN. Have you ever considered the idea of maybe having a private-based identity system for identifying who you are, and then referencing the Social Security database to see if you are eligible to work or not? Have you ever considered those kinds of ideas, those kinds of systems?

Mr. STANA. GAO hasn't seen those kinds of things being seriously considered. I have heard discussions of using other means. Mr. Johnson mentioned, swiping a credit card, and why can't you get the verification done quicker?

Mr. RYAN. Yes. Right.

Mr. STANA. I have heard of using private sector facilities like credit card terminals but one of the stoppers, frankly, is getting the right equipment out to the employers to use for this quick verification. Right now it just requires a computer and Internet access. If you want to do something more with biometrics, it may require something more sophisticated. I have heard the "credit card" solution tossed around, but not seriously considered.

Mr. RYAN. So, \$370 million is the number I just heard when I added up all that you said you think you need, Mr. Streckewald. So, \$370 million I am taking as sort of the minimum up-front cost annually to get a system like this going. You are going to give us—

Mr. STRECKEWALD. We don't have the exact figures yet, but—

Mr. RYAN. But you are going to give us a budget estimate in about three or four weeks, you told Mr. Levin?

Mr. STRECKEWALD. I hope to be able to. We will get it to you as soon as it is done.

Mr. RYAN. So, that number will probably go up to half a billion?

Mr. STRECKEWALD. That was the figure for DHS. Three to \$400 million for compliance staff, and another \$70 million for program management. So, it could be \$370 to \$470 million.

Mr. RYAN. By the end of our terms, we are going to be—I don't see a clock so I don't know what my time is—but by the end of our terms here, by 18 months, we are expecting every employer to verify every—actually, it is a four-year staggered process. Correct? So, can you walk me through that? I am not precisely familiar with the Senate bill, but it is—how do they roll in who all is checked?

Mr. STRECKEWALD. If I recall—

Mr. STANA. I have got that.

Mr. STRECKEWALD. Why don't you go ahead. It does ramp up.

Mr. STANA. There are two—

Mr. RYAN. What is the ramp-up?

Mr. STANA. Gutierrez-Flake is a different version, but I can give you both, if you like. The Senate version is in six months you want all new employees hired after the act is passed in critical infrastructure and government to be verified. By 18 months, you want new employees in all sectors to be verified. After three years, you want all employees, old and new to be verified. That is the Senate proposal.

Mr. RYAN. Three years? Okay.

Mr. STANA. On the Gutierrez-Flake proposal, the STRIVE Act, it is in year one, all employees working in critical infrastructure are to be verified. In year two, all large firms with 5,000 or more employees would have their employees verified. In the third year, mid-size firms would be added. In the fourth year, employees in small firms would be verified. Those criteria could probably be adjusted if need be.

This gets to the stress that is put on the field offices. It depends on how you manage EEVS implementation. Once an employee's data is validated in NUMIDENT, he or she is probably not going to get nonconfirms when seeking employment in the future unless there is a name change due to marriage, for example.

Mr. RYAN. Well, I would simply just say, Mr. Chairman, I think we owe it to our constituents, our colleagues, and our country to try and fix this or figure this out if this train is really coming on the rails as fast as it looks like it might be.

I would like to look into the possibility of not necessarily having a centralized database but a decentralized database, where we can use some of the ingenuity that is going out there in the private sector.

So, with that, I yield. Thanks.

Chairman MCNULTY. Ms. Tubbs Jones may inquire.

Ms. TUBBS JONES. Thank you, Mr. Chairman. Gentlemen, I apologize for being late. In Congress they give us lots of things to do.

I want to speak to Mr. Streckewald. You are real optimistic. You oversee the disability and income security programs. Do you know how many people there are in America that are waiting for a disability determination? We haven't fixed that yet, to then give you a greater responsibility of doing an employment verification system.

How many people do you need to fix that part before you do employment verification?

Mr. STRECKEWALD. Well, we are still looking at what approach will work best. My understanding, we have come up with a multi-faceted approach that not only looks at the old cases to try to get them out and get decisions on them, but also tries to try through the new ones so that they don't become the old cases. So, I think the Commissioner is coming out with a plan shortly on that.

Ms. TUBBS JONES. Then we are trying to figure out how we hire the employees to do the work that needs to be done. The issue was that there is a 10-year-old list of hearing officers and we have to hire some new ones.

So, in employment verification, it is likely there is going to be a list, that we have to put the list together to hire the people from the list, and on and on and on? Come on. Be real with us. I know the Administration is saying what you can do, but the reality is that this is not going to happen. I know you don't want to say it. I am going to say it for you. This ain't going to happen.

[Laughter.]

Mr. STRECKEWALD. We like to think with proper funding, this particular business process is doable. I apologize for seeming overly optimistic.

Ms. TUBBS JONES. You know, that is what we heard about—and I am not pointing individually at you or any of your colleagues at the table. Realism has to set in somewhere in this process so that there is not an anticipation by the people of America that we can do what people are talking about doing within 18 months.

I am more of a person that would say I love individual ingenuity, and privatization is something that could happen, but I also like people having jobs that are guaranteed and secure. There are people who would love to come and work at the Government till and have an opportunity to pursue this.

So, I would like to encourage you to figure out, if everybody else is doing it, why can't the Federal Government do it? Why can't we come up with a system by which we can do the work of employment verification?

I could ask a lot of questions, but the bottom line for me is, tell me the truth. Don't—and I am not saying you are lying—don't misunderstand me, but don't make me anticipate more than I am really going to get.

Mr. Chairman, Ranking Member, thank you so much for the opportunity to ask the questions. I am running. Thanks.

Chairman MCNULTY. The Ranking Member has an additional question.

Mr. JOHNSON. Mr. Schaeffer and Mr. Stana, I would like to ask you this one question: Is it possible to achieve a tamper-proof, fraud-resistant ID card?

Mr. STANA. Is it possible?

Mr. JOHNSON. Yes. I want to listen to him first.

Mr. SCHAEFFER. I would say anything is possible. However, the probability of achieving that, I think, would be very difficult. Most things that happen in that, once the card is out there and the people that want to circumvent that, once they start reverse engineering, almost always they develop the ability to do so.

So, you may have a tamper-proof card today and it may last for a period of time. It may not be—to me, the probability that the tamper-proof card that you develop today, for it lasting forever, I would say a very small probability, that you would have to continually be revising that card, with the associated cost associated with it, to have to stay one step ahead of those who would be looking at a way to defeat it.

Mr. JOHNSON. Mr. Stana?

Mr. STANA. I would say it is possible. If you put the right security features on an identity card, it might be useful for some time. Those security features would be mainly biometric—retina scans, enhanced fingerprints, other digital information.

I would also note for this purpose of verifying that the person who is sitting in front of you, if you are the employer—is the individual who they say they are—would probably require some expensive equipment for employers to maintain. So, that is the other aspect of it.

There are secure cards that are used to verify identity in top secret locations, and I suppose you could use those kinds of cards. I agree with my friend here that it is a matter of time before secure cards and systems get hacked. You would have to probably renew a card periodically to keep it reliable and secure.

Mr. JOHNSON. Thank you, Mr. Chairman.

Chairman MCNULTY. I thank all of the members of the panel. Members may have additional questions that they want to submit to you in writing, and I would ask that you would reply to them. I would ask you to respond to some staff inquiries that we may have as a result of your testimony at the hearing today, too.

Mr. Streckewald mentioned that the Social Security Administration has risen to past challenges. I believe he is correct, when—and you had that big qualifier there—when the proper resources are made available.

So that is a big qualifier on this whole issue. I would submit to you that the resources have not been made available with regard to the disability backlog. That is why that is an unmitigated disaster.

There is no reason why a citizen of the United States of America should come to the Social Security agency or to a Member of Congress with an application for benefits, and be told, we will get back to you in a year and a half or two years.

That is a disgrace. That is because you don't have the proper resources to do that. So, before we embark on any new big expanded

program, one of my main concerns is going to be to make sure that if we do this, that we do have the proper resources.

We thank all the members of the panel. We will now hear from panel two.

[Pause.]

Chairman MCNULTY. We thank all of the panel members for being here. Let me just begin by introducing the panel members.

Tyler Moran, Employment Policy Director of the National Immigration Law Center.

Angelo Amador, Director of Immigration Policy, U.S. Chamber of Commerce.

Sue Meisinger, President and CEO, Society for Human Resource Management, on behalf of the Human Resource Initiative for Illegal Workforce.

Peter Neumann, Principal Scientist, SRI International, on behalf of U.S. Public Policy Committee of the Association for Computing Machinery.

Marc Rotenberg, Executive Director, Electronic Privacy Information Center.

So, we thank all of you for being here. Your entire testimony will be included in the official record. We ask that you summarize your comments to stay within 5 minutes. You see the little prompter in front of you; when the amber light comes on, we ask you to try to wrap up and conclude when the red light appears.

Again, we thank you for taking time out of your busy schedules to help us address this issue. We will start with Ms. Moran.

STATEMENT OF TYLER MORAN, EMPLOYMENT POLICY DIRECTOR, NATIONAL IMMIGRATION LAW CENTER, BOISE, IDAHO

Ms. MORAN. Good morning, Chairman and Mr. Johnson, Members of the Committee. Thank you for the opportunity to allow me to address the critical issue of EEVS, or EEVS. This issue has not received the attention it deserves, and so it is critical that this Committee is holding a hearing today.

My name is Tyler Moran. I am the Employment Policy Director for the National Immigration Law Center. NILC is a nonpartisan national legal advocacy organization that works to promote and advance the rights of low-income immigrants and their families.

NILC has tracked the Basic Pilot Program since it was implemented in 1997, and we have extensive experience assisting immigrant advocates in responding to problems with the program, including the way in which it has been used to adversely affect workers.

Because of this experience, we do not support a mandatory EEVS. However, because it enjoys almost universal support in Congress, we want to work with you all to ensure that a system is implemented that is accurate and that avoids negative consequences for workers, both U.S.-born and immigrant.

While the focus of the Basic Pilot and the immigration reform debate has largely focused on DHS, as you heard this morning, SSA plays an integral role in its functionality. If it were to become mandatory, SSA would have to process 60 million queries per year versus the 1.8 it currently does.

So, a number of studies have found that the Basic Pilot Program has significant weaknesses, including its reliance on government databases that have unacceptably high error rates, and employer misuse of the program to take adverse action against workers. The significant weaknesses that exist in the current program, which serves approximately 17,000 employers, would be greatly exacerbated if the program were to surge to over six million.

Improvements to the Basic Pilot have been made in the past 10 years, but they are not sufficient enough for a mandatory program that, because of database errors, could take away people's livelihood. Additionally, if the current flaws are not addressed before it is made mandatory, it could lead to noncompliance, which would result in certain businesses and workers moving into the underground, unregulated cash economy, which could result in billion-dollar losses in Federal, state, and local tax revenues. A similar situation would occur if an EEVS were to be implemented outside the context of comprehensive immigration reform.

So, the database errors: As you heard this morning, we have got a 4.1 percent error rate. The error rate affects all workers, but it disproportionately affects immigrants. The impact is the most on foreign-born naturalized citizens.

Most people don't know when you naturalize to tell SSA that they changed their status. So, there are over three million records that have incorrect information on those folks. So they are going to have to go into SSA field offices to correct the information. So, the burden on your constituents could be enormous.

When workers receive a tentative nonconfirmation, they can't call the SSA field office. They actually have to physically go into the SSA field office. Right now, one-third of people simply applying for an SSN have to go back to the office with additional documentation. They have to make two trips.

From testimony from the National Council of Social Security Management Associations, wait times in field offices are running 2 to 3 hours, with some over 4 hours. So, if you think you are getting calls on disability right now, just wait until this is implemented.

So, the independent evaluation also found that employers misuse the Basic Pilot. For example, the law requires that you first extend a job offer and then you put the person's information through the system. In violation of this requirement, 42 percent of employers put workers through Basic Pilot before extending a job offer.

Why is this a problem? It is a problem because, because of these high error rates, most people who get tentative nonconfirmations are actually authorized to work. So, if they are not hired because of a tentative nonconfirmation, they never know that there is a problem, they are never hired, and then they can't go and fix the database errors. It might happen again at their next job.

Employers also penalize workers who receive tentative nonconfirmations, and 45 percent of employers subject people to pay cuts, delays in job training, and other restrictions on working.

So, what do we need to do to have a workable system? First, I want to start out and say the STRIVE Act in the House is what we consider the best effort at addressing an EEVS in a meaningful and thoughtful way. I do want to mention, too, that there is an independent evaluation commissioned by USCIS that has not been

released to the public, and I would urge you all to get a copy of that report before you move forward. It is by the Westat Corporation.

So, one, we need to phase in the system at a reasonable rate, and we need to have objective benchmarks. So, SSA and DHS have to prove to us they can meet certain levels of database accuracy, privacy, employer compliance with the system, and low error rates before the system is implemented. It is simple: Prove the system works before you implement it.

Two, include meaningful due process protections because for the first time in the history of this country, your constituents are going to have to ask the Federal Government for permission to work. If they are wrongly denied, they are going to be mad, and there should be a way for them to correct those errors.

Last, include workable documentation requirements that do not require a real ID license or a hardened SSN card, neither of which exist. Fifteen states thus far have said they will not implement the REAL ID Act.

Last, I forgot, strong anti-discrimination protections that prohibit employers from misusing the EEVS to penalize workers.

So, I just want to conclude by saying the House of Representatives is going to move forward on an immigration bill after the Senate finishes up this week. It is critical that it be guided by the lessons learned of the last 10 years of Basic Pilot. Since so much of the focus is on DHS, it will be critical for this Committee to work with the Judiciary Committee to help inform them about the impact of the system on SSA, and what resources will be needed to fix those database errors, and also how the agency can work with DHS to make sure that employers are following the rules and not taking adverse action against workers.

So, I would be happy to answer any questions, particularly about any of the proposals before Congress right now.

[The prepared statement of Ms. Moran follows:]

Prepared Statement of Tyler Moran, Employment Policy Director, National Immigration Law Center, Boise, Idaho

Members of the Committee, thank you for the opportunity to address the critical issue of current and proposed electronic employment verification systems (EEVS). My name is Tyler Moran, and I am the Employment Policy Director at the National Immigration Law Center (NILC). NILC is a **nonpartisan national legal advocacy organization that works to advance and promote the rights of low-income immigrants and their family members**. Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and the employment rights of low-income immigrants. NILC's extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. employment laws is an important resource for immigrant rights coalitions and community groups, as well as national advocacy groups, policymakers, attorneys and legal aid groups, workers' rights advocates, labor unions, government agencies, and the media.

Overview

My testimony today will focus on (1) the limitations of the current electronic employment verification system—the Basic Pilot program—upon which most proposed EEVS are based; (2) a summary of the impact of a flawed EEVS on the Social Security Administration (SSA) and on foreign-born workers; (3) an explanation of what provisions must be included in any mandatory EEVS; and (4) an analysis of the EEVS proposed in the 2007 House and Senate comprehensive immigration reform bills.

NILC has tracked the Basic Pilot program since it was implemented in 1997 and has extensive experience assisting immigrant advocates, attorneys, unions and other worker advocates in responding to problems with the program, including the way in which it has adversely affected workers. Because of this experience, we do not support expansion of a mandatory EEVS. However, because the concept enjoys almost universal support in Congress, and therefore will almost certainly be incorporated into any comprehensive immigration reform bill, we want to ensure that any proposed system be designed so as to avoid negative consequences for workers—both immigrant and U.S.-born.

While the focus of Basic Pilot has largely been on the Department of Homeland Security (DHS) and its agency that administers the program—the U.S. Citizenship and Immigration Services (USCIS)—the SSA also plays an integral role in ensuring its functionality. In fact, SSA must verify the name, Social Security number (SSN), and date of birth (and citizenship status of U.S. citizens) of every worker in the country whose employer participates in the Basic Pilot. If Basic Pilot were to become mandatory (and apply only to new hires), this would mean that SSA would need to process 50–60 million queries per year, versus the 1.8 million queries that the agency processed in 2006.¹

It is therefore essential that this Committee understand what it will take to create a system that functions with a high level of data accuracy, is properly monitored, and does not unintentionally promote employment discrimination. If implemented using the existing technology, procedures, and databases, the financial costs would be high and the inaccurate results would have a human cost borne by U.S.-born and immigrant workers. In addition, an expanded system would result in dangerous privacy breaches and increased discrimination against individuals who look or sound foreign.

The Social Security Administration's Role in the Basic Pilot Program

The Basic Pilot Program is an Internet-based program that allows employers to electronically verify new workers' employment eligibility by directly checking the records maintained by SSA and DHS. The program is one of the three pilots created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which began operating in six states in 1997. The other two pilot programs were discontinued. However, in December 2004 Congress extended the Basic Pilot to all 50 states, and it is now available to employers who voluntarily choose to participate in the program, although certain employers who have been found to unlawfully hire unauthorized workers or who have discriminated against workers on the basis of national origin or citizenship status may be required to participate. According to DHS, 16,000 employers are currently enrolled in the program.²

How the Verification Process Works at SSA³

Before employers can use the Basic Pilot program, they must first sign a memorandum of understanding (MOU), which sets forth the points of agreement between SSA, DHS, and the employer regarding the employer's participation in the program. Employers must also complete an online training and display a notice at the workplace from DHS indicating the employer's participation in the program, and an anti-discrimination notice from the Office of Special Council for Immigration-Related Unfair Employment Practices, Department of Justice.

1. Step 1: Employer completes I-9 form.

Employers participating in the Basic Pilot must still complete an I-9 employment eligibility verification form for each new employee hired as is required of all employers, but with one change to those procedures: Basic Pilot employers can accept a document as proof of a worker's identity only if the document includes a photograph. It is still the employee's choice, however, which documents to present to establish identity and employment eligibility.

¹According to former Commissioner Barnhart, SSA averaged 150,000 queries per month in 2006. See Jo Anne B. Barnhart, Testimony before the House Committee on Ways and Means (Social Security Administration, July 26, 2006), <http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=5172>.

²Jock Scharfen, Testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, U.S. House of Representatives: Problems in The Current Employment Verification and Worksite Enforcement System (USCIS, U.S. Dept. of Homeland Security, April 24, 2007), <http://judiciary.house.gov/media/pdfs/Scharfen070424.pdf>.

³For more information on the entire Basic Pilot process, see Basic Information Brief: DHS Basic Pilot Program (National Immigration Law Center, March 2007), www.nilc.org/immsemplymnt/ircaempverif/basicpilot_infobrief_brief_2007-03-21.pdf.

2. Step 2: Employer verifies identity and employment eligibility using the Basic Pilot.

For each newly hired worker, the employer must enter the worker's information provided on the I-9 form—such as name, SSN, and citizenship status or alien number—into a form on the Basic Pilot website within three days of the worker's hire date. If a worker has not yet been assigned an SSN (as can be the case with newly-arrived immigrants), however, the employer has to wait to enter that person's information into the Basic Pilot form *after* the SSN is obtained. This procedure is in conflict with the requirements outlined in the MOU stating that the employer will put the worker's information into the Basic Pilot within three days of hire. There continue to be delays in issuing SSNs at field offices—delays that can last for months. According to the American Immigration Lawyers Association, some of the delays arise from “front desk” errors, where an application is rejected for lack of a document that is not required.⁴

The information that is entered on the Basic Pilot website is first checked against information contained in SSA's database, the Numerical Identification File (“Numident”). SSA verifies that the name, SSN, and date of birth are correct, regardless of the worker's immigration status. SSA also confirms whether, if the employee has stated that he or she is a U.S. citizen, this is in fact the case; if it is, this establishes that the employee is employment-eligible. In the cases of naturalized citizens, however, SSA is sometimes unable to confirm their U.S. citizenship and must forward the inquiry to USCIS.

For any non-U.S. citizen employee, USCIS verifies that the worker currently has employment-authorization. If the information provided by the worker matches the information in the SSA and USCIS records, the employer will receive a “confirmation” and no further action will generally be required, and the worker may continue employment.

If SSA is unable to verify information presented by the worker, the employer will receive an “SSA tentative nonconfirmation” notice. Employers can receive an SSA tentative nonconfirmation notice for a variety of reasons, including lags in data entry in SSA's database, inaccurate entry of information into the form on the Basic Pilot website, or name changes or changes in immigration status that are not reflected in SSA's database. An SSA tentative nonconfirmation is also issued when the person attests to being a U.S. citizen but SSA records indicate that the person is a noncitizen with unknown work-authorization status. For example, a foreign-born U.S. citizen may have naturalized, but if the person does not inform SSA of this fact, SSA records will reflect his or her former immigration status.

3. Step 3: Employee can challenge a “tentative nonconfirmation.”

If the individual's information initially does not match SSA's records, the employer must first double-check that the information was entered correctly into the system. If the employer did not make an error, the employer must give the employee written notice of that fact, called a “Notice to Employee of Tentative Nonconfirmation.” The worker must then check a box on the notice stating that he/she contests or does not contest the tentative nonconfirmation notice, and both the worker and employer must sign the notice. If the worker chooses to contest the tentative nonconfirmation notice, the employer must print a second notice, called a “Referral Letter,” which contains information about resolving the tentative nonconfirmation notice, as well as the contact information for SSA. The worker then has eight Federal Government work days to visit an SSA office to try to resolve the discrepancy. SSA then has 10 Federal Government work days after the worker receives the referral notice to resolve the case.

Under the MOU, if the worker contacts SSA (or USCIS) to resolve the tentative nonconfirmation, the employer is prohibited from terminating or otherwise taking adverse action against the worker while he/she awaits a final resolution from the Government agency—even if it takes more than 10 Federal Government work days for SSA to resolve the matter. In the case of an SSA tentative nonconfirmation notice, the employer must wait 24 hours after the worker visits SSA to resubmit the inquiry to the Basic Pilot program, and no later than 10 Federal Government work days after the date that the worker was referred to SSA. If the worker does *not* contest the tentative nonconfirmation notice, it automatically becomes a “final nonconfirmation” and the employer is required to fire the worker.

⁴Minutes of the Social Security Administration and CIS AILA Liaison Meeting on SSA Related Issues (American Immigration Lawyers Association, May 8, 2006).

Concerns about Expanding the Basic Pilot Program

Numerous entities, including those that researched and wrote an independent report commissioned by the former Immigration and Naturalization Service, the Government Accountability Office, and the Social Security Administration's Office of the Inspector General (SSA-OIG), have found that the Basic Pilot program has significant weaknesses, including (1) its reliance on government databases that have unacceptably high error rates and (2) employer misuse of the program to take adverse action against workers.⁵ It is our understanding that the research corporation, Westat, has recently concluded another evaluation of the Basic Pilot for USCIS, though the results of that study have yet to be released to the public. It is critical that Congress review this evaluation before proceeding with any proposal to create a mandatory EEVS.

The significant weaknesses that exist in the current program, which serves approximately 16,000 employers, would be greatly exacerbated if the program were to surge to over 7 million. In Fiscal Year 2005, when the latest evaluation took place, only half as many employers used the program as use it now. While improvements to the Basic Pilot have been made since its inception, they are not sufficient for a mandatory program that, because of inaccurate nonconfirmations, could cause workers and businesses irreparable harm. Additionally, if the current flaws in the Basic Pilot are not addressed before it is made mandatory, it will lead to flawed implementation, frustration, and even noncompliance, which will result in certain businesses and industries moving into the unregulated underground cash economy.

When employers and workers move into the underground economy, the societal and economic costs are enormous. If enough of them abandon the "above-ground" economy, it could result in billion-dollar losses in federal, state, and local tax revenues, unfair competition, and further exploitation and abuse of all workers by unscrupulous employers. The similar situation would result if a mandatory EEVS were to be implemented outside the context of comprehensive immigration reform. In that case, the new system would start out with the insurmountable handicap of 8 million unauthorized workers and their employers seeking to uncover and exploit the weaknesses inherent in any system.

Database inaccuracies

One of the most significant problems identified in independent evaluations of the Basic Pilot program is that it is seriously hindered by inaccuracies and outdated information in SSA and DHS databases. For example, a sizeable number of workers who are identified as not having work authorization are in fact authorized, but for a variety of reasons the databases do not have up-to-date information on them. The SSA database used for the Basic Pilot program is the Numident file, which contains information on 435 million SSN holders, including name, date of birth, and place of birth, parents' names, citizenship status, date of death (if applicable), and the office where the SSN application was processed and approved.⁶ As referenced earlier in this testimony, the Numident file is the first point of verification in the Basic Pilot process.

According to a December 2006 report by SSA-OIG, 17.8 million (or 4.1 percent) of SSA's records in the Numident file contain discrepancies related to name, date of birth, or citizenship status that could result in tentative nonconfirmation notices from Basic Pilot.⁷ Any time that SSA's database conflicts with information presented by a worker, that worker must follow up with one of SSA's field offices. According to the Bureau of Labor Statistics, there are 4.9 million new hires per month

⁵ See Findings of the Basic Pilot Program Evaluation (Temple University Institute for Survey Research and Westat, June, 2002), www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=9cc5d0676988d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=2c039c7755cb9010VgnVCM10000045f3d6a1RCRD; Immigration Enforcement: Weaknesses Hinder Employer Verification and Worksite Enforcement Efforts (Government Accountability Office, Aug. 2005) (hereafter "GAO"), www.gao.gov/new.items/d05813.pdf; and Congressional Response Report: Accuracy of the Social Security Administration's Numident File (Office of the Inspector General, Social Security Administration, Dec. 2006), (hereafter "SSA"), www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm; Congressional Response Report: Employer Feedback on the Social Security Administration's Verification Programs (Office of the Inspector General, Social Security Administration, Dec. 2006), www.ssa.gov/oig/ADOBEPDF/A-03-06-26106.pdf; and Congressional Response Report: Monitoring the Use of Employee Verification Programs (Office of the Inspector General, Social Security Administration, Sept. 2006), www.ssa.gov/oig/ADOBEPDF/A-03-06-36122.pdf.

⁶ SSA, Accuracy of the Social Security Administration's Numident File, *supra* note 5.

⁷ *Id.*

in the U.S.⁸ If 4.1 percent of these new hires received a tentative nonconfirmation notice from SSA, field offices could potentially see 100,900 additional citizens and lawful immigrants per month seeking assistance with these alleged discrepancies.

In 2006 testimony before the Senate Finance Committee, the Inspector General of Social Security expressed concerns about an “increased workload in the field offices and teleservice centers” that would result from workers challenging erroneous database findings.⁹ At a recent Senate Finance hearing, the President of the National Council of Social Security Management Associations, Inc., testified that if a mandatory EEVS and hardened SSN card are instituted as part of an immigration reform bill without necessary funding, “it could cripple SSA’s service capabilities.”¹⁰ This problem is compounded by the fact that the agency is at its lowest staffing level since the early 1970s, and SSA field offices have lost 2,400 positions in the past 19 months.¹¹ As noted in the December 2006 OIG report, “[I]f use of an employment verification service such as the Basic Pilot becomes mandatory, the workload of SSA and DHS may significantly increase—even if only a portion of these 17.8 million numberholders need to correct their records with one of these agencies.”¹² Already, SSA field offices serve 42 million visitors per year.¹³

The cost and burden of SSA tentative nonconfirmation notices not only affects local SSA offices, but also workers. Although U.S. citizens’ records do have discrepancies, a disproportionate number of the database errors affect foreign-born U.S. citizens and work-authorized noncitizens. According to the December 2006 OIG report, approximately 4.8 million noncitizen records and 8 million foreign-born U.S. citizen records contain discrepancies that may result in a tentative nonconfirmation notice from the Basic Pilot.¹⁴ And, 3.3 million of foreign-born U.S. citizen records do not contain updated information on their citizenship status, so when they claim U.S. citizenship on their I-9 employment eligibility verification form, these workers receive a tentative nonconfirmation notice because their information does not match that in the SSA database.

When workers receive a tentative nonconfirmation notice, they often have to take unpaid time off from work to follow up with SSA, which may take more than one trip. Waiting time at field offices are running two to three hours, with some visits lasting over four hours.¹⁵ According to the National Council of Social Security Management Associations, Inc., nearly one-third of the people currently coming into SSA Field Offices to apply for an original or duplicate SSN have to return with additional documentation.¹⁶ Additionally, an unknown number of work-authorized job applicants are not notified of tentative nonconfirmations by their employer or are wrongfully terminated by their employer before they even have the opportunity to prove that they are indeed authorized to work in the U.S. (For more information on this problem, see the section below regarding employer misuse of the program).

Equally concerning is the fact that when workers do go to an SSA field office to correct their records, their information is sometimes not updated in a timely manner. Additionally, Basic Pilot rules instruct employers to wait 24 hours after a worker has updated his or her records to re-query the system; however, many times the employer will re-query the system before the 24-hour period has passed, or check before the employee visits SSA. In these instances, the employer will receive a default *final* nonconfirmation. According to Basic Pilot rules, the employer is then required to fire the worker.

⁸ Job Openings and Labor Turnover: February 2007 (U.S. Dept. of Labor, Bureau of Labor Statistics, February 2007), www.bls.gov/news.release/pdf/jolts.pdf.

⁹ Patrick P. O’Carroll Jr., Testimony before the U.S. Senate Committee on Finance: Administrative Challenges Facing the Social Security Administration (Office of the Inspector General, Social Security Administration, March 14, 2006), <http://finance.senate.gov/hearings/31699.pdf>.

¹⁰ Richard Warsinskey, Testimony before the U.S. Senate Committee on Finance: Funding Social Security’s Administrative Costs: Will the Budget Meet the Mission? (National Council of Social Security Management Associations, Inc., May 23, 2007), <http://finance.senate.gov/hearings/testimony/2007test/052307testrv.pdf>.

¹¹ *Id.*

¹² SSA, Accuracy of the Social Security Administration’s Numident File, *supra* note 5.

¹³ Barnhart, *supra* note 1.

¹⁴ SSA, Accuracy of the Social Security Administration’s Numident File, *supra* note 5.

¹⁵ Warsinskey *supra* note 10.

¹⁶ Richard Warsinskey, Testimony before the U.S. Senate Committee on Finance: Administrative Challenges Facing the Social Security Administration (National Council of Social Security Management Associations, Inc., March 14, 2006), <http://finance.senate.gov/hearings/31699.pdf>.

Employer misuse of the program

The independent evaluations of Basic Pilot have also revealed that employers use the Basic Pilot program to engage in prohibited employment practices.¹⁷ According to the SSA–OIG, “We learned that a significant number of the Basic Pilot employers in our sample verified individuals outside the scope of the signed agreement between the employer, SSA and DHS.”¹⁸ For example, the law requires that employers first extend a job offer to a worker and then complete the employment eligibility verification process, including the Basic Pilot procedure. In violation of this requirement, many employers put workers through Basic Pilot *before* extending the job offer, to avoid the potential costs of hiring and training employees who are not eligible to work (a practice known as “pre-screening”). This practice is a problem because most workers who receive a tentative nonconfirmation are, in fact, authorized to work. If workers are not hired because of a tentative nonconfirmation and are never informed that there is a problem with their records, they not only are denied a job but also the opportunity to contest database inaccuracies. Moreover, pre-screening increases the likelihood that an employer may be discriminatorily selecting foreign-looking or foreign-sounding individuals for such screening, resulting in increased discrimination without the person even knowing he or she has been subjected to this unlawful practice.

- In 2002, among employees who received a tentative nonconfirmation from the Basic Pilot, 23 percent said that they were *not* offered a job.¹⁹
- Four years later, in 2006, 42 percent of employees surveyed reported that employers used the Basic Pilot to verify their employment authorization *before* hire.²⁰
- The 2002 evaluation found that 73 percent of employees who should have been informed of work authorization problems were not notified.²¹

Employers also illegally use the Basic Pilot to verify the employment eligibility of their existing workforce. The immigration regulations require employers to reverify workers’ employment authorization in very limited circumstances (including when their work authorization expires). This has helped minimize the potential discrimination that may ensue from employers constantly reverifying only noncitizens or from using the reverification system in a retaliatory manner. According to the September 2006 SSA–OIG report, 30 percent of Basic Pilot users admitted they had verified the employment authorization of existing employees.²²

Employers also take adverse employment action based on tentative nonconfirmation notices, which penalizes workers while they and the appropriate agency (SSA or DHS) work to resolve database errors. For example, the 2002 independent evaluation found that 45 percent of employees surveyed who contested a tentative nonconfirmation were subject to pay cuts, delayed job training, and other restrictions on working.²³ Some employers also compromised the privacy of workers in various ways, such as by failing to safeguard access to the computer used to maintain the pilot system, e.g., leaving passwords and instructions in plain view for other personnel to potentially access the system and employees’ private information.

Although employers are prohibited from engaging in these practices under the MOU they sign, USCIS officials have told the GAO that their efforts to review and oversee employers’ use of the Basic Pilot program have been limited by lack of staff.²⁴

Provisions That Must Accompany Any Nationwide, Mandatory Employment Eligibility Verification System

After nearly a decade of experience with the Basic Pilot Program, it is clear that the existing program has significant flaws that must be addressed if Congress is to pursue the creation of a new EEVS. The creation of such a system without addressing the fundamental flaws in the current program is inadvisable and will result in

¹⁷ GAO, SSA, and Temple University Institute for Survey Research and Westat, *supra* note 5.

¹⁸ SSA, Employer Feedback on the Social Security Administration’s Verification Programs, *supra* note 5.

¹⁹ Temple University Institute for Survey Research and Westat, *supra* note 5.

²⁰ SSA, Employer Feedback on the Social Security Administration’s Verification Programs, *supra* note 5.

²¹ Temple University Institute for Survey Research and Westat, *supra* note 5.

²² SSA, Monitoring the Use of Employee Verification Programs, *supra* note 5.

²³ Temple University Institute for Survey Research and Westat, *supra* note 5.

²⁴ Richard M. Stana, Testimony before the Subcommittee on Immigration, Border Security, and Citizenship, Committee on the Judiciary, U.S. Senate, Immigration Enforcement: Weaknesses Hinder Worksite Enforcement Efforts (Government Accountability Office, June 2006), www.gao.gov/new.items/d06895t.pdf.

severe negative consequences for immigrants and U.S. workers on a much larger scale than they currently experience.

The following features would address the flaws in the existing Basic Pilot program.

- **Phase-in with objective benchmarks.**

The best way to ensure implementation of an EEVS that is accurate and implemented in a nondiscriminatory manner is to set standards and expectations for system performance up front and to hold DHS and SSA accountable for meeting those standards. Experience confirms that federal agencies do not meet expectations if the standards they are given are vague and optional. Therefore, the EEVS should be phased in at a reasonable rate, by size of employer, and provide for certification by the Comptroller General that it meets benchmarks regarding database accuracy, low error rates, privacy, and measurable employer compliance with system requirements before implementation and each phase of expansion.

The EEVS program is particularly vulnerable to poor planning because of its unprecedented scope and the disconnect between the agency mandate to get something up and running quickly and the requirements that would ultimately determine whether it is successful, such as the need for speed, efficiency, reliability, and information security. It is much easier to make design changes in a system before it goes fully online than afterwards. That is why software manufacturers produce “beta” versions of their programs to be tested in the real world before mass public marketing distribution. Once a system is designed and put in place for all employers and workers in our economy, it will be costly and difficult to implement needed changes.

- **Antidiscrimination protections.**

Experience has taught us that unscrupulous employers will use the system to unlawfully pre-screen potential employees, reverify work authorization, and engage in other unlawful activities when an employee lodges a complaint or engages in collective organizing. It has also demonstrated that DHS has not prioritized monitoring of employer misuse of the system, since 10 years after it was first implemented there is still no system in place for monitoring it. Thus, stronger enforcement and monitoring efforts and higher penalties for noncompliance are necessary to compel reluctant employers to comply with the law.

Employers also must be explicitly prohibited from (1) conducting employment eligibility verification before offering employment; (2) unlawfully reverifying workers' employment eligibility; (3) using the system to deny workers' employment benefits or otherwise interfere with their labor rights, or to engage in any other unlawful employment practice; (4) taking adverse action against workers whose status cannot initially be confirmed by the EEVS; or (5) selectively excluding certain people from consideration for employment due to the perceived likelihood that additional employment eligibility verification might be required, beyond what is required for other job applicants.

- **Due process protections against erroneous determinations.**

For the first time in the history of this country, workers will need to seek approval from the federal government to secure their livelihood. If the database errors are not improved before the EEVS is implemented, it is likely that millions of workers could be wrongly identified as not authorized for employment. It is therefore critical that workers have access to a *meaningful* administrative and judicial review process that provides for remedies such as back pay and attorney's fees if it is determined that a worker was terminated due to SSA or DHS error. Additionally, the EEVS must allow individuals to view their own records and correct any errors through an expedited process established by SSA and DHS.

- **Privacy and identity theft protections.**

The EEVS must protect information in the database from unauthorized use or disclosure. It is critical that privacy protections be included so that the information contained in the databases is not used for nonemployment eligibility verification purposes. The 2002 evaluation found several instances where employers or other unauthorized individuals gained access to the Basic Pilot program for uses other than the designated purpose. Civil and criminal penalties for unlawful use of information in the EEVS should also be included.

- **Studies of and reports on EEVS performance.**

Any EEVS should be independently evaluated to ensure that the program is meeting the needs of both employers and employees. Reports should specifically evaluate

the accuracy of DHS and SSA databases, the privacy and confidentiality of information in the databases, EEVS's impact on workers, and whether the program has been implemented in a nondiscriminatory manner.

- **Workable documentation requirements.**

Proposals to further limit which documents are acceptable to establish employees' identity must be flexible enough to recognize the fact that not all work-authorized individuals have the same documents. Under no circumstances should a REAL ID-compliant driver's license or ID card be required. No state is currently in compliance with REAL ID, and indeed 11 states thus far have decided not to implement the law or have placed significant conditions on their participation.²⁵ In eleven additional states, legislation opposing REAL ID has passed one or more chambers of the state's legislature.

Employment Eligibility Verification Systems in the Context of Comprehensive Immigration Reform

The two most significant immigration reform bills introduced in the House and Senate in 2007 include the "Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007" (H.R. 1645), introduced by Representatives Gutierrez and Flake, and the "Secure Borders, Economic Opportunity and Immigration Reform Act of 2007" (S. 1348) currently being negotiated in the Senate. Both bills include a mandatory EEVS, but there are *significant* differences between these two proposals. Most notably, the STRIVE Act makes a real attempt to address the shortcomings of the Basic Pilot program by including benchmarks, as well as privacy, antidiscrimination, and due process protections. Although it is unlikely that the STRIVE Act will be the immigration bill taken up by the House Judiciary Committee, it is helpful to analyze its EEVS provisions through the lens of accuracy, workability, and minimizing the harm to *all* workers.

The "Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007"

The STRIVE Act represents the best legislative effort to date to address the shortcomings of the Basic Pilot program.²⁶ Unfortunately, the bill contains a couple of provisions that would limit its workability. First, the STRIVE Act significantly limits the documents that individuals can present to prove their identity when seeking employment. Most concerning is the requirement that workers present documents that do not exist, such as a REAL ID-compliant driver's license and a biometric, machine-readable, tamper-resistant Social Security card. Former Commissioner Barnhart testified in July 2006 that the cost of issuing new cards with enhanced security features could cost approximately \$9.5 billion and require 67,000 work years.²⁷ This means that if U.S. citizens, including foreign-born U.S. citizens, do not have a REAL ID license or hardened SSN, they will have to present either a passport (passports are held by only approximately 20 percent of the U.S. population²⁸) or a passport card, which is not yet available. The Brennan Center for Justice estimates that as many as 13 million U.S. citizens do not have ready access to citizenship documents, such as U.S. passports, naturalization papers, or birth certificates.²⁹

Second, the STRIVE Act requires SSA to disclose private taxpayer identity information of employers and employees to DHS when DHS requests this information. Use of confidential tax information to enforce immigration law can have a negative effect on tax compliance and has the potential to increase discrimination against foreign-looking or -sounding workers.

Provisions in the STRIVE Act that should be included in any EEVS proposal:

- **Benchmarks for system performance.** Before the EEVS is implemented (and before any subsequent phase-in), the Comptroller General must study and certify that certain standards have been met, including database accuracy, measurable employer compliance with the EEVS requirements, protection of workers' privacy,

²⁵ States include Arkansas, Colorado, Georgia, Hawaii, Idaho, Maine, Missouri, Montana, Nevada, North Dakota, and Washington.

²⁶ For a summary of the EEVS provisions in the STRIVE Act, see Employment Eligibility Verification System in the STRIVE Act of 2007 (National Immigration Law Center, April 2007), www.nilc.org/immseplymnt/cir/strive_eevs_2007-04-02.pdf.

²⁷ Barnhart, *supra* note 1.

²⁸ Phil Gyford, "How Many Americans Own Passports?," www.gyford.com/phil/writing/2003/01/31/how_many_america.php.

²⁹ Citizens Without Proof: A Survey of Americans' Possession Of Documentary Proof of Citizenship and Photo Identification (Brennan Center for Justice at NYU School of Law, November 2006), www.brennancenter.org/dynamic/subpages/download_file_39242.pdf.

and adequate agency staffing and funding. In conducting the studies, the Comptroller General must consult with representatives from immigrant communities, among others. The Comptroller General is also required to submit reports to DHS and Congress on the impact of the EEVS on employers and employees.

- **Protections against discrimination.** The STRIVE Act amends section 274B of the Immigration and Nationality Act (INA), relating to unfair immigration-related employment practices, to explicitly apply to employment decisions related to the new EEVS. Additionally, it prohibits employers from misusing the EEVS, increases fines for violations, brings the INA into line with other civil rights laws, such as Title VII of the Civil Rights Act, and provides funding to educate employers and employees about antidiscrimination policies.

- **Privacy protections.** The STRIVE Act requires that information in the EEVS be safeguarded and that only minimum data elements be stored. It creates penalties for unlawfully accessing the EEVS and for using information in the EEVS to commit identity theft for financial gain.

- **Due process provisions.** The STRIVE Act requires that workers can view their own records and correct or update information in the EEVS. DHS also must establish a 24-hour hotline to receive inquiries from workers and employers concerning determinations made by the EEVS. The STRIVE Act also creates an administrative and judicial review process to challenge a finding that a worker is not authorized for employment (a “final nonconfirmation”). If, after the process, the worker is found to be authorized for employment and the error was DHS’s, the worker is entitled to back wages (although not during any period that the worker was not authorized for employment). However, attorney’s fees and costs are not included—even though employers can recover up to \$50,000 in attorney’s fees when they challenge a finding that they violated immigrant law. Low-income workers are far less equipped than better-off workers to represent themselves or hire counsel, and the availability of fees is critical to their ability to pursue their rights. STRIVE also prohibits a private right of action, which also would drastically limit workers’ ability to correct abuses and errors of the system.

- **Annual study and report.** The STRIVE Act requires the Comptroller General to conduct annual studies to be submitted to Congress that determine whether the EEVS meets the following requirements: demonstrated accuracy of the databases; low error rates and incidences of delays in verification; measurable employer compliance with EEVS requirements; protection of workers’ private information; adequate agency staffing and funding for SSA and DHS.

The “Secure Borders, Economic Opportunity and Immigration Reform Act of 2007” (S. 1348)³⁰

S. 1348 falls well short of creating a workable system. Its most troubling provision is the requirement that the guest worker and legalization programs for which it provides may not be implemented until the EEVS (including the use of “secure” documentation and digitized photographs that do not currently exist) is implemented. Because of this pressure, the focus will be on getting the EEVS up and running as quickly as possible, rather than on implementing an accurate system that actually works without adversely impacting authorized workers.

It is expected that an amendment will be introduced this week (to amendment 1150; see footnote 30) that will improve the EEVS provisions in S. 1348. Although the amendment will significantly improve the underlying bill, it will not address the database inaccuracies and will fall short on due process protections. Concerns with S. 1348 as introduced include the following:

- **The implementation timeline is unreasonable and unworkable.** All employers must participate in the EEVS within 18 months of enactment, with respect to new hires and those with expiring work authorization documents or immigration status; and within 3 years, all employers must use the EEVS for all new and continuing employees, including those in “Z” status who have not previously presented secure documentation. DHS is also given the sole discretion to require employers to participate at an earlier date than outlined. This rigid timetable must be met regardless of whether the EEVS actually works and whether the technology exists to implement it; nor is the timetable subject to performance benchmarks.

- **The antidiscrimination protections are weaker than current law.** Current law regarding “impermissible” uses of the EEVS would be weakened under the

³⁰ Amendment 1150 to S. 1348 is the actual text of the bill being debated; however, there has not yet been a vote on the amendment, so S. 1348 still stands. This analysis refers to amendment 1150.

Senate bill (existing requirements are outlined in the MOU that employers sign under the Basic Pilot) because the bill specifically prohibits these “impermissible” practices from being covered under the antidiscrimination protections in the INA by giving DHS exclusive enforcement authority and funding. Section 274B of the INA prohibits discrimination based on national origin and citizenship status, and provides a process for complaints, investigations, administrative and judicial review, and remedies. It is unlikely that DHS’s policy will include such procedures, since DHS has no expertise in this area.

- **The due process protections are insufficient.** Under the administrative review provisions, a final nonconfirmation is stayed pending the administrative review decision unless SSA or DHS decides that the “petition for review is frivolous, unlikely to succeed on the merits, or filed for purposes of delay.” This means that the agency whose administrative decision is being appealed has sole authority to issue or deny a stay of a nonconfirmation notice while an appeal is pending. The employee appealing the decision faces irreparable harm through loss of employment if a stay is denied, and the legislation does not provide a method for recovery of back pay, costs or attorney’s fees for those who are wrongfully terminated due to SSA or DHS database errors, including where the agency fails to issue a stay during the appeal process.

Workers have 30 days from the completion of the administrative appeal to file for judicial review in the U.S. Court of Appeals. However, the court can decide the petition based only on the administrative record, which may be limited. The burden is on the worker to demonstrate that the agency decision was “arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with law.” Moreover, “findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” That deferential review standard for factual findings is unwarranted. As with the administrative review process, the court must stay the final nonconfirmation notice, unless it determines that the “petition for review is frivolous, unlikely to succeed on the merits, or filed for purposes of delay.”

- **The documentation requirements are unattainable.** Like the STRIVE Act, the documentation requirements are heavily focused on state compliance with the REAL ID Act and a biometrically-enhanced Social Security card.

- **Employers, state and federal government agencies, and SSA are required to turn over to DHS confidential information about workers.** The bill permits data mining of SSA files, tax records, and other federal, state, and territorial databases covering everyone in the U.S. Multiple provisions requiring information-sharing give DHS expansive access to (a) personal employee information held by employers; (b) birth and death records maintained by states, passport and visa records, and state driver’s license or identity card information; and (c) as an exception to tax code confidentiality provisions, SSA records of taxpayers when the taxpayer’s SSN or name or address (for whatever reason) does not match SSA records, or when just two taxpayers have the same SSN. It also allows DHS to access “information” from SSA that DHS “may require.” The provisions do not require independent review, monitoring of disclosure, privacy protections, notice to workers that their private information or records have been disclosed, or recourse if overbroad information is sought or misused.

Conclusion

As stated in the first part of this testimony, based on our experience, NILC does not support the creation of a mandatory EEVS. However, when the House of Representatives moves forward with its immigration reform bill, which will inevitably include a mandatory EEVS, it is critical that it be guided by the lessons learned from ten years of experience with the Basic Pilot program. Put simply, if the shortcomings of the Basic Pilot are not addressed before it is expanded into a mandatory program, it will be a disaster for workers and employers, and will put an enormous strain on already overburdened SSA field offices. Because so much of the focus of EEVS proposals is on DHS, it will be important for this committee to work closely with the Judiciary Committee on any comprehensive immigration reform bill that creates a mandatory EEVS to ensure that SSA has the necessary funding and resources to carry out its duties. It will also be critical to ensure that the weaknesses of the Basic Pilot are addressed before it is expanded, including correcting SSA’s database errors, and implementing a monitoring system so employers do not use the system to take adverse action against workers.

Chairman MCNULTY. Thank you.
Mr. Amador.

**STATEMENT OF ANGELO I. AMADOR, DIRECTOR OF
IMMIGRATION POLICY, U.S. CHAMBER OF COMMERCE**

Mr. AMADOR. Thank you. Good morning, Chairman McNulty, Ranking Member Johnson, and distinguished Members of the Committee. Thank you for inviting me to testify on EEVS today. My name is Angelo Amador. I am the Director of Immigration Policy for the Chamber.

We also chair the Essential Workers Immigration Coalition, and are on the executive Committee of the Electronic Employment Verification System working group. That is a business group, but actually, as Tyler knows, we work very closely with groups on the left, unions, and this is a system that really is going to affect everyone, and we really need to work together to make sure that all of the main issues are addressed.

The concerns of the business community about how this new mandate is going to affect us cannot be overstated. The Government Accountability Office, as was said earlier, estimate that the cost of a new EEVS system that would apply to all employees would cost about \$11.7 billion per year, with employers bearing most of the cost. Still, the Chamber is willing to support a new EEVS as a necessary part of comprehensive immigration reform.

While most of the press has concentrated on the issues of the undocumented and the new worker programs with regards to comprehensive reform, employers view the employer verification system provisions as equally important. In fact, some of my members view it as the most important part of comprehensive reform.

As stated in my written testimony, the three issues are inter-related, and comprehensive reform remains crucial to both economic and national security for our country. Noted national security experts have also reinforced that enforcement alone at any level is not sufficient, and it would not be the solution.

Everyone agrees that the current immigration system is broken and the status quo is unacceptable. But agreement on a solution has been harder to find. States and localities have responded to the lack of action at the Federal level with a patchwork of immigration laws and enforcement, exposing employers most deal with a broken legal structure of unfair liability.

Many states and local governments are attempting to either force employers and retailers to bear the costs of helping shield undocumented workers, or are attempting to impose additional worksite enforcement provisions. must know what their responsibilities are, and having one Federal law with strong state law preemption language will help alleviate any confusion about employers' role under the law.

There are things that can be done immediately without legislation, such as limiting the number of documents accepted for verification under the I-9 system. Also, current documents should be retooled so as to provide employers with a clear and functional way to verify that they are accurate and relate to the prospective employee.

As you know, there are more than 27 documents and combinations of documents that you can use to prove your employment eligibility. Some of them don't even have pictures. So, you could technically get a job without showing an ID that has a picture, and the employer is forbidden, because of the current anti-discrimination provisions, from asking for other pieces of ID.

In addition, I would like to mention seven other critical things that are very crucial for the employer community. There are some others that are in my testimony, and actually some are addressed by Tyler as well, that I think are very important.

Just for the time being, I want to mention that, first, enforcement of employment verification law resides properly within the Federal Government. Accordingly, the Chamber maintains that DHS, as the Federal enforcement authority with responsibility in enforcement of section 274A, which is the one that we are talking about, should remain.

You may be aware that the Federal RICO statute has recently been used by private attorneys seeking to enforce immigration law. Not only does this invade the province of the Federal Government as sole enforcer of Federal immigration policy, it also perverts the Federal RICO statute into a use that is contrary to the intent of the statute. We do not want to create a trial attorneys relief act.

Second, the power to investigate labor and employment violations should be kept out a system created exclusively for the purpose of verifying employment eligibility. The system needs to be implemented with full acknowledgment that employers already have to comply with a variety of employment laws. The Code of Federal Regulations—actually, I looked at it this morning—is more than 5,000 pages long.

Third, a new verification system should only apply to new hires. Trying to re-verify the entire existing workforce of over 140 million employees is a burden that is too high. Again, I will be happy to talk about the different versions, but the version of the Senate requires that you re-verify more than 140 million employees.

What we hear from our members, especially those that are large, is that that is a monumental task. And there are other ways of doing this. Again, with the turnover today, everybody will be verified under the system in a couple of years.

Fourth, an employer should also be responsible only to verify the work authorization of its own employees.

Fifth, an employer needs to be able to affirmatively rely on the response as soon as possible. We think that 30 days should be more than enough for DHS or Social Security or somebody to tell us whether this person is authorized to work or not.

There are concerns, as you might have heard, and it is in the testimony, of the cuts that are implied when you have a tentative non-confirmation. For one, you cannot fire the worker. Second, DHS wants to use the fact that this individual that they told you not to fire to come and investigate and do raids and other things.

Sixth, penalties must be tailored to the offense, and the system must be fair. Automatic debarment from Federal contract is not an authority that should be given to DHS. Indeed, a work in process already exists in current law under the Federal Acquisition Regulations.

Finally, let me know that we are concerned about undue expansion of liability and new causes of actions which we have seen in some formulations of electronic employer verification systems. For example, the STRIVE Act, which I agree with Tyler is probably the best effort right now at trying to address a workable EEVS, but it still has—it would even make it illegal for an employer to hire an American or a legal permanent resident over a temporary worker that should be in the United States only when employers cannot find enough of the first two.

Discrimination protections should be retained, as in current law, to comport with the purposes of the program, monitoring the hiring and firing process, not other terms and conditions of employment.

Thank you for giving me the opportunity to come before you today, and I look forward to your questions.

[The prepared statement of Mr. Amador follows:]



Statement of the U.S. Chamber of Commerce

ON: ELECTRONIC EMPLOYMENT VERIFICATION SYSTEMS (EEVS)

TO: THE HOUSE SUBCOMMITTEE ON SOCIAL SECURITY OF THE
COMMITTEE ON WAYS AND MEANS

BY: ANGELO I. AMADOR

DATE: JUNE 7, 2007

The Chamber's mission is to advance business progress through an economic,
political and social system based on individual freedom,
innovation, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business— manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 96 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Statement on
"Electronic Employment Verification Systems (EEVS)"
Before
The House Subcommittee on Social Security of the Committee on Ways and Means
Angelo I. Amador
Director of Immigration Policy
U.S. Chamber of Commerce
June 5, 2007

Good Morning Chairman McNulty, Ranking Member Johnson, and distinguished members of the Subcommittee. Thank you for inviting me to testify on the subject of employment eligibility verification systems. My name is Angelo Amador and I am director of immigration policy for the U.S. Chamber of Commerce. I am encouraged that the Subcommittee is examining the potential impact that a new electronic employment verification system (EEVS) would have on workers and employers.

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. The Chamber co-chairs the Essential Worker Immigration Coalition (EWIC), a coalition of businesses, trade associations, and other organizations from across the industry spectrum that support reform of U.S. immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity.

The Chamber is also on the executive committee of the Employment Eligibility Verification System Working Group, or EEVS Working Group. This group was formed to serve as the voice of business exclusively on the issue of a new employment verification system and it is now made up of companies and trade associations from across the industry spectrum. The reason is simple:

there are over seven million employers and this will affect all of them, whether or not they hire immigrants.¹

The stakes are extremely high, and the concerns of the business community of how a new system will be constructed cannot be overstated. While much of the press has been focused on the issues of the undocumented and new worker programs, we certainly view the employer verification system provisions as equally important. After all, a new EEVS will have an impact in the day-to-day activities, obligations, responsibilities, and exposure to liability of every U.S. employer.

I. Overview

The Chamber supports a new EEVS within the context of comprehensive immigration reform because employers want the tools to ensure that their workforce is in fact authorized to work. Currently, each new employee must be verified as eligible to work under the paper-based I-9 system and we expect that new employees would have to be verified under any future EEVS. All the proposals under consideration by Congress require employers to bear a greater share of the burden of enforcing the nation's employment eligibility policies. The new EEVS must recognize that the over seven million employers in the U.S. are extremely different in both size and levels of sophistication and, accordingly, the system should accommodate these differences. If the system is not constructed and implemented properly, there is great risk of very real confusion among employers and employees alike, which could have significant consequences for every individual worker, as well as the employer community.

There are common concerns across the business, labor, and ethnic groups' advocates because of the broad reach of any new program. However, the Chamber believes that a new law should not be used to open the door to a barrage of new causes of action unrelated to the hiring or firing of employees based on their work authorization status and should, instead, clarify that only the Department of Homeland Security has enforcement jurisdiction over this issue. Likewise, employment verification, as discussed below, should not be combined with the enforcement of labor laws. Before concentrating on the specifics of a future system, I will briefly address why this issue should be dealt with only within the context of comprehensive immigration reform.

II. New EEVS Within the Context of Comprehensive Immigration Reform

Current immigration laws are severely flawed and have failed to curb the flow of undocumented workers into the U.S. It has been more than 20 years since the passage of the Immigration Reform and Control Act of 1986 (IRCA), and we are still experiencing the entry of undocumented workers into the U.S. at a rate of about 500,000 per year.² IRCA's goal was to address the undocumented in the country and create a worksite enforcement regime that deterred the employment of the undocumented, but it did not address the future need for workers in the

¹ U.S. Census Bureau "Number of Firms, Number of Establishments, Employment, and Annual Payroll" <http://www.census.gov/cd/web/sn014.xls>

² Passel, Jeffrey, "The Size and Characteristics of the Unauthorized Migrant Population in the U.S." *Pew Hispanic Center Report*, March 2006. <http://pewhispanic.org/files/reports/31.pdf>

U.S. economy. There was no provision for the legal flow of lesser skilled or semi-skilled ("essential") workers when there was a shortage of U.S. workers.

Studies have shown that the principal element in determining the level of immigration into the U.S., both legal and illegal, in the last decade is the strength or weakness in our economy, while enforcement has had only a "small" effect.³ "The single macroeconomic/demographic variable most highly correlated with the annual flows is the U.S. unemployment rate."⁴ Therefore, any new earned legalization program with a new worksite enforcement regime must be promulgated together with a new essential workers program. This new essential workers program must have the flexibility to respond to the needs of our vibrant and diverse economy.

There have been recent attempts to revamp the current worksite enforcement regimen in isolation at the federal legislative level and through the administrative process. Although the goal of fixing the worksite enforcement program is admirable, such attempts, outside comprehensive reform, could be severely detrimental to the economic security of the country. Noted national security experts have also reinforced that enforcement alone at any level is not the solution.⁵

III. The Current Employment Verification System

IRCA created the current paper-based employment verification system in the U.S. An employer must wait for a newly hired employee to start work before attempting to verify work eligibility in the U.S. Within the first three days, the employee shows the employer a document or combination of documents to prove identity and eligibility to work from a list of 27 possible options. The employer must fill out the Form I-9 and retain it. The process is susceptible to fraudulent documents, as well as identity fraud. Employers are not document experts. If a document looks valid on its face, an employer may not legally ask questions without the risk of violating anti-discrimination laws.

The current system has made it impossible for employers to really know who is actually authorized to work and who is not. It is important to note that often, when the Department of Homeland Security (DHS) conducts an audit or raid of an employer, the employer is generally not found at fault because it has followed the law, filled out the proper forms and documents, and could not have known that its employees were not authorized to work. While the company might not suffer any legal action or fines, losing valuable members of the workforce and possibly closing down for even a short amount of time can often add up to significant financial losses, not including the less quantifiable harm such as negative publicity.

In 1998, DHS rolled out an electronic employment eligibility system, the Basic Pilot Program. The Basic Pilot Program is a strictly voluntary, internet based, automated system where an

³ Passel, Jeffrey, "U.S. Immigration: Numbers, Trends, and Outlook." *Pew Hispanic Center Report*, March 26, 2007, pages 12-13.

⁴ *Id.* at 13.

⁵ Coalition for Immigration Security, composed of numerous former DHS officials, stated in their April 2006 letter that there is a relationship between adequate legal channels of immigration and enhanced border security. See also Stuart Anderson "Making the Transition from Illegal to Legal Migration" *National Foundation for American Policy*, November 2003.

employer checks a new hire's name and social security number against a government-run database to make sure the name and number matches those on record. As numerous studies and reports have shown, the databases maintained at DHS and the Social Security Administration are not always up-to-date, there is a high error rate in determining work authorization, and the program is incapable of capturing identity fraud.⁸ It is worth noting that in its current form, it would be problematic to expand it to all existing employers and employees. A future EEVS will need to take into account the failures and successes of the Basic Pilot Program to ensure that it is workable.

IV. Potential Costs and Increased Workloads

In your invitation, I was asked to address the potential costs and increased workloads that would be faced by the Social Security Administration (SSA). The Chamber would like to point out that in addition to the government cost of hiring more verifiers, modernizing the system, and purchasing and monitoring additional equipment, the Government Accountability Office (GAO), relying on independent studies, estimated "that a mandatory dial-up version of the pilot program for all employers would cost the federal government, employers, and employees about **\$11.7 billion total per year, with employers bearing most of the costs.**"⁹ (Emphasis added.)

Employers would also need to train employees to comply with the new law's requirements and devote a great deal of human resources staff time to verifying and re-verifying work eligibility, resolving data errors, and dealing with wrongful denials of eligibility.¹⁰ In particular, data errors and technological problems would lead many employees to start work as "would-be employees."¹¹ This could lead to a substantial decrease in productivity, especially when the work to be done is seasonal or time-sensitive.¹² Employers would also have to deal with the possibility of another level of government bureaucracy with random "on-site auditing" powers.¹³ Finally, employers who already will incur many internal costs of meeting the requirements of a new EEVS, should not be subject to a fee to pay for the cost of building the system itself—that is a government function and should be paid for by the government.

V. Principles for a New Employment Eligibility Verification System

Businesses want a reliable, streamlined, and easy to use method to verify the employment eligibility of their workforce. To start, it is imperative that adequate funds and resources be allocated to develop and implement the program to accommodate the over seven million

⁸ Government Accountability Office, "Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts," June 19, 2006, <http://www.gao.gov/new.items/066975.pdf>. Even an error rate of one percent of applicants would put at risk over a million workers in losing their job or prospective employment. The stakes could not be higher. For more detail on error rates see testimony from Angelo I. Amador, U.S. Chamber of Commerce before the House Subcommittee on Workforce, Employment, and Government Programs of the Committee on Small Business, June 27, 2006, http://www.uschamber.com/issues/testimony/2006/06/27_testimony_immigrant_employment.htm.

⁹ GAO, Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts, at 29.

¹⁰ Spragens, Memorandum on Problems with Employment Eligibility.

¹¹ *Id.*

¹² *Id.*

¹³ DHS, Report to Congress on the Basic Pilot Program, at 8, July 2004.

employers in the U.S. This will be a significant expansion of the less than one percent of the employer community that currently uses the Basic Pilot Program on a voluntary basis.¹² The Chamber has testified many times during the immigration reform debate and has consistently called for the development of an EEVS that carefully addresses: who is to be verified; what documents will be accepted; how the system will be phased in; how the system will function and who will certify functionality; how the system will be enforced; and, how DHS will protect good faith actors.

The Chamber's foremost concern is to ensure that any new system does not become too costly or burdensome for employers. Businesses already spend approximately 12 million hours each year documenting the legal status of the nation's 50 to 60 million new hires.¹³ This new system will not only be used by companies with large Human Resources departments and in-house legal counsel, but also by employers operating in the field out of the back of a pickup truck. These small employers create millions of jobs in the U.S. economy, and the burdens placed upon these entrepreneurs must be considered.

A. Preemption of State Laws and Local Ordinances

The current immigration system is clearly broken and states and localities have responded to the lack of action at the federal level with a patchwork of immigration laws and enforcement—exposing employers who must deal with a broken legal structure to unfair liability. Many states and local governments are attempting to either force employers/retailers to bear the cost of helping shield undocumented workers or are attempting to impose additional worksite enforcement provisions. These attempts run the risk of undermining the ability of the federal government to oversee and enforce national immigration laws and also put undue burden on businesses attempting to deal with the current broken system.

A new worksite enforcement regime needs to address specifically these attempts to preempt jurisdiction of federal immigration law.¹⁴ Employers must know what their responsibilities are under immigration law, and having one federal law will help alleviate any confusion about employers' role under the law.

B. Fair Enforcement Provisions

Full and fair enforcement of a new, functional verification system coupled with comprehensive immigration reform will be more feasible and more likely to focus on the true egregious violators than is currently the case. Enforcement should take into account transition times for the new system and should protect employers acting in good faith.

¹² As of December 2006, over 12,000 employers were registered with the Basic Pilot Program, approximately 0.2 percent of all employers. http://www.uscis.gov/files/pubs/documents/EEV_FS.pdf

¹³ Jacoby, Tamar, "An Idea Whose Time Has Finally Come? The Case for Employment Verification," *Migration Policy Institute*, 2005. www.migrationpolicy.org

¹⁴ A record number of immigration-related bills are under consideration, or have been enacted, in all 50 states. Nationwide, 1,169 immigration bills are in the works, and at least 57 bills in 18 states have been enacted, according to the National Conference of State Legislatures. <http://www.ncsl.org/>

Furthermore, DHS should have primary authority over the enforcement provisions of any new system.

Enforcement of employment verification laws resides properly with the federal government. Accordingly, the Chamber maintains that DHS, as the federal agency tasked with responsibility for immigration enforcement, should have sole enforcement authority over prosecutions for violations of section 274A of the immigration code, and this should also be the case for all other enforcement provisions in any new employment verification system.

You may be aware that the federal RICO statute has recently been used by private attorneys seeking to enforce immigration law. Not only does this invade the province of the federal government as sole enforcer of federal immigration policy, it also perverts the federal RICO statute into a use that is contrary to the intent of the statute.

Thus, there should be language prohibiting private rights of action against employers for matters that should be enforced by DHS. Furthermore, the power to investigate any labor or employment violations should be kept out of a system created exclusively for the purpose of verifying employment eligibility. The Chamber continues to call for a simple and reliable system, which includes reasonable penalties for bad actor violators.

C. Liability Standards and Penalties

The Chamber agrees that employers who knowingly employ illegal aliens ought to be prosecuted under the law. This current "knowing" legal standard for liability is fair and objective and gives employers some degree of certainty regarding their responsibilities under the law and should, therefore, be maintained. Lowering this test to a subjective standard would open the process to different judicial interpretations as to what an employer is expected to do. Presumptions of guilt without proof of intent are unwarranted. Furthermore, while the government should punish intentional violators, those employers whose only error was a simple oversight or mistake should be given an opportunity to rectify such error.

We do not oppose efforts to increase penalties. However, the penalties need to be proportionate to the offense and comparable to other penalties in existence in the employment law arena. If penalties are too high, and too unyielding, an employer who is assessed a penalty, but believes that they did not violate the law, will be forced into an unnecessary settlement because they cannot afford to pay both the legal fees necessary to fight the citation, and gamble that they might end up with a penalty that is so high that it devastates their business. Penalties should not be inflexible, and we urge you to incorporate statutory language that allows enforcement agencies to mitigate penalties, rather than tying them to a specific, non-negotiable, dollar amount.

It is also critical to the employer community that it does not bear vicarious liability for subcontractor actions unless the contractor knew of the actions of the subcontractor. In other words, the contractor should not be held liable for undocumented workers hired by

a subcontractor, both of which would be required to independently participate in the new EEVS for their own employees, without evidence of direct knowledge of the general contractor. Without such protection, an employer could be open to liability even for the violations of its peripheral contractors – e.g. a water delivery company or landscaping contractor.

A number of additional penalties and causes of action have been suggested as proper penalties in a new verification system. These range from debarring employers from federal government contracts to expansion of the current antidiscrimination protections. Penalties must be tailored to the offense and the system must be fair. Automatic debarment from federal contracts is not an authority that should be given to DHS. Indeed a working process already exists in current law under the Federal Acquisition Regulations (FAR).

Additionally, the Chamber objects to expansion of antidiscrimination provisions found in current law. As stated above, a new, functional system coupled with comprehensive immigration reform should provide adequate assurances that it will not be used to discriminate against workers. Employers should not be put in a “catch-22” position in which attempting to abide by one law would lead to liability under another one.

D. Employee Population to be Covered

Pursuant to IRCA, each new employee hired after November 6, 1986 must be verified as eligible to work under the current paper-based I-9 system. IRCA grandfathered employees hired prior to November 6, 1986 so as not to cause undue disruption of businesses. It is critical that any new process only mandate that new hires need to be verified under any future electronic employment verification system. Employers should only be required to verify new employees, as existing employees have already been verified under the applicable legal procedures in place when they were hired. Re-verifying an entire workforce is an unduly burdensome, costly proposition, and unnecessary given how often workers change jobs in the United States.

E. Acceptable Documents for Proof of Identity and Employment Authorization

The issues of document fraud and identity theft have been exacerbated under the current paper-based I-9 system because of the lack of reliable and secure documents. Documents should be re-tooled and limited so as to provide employers with a clear and functional way to verify that they are accurate and relate to the prospective employee. There are two ways by which this can be done, either by issuing a new tamper and counterfeit resistant work authorization card or by limiting the number of acceptable work authorization documents to, for example, social security cards, driver’s licenses, passports, and alien registration cards (green cards). All of these documents could be made more tamper and counterfeit resistant. In fact, in 1998, the federal government began issuing green cards with a hologram, a digital photograph and fingerprint images and by 2010 all green cards currently in existence should have these features.

With fewer acceptable work authorization documents, the issue of identity theft can more readily be addressed. The new verification process will need to require a certain degree of inter-agency information sharing. When an employer sends a telephonic or internet based inquiry, the government must not only be able to respond as to whether an employee's name and social security number matches, but also whether they are being used in multiple places of employment by persons who may have assumed the identity of other legitimate workers. In the long run, as the verification system is developed and perfected, it should move closer towards the use of biometric technology that can detect whether the person presenting the document relates to the actual person to whom the card relates.¹⁵

F. Fair and Reasonable Roll Out of New System

The Government Accountability Office (GAO) reported last year that there are still some unresolved issues with the Basic Pilot Program, including delays in updating immigration records, false-negatives, and program software that is not user friendly.¹⁶ Specifically, GAO has reported additional problems and emphasizes, "the capacity constraints of the system [and] its inability to detect identity fraud."¹⁷ Given these and other concerns, the new system should be phased in and tested at each stage, and expanded to the next phase only when identified problems have been resolved. The best approach would be for the program to move from one phase to the next only when the system has been improved to take care of inaccuracies and other inefficiencies ascertained through the earlier phase. This would also allow DHS to properly prepare for the new influx of participants. In addition, if industry sectors are carved out, these need to be delineated and defined. For example, there needs to be clear guidelines of what exactly falls within the broad term of "critical infrastructure" if that is used as one benchmark.

G. Response Times

The employer needs to be able to affirmatively rely on the responses to inquiries into the system. Either a response informs the employer that the employee is authorized and can be retained, or that the employee is not and must be discharged. Employers would like to have the tools to determine in real time, or near real time, the legal status of a prospective employee or applicant to work. DHS and the Social Security Administration must be given the resources to ensure that work authorization status changes are current to avoid the costs and disruption that stems from employers having to employ, train, and pay an applicant prior to receiving final confirmation regarding the applicant's legal status.

The Chamber understands that due process concerns must allow the employee to know of an inquiry and to then have the ability to challenge a government determination. Thus, at

¹⁵ Obviously, as biometric technology is rolled out, it is important to address who would actually pay for the readers and the implementation of the technology. Further, there will be legitimate issues of practicality in implementing biometrics in many workplaces.

¹⁶ Borjerg, Barbara D., Director, Education, Workforce, and Income Security Issues at GAO, Testimony before the Subcommittee on Oversight of the House Committee on Ways and Means, February 16, 2006.

¹⁷ *Id.*

the very least, employers should be able to submit an initial inquiry into the system after an offer of employment has been made and accepted. Presumably this could be done two weeks before the first day of employment so the clock starts running earlier. The start date should not be affected by an initial tentative nonconfirmation. Of course, for employers that need someone immediately, the option of submitting the initial inquiry shortly after the new employee shows up for his or her first day at work should continue to be available. In the case of staffing agencies, current law allowing for submission of the inquiry when the original contract with the agency is signed should be kept in future laws. A maximum of 30 days, regardless of when or how the inquiry is made, and taking into consideration time to submit additional information and manual review, should be the outer limit that the system should take from the date of initial inquiry until a final determination is issued by the government.

H. Government Accountability

The government must also be held accountable for the proper administration of the new system. There must be an administrative and judicial review process that would allow employers and workers to contest findings. Through the review process, workers could seek compensation for lost wages due to a DHS agency error. Meanwhile, if an employer is fined by the government due to unfounded allegations, the employer should be able to recover some attorneys' fees and costs—capped at perhaps \$50,000—if they substantially prevailed in an appeal of the determination. Additionally, workers should have access to review and request changes to their own records to avoid issues when changing jobs.

I. Limited Bureaucracy and Additional Cost Concerns

It is imperative that the new system be workable, simple, easy to use, and not be costly or burdensome to employers. DHS will need adequate funding to create, maintain and implement the new system. This cost should not be passed on to the employer with fees for inquiries or through other mechanisms. Additionally, there should not be overly burdensome document retention requirements. The more copies of official documents are kept in someone's desk drawer, the increased likelihood of identity theft. Under current law, an employer does not need to keep copies of driver licenses, social security cards, birth certificates, or any other document shown to prove work authorization. The employer must certify under penalty of perjury that those documents were presented. The requirement to copy and store copies of this sensitive documentation in any new program should be carefully analyzed not only from the cost perspective to employers, but also from the privacy perspective of workers.

J. No Further Expansion of Employment Law

Finally, the new system needs to be implemented with full acknowledgment that employers already have to comply with a variety of employment laws. Thus, verifying employment authorization, not expansion of employment protections, should be the sole emphasis of a new employment verification system.

In this regard, it should be emphasized that there are already existing laws that govern wage requirements, pensions, health benefits, the interactions between employers and unions, safety and health requirements, hiring and firing practices, and discrimination statutes. The Code of Federal Regulations relating to employment laws alone covers over 5,000 pages of fine print. And of course, formal regulations, often unintelligible to the small business employer, are just the tip of the iceberg. Thousands of court cases provide an interpretive overlay to the statutory and regulatory law, and complex treatises provide their own nuances.¹⁶ A GAO report titled "Workplace Regulations: Information on Selected Employer and Union Experiences" identified concerns regarding workplace regulations that employers continue to have to this very day.¹⁷ The report noted that enforcement of such regulations is inconsistent, and that paperwork requirements could be quite onerous. Most importantly, the report concluded that employers are overburdened by regulatory requirements imposed upon their businesses and many are fearful of being sued for inadequate compliance.

The cost of compliance continues to grow at an alarming pace. A 2005 study by Joseph Johnson of the Mercatus Center¹⁸ estimated the total compliance cost of workplace regulations at \$91 billion (in 2000 dollars) and a follow up study by W. Mark Crain for The Office of Advocacy, U.S. Small Business Administration,¹⁹ estimated the total compliance cost of workplace regulations at \$106 billion (in 2004 dollars). Within a four year span, the cost grew at a rate of \$15 billion, or \$3.75 billion per year.

VI. Conclusion

The Chamber urges you to continue to engage the business community to create a workable electronic employment verification system within the context of comprehensive immigration reform. This requires an overall system that is fast, accurate and reliable under practical real world working conditions, and includes:

- Clarification that federal jurisdiction preempts state and local laws with DHS-only enforcement authority;
- An investigative and enforcement system that is fair, with penalties commensurate to the offense;
- Provisions to protect first-time good faith "offenders" caught in the web of ever-changing federal regulations;
- No expansion of liability beyond the knowing standard for contractor/subcontractor relationships;
- No expansion of antidiscrimination laws or debarment outside the FAR system;

¹⁶ For example, one treatise on employment discrimination law alone stretches over 2,000 pages. Barbara Lindemann and Paul Grossman, "Employment Discrimination Law," *ABA Section of Labor and Employment Law*, 7th Edition, 1996.

¹⁷ U.S. Government Accountability Office Report, "Workplace Regulation: Information on Selected Employer and Union Experiences," GAO-19EHS-04-138, Washington DC, pages, June 30, 1994, pages 25-53.

¹⁸ Johnson, Joseph, "The Cost of Workplace Regulations", Mercatus Center, George Mason University, Arlington, Virginia, August 2001.

¹⁹ Crain, Mark W. "The Impact of Regulatory Costs on Small Firms," Report RFP No. SB10Q-03-M-0322, Lafayette College, for the Office of Advocacy, U.S. Small Business Administration, September 2005.

- A new verification system that only applies to new hires;
- A reasonable number of reliable documents to reduce fraud;
- A telephone based alternative to accommodate all employers;
- A phase-in with independent certification as to accuracy and workability;
- Congressional oversight authority with independent studies;
- Verification to begin when firm offer of employment is made and accepted, followed by reasonable system response times—at the most 30 days;
- Accountability structures for all involved—including our government;
- Limited bureaucracy and sensible document retention requirements that takes into consideration privacy concerns;
- No artificially created incentives favoring automatic fines or frivolous litigation; and,
- No expansion of labor laws within the electronic employment verification system.

Employers will be required to utilize and comply with the new electronic employment eligibility verification system, and therefore, we should continue to be consulted in shaping such a system. We at the Chamber, EWIC, and the EEVS Working Group, stand by to continue to assist in this process. Thank you again for this opportunity to share the views of the Chamber, and I look forward to your questions.

Committee on Ways and Means
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 3(d)

Your Name: Angelo I. Amador

1. Are you testifying on behalf of a Federal, State, or Local Government entity?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
2. Are you testifying on behalf of an entity other than a Government entity?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
3. Please list any Federal grants or contracts (including subgrants or subcontracts) which you have received during the current fiscal year or either of the two previous fiscal years: <p style="text-align: center;"><i>n/a</i></p>			
4. Other than yourself, please list what entity or entities you are representing: <p style="text-align: center;"><i>U.S. Chamber of Commerce</i></p>			
5. If your answer to question number 2 is yes, please list any offices or official positions held or briefly describe your representational capacity with the entities disclosed in question number 4: <p style="text-align: center;"><i>Director of Immigration Policy</i></p>			
6. If your answer to question number 2 is yes, does any of the entities disclosed in question number 4 have parent organizations, subsidiaries, or partnerships whom you are not representing?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
7. If the answer to question number 2 is yes, please list any Federal grants or contracts (including subgrants or subcontracts) which were received by the entities listed under question number 4 during the current fiscal year or either of the two previous fiscal years, which exceed 10 percent of the entity's revenues in the year received, including the source and amount of each grant or contract to be listed: <p style="text-align: center;"><i>n/a</i></p>			
Signature: 		Date: <u>6/5/09</u>	

Chairman MCNULTY. Thank you.
Ms. Meisinger.

**STATEMENT OF SUSAN R. MEISINGER, PRESIDENT AND CEO,
SOCIETY FOR HUMAN RESOURCE MANAGEMENT, ALEXAN-
DRIA, VIRGINIA**

Ms. MEISINGER. Mr. Chairman, Ranking Member Johnson, Members of the Committee, my name is Sue Meisinger and I am President and CEO of the Society for Human Resource Management. I appear today on behalf of the more than 200,000 members of the society, as well as being co-chair of the HR Initiative for a Legal Workforce. I am grateful for this opportunity.

Our members represent the frontlines on workforce verification, and therefore offer a crucial viewpoint on the matter. We fully support and we are committed to the hiring of only work-authorized individuals through an effective, efficient, electronic employment verification system.

We also recognize that the current employment verification system is in need of real reform. In fact, we believe that verification is the linchpin of really, truly reforming the immigration system.

As the debate on immigration reform continues, we urge Congress to carefully consider the implications of any new employment verification system, keeping in mind that this is not just a debate about immigration reform. This is a debate about workplace management, which impacts all employers and all American workers, not just those who are foreign born.

My remarks will focus on the current employment verification process, as well as our proposal to create a potentially alternative effective employment verification system.

As you know, under IRCA, employers are required to review documents presented by employees, and after review, required to attest on a Form I-9 that they have reviewed the documents and that they appear genuine and authentic.

Even under the best of circumstances, HR professionals encounter numerous challenges with the employment verifications of IRCA. They include maintaining the I-9 records when an employee presents a document that has an expiration date; verifying the authenticity, the quality, the quantity of documents presented by an employee for work authorization and identification purposes; and simply managing the current I-9 system, which is burdensome and time-consuming.

The system is prone to fraud, forgeries, and identity theft. It is difficult if not impossible for an employer to differentiate between the legal and illegal worker in this process. In addition, if an employer questions the validity of documents too much, they are also vulnerable to potential claims of discrimination.

Attempting to address the shortcomings of the paper-based system, Congress created the Basic Pilot Program that we have heard of this morning in great detail. Under this system, employers can voluntarily check each new employee's work eligibility using the electronic verification system, while also having to do the paper check and maintaining the paper records.

The system is supposed to respond to the employer within three days with either a confirmation or a tentative nonconfirmation of the employee's work eligibility. In the cases of tentative nonconfirmation, a secondary verification process lasting 10 days is initiated to confirm the validity of the information provided and to pro-

vide the employer with a confirmation of nonverification of worker eligibility.

Although it has been operational since 1997, and despite the best efforts of the people in the government agencies managing it, we think it is just flat-out inadequate to meet the U.S. employer's needs in a global verification system.

As we heard this morning, over 92 percent of inquiries from employers receive an instantaneous employment authorized response. This means there is a no verification 8 percent of the time. With 60 million new hires each year, this makes mandating the system having an impact on about 5 million people a year, as we have heard as well.

Since a significant percentage of the Basic Pilot queries require human intervention, a lot of resources are going to be needed to purge the various agency databases and improve communication between the agencies. We think this is going to be problematic.

Employers need the right tools to verify a legal workforce, but we cannot have HR, and we should not have HR, be America's surrogate Border Patrol agents. Rather, employers are entitled to a clear answer to the query whether an employee is authorized to work, and be able to reply to that response.

We believe that Congress must transform the current paper-based verification process into a state-of-the-art electronic system. Specifically, we advocate a system that would verify identity through additional background checks and the voluntary use of biometric enrollment conducted by government-certified private vendors.

The system would be built upon background checks currently conducted by many employers. Our own survey shows that 85 percent of our members do employment verification checks, reference checks, to include forensic document examines and tailored data mining in publicly available databases. An individual's identity could be locked to biometric or other secure identifiers through the process. Employees would not need to present an identity card, just themselves.

Under our proposal, employers would be required to participate in one or two electronic employment verification systems. The first would be the current EEVS, but permitting employers to access the system via phone and internet. The second would be SEEVS, a more secure electronic employment verification system. The state-of-the-art system would identify, through additional background checks and voluntary biometric enrollment conducted by private employers.

This system, we think, would answer two important questions: Is the person identified by name, date of birth, and Social Security authorized to work? Is the person actually who he or she claims to be?

In the interests of time, I would like to conclude by encouraging Congress to look at this carefully. We are very concerned that in the rush to deal with immigration reform, which we believe needs to happen, that there is a push to just simply push this verification system through. And the word chaos, I thought, was apt in describing what we think is going to happen when this rolls forward.

Thank you.

[The prepared statement of Ms. Meisinger follows:]

Prepared Statement of Sue Meisinger, The Human Resource Initiative for a Legal Workforce, Society for Human Resource Management, Alexandria, Virginia

Mr. Chairman, Ranking Member Johnson, Members of the Committee. My name is Susan R. Meisinger and I am the President and CEO of the Society for Human Resource Management. I appear today on behalf of the Society for Human Resource Management. I am also the Co-chair of HR Initiative for a Legal Workforce. I am grateful for the opportunity to provide our views on this important issue.

The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 217,000 individual members, the Society's mission is both to serve human resource management professionals and to advance the profession.

The Human Resource Initiative for a Legal Workforce is a coalition of human resource organizations and business groups, representing thousands of small and large U.S. employers from a broad range of sectors. The HR Initiative includes SHRM, the American Council on International Personnel, the College and University Professional Association for Human Resources, the Food Marketing Institute, the HR Policy Association, the International Public Management Association for Human Resources, and the National Association of Manufacturers. Our objective is to improve the current employment verification process by creating a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment.

Our collective members represent the front lines on workforce verification, and therefore offer a crucial viewpoint on the matter. We fully support and are committed to the hiring of only work-authorized individuals through an effective, efficient electronic employment verification system.

We also recognize that the current employment verification system is in need of real reform. In fact, we believe verification is the lynchpin for true immigration reform. Unfortunately, the current paper-based employment verification system is inadequate to meet current and future demands, and current proposals before Congress fall far short of what is needed.

As the debate on immigration reform continues, we urge Congress to carefully consider the implications of any new employment verification system, keeping in mind that this is not just a debate about immigration reform, it is a debate about workplace management, which impacts all U.S. employers and all American workers, not just those who are foreign born.

My remarks will focus on the employment verification process established in the Immigration Reform and Control Act (IRCA) of 1986, the state of the current electronic verification system, the Basic Pilot Program that was enacted in The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, as well as our proposal to create an effective electronic employment verification system in the effort to ensure compliance with immigration laws at the worksite, and to protect the civil rights and privacy of employees.

Mr. Chairman, under IRCA employers are required to review documents presented by employees within three business days of hire demonstrating identity and authorization to work in the United States. After reviewing these documents, employers are required to attest on Form I-9 that they have reviewed the documents and that they appear genuine and authentic. Under current law, 27 paper-based documents are available to employees to demonstrate work eligibility, with 12 different documents authorized under law to prove identity.

Even under the best of circumstances, HR professionals encounter numerous challenges with the employment verification requirements under IRCA. These include: maintaining the I-9 records when an employee presents a document that has an expiration date; verifying the authenticity, quality, and quantity of documents presented by an employee for work authorization and identification purposes; and managing the current I-9 process, which is burdensome and time-consuming.

According to *SHRM's 2006 Access to Human Capital and Employment Verification* survey, 60 percent of responding HR professionals indicated that they continue to experience problems with the current verification requirements of IRCA 20 years after its enactment. The most common challenge cited is ascertaining the authenticity of documents presented for employment (40 percent).

The current document-based system is prone to fraud, forgeries and identity theft, making it difficult, if not impossible, for an employer to differentiate between the legal and illegal worker in this process.

U.S. employers, whether large or small, cannot be expected to consistently identify unauthorized workers using the existing system, but they are liable for severe sanctions if these workers find their way onto the payroll. Conversely, they are subject to claims of discrimination if they question the validity of documents too much.

The proliferation of false or stolen documents can and does cause reputable employers to mistakenly hire individuals who are not eligible to work. At the same time, the lack of certainty and threat of government-imposed penalties may lead some employers to delay or forego hiring legal workers who are eligible. In either case, the costs are high for both U.S. employers and legal workers.

In an attempt to address the shortcoming of the paper-based system, Congress created the Basic Pilot program for employers to voluntarily confirm an employee's eligibility to work using an electronic verification system. Under the Basic Pilot program, employers are required to review an employee's identity and work authorization documents consistent with IRCA requirements, including completing all Form I-9 paperwork. Employers are then required to check each new employee's work eligibility using the electronic verification system.

The Basic Pilot system is supposed to respond to the employer within three days with either a confirmation or a tentative non-confirmation of the employee's work eligibility. In the cases of a tentative non-confirmation, a secondary verification process lasting ten days is initiated to confirm the validity of the information provided and to provide the employer with a confirmation or non-verification of work eligibility. Employers are not permitted to terminate individuals that have received a tentative non-confirmation until the employer has received a final non-verification or the ten-day period has elapsed.

Although the Basic Pilot has been operational since 1997, and despite the best efforts of the men and women who administer this program in the USCIS, we believe it is inadequate to meet the needs of all U.S. employers in the employment verification process. According to the Government Accountability Office (GAO), in June of 2005, only 2,300 out of 5.6 million U.S. employers participated in the Basic Pilot in 2004. Even with the relatively low participation rate, the GAO found that about 15 percent of all queries required additional verification because the automated system was unable to provide confirmation responses on the initial attempt.

In April 2007, the United States Citizen Immigration Services (USCIS) testified before the House Judiciary Subcommittee that the total number of participating employers has risen to about 16,000 employers and that "over 92 percent of inquiries from employers receive an instantaneous employment authorized response."

However, these numbers represent only a fraction of the nearly 6 million employers in the United States. According to USCIS, if all employers were required to enroll in the Basic Pilot within 18 months, as called for by some proposals in Congress, USCIS would need to enroll approximately 20,000 employers a day. Expanding this system to cover all employers as proposed—absent federal certification that the system is adequately staffed and prepared to handle the increased workload—will undoubtedly cause confusion, harm productivity, and deny eligible workers employment opportunities.

Since a significant percentage of the Basic Pilot queries require human intervention, substantial resources will be needed to purge the various agency databases and improve communication between agencies. This problem is likely to be exacerbated if participation increases from 16,000 to all 6 million-plus employers. As we have seen in other aspects of immigration adjudication, a substantial increase in immigration-related caseload without corresponding increases in resources can lead to major processing delays. Using USCIS's own numbers of a 92 percent verification rate, millions of authorized employees' verification for employment could be in jeopardy.

As evidenced in several recent high profile situations, there are major concerns that the Basic Pilot's accuracy is severely limited by the proliferation of fraudulent identity documents. This is because the Basic Pilot system does not verify the authenticity of the identity being presented for employment purposes, only that the identity presented matches information in the Social Security and DHS databases.

In testimony to House Judiciary Subcommittee in April, Jack Shadley, Senior Vice President for Human Resources for Swift & Company detailed the shortcomings of the "Basic Pilot" employment verification system. Despite the company's hiring processes, which included participation in Basic Pilot, the government raided six Swift production facilities on the morning of December 12th, 2006, and detained 1,282 employees. Many were using stolen identities that could not be detected by Basic Pilot. This event cost the company more than \$30 million and disrupted communities that Swift has worked hard to enrich. As Mr. Shadley stated in his testimony:

“It is particularly galling to us that an employer who played by all the rules and used the only available government tool to screen employee eligibility would be subjected to adversarial treatment by our government. These ICE raids once again highlight significant weaknesses in the Basic Pilot program.”

In addition to concerns with premature expansion of the Basic Pilot, several Congressional proposals also expose employers to liability for actions beyond their control, such as the actions of subcontractors. We strongly believe that U.S. employers should be liable for their own hiring decisions, not those made outside their control. Enforcement needs to be vigorous and fair, and should focus on employers that blatantly ignore the law as opposed to employers who commit paperwork or technical violations in their attempt to comply.

Employers need the right tools to verify a legal workforce. However, HR cannot—and should not—be America’s surrogate border patrol agents. Rather, employers are entitled to an unambiguous answer to the query whether an employee is authorized to accept an offer of employment. Unfortunately, mandating the current Basic Pilot system will not meet the needs of employers or employees.

We believe that Congress must transform the current paper-based verification process into a state-of-the-art electronic system that is accurate, reliable, cost-efficient, easy-to-use, and shares responsibility among government, employers and employees. Specifically, we advocate a system that would verify identity through additional background checks and the voluntary use of biometric enrollment conducted by government certified private vendors. According to *SHRM’s 2006 Weapons in the Workplace*, 85 percent of responding HR professionals indicated their organizations conduct background checks of potential employees.

This system would build upon background checks currently conducted by many employers, to include forensic document examination and tailored data mining in publicly available databases. An individual’s identity could be “locked” to biometric or other secure identifiers through this process. Employees would not need to present a card as some have advocated, just themselves.

Under our proposal, employers would be required to participate in one of two electronic employment verification systems:

EEVS—A completely electronic employment verification system (EEVS) which improves upon the current Basic Pilot system and permits employers to access the system via phone and internet. Employers would verify identity by visually examining a limited number of documents presented by the employee. Employers would verify work authorization by submitting employee data to the SAVE system. The verification process can be initiated either post offer or acceptance of a job by an employee but prior to the commencement of work or within the first 3 days after work commences. The databases feeding into the SAVE system must be upgraded to ensure all information is accurate and updated and that secondary verifications are completed within 10 days. Employers would continue to make subjective determinations that the person presenting the documents is who he claims to be and that the documents are valid on their face. The current I-9 form would be eliminated. Employers in this system would be subject to the current range of enforcement efforts and penalties.

SEEVs—A more secure electronic employment verification system (SEEVs) that guard against identity theft would be available to employers on a voluntary basis. This state-of-the-art system would verify identity through additional background checks and voluntary biometric enrollment conducted by private vendors. The employee’s work authorization would continue to be verified through the SAVE databases. By eliminating subjective determinations of work authorization documents, this system will eliminate discrimination and simplify enforcement. There will be only two enforcement questions for the government: 1) Did you check every employee through the system in a fair and equal manner? 2) Did the employer make his/her hiring decisions consistent with information they received through the system? Employers participating in this system would be deemed to be in compliance absent a showing of bad faith.

The proposed SEEVs system would prevent identity fraud by automatically recognizing an individual based on measurable biological (anatomical and physiological) and behavioral characteristics. The new system would be able to answer two vital questions:

1. Is the person identified by name, date of birth, and social security number **authorized** to accept the employment being offered?
2. Is the person actually who he or she claims to be?

We also believe that any such secure electronic employment verification system as described above needs to meet standards set by the National Institute of Standards and Technology (NIST) from a technology and a privacy standpoint. The SEEVS model for prevention of identity theft lies in authorizing competing private entities, certified by the Government with the involvement of NIST, to develop and conduct the process necessary to verify the identity. The privately held databases would be protected from disclosure by law and held in a segregated fashion that would prevent linking of identity to biometrics without the enrolled person presenting his or her biometrics as the key.

We do not believe a biometric card is necessary to have an effective employment verification system. A new biometric card, such as a Social Security card, would cost billions of dollars to create, foster visions of a national ID card, and would tax the current capabilities of the Social Security system. Finally, as we have discussed and has been demonstrated before through cases such as the Swift, government-issued identity and work authorization cards eventually can be counterfeited by those who want to circumvent the system.

If adequately funded and fairly administered, SHRM and the HR Initiative believe this new system could eradicate virtually all unauthorized employment—thereby eliminating a huge incentive for illegal immigration. It will also eliminate discrimination by taking the subjectivity out of the verification process.

Finally, we strongly recommend that the Federal Government, specifically the Department of Homeland Security, take sole ownership of enforcing immigration laws at the worksite. Recently, partially due to an understandable frustration on the part of state and local governments over the lack of immigration control, many jurisdictions have enacted their own laws on employment eligibility verification. With all due respect to these states and municipalities, it is the U.S. Congress that has plenary authority, and the expertise, to deal with this issue. Moreover, it is extremely hard on employers, especially ones with presence in several states, to keep up with the various requirements. Ironically, while law-abiding employers risk exposure because of inadvertent mistakes or confusion over the different and possibly contradictory requirements, unscrupulous businesses can continue to hire off the books with virtual impunity. We suggest that worksite enforcement must be vigilant, and that the Federal Government must hold all employers to the same standards and same set of requirements.

True employment verification is the only way to ensure fair and equitable treatment for those individuals who should have access to legitimate jobs. It is essential for a legal workforce and for America's national and economic security.

Both SHRM and the HR Initiative coalition look forward to working with the committee on a new verification system that is effective, secure, easy to use, and in which both employees and employers can place their trust.

Chairman MCNULTY. Thank you very much.

We have two votes on the House floor. Since this is a 15-minute vote and we are just at the beginning of it, we are going to try to hear Mr. Neumann's testimony, perhaps Mr. Rotenberg. We will get as far as we can before we have to run over to vote. Then we will do two votes back to back and reconvene here as quickly as possible, hopefully only detaining for a 15-minute break.

So, Mr. Neumann may start.

**STATEMENT OF PETER G. NEUMANN, PRINCIPAL SCIENTIST,
COMPUTER SCIENCE LABORATORY, SRI INTERNATIONAL,
MENLO PARK, CALIFORNIA, ON BEHALF OF THE U.S. PUBLIC
POLICY COMMITTEE OF THE ASSOCIATION FOR COMPUTING
MACHINERY**

Mr. NEUMANN. Thank you very much for the invitation to be here. It is a very important topic, and I hope I can shed some constructive background on it.

I am speaking on behalf of the USACM, the U.S. Public Policy Committee of the Association for Computing Machinery, which is a nonprofit group, over 80,000 people dedicating to constructive use

of computer technology. I also speak as someone who has over 50 years of experience in research and development, and a sideline interest of collecting stories on things that failed.

If you ask me questions about it, I will talk about the IRS failure, the air traffic control modernization failure, the FBI virtual case file problems, the deadbeat dads, and so on. There are just an enormous number of cases in which large systems collapsed. The first two of those were \$4 billion efforts that were eventually canceled after it was recognized that they could never succeed.

The task that you are embarking on with a modernization or upgrading of EEVS reminds me of a metaphor, because if you look under the eaves, you typically see rodents and termites and dry rot from roof leaks in a badly built house, or even some of the well-built houses. You also have ongoing maintenance problems of having to clean out the gutters, and the liability lawsuits when the maintenance guy falls off the ladder.

[Laughter.]

Mr. NEUMANN. So it is a much bigger problem than it is normally conceived. When somebody tells you, yes, we can build this system, I will give you hundreds of examples of things that have gone wrong over the years, and reasons why most of the systems don't work.

If Ranking Member Johnson will ask me about tamper-proof systems, there are no such things. There might be some tamper-resistant ones and tamper-evident systems, but some of my colleagues can break just about anything that has ever been built.

I would like to very briefly outline some of the more critical issues. In my written testimony, I go through considerable detail on things that have to be fixed before this could possibly work, assuming that it ever possibly could work.

In particular, the sensitive information needs to be protected. This is an extremely different problem—difficult problem, rather—because many of the privacy problems are extrinsic to the system. They involve insiders who have legitimate access and who can misuse that access, for example. They are based on computer systems that are not secure, which means, since you put it on the Internet, you have a great many problems.

Authentication: Passwords are mentioned. Passwords are an extremely weak form of protection. We need something much greater than that, especially when we start sharing across the Internet.

One of the biggest problems that you are going to face is the scalability problem. I will give you two examples. The simplest example is the man who starts out with a hamburger stand and expands it into a worldwide chain. The logistic problems, the financial problems, the health problems, and so on are orders and orders of magnitude more complex. It does not scale in any reasonable sense.

A more computer-related example is taking MS DOS, which had no security in it whatsoever, and suddenly saying, we are going to build a variant of that that is accessible to everybody in the world over the Internet. There is no security in the Internet. There is very little security in some of the systems that we are dealing with. The result of all of that is that we are living in a world where you cannot really guarantee anything about protection.

Authentication and accountability are absolutely fundamental. Oversight. Audit trails. It represents an enormous problem, but then you have the problem of who can look at the audit trail, who can modify the audit trail. It should never be modifiable, of course.

You then have all of the level playing field issues that smaller organizations may be very seriously disadvantaged, especially by the realtime requirement, where they don't even have access to computers at the time that they need it.

So, I think the bottom line here is that experience has taught us over the years, for those of us who have been deeply involved in building systems and analyzing them and analyzing why they don't work, that systems like EEVS are subject to an enormous number of pitfalls. Those are anticipated from the very beginning, they can never be overcome in an incremental way.

I think the real problem here is that we tend not to anticipate all of the problems. We said, oh, let's go and build this thing. We are told that it can work. Our subcontractors are all very happy to take our money and build it. And, in fact, when it doesn't work and it get canceled years later, the same guys go off and build another system.

So, I think the problems here are ones that you really need to look at proactively before you engage in any legislation. So, on one hand, as a technologist, I can say, well, I could build something that might work in the small. However, when you scale it up to the massive number of uses over the Internet, where they are accessible from anywhere in the world, from any hacker, cracker, terrorist, or anybody else who can either bring down the system or access it, you have a totally different ball game than the one that you think you are dealing with.

Thank you very much for inviting me, and I look forward to your questions.

[The prepared statement of Mr. Neumann follows:]

Prepared Statement of Peter Neumann, Principal Scientist, Computer Science Laboratory, SRI International, Menlo Park, California, on behalf of U.S. Public Policy Committee of the Association for Computing Machinery

Security and Privacy in the Employment Eligibility Verification System (EEVS) and Related Systems

This testimony addresses some of the potential pitfalls that should be considered when planning systems with extensive computer database applications containing personal information, such as the Employment Eligibility Verification Systems (EEVS). Many of these concerns are also applicable to related programs such as US-VISIT and REAL-ID and to peripheral systems that may depend on EEVS or result from interconnections among those other systems. Widespread problems have arisen in efforts to develop complex systems that must satisfy critical requirements for security and privacy; these problems are also considered. Furthermore, there is a pervasive tendency to overestimate the benefits of computer-related technologies as would-be solutions to societal problems. We should not expect easy technological answers to inherently difficult problems. People are almost always the weakest links, although in many cases the system design and implementation create further weak links. A deep awareness of the long-term problems is essential before adopting legislation that might promise to help in the short term.

1. Introduction

Thank you, Chairman McNulty and Ranking Member Johnson, for the opportunity to testify at today's hearing exploring issues related to proposed changes to the EEVS. I commend you for exploring the policy and technology issues associated

with current proposals to expand and make this program mandatory. The computing community has often seen problems that resulted from policies established without careful consideration of the inherent limitations of technology. This can result in serious technical and social hurdles, and can lead to problems that are difficult to remediate once they have occurred, but that could have been prevented proactively. We hope that your efforts can help to avoid such difficulties.

As Principal Scientist in the Computer Science Laboratory at SRI International (formerly Stanford Research Institute), where I have been since 1971, and as someone with 54 years of experience related to computer and communication technologies, I have explored the intersection of technology and policy in numerous contexts, with a particular focus on system trustworthiness, security, and privacy issues. These areas are particularly relevant to the technology and policy nexus because privacy and equal treatment under law are fundamental rights; technology can at the same time help secure and also undermine those rights—depending on the policies and practices for its use. Privacy and security are inextricably linked. One cannot ever guarantee complete privacy, but the difficulties are severely complicated by systems that are not adequately secure. Creating complex systems that are dependably trustworthy (secure, reliable, survivable in the face of many adversities, and so on) remains a grand challenge of computer science. As we review a proposed expansion to the EEVS, USACM sees a number of issues that should be explored, debated, and resolved before adopting this massive new system for identity verification.

This statement represents my own personal position as well as that of the Association for Computing Machinery's (ACM) Committee on U.S. Public Policy (USACM). ACM is a non-profit educational and scientific computing society of more than 80,000 computer scientists, educators, senior managers, and other computer professionals in government, industry, and academia, committed to the open interchange of information concerning computing and related disciplines. The Committee on U.S. Public Policy acts as the focal point for ACM's interaction with the U.S. Congress and government organizations. It seeks to educate and assist policy-makers on legislative and regulatory matters of concern to the computing community. (See <http://www.acm.org> and <http://www.acm.org/usacm>.) A brief biographical paragraph is appended.

2. Issues of Specific Concern in the EEVS

The information transmitted to and stored in EEVS includes all of the primary personal identifiers in the U.S. As such, any compromise, leak, theft, destruction, or alteration of this data would have severe consequences to the individuals involved, including, but not limited to, identity theft and impersonation. It is thus essential that the system be designed, constructed, and operated with the quality of protection that is essentially that required for classified national security information.

2.1. Transmission of Information

Any legislation requiring the transmission of personal information across the Internet should require secure transmission of this information. Employers and agencies participating in the program should be required to have strong encryption, strong authentication, or even elementary security (such as Secure Socket Layer, SSL) for transmissions to and from employers. Calling out such specific technologies and details would be inappropriate for statutory language; however, the legislation should include performance-based standards for security that limit the exposure of personal information and provide accountability for every step in handling and processing this information. This will make it clear to agencies that implement the system, and employers who use the system, that the security of personal information is as valued by policymakers as the reliability and timeliness of responses. In the case of EEVS and many other important systems, it is much more important to have continuing trust in the security and accuracy of the information rather than to get results in the shortest possible time.

We recommend that legislation require that the system be designed to protect the integrity and confidentiality of information, that an independent security review evaluation be conducted before the system is deployed, and periodically after deployment, and that the results of these evaluations be made public. The systems and their operation should be required to follow Fair Information Practices. See also USACM's recommendations for database design (<http://www.acm.org/usacm/Issues/Privacy.htm>).

We further recommend that the legislation require security breach notification: if administrators become aware of any breaches that could potentially affect personally identifiable information, then they must publish a disclosure and must notify

all individuals who may be affected. Congress could model this after various state disclosure laws, such as one recently passed in California.

We also recommend that individuals be notified whenever someone accesses their records. The cost would be small, relative to other costs of the system: one letter or e-mail per job application.

2.2. Accountability for Access to Information

Accountability from the end user to the system administrator is vital in a computing system for ensuring the integrity of the system. If people are not held accountable for their actions, then policies intended to curb abuse will be undermined as users circumvent policies to make their jobs easier. One way of improving accountability in any computing system is by requiring strong user authentication and access controls coupled with thorough tamper-resistant and tamper-evident logging of all activity. In addition, all system accesses should log who accessed which records, and individuals whose information is stored should be informed who has accessed their records. This would then allow concerned individuals to detect misfeasance and improper access to their records. Each employer should identify a compliance officer (distinct from EEVS users). The system should automatically detect unusual user behaviors (to the extent technically feasible) and report them to compliance officers.

Some strong controls are clearly needed to explicitly bind the access of a particular request to a specific authorized requestor acting in a specific role for a specific employer. The same controls should be applied to the operators of the system. Names, titles, and SSNs of authorized system users are not enough.

Access controls are also critical if individual employees are going to access the system to check their own information. Procedures and policy need to be in place to restrict employees' access to only their own information. The ability to check the accuracy of one's own information is very important. However, such accesses also need to be controlled and audited, at least as extensively as the accesses on behalf of an employer—particularly to be able to identify systematic misuses.

2.3. Scalability

To date the system has functioned as a pilot program. The pilot has about 8,600 employers (June 2006 number) registered, with about half of those employers considered active users. This is out of about 5.6 million employers (as of 2002) that would eventually use the system once the law is fully implemented. Just because it seems to work for a small number of employers does not imply that it would work for all employers. The scalability of EEVS is a very serious architectural issue, because it will have to handle at least a thousand-fold increase in users, queries, transactions, and communications volumes. As a general rule, each time a system grows even ten times larger, serious new technical issues arise that were not previously significant.

At present, eight percent of confirmation requests cannot be handled immediately. This percentage needs to be reduced significantly as the number of employers increases. This would reduce the frustration with the system as well as the additional time required for manual confirmation for those records that could not be immediately verified. The additional human resources and associated costs necessary to handle this burden must be taken into account and included in budgets.

In general, it is risky to operate a system outside its intended design capacity and rely upon it to work under all circumstances, unless it has been carefully designed and implemented with scalability specifically in mind. Issues relating to inadequate scalability could completely compromise the effectiveness of the resulting system.

2.4. Accuracy of Information

The system has weaknesses about the accuracy of information presented to the system by an employee or employer as well as the accuracy of the underlying databases.

Speaking to the first kind of inaccuracies—fraudulent documents—the GAO has indicated that the Basic Pilot cannot effectively detect identity fraud. Proposals to add a digitized photograph to any employment authorization document would help make sure the employer could confirm that the photograph on the documents matched the employee presenting them. However, it is unclear how much this would reduce identity theft.

The inevitable cat-and-mouse game that always occurs in security (an ever upward escalating spiral in measures and countermeasures) is likely to occur between the security control and those seeking to commit fraud. As it becomes known that photo verification is a security feature, obtaining official documents under false pretenses will become more valuable. This could be done by bribing an insider or providing fraudulent documents to obtain the identification. The fraud is simply moved

to a different part of the system. We also note that requiring REAL-ID, as envisioned by the DHS's rules for implementation of the REAL-ID system, will not solve the insider threat problem. This was pointed out in USACM's comments on the REAL-ID rulemaking. (See the "insider threats" heading in USACM's comments: http://www.acm.org/usacm/PDF/USACM_REAL_ID_Comments_FINAL.pdf)

Carefully developed standards for digital photographs are necessary—much like those for driver's licenses—although they will not be sufficient for the prevention and detection of forgeries.

Serious areas of concern also exist for the second kind of inaccuracies—bad information in the underlying databases, delays in entering or revising information, and inconsistencies and name confusions among different databases. The Social Security database is known to have a high number of errors in name matches, as well as some duplicate numbers. For example, the Social Security Administration's Office of the Inspector General recently estimated that the SSA's 'Numident' file—the data against which Basic Pilot checks worker information—has an error rate of 4.1 percent. If each of 5.6 million employers made a query of a different potential applicant, that percentage suggests that on average more than 200,000 of them might get false responses.

The other databases the system will rely on will have similar issues. We certainly recognize and endorse the importance of provisions that allow individuals to check the correctness of information in the system that relates to them. However, a better defined process of correcting any erroneous information would be the necessary next step in improving the reliability of these databases, and the system as a whole. The risks of incorrect information are considerable, although establishing standards and procedures for accuracy to avoid those risks and to remediate errors and malicious misuse is an extremely difficult task. Numerous potential employees could be wrongly denied employment because of inaccurate records, if this problem is not addressed.

Risks of identity theft and privacy violations are also present—for example, if unauthorized or surreptitious accesses, or even changes, can be made. Explicit provisions are needed to protect employees and potential employees from adverse consequences of database and data entry errors.

Employers should also be held accountable for misuse of their blanket access privileges, such as using the data for running credit and insurance checks, engaging in blackmail, and other inappropriate purposes.

USACM encourages Congress to consider undesirable effects of false-positive and false-negative results. (A false positive is when a response indicates someone may be hired, only to be overturned later. A false negative would be when a response indicates someone has not been confirmed, only to be shown later to be incorrect.) Given the possibilities for error, identity theft, and system failure, employers should be protected from penalties when acting in good faith, and potential employees should be protected against discriminatory behavior. This is a policy issue rather than a technical issue, but directly arises from using an imperfect system as an arbiter.

It must be possible for authorized staff, as well as potential employees, to challenge incorrect EEVS data and determinations.

2.5 National ID System Concerns

Although there is no national ID card requirement attached to the EEVS, the connections to various databases are similar to the REAL-ID system currently proposed by DHS. If the EEVS does store query information or holds duplicates of information gleaned from the databases it interacts with, then it will have the appearance of a national identity system. As the existence of a national ID is not authorized by the proposed Senate immigration reform legislation, the Department will need to take care to avoid even the appearance of providing such documentation. The tradeoffs here are extremely complex, but are probably already being discussed in other testimony and other hearings.

2.6. Accessibility Issues

The potential lack of timely and highly available remote access to EEVS is another concern. Many small employers may not have Internet access or even computers that would allow them to have access. Examples might include small shop owners who want to hire clerks, and farmers who want a few hired hands. Furthermore, access via slow-speed dial-up connections is not likely to encourage consistent system use. Real-time confirmation of employability is less likely to occur consistently in such cases, and in cases of loss of computing or communication connectivity.

Perhaps even worse, poorly protected systems and poorly trained users will probably fall victim to ubiquitous security vulnerabilities and malicious software on the

Internet. Many casual or novice computer system users could become unsuspecting victims of scams, phishing attacks, identity theft, and so on—as a consequence of being forced to add computing and connectivity to support use of EEVS.

It is also a certainty that criminal elements will craft phishing e-mail appearing to originate from the Department of Homeland Security. This would include pointers (URLs) to what appear to be DHS websites with the DHS seal and apparent certificates that are essentially indistinguishable from the real websites. Unsuspecting users who visit these sites might then be victimized, resulting in significant financial losses and other serious consequences that typically result from identity thefts. Skilled identity thieves are likely to be able to scam the system itself more readily than authorized individuals can protect themselves or correct data errors.

A further problem is that many of the computer systems used to access EEVS may not have adequate security, and may have been compromised. Unfortunately, the security of EEVS itself may be subverted by the lack of security in other connected systems (which potentially implies the entire Internet).

For these reasons, despite its possible benefits, EEVS might actually make identity theft easier and at the same time make remediation and recovery more difficult.

3. Broader Concerns

The current state of the art in developing trustworthy systems that can satisfy critical requirements such as security, reliability, survivability, and guaranteed real-time performance is truly very poor. This is not a newly recognized problem, and was well documented in 1990 in a report, *Bugs in the Program*, by James Paul (Subcommittee on Investigations and Oversight of the U.S. House Committee on Science, Space, and Technology). Subsequently, I presented four testimonies (1997, 1999, 2000, and 2001) for various House committees—each of which suggested that the overall situation had incrementally gotten worse. Of specific relevance to this testimony was my written testimony for the House Subcommittee on Social Security, *The Social Security Administration: PEBES, Identity Theft, and Related Risks*, on May 13, 1997—now more than 10 years ago. Similar conclusions appear in my testimonies for Senate committees (1996, 1997, 1998). (These testimonies are all online, with links from my website, <http://www.csl.sri.com/neumann>.)

Software development fiascos abound—including many highly visible projects that have been late, over budget, or indeed abandoned after many years and large expenditures. My *Illustrative Risks* compendium index (<http://www.csl.sri.com/neumann/illustrative.html>) cites numerous examples such as the IRS and Air Traffic Control modernization programs and the FBI Virtual Case File, to cite just a few. See also the PITAC report, *Cyber Security: A Crisis of Prioritization*: http://www.nitrd.gov/pitac/reports/20050301_cybersecurity/cybersecurity.pdf.

Privacy problems are also manifold, and becoming increasingly complex as ubiquitous dependence on computerized databases increases. The extent to which computer systems and databases can enforce privacy policies is severely limited by the absence of meaningfully secure systems, and by the number of privacy violations occurring outside of the confines of the computer systems. Correctness and timeliness of the data are also major concerns.

Several problems with identity management must be addressed. The existing infrastructure is riddled with security and reliability vulnerabilities, and is not sufficiently trustworthy. Because many of the privacy problems are related to total systems (encompassing computers, communications, people, and procedures), they cannot be adequately protected by technological approaches alone. Identities are typically subject to masquerading and spoofing. Name confusions such as alternative spellings and aliases cause major confusions. Authentication is often compromised by “social engineering” and other nontechnological bypasses. Authorization is typically inadequately fine-grained (and worse yet, often supposedly all-or-nothing, but bypassable). Blanket authorization should be avoided, observing the Principle of Least Privilege—under which access authorizations should be restricted to just what is needed to accomplish that intended task rather than being overly broad.

It is also worth noting that there are cases where identities need to be masked. Examples include individuals protected under the Federal Witness Protection Program, individuals granted asylum from other countries and given new identities, undercover intelligence agents, undercover law-enforcement agents working criminal cases, and sky marshals. (Note that the Transportation Security Administration somehow lost the employee personnel records for 2003–2005.) All of these people need to have verifiable identities that stand up to any scrutiny, online or otherwise. Exposure of their real identities may result in their violent deaths, compromises of national security, and possible violence to their friends and families. Those individuals will likely need employment under their alternate identities, and it must be ensured that any system implemented for EEVS does not endanger their cover iden-

tities. The more that databases become cross-linked, the more difficult it becomes to prevent errors and leakage of such sensitive information. Furthermore, such linkages make these database systems higher-value targets for criminals.

The requirement of masking, aliasing, or otherwise providing alternative identities seems to create a fundamental conundrum: maintaining the accuracy of a critical database while simultaneously undermining its accuracy may impair the accuracy of other data in the process.

Past legislative efforts for improving accuracy and integrity of public databases have caused serious problems with the viability of other systems. For example, the Help America Vote Act mandated statewide-centralized voter registration databases that must verify the accuracy of records by matching them with drivers' license records. States such as California found that the data-matching requirements in practice led to high rejection rates in some counties, depending on how strictly the data was interpreted across databases. This had the effect of reducing, not improving, voter registration list accuracy, because legitimate voters were removed from the rolls because of address typos and name variants.

4. Conclusions

The problems identified in this testimony are fundamental in the context of EEVS-like systems. There are many risks. Essential concerns for system and data security, system and data integrity, and individual privacy must be anticipated from the beginning and reflected throughout design, implementation, and operation. Many potential slippery slopes must also be anticipated and avoided. Privacy requires a real commitment to creating realistic policies and enforcing them.

Experience has taught us that the design of information systems is subject to many pitfalls that can compromise their effectiveness. If EEVS is not appropriately implemented, it could—like many past systems—be subject to problems that include, but are not limited to, the following:

- Difficulties in maintaining accuracy, correctness, and timeliness of the database
- Inconsistencies among widely distributed systems with distributed data entry
- A popular tendency to place excessive faith in the trustworthiness of the system's responses
- A common tendency to place excessive faith in the infallibility of identification, authentication, and access controls to ensure security and privacy
- The lack of scalability with respect to ever-growing enormous databases, massive numbers of authorized users, and consequent communication and access limitations
- The complexity of requirements imposed by noncompromisable auditing and accountability, both of which introduce further problems with respect to system security and integrity and with respect to data privacy
- The complexity of audit trails and notification of accesses to audit trails themselves
- The risks of exacerbated problems that result from mission creep—as further applications tend to be linked to the originally intended uses, and as control of the above factors becomes less possible
- Similar risks related to feature creep, with or without any oversight and audit mechanisms.
- “Piggybacking” by other agencies—e.g., law enforcement and DHS might want to place silent-hit warnings (as was considered in the late 1980s for the National Crime Information NCIC system) that would inform them who was seeking information for anyone who was under surveillance. Linkages with databases for deadbeat parents, student loan defaulters, and other applications might also be contemplated. Each such connection would expand the exposure of the system and the dangers of incorrect data and data leakage.

Congress should establish clear policies and required outcomes, rather than prescriptive or detailed technical processes or systems. The technical challenges to achieving the policies and outcomes should be fully documented in the Congressional Record of the legislation.

Considerably more focused research is needed on total-system approaches that address identity authentication, authorization, and data protection within the context of overall system architectures for security and privacy. (For example, some promising new developments enable the use of cryptography to enable certain queries to be answered without requiring decryption and release of excessive information in violation of the Principle of Least Privilege. These techniques appear to be significantly less subject to misuse, including insider misuse.) Such approaches may be more effective than trying to rely on biometric and other devices whose effectiveness may be compromised by technological or operational flaws in the systems in which

they are placed and errors in human judgment. Finally, incentives are needed to ensure that research and innovative prototypes are relevant to the real-world problems and to ensure that these advances find their way into the development and operation of practical systems.

Although similar comments can be made about REAL-ID and any other national identification systems, all of these concerns are specifically relevant to systems such as EEVS.

We have not attempted to be complete here, but rather to focus on the main issues. There are many relevant reports of the Government Accountability Office, the National Research Council, and other sources that I hope you have already seen. Whereas USACM and I speak from a technical perspective, we recognize the political imperatives regarding immigration and employment. We urge the Congress to focus on creating the right incentives for operators and employers that maximize achievement of our immigration laws and each citizen's right to work while minimizing privacy invasion, ID theft, and criminal activity. In this effort, technology should be seen as a supporting block, not the keystone of the arch.

We look forward to any further questions that might arise from your reading of this written testimony or from my oral testimony.

Acknowledgments

I am particularly grateful to Cameron Wilson (ACM Director of Public Policy), David Bruggeman (USACM Public Policy Analyst), Eugene Spafford (USACM Chairman, and Professor at Purdue University), Jim Horning, and many other members of USACM for their generous help in my preparing this testimony on rather short notice.

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Personal Background Information

Peter G. Neumann (Neumann@CSL.sri.com) has doctorates from Harvard and Darmstadt. His first technical employment was working for the U.S. Navy in the summer of 1953. After 10 years at Bell Labs in Murray Hill, New Jersey, in the 1960s, during which he was heavily involved in the Multics development jointly with MIT and Honeywell, he has been in SRI's Computer Science Lab since September 1971. He is concerned with computer systems and networks, trustworthiness/dependability, high assurance, security, reliability, survivability, safety, and many risks-related issues such as voting-system integrity, crypto policy, social implications, and human needs including privacy. He moderates the ACM Risks Forum (comp.risks), edits CACM's monthly Inside Risks column, and is the Chairman of the ACM Committee on Computers and Public Policy (ACM-CCPP), which serves as a review board for RISKS and Inside Risks and is international in scope. He is also a member of USACM, which is independent of ACM-CCPP. He created ACM SIGSOFT's Software Engineering Notes in 1976, was its editor for 19 years, and still contributes the RISKS section. He has participated in four studies for the National Academies of Science: Multilevel Data Management Security (1982), Computers at Risks (1991), Cryptography's Role in Security the Information Society (1996), and Improving Cybersecurity for the 21st Century: Rationalizing the Agenda (2007). His book, Computer-Related Risks (Addison-Wesley and ACM Press, 1995), is still timely—including many of the problems discussed above. He is a Fellow of the ACM, IEEE, and AAAS, and is also an SRI Fellow. He received the National Computer System Security Award in 2002 and the ACM SIGSAC Outstanding Contributions Award in 2005. He is a member of the U.S. Government Accountability Office Executive Council on Information Management and Technology, and the California Office of Privacy Protection advisory council. He has taught courses at Darmstadt, Stanford University, the University of California at Berkeley, and the University of Maryland. Neumann chairs the National Committee for Voting Integrity (<http://www.votingintegrity.org>). See his website (<http://www.csl.sri.com/neumann>) for prior testimonies for the U.S. Senate and House and for the California state Senate and Legislature, publications, bibliography, and further background.

Dr. Neumann is Principal Investigator for two SRI projects that are relevant to this testimony:

- Privacy-Preserving Credentials, one of several subcontracts from Dartmouth College, Assessable Identity and Privacy Protection, funded by the Department of Homeland Security, 2006-CS-001-000001-02, FCDA #97.001. The SRI project is part of a collaborative team project jointly with the University of Illinois at Urbana-Champaign, Cornell, Purdue, and Georgia Tech. The project is contributing some highly innovative cryptographic research and extensive system experience to the application of practical techniques for advanced identity management with demonstrations of applications that will include health care and finance but that have significant relevance to identity management generally.
- A Center for Correct, Usable, Reliable, Auditable and Transparent Elections (ACCURATE), NSF Grant number 0524111. ACCURATE is a collaborative effort with colleagues at Johns Hopkins, Rice, the University of California at Berkeley, Stanford, the University of Iowa, and SRI. It is examining techniques and approaches for voting systems, with particular emphasis on security, integrity, and privacy. SRI

Neumann contributes to the following DHS project:

- Cyber Security Research and Development Center (CSRDC), Department of Homeland Security, Science and Technology Directorate, DHS Contract HSHQDC-07-C-0006 to SRI International. CSRDC is providing extensive support for S&T Program Manager Douglas Maughan's R&D program. (<http://www.csl.sri.com/projects/csrc> and <http://www.cyber.st.dhs.gov>)

Chairman MCNULTY. Thank you very much.

The Members will now run over to the House floor to vote. There are 5 minutes left on this vote, and the next vote will be directly afterward, so we should be able to vote and hopefully only be gone for 15 minutes. When we return, we will hear from Mr. Rotenberg, and then allow for questions. Thank you for your patience.

[Recess.]

Chairman MCNULTY. The hearing will come to order. Sorry for the delay. We know that your time is very valuable, and we very much appreciate the fact that you are spending some of it with us here today.

We have heard from the first four witnesses on this panel, and we will now hear Mr. Rotenberg.

**STATEMENT OF MARC ROTENBERG, EXECUTIVE DIRECTOR,
ELECTRONIC PRIVACY INFORMATION CENTER**

Mr. ROTENBERG. Thank you very much, Chairman McNulty and Ranking Member Johnson, Members of the Subcommittee. Thank you for the opportunity to testify today.

My name is Marc Rotenberg. I am Executive Director of the Electronic Privacy Information Center. We are a public interest research organization here in Washington, D.C. We track emerging privacy issues. We have also frequently been before the Subcommittee to discuss the privacy impact of proposals that involve the use of the Social Security number and SSA records.

We recently did a detailed report on the employment verification systems that are contemplated in both the Senate and the House bills. That report is simply titled, "National Employment Database Could Prevent Millions of Citizens from Obtaining Jobs." I would like to add that it be included in the hearing record as part of my statement, if that is okay.

Chairman MCNULTY. No objection.

Mr. ROTENBERG. Thank you. I would like to today highlight the key findings of our report. The central conclusion that we reached is that the employment verification system has significant weaknesses. It will pose enormous burdens for employers, and put the privacy rights of American workers at substantial risk.

It will also give the Federal Government an extraordinary amount of new power over the lives of Americans, as well as greatly expand the role of the Department of Homeland Security in the American labor force.

I want to say a word about the Department of Homeland Security. As Mr. Johnson mentioned earlier, there is, of course, this very significant concern about the misplaced disk drive that contained the employment records of 100,000 TSA employees who had been hired between January 2002 and September 2005. I think it is important to understand the significance of this particular incident.

You have heard a great deal of testimony this morning about the problem of record accuracy. No doubt, if you scale up the Basic Pilot Program, the number of workers who may face determinations that say they may not be eligible to work unless they, in effect, clear their status is going to grow dramatically.

You haven't heard very much about new threats to privacy and security that these proposals raise. I believe that is a key problem that the Department of Homeland Security has helped identify because by misplacing the records that they did on the TSA employees, they have, in effect, brought attention to the problem of identity theft and security breaches, which are significantly increasing in the United States. In fact, the Federal Trade Commission has reported that identity theft is now the number one concern of American consumers. A big contributor to that problem is the extraordinary collection of personal information.

I will say a few words about the current design of this system. As other witnesses have noted earlier, the proposal to consolidate so much personal information in these centralized government databases does significant increase the risks to privacy.

Now, it is our view that the SSA has done a good job over the years trying to narrow the use of the Social Security number and Social Security records for the appropriator legislative purposes. Of course, when another agency comes forward and proposes new expanded uses of the Social Security number, then new privacy issues arise.

Now, both bills state that the database access will be limited to authorized users only. However, it is very easy to understand the circumstances under which others could get access to these record systems. Dr. Neumann has described the various ways under which computer systems can be compromised through weak security. It is also a result of the insider access to the record systems that would result as well.

I would like to say a word about the role that the REAL ID act plays in the legislation that is under consideration in both the Senate and the House. As you know, there is a lot of opposition to the implementation of the REAL ID Act. The statute, which was passed in February of 2005, went forward without a vote, without a public hearing.

Since that time, more than a dozen states have passed bills to oppose the implementation of REAL ID in their states. Four states have actually said that they would not have a REAL ID requirement.

Now, this is a fact worth keeping in mind as you look at these legislative proposals because the Department of Homeland Security is proposing that the REAL ID document be used as one of the ways to establish employment eligibility. In fact, the Senate bill would make non-REAL ID-compliant documents of no use for establishing employment eligibility by the year 2013, which means you could actually have a situation, if the legislation passes and REAL ID is not implemented, that there would be no documents available to authenticate employment eligibility.

Well, let me conclude, Members, if I may briefly with a few key recommendations. I think there are some things that could be done.

Obviously, the data accuracy issue has to be addressed before the system is scaled. I think the systems of accountability for the dramatically expanded role for the Department of Homeland Security, particularly the ability to essentially require biometric identification and perhaps the collection of fingerprints, that needs to be examined. I think the REAL ID provision needs to be revised.

Finally, these proposals, very costly proposals, to try to make the Social Security card tamper-proof, incorporating biometric identity factors—even if those were to go forward, as other witnesses have testified, I think you would be right back in a couple of years trying to design a new card when the flaws in the current card are uncovered.

Thank you very much for your time.

[The prepared statement of Mr. Rotenberg follows:]

**Prepared Statement of Marc Rotenberg, Executive Director, Electronic
Privacy Information Center**



Testimony and Statement for the Record of

Marc Rotenberg
President, EPIC

Hearing on

Employment Eligibility
Verification Systems (EEVS)

Before the

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Committee on Ways and Means,
U.S. House of Representatives

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Introduction

Chairman McNulty, Ranking Member Johnson, and Members of the Subcommittee, thank you for the opportunity to testify on proposed employment eligibility verification systems (EEVS) and their relationship with the Social Security Administration.

My name is Marc Rotenberg and I am the Executive Director of the Electronic Privacy Information Center (EPIC). EPIC is a non-partisan research organization based in Washington, D.C. Founded in 1994, EPIC has participated in leading cases involving the privacy of the Social Security Number (SSN) and has frequently testified in Congress about the need to establish privacy safeguards for the SSN.¹ Last year, I testified before this Subcommittee on Social Security regarding high-risk issues surrounding SSNs, and I urged the Subcommittee to limit use and disclosure of the SSN in order to reduce error, misuse, and exploitation.² In a hearing before the Subcommittee on Immigration of the House Judiciary Committee in 2005, I also described some of the problems that would likely result from a poorly designed employment eligibility system.³

Recently, EPIC prepared a detailed report on the legislative proposals to establish the employment eligibility verification systems.⁴ We reviewed the bills currently pending in Congress, the recent reports of the Government Accountability Office, and the report of the Inspector General of the Social Security Administration. Our report "National Employment Database Could Prevent Millions of Citizens from Obtaining Jobs" is attached to this statement.

In my testimony today, I will highlight some of our key findings as well as the related privacy and security concerns in the proposed development of the employment eligibility verification systems. Our central conclusion is that the verification systems proposed in H.R. 1645 and S.AMDT. 1150, contain significant weaknesses that should be remedied prior to enactment.⁵ As currently planned, these systems greatly diminish

¹ EPIC maintains an archive of information about the SSN, including Congressional testimony, at <http://www.epic.org/privacy/ssn/>.

² Marc Rotenberg, Exec. Dir., EPIC, *Testimony and Statement for the Record at a Hearing on Social Security Number High Risk Issues Before the Subcomm. on Social Sec., H. Comm on Ways & Means*, 109th Cong. (Mar. 16, 2006) ["EPIC Testimony on SSN"], available at http://www.epic.org/privacy/ssn/mar_16test.pdf.

³ Marc Rotenberg, Exec. Dir., EPIC, *Testimony and Statement for the Record at a Hearing on H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2005," Before the Subcomm. on Immigration, Border Sec., and Claims, H. Comm on the Judiciary*, 108th Cong. (May 12, 2005), available at <http://www.epic.org/privacy/ssn/51205.pdf>.

⁴ EPIC, *Spotlight on Surveillance, National Employment Database Could Prevent Millions of Citizens From Obtaining Jobs* (May 2007), <http://www.epic.org/privacy/surveillance/spotlight0507>.

⁵ *Security Through Regularized Immigration and a Vibrant Economy Act, of 2007*, H.R. 1645, 110th Cong. (2007) ["H.R. 1645"], available at <http://www.epic.org/privacy/surveillance/spotlight0507/hr1645.pdf>; *Secure Borders, Economic Opportunity and Immigration Reform Act of 2007*, S.AMDT. 1150 to S. 1348, 110th Cong. (2007) ["S.AMDT. 1150"], available at <http://www.epic.org/privacy/surveillance/spotlight0507/samd1150.pdf>.

employee privacy and make personal information vulnerable to theft and misuse. The proposed verification systems would also grant to the federal government unprecedented control over the livelihoods of American citizens and significantly expand the role of the Department of Homeland Security. The Secretary of Homeland Security could create a biometric identity system for all workers in the United States and make determinations about who is allowed to work without providing the basis for a determination.

Giving the Department of Homeland Security the authority to determine employment eligibility for virtually all Americans in the workforce, including those currently employed, raises unprecedented privacy and security concerns. As the Subcommittee must be aware, last month a critical component of the DHS lost the employment records of 100,000 federal employees. That missing data drive contained the names, Social Security numbers, dates of birth, payroll history and detailed bank account information for every person hired by Transportation Security Administration ("TSA") between January 2002 and August 2005, including federal air marshals who fly undercover to help safeguard commercial aviation in the United States. While the privacy office of the TSA responded promptly once the problem was uncovered, the consequences of that data breach are truly staggering.⁶

This loss of 100,000 employment records by the Department of Homeland Security at a time of growing concern about identity theft raises serious questions about the ability of the Department to safeguard the sensitive data of American workers that would be collected under the House and Senate proposals.

I. The Proposed Employment Verification System Will Increase the Likelihood of Inaccurate Employment Determinations

The House and Senate proposals would significantly expand the Basic Pilot employment verification system instituted in 1997. Currently the program is essentially a voluntary program that is used by only one-fifth of one percent of employers.⁷ The expansion of Basic Pilot under the House and Senate proposals would require all U.S. employers, approximately 7.4 million employers in the private sector and 90,000 in the public sector, to verify all new hires within 4 years.⁸ This will create serious problems for the 143.6 million employees who would be exposed to preexisting data accuracy problems with the Basic Pilot system.

As currently drafted, the House and Senate proposals would cross-reference large volumes of employee information against government databases.⁹ If even a small fraction of employee records contained errors, millions of individuals would be prevented from working if the flaws were not corrected. The number of incorrect nonconfirmations may

⁶ Transp. Sec. Admin., TSA Public Statement on Employee Data Security (May 2007), available at http://www.tsa.gov/datasecurity/statement_05-07-2007.shtml.

⁷ U.S. Citizenship & Immigration Serv., Dep't of Homeland Sec., *I Am an Employer... How Do I Use the Employment Eligibility Verification/Basic Pilot Program?* 1 (Jan. 2007), available at http://www.uscis.gov/files/nativelocuments/EEV_FS.pdf.

⁸ S.AMDT. 1150 §302(a) (amending §274A(d)); H.R. 1645 §301(a) (amending §274A(c)).

⁹ H.R. 1645 §301(b)(2), §306; S.AMDT. 1150 §302(a) (amending §274A(c)(9)(F)), §304(a)(1), §308.

be significant. A 2002 independent study of Basic Pilot, undertaken by the Immigration and Naturalization Service (INS), determined that 42% of final nonconfirmations were erroneous and the affected individual was eligible for work.¹⁰

Correcting such inaccuracies would place considerable burdens upon employees. They would have to navigate the appeals process for as long as two and a half months in order to prove their eligibility to work.¹¹ Some employees will also face hardship from their employers while trying to correct database errors. The INS report found that almost half of employees awaiting appeal had their pay cut, job training delayed, or were prohibited from working altogether.¹²

Recent reports have also determined that employers are using the Basic Pilot to prescreen applicants, in some instances denying them job opportunities because of faulty data maintained by the federal government.¹³ Even though the practice of pre-screening is prohibited, it would seem obvious that employers will try to prescreen so as to avoid the additional burden that might result from a “further action” or “tentative nonconfirmation” notification. And the employee may never know the basis for the determination.

Although the House and Senate proposals provide for accuracy and security reviews, these audits take place months after establishment of the program.¹⁴ Any solution adopted after the fact will likely arrive in the midst of an onslaught of verification requests. To minimize the problems that will arise from database inaccuracies, such errors should be corrected prior to enactment of the bills. A comprehensive accuracy and security audit of agency databases to fix existing problems would prevent setbacks if an employee verification system were established in the future.

II. Data Aggregation

Both the House and Senate bills offer government agencies unprecedented power over the means by which an individual may prove identity to gain employment. Both bills greatly expand the federal government’s data collection and data sharing roles. Aggregation of large amounts of data increases the possibility that the information could be used for unintended purposes, such as long-term tracking of individuals and identity theft.

An all-inclusive database provides an appealing mark for thieves trying to create false identities for criminal activities. Large centralized databases of sensitive

¹⁰ Inst. for Survey Research, Temple Univ., and Westat, *INS Basic Pilot Evaluation Summary Report 8* (Jan. 29, 2002) [“Summary of Independent Analysis of Basic Pilot”], available at http://www.uscis.gov/files/nativedocuments/INSBASICpilot_samm_jan292002.pdf.

¹¹ H.R. 1645 §301(a) (amending §274A(c)(19)(A); S.AMDT. 1150 §302(a) (amending §274A(d)(5)(C)(ii)(II)).

¹² Summary of Independent Analysis of Basic Pilot at 31, *supra* note 10.

¹³ *Id.* at 19-20; Office of Inspector Gen., Soc. Sec. Admin., *Congressional Response Report: Employer Feedback on the Social Security Administration’s Verification Programs, A-03-06-26106-6* (Dec. 18, 2006), available at <http://www.ssa.gov/oig/ADOBE/PDF/A-03-06-26106.pdf>.

¹⁴ S.AMDT. 1150 §302(a) (amending §274A(d)(2)(E); H.R. 1645 §301(a) (amending §274A(c)(2)(C)).

information also create the potential for devastating hardships for the millions of Americans who would be affected by identity theft from even a single security breach. In addition to the personal and financial troubles a data breach causes, some individuals would also experience threats to their safety. Privacy is better safeguarded by storing data in multiple, decentralized locations, and only when necessary.

Both the House and Senate proposals require DHS and the Social Security Administration to work together to operate the employment verification system as a fully integrated, cross-agency system.¹⁵ However, the responsibility for data retention is given to DHS exclusively. The Senate bill requires that the Social Security Administration, Internal Revenue Service, and Department of State disclose personal data to DHS, including: driver's license and state identification numbers; tax information; employment data; passport and visa information; and birth and death records.¹⁶ In addition, both bills give the Secretary of DHS the discretion to choose which documents can be required for employment eligibility.¹⁷

The House bill requires "administrative, technical, and physical safeguards" in order to minimize the unauthorized disclosure of personal information.¹⁸ This includes the use of encryption, security updates, and periodic tests.¹⁹ While these are all necessary and important components to safeguard data privacy, security includes all parts of a system's hardware, software, tapes, disks, and personnel. Although both bills state that database access will be limited to authorized users only, employees with no connection to employment verification could access the database as well. This likelihood is increased by the interlinking nature of the system proposed under both the House and Senate bills.

Both of the proposals require employers to submit employer and employee attestations, names, addresses, birth dates, and Social Security numbers for every employee. The House bill requires that employee information be stored by the employers for three years after the date of hire, or one year after termination for each employee, whereas the Senate bill requires employers to retain records for seven years after the date of hire, or two years after termination.²⁰ The employee records must be maintained by employers for a significant amount of time, thus increasing the likelihood of security breaches. The Senate proposal also contains a provision allowing employers to require new employees to submit their fingerprints to DHS. However the bill does not require employee notice or consent.²¹ While the purpose of the action is to avoid identity theft, the involuntary collection of biometric data for employment verification is expansive and too invasive to adopt at this time.²²

¹⁵ H.R. 1645 §301(a) (amending §274A(c)(2)(B)); S.AMDT. 1150 §302(a) (amending §274A(d)(1)).

¹⁶ S.AMDT. 1150 §302(a) (amending §274A(d)(9)(D)(i)).

¹⁷ H.R. 1645 §301(a) (amending §274A(b)(1)(E)); S.AMDT. 1150 §302(a) (amending §274A(c)(1)(E)).

¹⁸ H.R. 1645 §301(a) (amending §274A(c)(4)(F)).

¹⁹ *Id.*

²⁰ H.R. 1645 §301(a) (amending §274A(b)(3), (b)(4)); S.AMDT. 1150 §302(a) (amending §274A(c)(3), (c)(4)).

²¹ S.AMDT. 1150 §307(a).

²² S.AMDT. 1150 §307(b)(1).

Employers are to submit employment verification requests via the Internet, other electronic media sources, or over phone lines. These systems are vulnerable to interception, but the bills do not specify proper safety protocols for employers. Employers will also be responsible for collecting and storing large quantities of personally identifiable information for their employees seeking verification.²³

Requiring employers to retain and protect their employees' personal information creates a significant burden. Employers will incur additional costs for storage, training, and necessary safety precautions. In addition, employers also have the added burden of being forced to verify all of their new hires with the federal government. This could lead to lost revenue as well as the difficulty inherent in implementation of the new procedures.

Neither the House nor Senate proposals require employers to retain sensitive employment data in a secure manner. While most employers would undoubtedly engage in safe storage practices, as identity theft becomes more lucrative, and thieves become more sophisticated, the chances of data breaches increase significantly. The Senate bill does contain a provision requiring the Comptroller General to conduct an annual report to ensure 97 percent employer compliance with specified privacy requirements listed in the bill.²⁴ Although 97 percent compliance is substantial, if even 3 percent of Americans are subjected to the devastation privacy breaches can cause, that would be too many. For this reason, additional federal safety guidelines should be included in both bills. The current proposals require that privacy trainings be conducted for employers; however, grants and other tools would also help employers successfully implement the necessary changes. These tools would be especially helpful for small business owners who may not have sophisticated technology or large budgets at their disposal.

As currently drafted, neither of the bills offers employees a private right of action against employers who negligently retain employee data. This is undesirable because employees must be protected, in the event that overburdened employers take short-cuts that could jeopardize employee data.

The risks of misuse and data breach are very real. Every day new stories surface in which hapless people are the victims of identity theft or security breaches. These events are caused by both unauthorized and authorized users of databases. For example, in 2006 an official of the Maryland Motor Vehicle Administration was one of three people charged with conspiring to sell unlawfully produced identification cards.²⁵ Similarly, in 2006, a police officer admitted accessing motor vehicle records to gather personal data on a romantic interest and co-workers.²⁶ Such abuses may increase under a national employment eligibility verification database.

III. REAL ID Requirements

²³ H.R. 1645 §301(a) (amending §274A(c)(12)(A)(i); S.AMDT. 1150 §302(a) (amending §274A(c)(1).

²⁴ H.R. §301(a) (amending §274A(c)(18)(B)).

²⁵ *Fake ID Cards*, Wash. Post, Mar. 15, 2006, at B02.

²⁶ Michael Kiefer, *Officer Admits to Tampering: Databases Used to Check on Women*, Ariz. Republic, Apr. 6, 2006, at B3.

As the Subcommittee is likely aware, there is growing opposition to the implementation of the REAL ID Act. For example, Nevada recently passed a joint resolution urging Congress to repeal the scheme.²⁷ Fourteen other states have enacted legislation against it as well. In addition, there are bills in both the House and Senate seeking to repeal the Act.²⁸ During the public comment period on REAL ID draft rule, DHS received over 12,000 comments.²⁹

Significantly, it took the Department of Homeland Security two years to issue the draft rule. The delay has raised further questions about the competence of the agency to successfully create a national identification system.

Therefore, it is surprising that the proposals to establish the Employment Eligibility Verification System assume a functioning, reliable REAL ID document and one proposal actual would make REAL ID-compliant identity the only document that could be used to determine employment eligibility. Identification documents listed under both bills include biometric, machine-readable Social Security cards or passports.³⁰ In addition, the Senate bill also includes REAL ID compliant driver's licenses.³¹ Although REAL ID's drafters did not envision it as a national identification system, merely to set federal requirements for driver's licenses, both of the proposed verification systems would obligate individuals to adopt REAL ID as a prerequisite to employment. In fact, the Senate bill stipulates that non-REAL ID compliant cards would not be accepted after 2013.³² Thus, both bills would help to create a national identification system, and they would move driver's licenses farther from their original use. There is even a scenario under which the Congress would pass legislation that would make employment in this country permissible only upon the presentation of a document that does not exist.

EPIC has previously explained at length that the REAL ID plan is fundamentally problematic.³³ The creation of machine-readable biometric Social Security and REAL ID cards will allow for greater data collection and tracking of individuals. Personal data would be recorded in digital format in many more encounters, leading to greater numbers of information databases and less secure personal information. The most reliable way to protect citizens, and reduce the growing problem of identity theft is by minimizing the collection of data, developing alternative technologies, and utilizing new organizational

²⁷ EPIC, *National ID Cards and REAL ID Act Page*, http://www.epic.org/privacy/id_cards/.

²⁸ *Id.*

²⁹ *Id.*

³⁰ H.R. 1645 §301(a) (amending §274A(b)(1)(B)(i)).

³¹ S.AMDT. 1150 §302(a) (amending §274A(c)(1)(C)).

³² S.AMDT. 1150 §302(a) (amending §274A(c)(1)(F)).

³³ EPIC Testimony on SSN, *supra* note 2; EPIC, *Spotlight on Surveillance, Federal REAL ID Proposal Threatens Privacy and Security* (Mar. 2007), <http://www.epic.org/privacy/surveillance/spotlight/0307>; EPIC and 24 Experts in Privacy and Technology, *Comments on Docket No. DHS 2006-0030: Notice of Proposed Rulemaking: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes* (May 8, 2007) ["EPIC REAL ID Comments"], available at http://www.epic.org/privacy/id_cards/epic_realid_comments.pdf.

practices.³⁴ The REAL ID identification method does not meet these stipulations. Thus, it is an inappropriate requirement of employment verification systems.

But whether or not you accept our assessment of the REAL ID plan, the substantial opposition by the states, the high level of public opposition, as well as the far-reaching engineering problems suggest that employment verification based upon the availability of the REAL ID card is a perilous course.

IV. SSA Responsibilities

As they are currently drafted, the House and Senate proposals make extensive use of SSNs as a means of identity verification. But the number and card were never intended to be such. The proposed additions to the Social Security card will increase their value to identity thieves and make privacy breaches more serious when they occur. The bills' requirements would also draw Social Security Administration resources away from their core mission.

When Congress passed the Privacy Act of 1974, it recognized the undesirability of using SSNs as universal identifiers. However, as they are currently drafted, the House and Senate proposals reinforce the use of SSNs as identification.³⁵ The verification system would require the Social Security Administration to cross-reference its information with DHS to help determine identity.³⁶ The House proposal recognizes that the SSN should not be an identifier: it requires that a disclaimer appear on the Social Security card stating that it is not to be used for identification purposes.³⁷ Yet that is precisely the practical effect under both bills.

The proposals would transform the Social Security card and include biometric and machine-readable characteristics, such as a digital photograph of the cardholder, for purposes of individual identification.³⁸ Including machine-readable features on the Social Security card would create a digital record each time the card is used. A widely used machine readable document increases the risk that the number will be compromised through identity theft. And the biometric data on the card would make breaches more serious for cardholders when they occur.

Adding these expensive features to the Social Security card would also divert resources from the original purpose of the Social Security Administration to administer retirement, disability and survivors' benefits. In a 2006 hearing before this Subcommittee, an Assistant Deputy Commissioner of the Social Security Administration testified that issuing Social Security cards with the new features outlined in the House proposal would cost more than \$25 per card, with the cost of replacing cards for all

³⁴ EPIC, *Comments to the Federal Identity Theft Task Force, P065410* (Jan. 19, 2007), available at http://www.epic.org/privacy/idtheft/EPIC_FTC_ID_Theft_Comments.pdf.

³⁵ H.R. 1645 §301(a) (amending §274A(b)(1)(B)); S.AMDT. 1150 §302(a) (amending §274A(d)(5)(A)(i)).

³⁶ H.R. 1645 §301(b)(2) (amending §205(c)(2)).

³⁷ H.R. 1645 §301(b) (amending §205(c)(2)(G)(iii)(III)).

³⁸ H.R. 1645 §301(a) (amending §274A(b)(1)(B), (c)(12)(A)(iii)); S.AMDT. 1150 §305(a)(2) (amending §205(c)(2)(G)(4)).

holders approaching \$9.5 billion.³⁹ Likewise, the safeguards the Social Security Administration and DHS must develop to ensure the system runs properly will be substantial. The bills require administrative, technical and physical layers to protect retained information. This includes encryption, an appeals process, periodic system testing and security updates.⁴⁰ These components add significantly to the workload of the agency, but are absolutely crucial from a privacy standpoint if the proposed verification system is to go forward.

The SSN is easily used for fraud not because the card lacks tamper-resistant features, but because the number is used as an identifier in so many encounters when it should not be. A more effective and secure verification system might institute a different unique number for the limited purpose of employment eligibility. This would limit the frequency of SSN disclosure and minimize the severity of any privacy breaches associated with the number. This would help curb identity theft and avoid placing increased costs and workload on the Social Security Administration.

V. Recommendations

Mr. Chairman, Members of the Subcommittee, I predict that if these proposals are adopted as currently drafted, there will be unprecedented problems in American labor markets. Employment verification relies upon the accuracy of the underlying data, the ease with which determinations can be made, the establishment of essential safeguards to ensure that the data collected is not subject to misuse, and procedural remedies to guarantee that when problems arise they can be quickly and fairly resolved. There is virtually no indication that any of these issues have been considered.

First, the existing inaccuracies within agency databases ought to be corrected before establishing the verification systems on a nationwide basis. Otherwise there is a strong likelihood that millions of eligible workers face a laborious identity correction process. This would lead to lost productivity and unnecessary expense.

Second, as little sensitive data should be collected as possible, and then only when necessary. Keeping huge quantities of personal information in a single government database enhances the appeal of that database to those who will attempt to misuse it. And if that database is compromised in the same way that TSA's employment records were, the fact that it contains such voluminous and detailed information makes the breach that much more serious. Instead, limiting the scope of information collected and retained to decentralized databases would reduce the vulnerability. The same goes for employers. Requiring employers to retain such detailed information for years after hire without strong safeguards not only burdens the employers, but also vastly increases the susceptibility of employee information to loss or misuse. Safeguards and privacy

³⁹ Frederick G. Streckewald, Assistant Deputy Comm'r, Disability & Income Sec. Programs, Soc. Sec. Admin., *Statement at a Hearing on Social Security Number High-Risk Issues Before the Subcom. on Soc. Sec. of the H. Comm. on Ways & Means*, 109th Cong. (Mar. 16, 2006), available at http://www.ssa.gov/legislation/testimony_031606a.html.

⁴⁰ H.R. 1645 §301(a) (amending §274A(c)(4)(F)), §306(a) (amending §205(c)(19)(B)).

implications should be established prior to implementation of the systems.

Third, the House and Senate proposals rely heavily on technology that has yet to be established. At this time, no states have adopted the REAL ID program, and its future is actively contested at both the national and state level.⁴¹ It may therefore be imprudent to enact a wide-scale employment verification system based on a program whose future is in doubt. The verification system would be more effective, and future complications more easily anticipated, if the technology underpinning the documents was worked out beforehand.

Fourth, there must be better accountability for the extraordinary powers granted to the Secretary of Homeland Security. The Secretary should not be given discretionary authority to require the establishment of biometric identification for private employment in the United States or to require the routine collection of fingerprints in the private sector. One of the Department's own identification systems, which included contactless RFID technology, was proved deeply flawed and subsequently revised.⁴² All determinations of the Secretary regarding employment eligibility should be subject to the full privacy safeguards set out in the Privacy Act of 1974, including the right to inspect and correct data upon which an agency makes a decision, as well as additional safeguards proposed in the various measures.

⁴¹ EPIC, *National ID Cards and REAL ID Act Page*, *supra* note 27.

⁴² In 2005, DHS began testing RFID-enabled I-94 forms in its United States Visitor and Immigrant Status Indicator Technology ("US-VISIT") program to track the entry and exit of visitors. The RFID-enabled forms stored a unique identification number, which is linked to data files containing foreign visitors' personal data. EPIC warned that this flawed proposal would endanger personal privacy and security, citing the plan's lack of basic privacy and security safeguards. The Department of Homeland Security's Inspector General echoed EPIC's warnings in a July 2006 report. The Inspector General found "security vulnerabilities that could be exploited to gain unauthorized or undetected access to sensitive data" associated with people who carried the RFID-enabled I-94 forms. A report released by the Government Accountability Office in late January identified numerous performance and reliability issues in the 15-month test. The many problems with the RFID-enabled identification system led Homeland Security Secretary Michael Chertoff to admit in Congressional testimony on February 9th that the pilot program had failed, stating "yes, we're abandoning it. That's not going to be a solution" for border security. Dep't of Homeland Sec., *Notice With Request For Comments: United States Visitor and Immigrant Status Indicator Technology Notice on Automatic Identification of Certain Nonimmigrants Entering the United States at Select Land Border Ports-of-Entry*, 70 Fed. Reg. 44,934 (Aug. 5, 2005), available at http://www.epic.org/privacy/us-visit/100305_rfid.pdf; Dep't of Homeland Sec., *Additional Guidance and Security Controls Are Needed Over Systems Using RFID at DHS (Redacted)* 7 (July 2006), available at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIGr_06-53_Jul06.pdf; Richard M. Stana, Dir., Homeland Sec. & Justice Issues, Gov't Accountability Office, *Testimony Before the Subcom. on Terrorism, Tech., & Homeland Sec., S. Comm. on the Judiciary*, 110th Cong. (Jan. 31, 2007), available at <http://www.gao.gov/new.items/d07378t.pdf>; and Michael Chertoff, Sec'y, Dep't of Homeland Sec., *Testimony at a Hearing on the Fiscal Year 2008 Dep't of Homeland Sec. Budget Before the H. Comm. on Homeland Sec.*, 110th Cong. (Feb. 9, 2007), available at http://www.epic.org/privacy/us-visit/chertoff_020907.pdf.

Fifth, further enhancements to the Social Security card that would reduce the risk of tampering or counterfeiting are sensible, but the provisions to incorporate biometric data, to make the card machine readable, and to propose that it be used more widely to determine employment eligibility should be revised. The machine-readable capability would also create a trail of digital records of the card information whenever it is used. This would create more opportunity for identity thieves to steal the information and the problem would be more severe when they have done so. Instead, perhaps a number other than the SSN, used solely for the purpose of employment verification, may suffice. This would have the added benefit of avoiding additional cost to the Social Security Administration and allowing it to focus on its original mission.

Conclusion

Mr. Chairman, members of the Subcommittee, It is tempting to believe that technology and new systems of identification can help solve long-running policy problems, such as determining eligibility to work in the United States. But the reality may be that new systems of identification will create new privacy risks for employees and new burdens for employers. We have already seen how the expanding use of the Social Security Number contributed to the dramatic increase in identity theft in the United States. Given the inaccuracies that currently exist in Basic Pilot, the difficulty that the Department of Homeland Security has had managing computer security and identification systems within its own agency, and the justifiable concern of those currently employed that they will now be required to undergo new identification requirements, I would strongly urge you to proceed cautiously on this proposal. Even a small error rate will impact the livelihood of millions of Americans.

Thank you for your attention. I would be pleased to answer your questions.

Chairman MCNULTY. Thank you, Mr. Rotenberg. Thanks to all of you for your testimony, and for the clarity of your testimony. As

a matter of fact, I had a number of questions prepared for several of you, but you answered them quite clearly in your testimony.

I do want to ask Ms. Moran, because we have been discussing the database discrepancies in the abstract, if you could provide us with a real-life example of how the problems with the databases affect people.

Ms. MORAN. Sure. We provide technical assistance to a lot of labor unions and immigrant organizations across the country. In fact, we just got a technical assistance call last week from a woman in North Carolina. She is Honduran. She had temporary protected status. She was work-authorized. She presented her documents. She worked at a hog plant. When the company put her information in the system, SSA said the stuff didn't match.

The long story short is from January to April she went back to Social Security Administration four times to try to fix the error in the database. Because it wasn't fixed, ultimately the company fired the woman and she was without a job.

So today, she could theoretically go to another company and get a job, but under this new system, if she were fired, she wouldn't be able to go get a new job. Under the proposal that is in the Senate right now, she wouldn't be able to get back wages. She wouldn't be able to get attorneys fees. She could be out of—a low-income worker could be out of a job for a number of months.

So, that is just one example of many to show, really, it is pretty serious, talking about people's livelihood here.

Chairman MCNULTY. Thank you. We just received information that there was a cloture vote in the Senate, and it failed 55 to 42. There is going to be another vote at 5:00, so there is a very real question about how far this bill is going to go now. If it goes anywhere, we want to be prepared for it.

I will now call on the Ranking Member of the Subcommittee, Mr. Johnson, to inquire.

Mr. JOHNSON. Thank you, Mr. Chairman. I appreciate that.

I wonder if all of you could comment, maybe. Many have advocated the use of biometric ID as an effective way to confirm a person's identity. I would like your comments and what you think of a biometric ID. Is it the right or wrong way to go, and why?

Ms. MORAN. I will refer to the technology people on that.

Ms. MEISINGER. I believe that there is some use of biometric information. I think it should be voluntary for the employers who can afford to develop the system and work with the system, but I think the technology is there. I think biometric information has the advantage of being carried with a person wherever they go, and you don't need a card for it if you can have it locked in with other identification that may be in the system.

I think there are ways now—and I am not a technologist so I am going to defer—to build a system where it is not centralized in one government agency, which I agree, I think, is very troublesome to many people, the thought that this would all be in some centralized database.

Right now companies do reference checks on a regular basis. Data mining takes place. They go out with public data sources—where people lived, whether their house was on that street, what

the name on the mortgage was—those sorts of things in terms of to link the person.

I just think that what we would like to see is some technology experts coming together, privacy as well as employers and government, to sort through what is possible that balances. I don't think there is anything that we will ever develop that provides an absolute protection against privacy because you can't control people's behaviors, but I think there are ways to design something that gets closer to what everybody is trying to get done than what is being proposed here.

Mr. JOHNSON. Well, I will tell you, when we had the eye scan out at the airport, which Homeland Security can't get back in again, as you know, I used to like to go to the airport because I would look in that thing and it would say, hello, Mr. Johnson.

Mr. AMADOR. I have to say that from our perspective, as was just mentioned, it should be voluntary, because the employers are of different sizes and levels of sophistication. Most employers in the United States do not have an HR division and an inside legal counsel.

So, what might be easy for one of the over 7 and a half million employers in the United States, about 2 million of those are basically self-employed individuals. Those machines are actually right now, and maybe the technology would improve and it will be cheaper, as has happened with computers and others, but right now those card readers are very expensive for somebody to—

Mr. JOHNSON. Well, you are advocating a private enterprise operation versus government, I think, in that instance.

Mr. AMADOR. Correct.

Mr. JOHNSON. Yes. Dr. Neumann?

Mr. NEUMANN. I would like to generalize your question just a little bit because when you start to talk about biometrics, the question is, how are they embedded in the overall system? You have the problem of nonsecure operating systems and application software, you have the problem of supposedly smart and secure and tamper-proof smart cards that aren't, and then you have the biometrics.

Well, some biometrics are actually potentially pretty good. When they first put the photo and the face recognition stuff in the Palm Beach Airport, they could only recognize 40 percent of the people. We are photographed with perfect lighting, and that system was a failure. Well, then, we will increment it up a little bit, and we will get it to 50 and 60 and 70, but most of these systems have the fundamental problem. The gummy bear story is one of the examples of the fingerprint system. There was a demonstration at Asiacrypt a couple of years ago where somebody had taken essentially an imprint of a thumb on a gummy bear and was able to get through all of the fingerprint detection systems that were being demonstrated.

Mr. JOHNSON. Really?

Mr. NEUMANN. The next version of that is you cut off the thumb, of course, and—

Mr. JOHNSON. Well, according to you, there is not a system that can be devised that can't be circumvented.

Mr. NEUMANN. Well, one of my colleagues has in fact essentially broken every smart card. This is Paul Kotcher, who has done

differential power analysis. Just by determining the power consumption of the crypto chip, he can extract the secret key. There are some high tech solutions, but I think we are in this escalating spiral, where we continually believe that if we throw more technology at it, it will solve the problem. Then there turns out to be an utterly trivial countermeasure that completely defeats it.

In many cases, it is, for example, that a cryptography key is stored in memory or a password is pasted up on a Post-It. So, in many cases, it is a very simple attack. Here you have built this very complex system, and discovered that there is some utterly trivial way of breaking it.

Mr. JOHNSON. Thank you. Mr. Rotenberg, do you have a comment?

Mr. ROTENBERG. Yes. I was just going to say briefly that one of the obvious problems with the biometric identifiers is that when they are compromised, you have a real problem. You can change a credit card number or a bank account number, but it is not so easy to change the digital representation of your fingerprint or your eye scan.

It was interesting to us also because we have been studying the identity systems that the Department of Homeland Security has been pursuing. One of the identity systems that they developed, the digital access card, the DAC, was originally designed with only a biometric identifier. They decided that was actually a too-risky approach for Federal employees, so they have included a PIN number as a backup to the biometric. I think it is a recognition on their part that there are going to be problems with biometrics.

Mr. JOHNSON. Thank you. Thank you, Mr. Chairman.

Chairman MCNULTY. Thank you.

Mr. Brady may inquire.

Mr. BRADY. Thank you, Mr. Chairman. Thanks for holding this hearing. I think this is one of the most overlooked issues in the Senate debate right now, and may be an area where this Committee can play a big role in this whole debate.

Listening to the panel, the second panel, I think they have exposed two myths in this discussion. The first is that any Federal agency will be ready in 18 months to reliably and accurately verify employment and identification. It is not a criticism of the agencies. The task is simply overwhelming. The data that is currently available is unreliable. The pilot programs we have had in place have too many question marks. It is like we are trying to stand an elephant on a toothpick and hoping it will hold. It likely won't, and we know it in advance.

The second myth is that any single document, including a national ID card, is necessary or in fact desirable in this. I am not in the black helicopter caucus, but the truth is I think using multiple documents tailored more—the truth of the matter is some workers will be very easily verifiable. Others will be very difficult. We ought to have a system that is flexible enough to deal with that, and it seems this Committee Chairman ought to be exploring some innovative partnership between government and the cutting-edge private companies that are today verifying ID instantaneously, both for companies and for the government itself; find a way where it is more decentralized so you don't have a single, as

Dr. Neumann said, hacker, cracker, or terrorist, I think was the phrase, able to break it. We have examples today.

Two questions. Mr. Amador, GAO says the cost of a completely verifiable system will be about \$11.7 billion a year, much of it borne by employers and workers. Can you talk a little about that?

Ms. Meisinger, Mr. Ryan wanted to ask about the background checks that help confirm identity. From what databases do they draw?

So, Mr. Amador.

Mr. AMADOR. Yes. Last year—actually, in 2005, GAO testified and they said it would be that much. I since have called them, and I was trying to find out, well, how do you split it up? They didn't have a rigid split, but what they said, that would be the cost because you will be adding 96 percent of employers to a system. You have to find out a way of also making it telephonic.

So, they said that in addition to considering the fact that you have to hire more verifiers, modernize the system, and purchase and monitoring additional equipment, employers would also need to train employees to comply with the new law requirements and devote a great deal of human resources staff to verifying and re-verifying the workforce.

Currently, under the I-9 system, the estimate is that we spend about 12 million working hours verifying the 50 to 60 million of individuals that are hired, either—some people are hired more than once in a year. Some people have more than one job, but somebody is doing the hiring.

There is also the cost of keeping these documents, filing. The requirements in the Senate right now, which we know are too many, too much, are requiring that you keep these documents for like 7 years. We think that is obviously too long, especially when you have a turnover rate that is very high.

Resolving data errors is going to be a new additional cost that is going to be more complicated and expensive than it is under the current system. A new issue is going to be dealing with wrongful denial of eligibility when you get a tentative nonconfirmation.

What they are looking at is the employer is going to have to start making calls because of course you cannot fire the individual until you go through the entire process. In the Senate version, the shortest period that it could take is 152 days. So, you have an employer dealing with days and an employee that is going to have to be taking time off from work to go in person to an SSA office to try to resolve all these things.

So, when they put all of these things together, they are just not looking at how much the one inquiry costs. They are saying, well, how did the entire thing cost? How much was spent in hours from the employer's perspective and from the employee perspective in addition to the government's perspective? And that is when, again, they were using that number when they were trying to ask for more funding. I notice that now they are trying to use lower numbers.

It is also important to mention that I think the number is based on the study that came in 2002, the Westat study that everybody—the independent study that has been mentioned before. There is a new study. Tyler mentioned it. The Chamber has been trying to get

a copy of it. DHS has it, and we would like to have your help in trying to find out if they maybe broke down this number, and some other information in it.

Mr. BRADY. Thank you.

Ms. Meisinger, I am not suggesting background checks on everyone. The point is, oftentimes using multiple sources you can verify quicker and more accurately.

Ms. MEISINGER. I think if you think of some times when you've gone online and people ask you for background questions that you might answer—mother's maiden name, street that you lived in when you were young—those sorts of things are really embedded in databases that exist in a public format.

I think that would be the recommendation, that it would be public formats, public databases. Criminal records are one that reference checkers always go into and look at. Depending on the level of depth that you are going through, you will go to the FBI. Sometimes it will just be local. It depends on the job.

There are state laws now that require this sort of in-depth background check for certain types of jobs. If it is somebody working with children, frequently they will have a much more in-depth background check to try and make sure they know everything they can know about that person, including that the person is who they say they are.

Mr. BRADY. So, you use different sources for different types of jobs and different needs.

Ms. MEISINGER. Different sources. Right.

Mr. BRADY. Which I think it would be difficult to accomplish by people in the single agency or double agency.

Ms. MEISINGER. Well, and I think right now you have got credit companies, check companies that track people's credit history. There is a competitive market to try and make sure that you are the most accurate, the most reliable, respond the quickest to the customers. I think you want to build that same sort of environment.

Mr. BRADY. Right. Thank you.

Thank you, Mr. Chairman.

Chairman MCNULTY. Thank you very much. On behalf of Mr. Johnson, Mr. Brady, and all the Members of the Committee, we want to thank each of you for your expert testimony. It has been extremely helpful.

We would ask that as the process moves forward, we may keep in contact with you for your response to questions by our Members and our staff outside of the formal setting of a hearing, so that we are able to contact you on a more immediate basis.

I would just like to say for myself that as I have looked at the Social Security agency and the many challenges that it faces, we have been tremendously distressed with the lack of progress on the issue of the disability backlog, which we have been trying to work on for a long time now.

I think it is an unmitigated disaster and I don't want to see it compounded by another disaster. If you can help us in that regard, we are deeply grateful.

This Committee hearing is adjourned.

[Whereupon, at 12:17 p.m., the hearing was adjourned.]

[Submission for the Record follows:]

On behalf of the 11,000 front-line Border Patrol employees that it represents, the National Border Patrol Council thanks the Subcommittee for holding a hearing to examine various methods of verifying the employment eligibility of workers in the United States. There is now near-universal agreement with the 1994 finding of the U.S. Commission on Immigration Reform that "reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration." There is no consensus, however, regarding the best method for accomplishing that goal. The Immigration Reform and Control Act of 1986 made it a crime to hire illegal aliens, but failed to provide employers with a simple and effective means of verifying the authenticity of the numerous documents that were permitted to be used to prove eligibility to work in this country. Thus, it is nearly impossible to establish that an employer "knowingly" hires illegal aliens, rendering the current law largely unenforceable and meaningless.

The Illegal Immigration and Immigrant Responsibility Act of 1996 required the Attorney General to conduct three pilot programs of employment eligibility confirmation: the basic pilot program, the citizen attestation pilot program, and the machine-readable-document pilot program. Of these, the basic pilot program, now known as the Employment Eligibility Verification System, has emerged as the most widely-utilized system. Although it is relatively inexpensive and easy to use, it is also extremely susceptible to identity fraud, wherein legitimate information is used by imposters. This was highlighted by the recent Bureau of Immigration and Customs Enforcement raids against several Swift & Company plants, in which nearly thirteen hundred people who were cleared to legally work under the provisions of the Employment Eligibility Verification System were arrested for being in the country in violation of our immigration laws. Although the current amount of fraud under that system is relatively low, that is due to the fact that only a very small percentage of companies are participating in the program, and most illegal aliens opt to seek employment in companies that do not use it. If its use became mandatory, however, the amount of fraud would undoubtedly increase exponentially. The Federal Trade Commission estimates that about ten million Americans are victimized by identity theft annually. With such a large universe of compromised identities to draw from, criminals would have no problem supplying illegal aliens with new identities to circumvent the system. Moreover, the information contained in the Social Security Administration's databases contains a number of inaccuracies, especially concerning citizenship. In fact, a recent study by the Office of Inspector General of the Social Security Administration found that at least 100,000 non-citizens are provided with bona fide Social Security numbers every year based on invalid immigration documents. That report also acknowledged that the agency has no way of knowing how many Social Security numbers have been improperly issued to illegal aliens.

The other two employment eligibility confirmation pilot programs suffered from similar shortcomings. The citizen attestation pilot program was limited to non-citizens, and was not designed to verify the validity of claims of citizenship, but only identity. Thus, this program was by far the most vulnerable to fraud, as well as the least useful of the experimental programs. The machine-readable-document pilot program relied upon State-issued identity documents that met specified criteria, and matched that to the information contained in Social Security Administration and Immigration and Naturalization Service databases. Because only one State's driver's licenses met the specified criteria at that time, this test was quite limited in scope. Moreover, its reliability was diminished by its reliance upon the aforementioned incomplete and inaccurate databases.

The National Border Patrol Council believes that it would be unwise to expand any of these experimental systems, but rather recommends that the lessons learned from them be used to construct a workable and effective system.

Such a system must utilize a single, counterfeit-proof, machine-readable document that contains a recent digital photograph, as well as embedded biometric information. Since every authorized worker in this country is issued a Social Security number, the logical choice for this document is the Social Security card. Instead of relying upon information contained in one or more incomplete or inaccurate databases to check for employment eligibility every time a person applies for a job, the system should verify that information conclusively prior to issuing the new secure document. Then, when an applicant presents the employment eligibility document to a prospective employer, the only check that would need to be made is a determination of whether or not the document is genuine, and that could easily be accomplished through means of an electronic reader. At the same time, this process would provide the Department of Homeland Security with a record of all employment inquiries,

which would facilitate its worksite enforcement efforts. It would be a simple matter for investigators to spot-check for compliance by matching employment inquiries with payroll and income tax withholding records.

H.R. 98, the "Illegal Immigration Enforcement and Social Security Protection Act of 2007," would mandate the establishment of such a system, and would also provide the enforcement mechanism and resources to ensure compliance therewith. This would effectively eliminate the employment magnet, allowing the Border Patrol and other law enforcement agencies to concentrate their scarce resources on stopping terrorists and other criminals from entering the United States. Such a system would have the added benefit of greatly reducing the amount of identity theft involving Social Security numbers.

The consequences of inaction and/or delay are dire. Open borders are an open invitation to further terrorist attacks. These measures need to be enacted swiftly in order to safeguard our Nation.



3. I obtained a copy of Fremont Ordinance No. 5165, the Immigration Ordinance that was passed on June 21, 2010 by the voters of Fremont, Nebraska by visiting the following website and downloading a copy of the file found at <http://www.fremontne.gov/DocumentView.aspx?DID=714> on July 21, 2010. A true and correct copy of this document is attached to this index as Exhibit A.
4. I obtained a copy of the official election results for the Special Election held in Fremont, Nebraska on July 21, 2010 that detail the results of the vote on Proposed Ordinance No. 5615 by visiting the following website and downloading a copy of the file found at <http://www.dodgecounty.ne.gov/content/EL45.HTM> on July 21, 2010. A true and correct copy of this document is attached to this index as Exhibit B.
5. I obtained a copy of a press release issued by the City of Fremont, Nebraska and posted on its official website dated July 13, 2010 titled "City of Fremont Planning for Implementation" by visiting the following website and downloading a copy of the file found at <http://www.fremontne.gov/CivicAlerts.aspx?AID=75> on July 21, 2010. A true and correct copy of the document is attached to this index as Exhibit C.
6. I obtained a copy of a press release issued by the City of Fremont, Nebraska and posted on its official website dated July 16, 2010 titled "City of Fremont Prepares to Implement Illegal Immigration Law" by visiting the following website and downloading a copy of

the file found at <http://www.fremontne.gov/CivicAlerts.aspx?AID=77> on July 21, 2010.

A true and correct copy of the document is attached to this index as Exhibit D.

7. I obtained a copy of the webpage entitled "Legal Defense Support; Illegal Immigration Ordinance" posted on the City of Fremont, Nebraska official website by visiting the following website and downloading a copy of the file found at <http://www.fremontne.gov/index.aspx?nid=450> on July 22, 2010. A true and correct copy of the document is attached to this index as Exhibit E.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection.

Executed this 22nd day of July, 2010, San Francisco, CA.

By:

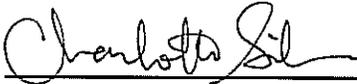

CHARLOTTE SILVER

Exhibit A

PROPOSED ORDINANCE NO. 5165

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, AMENDING THE FREMONT MUNICIPAL CODE, ORDINANCE NO 3139 TO PROHIBIT THE HARBORING OF ILLEGAL ALIENS OR HIRING OF UNAUTHORIZED ALIENS, PROVIDING DEFINITIONS, MAKING PROVISION FOR OCCUPANCY LICENSES, PROVIDING JUDICIAL PROCESS, REPEALING CONFLICTING PROVISIONS, AND ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE.

WHEREAS, Federal law requires that certain conditions be met before an alien may be authorized to be lawfully present in the United States. Those conditions are found principally at United States Code Title 8, Section 1101, et. seq., and;

WHEREAS, United States Code Title 8, Section 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of the federal immigration crime of harboring, and;

WHEREAS, United States Code Title 8, Section 1324a prohibits the knowing employment of unauthorized aliens; and United States Code Title 8, Section 1324a(h)(2) permits state and local governments to suspend the businesslicenses of those who employ unauthorized aliens, and;

WHEREAS, The presence of illegal aliens places a fiscal burden on the City, increasing the demand for, and cost of, public benefits and services, and;

WHEREAS, Crimes committed by illegal aliens in the City harm the health, safety and welfare of U.S. citizens and aliens lawfully present in the United States, and;

WHEREAS, The employment of unauthorized aliens in the City displaces authorized United States workers and adversely affects their wages, and;

WHEREAS, In 1996 Congress amended the Immigration and Nationality Act to require the federal government to verify the immigration status of any alien upon the request of a state, county, or municipality, for any purpose authorized by law. United States Code Title 8, Section 1373(c). The federal government has established several systems to accomplish this obligation, including the Systematic Alien Verification for Entitlements (SAVE) Program and the Law Enforcement Support Center (LESC), and;

WHEREAS, This Ordinance is in harmony with the congressional objectives of prohibiting the knowing harboring of illegal aliens and prohibiting the knowing employment of unauthorized aliens, and;

WHEREAS, The Secretary of the U.S. Department of Homeland Security has specifically praised and encouraged those states and localities that require employers to participate in the E-Verify Program, and;

WHEREAS, The City of Fremont shall not construe this ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

BE IT THEREFORE ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FREMONT, NEBRASKA:

SECTION 1. That a new section §6-428 be added to the Fremont Municipal Code Ordinance No. 3139 to provide as follows:

§6-428 Harboring or Hiring Illegal Aliens, Prohibited.

1. DEFINITIONS: For the purposes of this Ordinance, the following terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

A. ***Illegal alien*** means an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an individual is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United State Code Title 8, Section 1373(c), such individual's immigration status.

B. ***Unlawfully present in the United States*** means unlawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an alien is unlawfully present in the United States unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373 (c), such alien's immigration status.

Dwelling unit means a single residential unit with living facilities for one or more persons, including space for living, sleeping, eating, cooking, bathing and sanitation, whether furnished or unfurnished, that is let or rented for valuable consideration. There may be more than one rental unit on a premise. In a multifamily residence or apartment building, each residential unit or apartment constitutes a separate dwelling unit. The term dwelling unit does not include a dormitory room at a postsecondary educational institution, a room at a shelter for the homeless or the abused, or a hotel room.

D, ***Lessor*** means a person who leases or rents a dwelling unit as, or on behalf of, a landlord.

E. ***Occupant*** means a person, age 18 or older, who resides at a dwelling unit. A temporary guest of an occupant is not an occupant for the purposes of this ordinance.

F. ***Unauthorized alien*** means an alien who does not have authorization of employment in the United States, as defined by United States Code Title 8, Section 1324a(h)(3). The City shall not conclude that an individual is an unauthorized alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373(c), such individual's lack of authorization of employment in the United States.

G. ***Business entity*** means any person, group of persons, partnership or corporation that engages in any

activity, enterprise, profession or occupation for financial gain, benefit, or livelihood, and shall include all such activities, enterprises, professions, or occupations, whether preformed in one or more establishments by one or more corporate or other organizational units, including departments or establishments operated through leasing arrangements, whether for profit or not-for-profit. The term business entity shall include but not be limited to contractors, subcontractors, self-employed individuals, partnerships, and corporations. The term business entity shall include both business entities that are required to obtain a license or permit to conduct business in the City of Fremont, and businesses that are not required to obtain a license or permit to conduct business in the City of Fremont.

- H. *Work* means any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.
1. *E-Verify Program* means the electronic verification of employment authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, United States Code Title 8, Section 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government).
- J. Systematic Alien Verification for Entitlements (SAVE) Program means the electronic program created pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104193, which enables a federal, state, or local government entity to confirm with the United States Department of Homeland Security an alien's immigration status (or a successor program or method of confirmation of immigration status established by the federal government).
- K. *Business license* means any license, permit, occupation tax registration, business registration, or registration certification issued to a business entity by the City, including but not limited to all such licenses and permits described under the Fremont Municipal Code, Ordinance No. 3139.
- L. **City** means the City of Fremont, Nebraska.

2. HARBORING ILLEGAL ALIENS:

- A. It is unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.
1. For the purpose of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.
 2. Condition of lease. An occupant may not enter into a contract for the rental or lease of a dwelling unit in the City unless the occupant is either a U.S. citizen or national, or an alien lawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. An occupant who is neither a U.S. citizen or national, nor an alien lawfully present in the United States, who enters into such a contract shall be deemed to have breached a condition of the lease. An occupant who is an alien who

subsequent to the beginning of his lease becomes unlawfully present in the United States shall be deemed to have breached a condition of the lease.

3. Prospective Application Only. This Ordinance shall apply only to contracts to let, lease, or rent dwelling units that are entered into and tenancies that begin after the date that the Ordinance becomes effective.
4. The legal obligations imposed by this Section shall be enforced through the process described in Provisions 3 and 4 of this Ordinance, below.

3. ISSUANCE OF OCCUPANCY LICENSES:

- A. Prior to occupying any leased or rented dwelling unit, each occupant, age 18 or older, must obtain an occupancy license.
- B. It is the occupant's responsibility to submit an occupancy license application to the Fremont Police Department, pay a fee of \$5 to the City, and obtain an occupancy license. If there are multiple occupants seeking to occupy a single rental unit, each occupant must obtain his or her own license. An applicant for an occupancy license may designate the owner or manager of the dwelling unit as his agent to collect the required information and submit the required application form(s), signed by the applicant, to the Fremont Police Department on the applicant's behalf. The City may establish a procedure whereby an applicant (or designated owner or agent) may submit the required application form(s), signed by the applicant, via facsimile or website portal.
- C. The owner or manager of any dwelling unit must notify each prospective occupant of this requirement and shall not permit occupancy of a dwelling unit unless the occupant first obtains an occupancy license.
- D. Each occupancy license is valid only for the occupant for as long as the occupant continues to occupy the dwelling unit for which such license was applied. Any relocation to a different dwelling unit requires a new occupancy license.
- E. Applications for occupancy licenses shall be made upon forms furnished by the City for such purposes and shall require the following information:
 - (1) Full legal name of occupant;
 - (2) Mailing address of occupant;
 - (3) Address of dwelling unit for which occupant is applying, if different from mailing address;
 - (4) Name and business address of dwelling unit owner or manager;
 - (5) Date of lease commencement;
 - (6) Date of birth of occupant;
 - (7) Occupant's country or citizenship;
 - (8) Full legal name and date of birth of each minor dependent residing with occupant;
 - (9) (a) *in cases in which the applicant is a United States citizen or national*, a signed declaration that the applicant is a United States citizen or national on a form provided by the City, which notifies the applicant that knowingly making any false statement or claim that he or she is, or at any time has been, a citizen or national of the United States, with the intent to obtain a state benefit or service is a crime under United States Code Title 18, Section 1015(e);

Or

(b) in cases in which the applicant is not a United States citizen or national, an identification number assigned by the federal government that the occupant believes establishes his lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, 1-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). *If the alien does not know of any such number, he shall so declare. Such a declaration shall be sufficient to satisfy this requirement.*

- F. Upon receipt of a complete signed application and the payment of the application fee as set forth above, the City shall immediately issue an occupancy license. The **City shall not deny an occupancy license** to any occupant who submits a completed application and pays the application fee.
- G. All information contained in occupancy license applications shall be maintained as confidential by the City, except that the **information provided on an application** may be disclosed to other government entities where authorized by law, pursuant to **United States Code Title 8, Section 1373**.
- H. It shall be a **violation** of this section for a lessor to lease or rent a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant of the dwelling unit.
- I. It shall be a violation of this section for a lessor to lease a dwelling unit without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid occupancy license constitutes an event of default under the lease.
- J. It shall be a violation of this section for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to **knowingly permit an occupant to occupy a dwelling unit without a valid occupancy license**. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and **diligently pursued** such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.
- K. Any person who violates this section shall be subject to a fine of \$100 for each such violation, upon conviction in the County Court for Dodge County.
- L. The lease or rental of a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant, age 18 or older, **shall be a separate violation for each occupant in a dwelling unit for which no license is obtained** and retained, and for each day of such occupancy, beginning on the 46th day after the date of a revocation notice under Section 5.

4. ENFORCEMENT OF HARBORING AND OCCUPANCY PROVISIONS

Notwithstanding any other provision of this Ordinance, the Fremont Police Department (Hereinafter "Department") shall enforce the requirements of this Ordinance as follows.

- A. Promptly after issuance of an occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States, the Department shall, pursuant to Title 8, United States Code, Section 1373(c), request the federal government to ascertain whether the occupant is an alien lawfully present in the United States. The Department shall submit to the federal government the identity and immigration status **information** contained on the application for the occupancy license, along with any other information requested by the federal government. The Department may **enter into a memorandum of understanding to use the Systematic Alien Verification for Entitlements (SAVE) Program** operated by the U.S. Department of Homeland Security, or utilize any other process or system designated by the federal government.
- B. If the federal government reports that the occupant is not lawfully present in the United States, the Department shall send a deficiency notice to the occupant, at the address of the dwelling unit shown on the application for occupancy license. The deficiency notice shall state that on or before the 60th day following the date of the notice, the **occupant may** seek to obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is lawfully present in the United States. If the occupant provides such additional information, the Department shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.
- C. If the federal government notifies the Department that it is unable to conclusively ascertain the immigration status of the occupant, or that the federal government's ascertainment of immigration status is tentative, the Department shall take no further action until final ascertainment of the immigration status of the occupant is received from the federal government. The Department shall not attempt to make an independent determination of any occupant's immigration status. If the federal government notifies the Department that more information is required before the **federal government can issue a final ascertainment** of the occupant's immigration status, or that the occupant may contest the federal government's ascertainment of status, the Department shall notify the occupant

accordingly.

- D. No earlier than the 61st day after a deficiency notice has been sent to an occupant, the Department shall again make an inquiry to the federal government seeking to ascertain the immigration status of the occupant. If the federal government reports that the occupant is an alien who is not lawfully present in the United States, the Department shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's occupancy license effective 45 days after the date of the revocation notice.
- E. The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.
- F. Judicial review shall also be available as follows:
 - 1. Any landlord or occupant who has received a deficiency notice or a revocation notice may seek pre-deprivation or post-deprivation judicial review of the notice by filing suit against the City in a court of competent jurisdiction.
 - 2. In the event that such a suit is filed prior to or within fifteen days after the date of the relevant revocation notice, if any, revocation shall be automatically stayed until final conclusion of judicial review.
 - 3. The landlord or occupant may seek judicial review of the question of whether the Department complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law, or the question of whether the occupant is an alien not lawfully present in the United States, or of both such questions.
 - 4. In a suit for judicial review in which the question of whether the occupant is an alien not lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court shall defer to any conclusive ascertainment of immigration status by the federal government.
 - 5. The court may take judicial notice of any ascertainment of the immigration status of the occupant previously provided by the federal government. The court may, either sua sponte or at the request of a party, request the federal government to provide, in automated, documentary, or testimonial form, a new ascertainment of the immigration status of the occupant pursuant to United States Code Title 8, Section 1373(c). The most recent ascertainment of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

5. BUSINESS LICENSES, CONTRACTS OR GRANTS; THE E-VERIFY PROGRAM.

- A. It is the policy of the City to discourage business entities from knowingly recruiting, hiring for employment, or continuing to employ any person who is an unauthorized alien to perform work within the City.
- B. This Section shall not apply to the hiring of an independent contractor by a business entity, or to the intermittent hiring of casual labor for domestic tasks customarily performed by the residents of a dwelling. Such independent contractors or laborers are not employees within the meaning of this Section. This Section shall be interpreted to be fully consistent with United States Code Title 8, Section 1324a, and with all other applicable provisions of federal law.
- C. An authorized representative of any business entity that applies for any business license or permit in the City, or is awarded a contract for work to be performed in the City, or applies for any grant or loan from the City shall be required to execute an affidavit to the effect that the business entity does not knowingly employ any person who is an unauthorized alien. The business entity shall also provide documentation confirming that the business entity has registered in the E-Verify Program. Compliance with this section shall be a condition of any license or permit granted by the City, any contract awarded by the City and of any grant or loan given by the City.
- D. All agencies of the City shall register in the E-Verify Program and use the E-Verify Program to verify the

authorization of employment in the United States of each employee hired after such registration.

- E. Every business entity employing one or more employees and performing work within the City shall register in the E-Verify Program within 60 days after the effective date of this Ordinance, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.
- F. Any business entity employing one or more employees that begins performing work within the City later than 60 days after the effective date of this Ordinance shall register in the E-Verify Program prior to commencing any work within the City, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.
- G. In the enforcement of this Section, at no point shall any City official attempt to make an independent determination of the authorization of employment in the United States of any individual employed by a private business entity in the City.
- H. This Section shall be enforced by the City Attorney as follows:
 - 1. If a business entity possesses a license, permit, contract, loan, or grant issued by the City and violates this Section, by failing to register in the E-Verify Program and verify the authorization of employment in the United States of each employee hired after such registration, the business entity shall be tried at a public hearing before the City Council. Due process, including notice, the opportunity to present evidence and to be heard, and the right to appeal to the District Court of Dodge County, shall be accorded to all parties. If the City Council determines that a person or business entity has violated this Section, it may, according to the terms of such license, permit, contract, loan or grant, revoke the license, cancel the contract, recall the grant or accelerate the loan and institute an action to collect any sums due.
 - 2. The City Attorney may bring a civil action against any business entity suspected of violating this section, by failing to register in the E-Verify Program and verify the authorization of employment in the United States of each employee hired after such registration, in a court of competent jurisdiction in Dodge County. The City Attorney may seek injunctive relief compelling the business entity to comply with this section.

The following judicial review shall also be available:

- 1. Any business entity that is subjected to enforcement under this Ordinance may seek pre-deprivation or post-deprivation judicial review of the enforcement of this Ordinance with respect to such business entity in any court of competent jurisdiction. While such judicial review is occurring, any actions by the City to revoke a license, permit, contract, loan, or grant issued by the City shall be stayed.
- 2. Any business entity or employee subject to the terms of this Ordinance may seek judicial review of the question of whether the City has complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law in the County Court for Dodge County, or in any other court of competent jurisdiction.

SECTION 2. CONSTRUCTION AND SEVERABILITY:

- A. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens, nationals, and aliens.
- B. If any part or provision of this Ordinance is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.

SECTION 3. REPEAL:

Any ordinance or parts of ordinances of the City of Fremont in conflict herewith are hereby repealed.

SECTION 4. EFFECTIVE DATE:

This Ordinance shall be in full force and effect from and after passage and publication according to law,

PASSED AND APPROVED THIS _____ DAY OF _____, 2010

Donald B. Edwards, Mayor _____

ATTEST:

Kimberly Volk, CMC

Exhibit B

Official Results DODGE COUNTY, NEBRASKA
RUN DATE:06/28/10 SPECIAL ELECTION
RUN TIME:04:20 PM JUNE 21, 2010

	VOTES	PERCENT
PRECINCTS COUNTED (OF 21)	21	100.00
REGISTERED VOTERS - TOTAL	15,208	
BALLOTS CAST - TOTAL.	6,926	
VOTER TURNOUT - TOTAL		44.87
PROPOSED ORDINANCE NO. 5165		
VOTE FOR 1		
Yes	3,950	57.11
No.	2,966	42.89
Over Votes	3	
Under Votes	7	
Total	6,926	

Exhibit C



City Government Departments Recreation & Learning Economic Development City Information

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Immigration Ordinance News and Information

July 13, 2010

July 13 - City of Fremont Planning for Implementation

July 13 -- Following the anticipated Fremont City Council vote certifying the County's election results, the City is making plans to implement the immigration ordinance effective July 29th.

Forms and procedures related to rental housing will be managed by the City Police Department. The City will make forms and procedures available the week of July 26.

The City is in the process of acquiring business licensing software in order to comply with the hiring provisions of the ordinance. Regardless of the installation and training timeline needed for City staff, businesses will need to comply with the hiring provisions in the ordinance beginning July 29, 2010.

In order to comply with the hiring provisions in the ordinance, businesses will need to use the Federal government's E-verify program. More information regarding E-verify can be found at the USCIS website: <http://www.uscis.gov>.

Small businesses that may not have the capacity to use the E-verify system, are encouraged to contact local employment agencies in the City. Training dates to help landlords and business owners comply with the ordinance will be set up for the week of July 26. Additional information will be available in future news releases.

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July 16 - City of Fremont Prepares to Implement Illegal Immigration Law

July 13 - City of Fremont Responds to ACLU Nebraska

Other News in Immigration Ordinance News and Information

July 16 - City of Fremont Prepares to Implement Illegal Immigration Law

July 16, 2010

July 13 - City of Fremont Responds to ACLU Nebraska

July 13, 2010

June 24 - City of Fremont Accepts Contributions for Legal Costs

June 24, 2010

June 22 - Fremont passes local immigration ordinance

July 13, 2010

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- Immigration Ordinance News and Information

City of Fremont
400 E. Military Ave.
Fremont, NE 68025
Ph: 402.727.2630

Exhibit D



City Government Departments Recreation & Learning Economic Development City Information

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Immigration Ordinance News and Information

July 16, 2010

July 16 - City of Fremont Prepares to Implement Illegal Immigration Law

July 16 – The City of Fremont is preparing to implement the local illegal immigration ordinance passed last month. New forms to obtain a renter’s license and for employer business licensing will be available starting July 27, 2010 in the City Clerk’s Office, Fremont Police Department, and on the City of Fremont website at www.fremontne.gov.

The City plans to offer three orientation sessions and will have city representatives available for questions and answers July 27th and July 28th. Q&A sessions have been scheduled in City Council Chambers on the 2nd Floor of the Municipal Building, 400 E Military Ave.

- Tuesday, July 27 – 7:00 a.m.
- Tuesday, July 27 – 12:00 noon.
- Wednesday, July 28 – 4:30 p.m.

The sessions will last about 60 minutes. Due to limited space, please call 727-2630 to schedule with your preferred session time by Friday, July 23rd, at 4:30 p.m.

Next =>

[July 13 - City of Fremont Planning for Implementation](#)

Other News in Immigration Ordinance News and Information

July 13 - City of Fremont Planning for Implementation

July 13, 2010

July 13 - City of Fremont Responds to ACLU Nebraska

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June 24 - City of Fremont Accepts Contributions for Legal Costs

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June 22 - Fremont passes local immigration ordinance

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City of Fremont
400 E. Military Ave.
Fremont, NE 68025
Ph: 402.727.2630

Exhibit E



City Government Departments Recreation & Learning Economic Development City Information

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Legal Defense Support

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Keene Memorial Library

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City of Fremont
400 E. Military Ave.
Fremont, NE 68025
Ph: 402.727.2630

Illegal Immigration Ordinance

On June 21st, 2010 the citizens of Fremont passed a petition initiated ordinance relating to immigration. A copy of the ordinance is available [here](#).

Any comments may be sent to immigration@fremontne.gov or immigration@fremontne.gov.

Legal Defense Support

The City of Fremont has set up an avenue to contribute to the City's legal and other costs associated with defending the ordinance passed at the June 21st election. These donations may be made to:

CITY OF FREMONT
Attn: CITY TREASURER
PO BOX 1266
FREMONT NE 68026-1266

Please include a note specifying "Legal Defense Support"

DECLARATION OF MARIO MARTINEZ, JR.

I, Mario Martinez, Jr., hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I live in Fremont, Nebraska and have lived there for the past 13 years.
2. I am a native-born U.S. citizen and a Latino. I speak both English and Spanish.
3. I have a wife and young daughter who live with me in Fremont. My wife was born in Mexico, but has lived in the U.S. since she was 12 years old. After we got married four years ago, my wife and I hired a lawyer who helped her get her green card. My daughter is a U.S. citizen.
4. I am going to school to get my Bachelor's degree and am studying information technology. I am also working part time with a mail order pharmacy company.
5. My family rents a house in Fremont and we live there with our dog. We have lived in the same rental house for about two and a half years. We currently rent the house on a monthly basis. Because we rent our house month to month, I believe my family could be evicted or asked to leave at the end of any month. My rent could also be raised at the end of any month.
6. I am a registered voter and I voted against the Immigration Ordinance because I believe it is wrong and targets Latinos.
7. I do not believe that immigration or citizenship status affects whether someone is a good tenant, or whether guests should be allowed to come to visit.
8. Because I think the Immigration Ordinance is wrong and illegal, I do not think I should have to comply with it. But I am afraid that if I don't do what is required, then I could be criminally prosecuted, fined, and evicted for violating the Ordinance.

9. I am also afraid that if the Immigration Ordinance goes into effect, my wife and I could be required to get new occupancy licenses every month because we rent our house one month at a time. If we had to get occupancy licenses every month, it would be very hard on us and would take lot of time and money. Especially since between working and going to school I am very busy, I do not know when I would find time to get an occupancy license.

10. I am afraid that we will not be able to have guests come stay with us at our house anymore. My family has friends and relatives who come to visit and stay at our house from time to time. I understand that under the Immigration Ordinance, everyone who stays at a rental property who is not a "temporary" guest is required to get an occupancy license. I do not know if our guests will be required to get occupancy licenses under the Immigration Ordinance if they stay with us for any amount of time, such as overnight. I do not know how to figure out whether someone is a "temporary" guest.

11. One of my relatives has already told me that because of what is happening in Fremont around the Immigration Ordinance, she is afraid to visit me even for a short amount of time.

12. I do not ask my houseguests what their immigration status is before they come to stay with us. I am not a lawyer and I know that immigration status is very complicated.

13. I am afraid I could be evicted because under the Immigration Ordinance, if I allow someone to stay at my house who has no occupancy license but is required to have one, I will be considered to have breached my lease. I am also afraid that I could be criminally prosecuted and fined for letting someone stay at my house who has no occupancy license.

14. I am afraid that if I don't do all that is required by the Immigration Ordinance, my landlord could be forced to evict my family. I don't know what my family would do if we were evicted. I am very worried about what we would do if that happened, especially because I don't

have any spare time to look for another rental but also because it can be very hard to find another rental property that would allow us to keep our dog.

15. It would also be very hard on my family if we were evicted and we could not find another rental property in Fremont, because I work in Fremont, and because my parents, godparents, and friends all live in Fremont. It would be a hardship to be far away from my family and job.

16. I am very concerned about the negative effect the Immigration Ordinance is having on our town. Fremont feels like a completely different town now. I feel like Caucasian people in Fremont give me looks of hostility and hatred, like they want me to get out, and it was not like that before the Immigration Ordinance was introduced. I have seen people around town wearing t-shirts that say "Proud to Be an American: If You're Not, Go Home."

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17. My wife has also experienced harassment that I believe is related to the Ordinance. Around the time that the City Council was considering the Ordinance, my wife told me that a female customer at her previous job complained about her accented English and told her to "Go back to Mexico."

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 19 day of July, 2010, Fremont, Nebraska.



Mario Martinez, Jr.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

MARIO MARTINEZ, JR. ET AL.,)	
)	
Plaintiffs,)	Civ. Action No. _____
)	
v.)	
)	
CITY OF FREMONT, ET AL.,)	
)	
Defendants.)	
)	

DECLARATION OF PAULA MERCADO

I, Paula Mercado, hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I live in Fremont, Nebraska and have lived there for the past 14 years.
2. I am a native-born U.S. citizen and identify as Latina. I speak primarily Spanish; I am able to understand some English but am much more comfortable speaking Spanish.
3. I have been married to my husband, also a U.S. citizen, for 15 years. We have four children and are expecting one more.
4. I do not currently work because of a work-related shoulder injury I suffered at the Hormel plant.
5. My family rents our house month-to-month. I am concerned that our landlord would use the Ordinance to try to raise our rent as soon as the Ordinance goes into effect.

6. I do not believe that we should have to provide proof of citizenship to the City. I don't believe that we should have to provide the personal information that we would need to in order to get occupancy licenses.

7. I do not believe that immigration or citizenship status affects whether someone is a good tenant, or whether guests should be allowed to come to visit.

8. Because I think the Immigration Ordinance is wrong and illegal, I do not think I should have to comply with it. But I am afraid that if I don't do what is required, then I could be criminally prosecuted, fined, and evicted for violating the Ordinance.

9. I am also afraid that if the Immigration Ordinance goes into effect, my husband and I could be required to get new occupancy licenses every month because we rent our house one month at a time. If we had to get occupancy licenses every month, it would be very hard on us and would take lot of time and money. Because my husband works and I am busy raising our children, I am not sure how we will have the time to obtain occupancy licenses each month.

10. I am worried that we will have to limit the guests who come to stay with us at our house because of the Ordinance. My family often has friends and relatives who come to visit and stay at our house over the weekends. The longest period someone has stayed with us is for one year, when she was out of work. I think it's only right that we should be able to help family and friends by allowing them to stay until they get back on their feet.

11. I understand that under the Immigration Ordinance, everyone who stays at a rental property who is not a "temporary" guest is required to get an occupancy license. I do not know if our guests will be required to get occupancy licenses under the Immigration Ordinance if they stay with us for any amount of time. I do not know how to figure out whether someone is a "temporary" guest.

12. I don't ask my houseguests what their immigration status is before they come to stay with us. Since immigration status is so complicated, it is difficult to figure out what someone's immigration status is.

13. I am afraid I could be evicted because under the Immigration Ordinance if I allow someone to stay at my house who has no occupancy license but is required to have one, I will be considered to have breached my lease. I am also afraid that I could be criminally prosecuted and fined for letting someone stay at my house who has no occupancy license.

14. I am afraid that if I don't do all that is required by the Immigration Ordinance, my landlord could be forced to evict my family because of our guests or if we don't obtain occupancy permits. I don't know what my family would do if we were evicted. I am very worried that we won't be able to find another place to rent, especially because we have four children and I am currently pregnant.

15. I am very concerned about the negative effect the Immigration Ordinance is having on our town. I believe that this Ordinance will negatively affect a lot of people, including people who are here legally. Because many people who are citizens or legal immigrants have family members who do not have immigration papers, I am concerned that this Ordinance will disrupt family relationships.

16. I know that other Latinos are already leaving Fremont to shop elsewhere, to avoid the glares and hostility they encounter in Fremont.

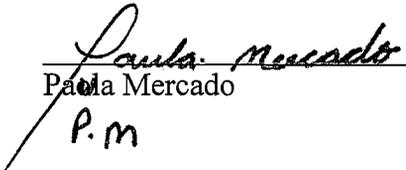
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17. I have experienced discrimination I believe is related to the Ordinance. For example, I was discriminated against at Walmart. A clerk there followed me around and made a comment about my race. I told the manager, but he would not do anything about it.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 21 day of July, 2010, Fremont, Nebraska.



Paola Mercado
P.M

CERTIFICATE OF TRANSLATION

1. My name is Angelica Mercado and I am fluent in English and Spanish.
2. I translated the foregoing declaration from English to Spanish and read it to Paola Mercado in Spanish.
3. Paola Mercado affirmed that the contents of the declaration were true and correct to the best of her knowledge.

I declare under penalty of the laws of the United States that the foregoing is true and correct. Executed this 21 of July, 2010, in Fremont, Nebraska.

Angelica Mercado

DECLARATION OF JANE DOE

I, Jane Doe, hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I live in Fremont, Nebraska.
2. I am a native-born U.S. citizen and a Latina. I speak both English and Spanish.
3. I live with my fiancé and my minor child. My fiancé and I are expecting a child.
4. My fiancé does not currently have any immigration papers. We are planning to consult an attorney about starting the process for getting my fiancé his immigration status after our wedding. However my fiancé does not currently have any government-issued identification number that would establish his lawful presence in the U.S.
5. We live in a rental apartment in Fremont. We have a lease that expires early next year.
6. If it weren't for the Immigration Ordinance, my fiancé and I would be trying to move to a bigger rental home in Fremont so that we could have more room for our growing family. But because of the restrictions in the Ordinance and all of the hostility and suspicion in Fremont right now, we are unable to move.
7. I am very afraid that if the Immigration Ordinance is allowed to go into effect, not only will my family not be able to move elsewhere in Fremont, but that we will be unable to remain together in our current apartment. My biggest fear is that my family will be broken apart and my fiancé will be forced to live away from us because of the Immigration Ordinance.
8. Since we will be dealing with the demands of a newborn baby soon, it will be especially hard for us to find another apartment where we can all live together in Fremont. I do

not think that any landlord would be willing to risk renting to us without proof of my fiance's immigration status, because it would be likely that my fiance's occupancy license would be revoked, and then the landlord would have to go through the hassle and expense of evicting us.

9. I disagree with the Immigration Ordinance and do not think I should have to comply with it. But I am afraid that if I don't do everything that the Immigration Ordinance requires, then I could be criminally prosecuted, fined, and evicted for violating the Ordinance.

10. I am afraid that because of the Immigration Ordinance, we will no longer be able to have guests come stay with us at our apartment.

11. We have friends and family who come to stay with us at our apartment for a few days at a time. We also have one family member who has been living with us for a while.

12. I understand that under the Immigration Ordinance, everyone who stays at a rental property who is not a "temporary" guest is required to get an occupancy license. I do not know if our guests will be required to get occupancy licenses under the Immigration Ordinance if they stay with us for any amount of time, such as overnight. I do not know how to figure out whether someone is a "temporary" guest. I am afraid I could be evicted, prosecuted, or fined under the Immigration Ordinance if I let someone stay at our apartment who has no occupancy license but is required to have one.

13. I do not ask our guests what their immigration status is before I let them come to stay with us. I am not a lawyer but I understand that immigration status is very complicated. I do not think immigration status is relevant to whether we are good tenants, or whether guests should be allowed to come to visit us.

14. My family has suffered hostility and harassment since the Immigration Ordinance was introduced, and I am afraid that if my participation in this lawsuit is revealed, we could be

targets for hate crimes, retaliation, and further harassment. I am especially concerned for the safety and security of my fiancé, my child, and the baby we're expecting.

15. I have noticed that after the Immigration Ordinance was first introduced, people in Fremont, who are predominantly Caucasian, have been acting disrespectfully toward us and staring intensely at my family and myself in a hostile manner when we are out in public. For example, I have overheard people in Fremont referring to us as "the brown people," and drivers of passing cars in Fremont have made obscene gestures at us.

16. I believe that supporters of the Immigration Ordinance group all Latinos together and look at us all as if we are all undocumented immigrants. Recently, while shopping at a store, I asked if my child – who is a U.S. citizen – could use the bathroom and the store employee told us that there were "no restrooms for Mexicans."

17. I am aware from stories in the news that other Latinos in Fremont have also recently suffered harassment and in some instances, threats. I am also aware from my lawyers that they have received hate mail and hostile phone calls in connection with their publicly announced plans to challenge the Immigration Ordinance in court.

18. I am very afraid that if my identity and participation in this lawsuit are revealed, the hostility against me and my family will only increase.

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19. I am also afraid that if my opposition to the Ordinance (and my desire not to comply with it) is made known, then I could be targeted for eviction, prosecution, and enforcement.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 21 day of July, 2010, Fremont, Nebraska.


Jane Doe

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

MARIO MARTINEZ, JR. ET AL.,)	
)	
Plaintiffs,)	Civ. Action No. _____
)	
v.)	
)	
CITY OF FREMONT, ET AL.,)	
)	
Defendants.)	
)	

DECLARATION OF MARIA ROE

I, Maria Roe,¹ hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I am a U.S. citizen.
2. I was born in Fremont and have lived in Fremont for much of my life.
3. I have been married for three and a half years. My husband is not here legally.

For the past few years, my husband and I have been trying to get his immigration status changed. However, the process is very expensive and that has been difficult for us. Because my husband is not here legally, I do not believe that he currently has any government-issued identification number that would demonstrate his lawful presence in the U.S. as required by the Ordinance.

¹ Maria Roe is not my real name. I am applying to the Court for permission to proceed under a pseudonym.

4. I have a child that I raise together with my husband. Ever since the Ordinance was passed, my child has been crying that my husband will be taken away from us.

5. My family rents an apartment in Fremont on a month to month basis. I have lived in the same apartment for over five years. My landlord could raise the rent or evict us at the end of any month.

6. I believe that it is very likely that my landlord will evict us if the Immigration Ordinance goes into effect, because he will want to avoid running into problems with the Ordinance.

7. I am scared that if we had to move that we wouldn't be able to find a new place to live together in Fremont because other landlords would not be willing to rent to us. I believe that landlords would be very strict about the enforcement of the Ordinance and would not want to rent to us because of my husband's immigration status. I am also worried about the costs of moving and I am concerned that finding the time for a move may be difficult.

8. It would be very hard on my family if we couldn't stay in Fremont. We would be leaving our family and friends, and my child would be leaving all of my child's friends. My child has gone to the same school for the last five years and most of my child's friends are in town. Moving outside of town or to another town would make it difficult for us to get to work. There would be the added expense of gas and the fact that, because we are living farther from work, my child wouldn't have any after-school supervision and we wouldn't be able to pick my child up after school. I am worried that I might not be able to keep my job.

9. I don't think I should have to comply with the Ordinance because it's wrong. But I'm scared that I could be subject to eviction, prosecution, and fines if I violate the Ordinance.

10. I am worried that because we rent our apartment on monthly basis, we would have to get occupancy licenses every month. That would be very expensive and time-consuming.

11. I have guests stay overnight at our apartment sometimes, including my nieces and nephews and my husband's cousins. It would be a problem for me if our family wanted or needed to stay with us but weren't allowed to under the Ordinance. I am unwilling to turn our family away because of the Ordinance. But I'm also afraid I'd be subject to eviction, criminal prosecution, and penalties if I let someone stay with us without an occupancy license. I don't know how I'd figure out whether someone was an "occupant" or a "temporary guest."

12. I don't believe immigration status affects whether someone will be a good tenant or a good guest.

13. I am truly disappointed that a town that I have always known to value Christian attributes is acting so unwelcoming to a group of people. I believe this may be because of ignorance, but it is very hard for me.

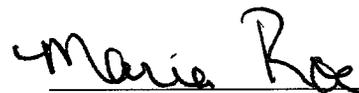
14. My family has experienced harassment and discrimination I believe is related to the Ordinance. For example, we get weird looks and nasty comments when we go out in public. Because of this, my husband has stopped playing soccer in the evening with friends and doesn't want to go out to shop or be in the town. As another example, on one occasion I approached a City Council member to express my opposition to the Ordinance. The Council member laughed at a racist joke told by another person, even though I was standing right there.

15. I am aware that other Latinos in Fremont have also recently suffered harassment and in some instances, threats. I am also aware from my lawyers that the ACLU has received hate mail and hostile phone calls because of their plan to sue over Immigration Ordinance.

16. I am afraid that if my participation in this lawsuit is revealed, my family would be targeted for hate crimes, retaliation, and more harassment. I am especially worried about revealing the immigration status of my husband and the negative consequences that could have. I am also worried for my child, who attends school in Fremont. I am very afraid that if my identity and participation in this lawsuit are revealed, the hostility against me and my family will only increase.

17. I am also afraid that if my opposition to the Ordinance (and my desire not to comply with it) is made known, then I could be targeted for eviction, prosecution, and enforcement.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 21 day of July, 2010, Fremont, Nebraska.



Maria Roe

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

MARIO MARTINEZ, JR., ET AL.,)	
)	
Plaintiffs,)	Civ. Action No. _____
)	
v.)	
)	
CITY OF FREMONT, ET AL.,)	
)	
Defendants.)	
)	

DECLARATION OF STEVEN DAHL

I, Steven Dahl, hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I live in Fremont, Nebraska and have lived here for the past 10 years with my wife and family.
2. I own a number of properties in Fremont. In total, there are 61 units for rent.
3. I generally have about 130-140 tenants at any given time. My tenants come from various ethnic and racial backgrounds, but I estimate that about one-third of them are Latino.
4. I do not know my tenants' legal status and do not ask them about it. I am not a lawyer and I understand that determining someone's immigration status can be very complicated.

5. About five percent of my units are generally vacant at any given time. Right now, I have one vacant unit and will have two more vacant units at the end of this month.

6. After paying for my mortgages, utility bills, and building maintenance, my properties bring in about \$5,000 a month in income. This income is what my family and I live on.

7. Four of my current tenants have expressed concern that I would evict them if the Ordinance went into effect. One of my current tenants said that she may move out of Fremont if the Ordinance goes into effect.

8. I am concerned that if the Ordinance went into effect that it would substantially decrease my income. I have not previously had problems filling my vacant apartments, but I am concerned that renters will either move out of Fremont or choose not to move here if the Ordinance is allowed to go into effect. I am concerned that even if I managed to fill my vacancies, I would have to substantially lower my rental prices to do so. I am also concerned that my property values have decreased as a result of the Ordinance and I've already contacted the County assessor about reassessing the value of my properties.

9. I do not feel that I should have to comply with the Ordinance. But I am afraid that I may be subject to prosecution and fines if one of my tenants does not have a proper license.

10. I do not ask my tenants about their immigration status. As a non-lawyer I feel this would be difficult to determine in any case. I do not think immigration status has any bearing on whether a tenant will be good or not or whether a guest should be allowed to visit.

11. I am concerned that it will be difficult and burdensome for me to ensure compliance with the Ordinance. For instance, every time a roommate moved out and another moved in then I would have to ensure that the new roommate had a license.

12. I am also concerned that I will not be able to monitor how long guests are visiting or whether they qualify as "temporary guests." I understand that under the Immigration Ordinance, everyone who stays at a rental property who is not a "temporary" guest is required to get an occupancy license. I do not know if any of my tenants' guests will be required to obtain occupancy licenses for their stays, which may vary in length. I am afraid that I could be subject to prosecution and fines because of a tenant's guest.

13. I am afraid that because of the Ordinance, I will have to incur substantial costs to comply with it. I am especially concerned about the harms I will suffer if I have to evict any tenants. I estimate that each eviction costs about \$1,000 in court costs and attorney's fees. I also anticipate that tenants would do deliberate damage or neglect to maintain my property because they were being evicted.

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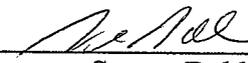
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14. I am concerned about the negative effect the Ordinance is having on Fremont. I know that there is a great deal of fear right now in Fremont's Latino community. I am also disturbed by what I see as a significant amount of discriminatory sentiment in Fremont. For example, I have noticed Latinos being treated differently at stores, such as at Walmart. As another example, I have had to deal with a situation involving a neighbor who spends a great deal of time shouting racist comments at my tenants. I am also worried that the Ordinance will lead to the Fremont Police targeting my tenants.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 21 day of July, 2010, Fremont, Nebraska.



Steven Dahl

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

MARIO MARTINEZ, JR., PAOLA)
MERCADO, JANE DOE, MARIA ROE,)
STEVEN DAHL, AND ACLU)
NEBRASKA FOUNDATION,)

Civ. Action No. 4:10-cv-3140

Plaintiffs,)

v.)

CITY OF FREMONT; DEAN F.)
SKOKAN, JR., IN HIS OFFICIAL)
CAPACITY AS FREMONT CITY)
ATTORNEY; AND TIMOTHY)
MULLEN, IN HIS OFFICIAL)
CAPACITY AS FREMONT CHIEF OF)
POLICE,)

Defendants.)
_____)

DECLARATION OF LAUREL S. MARSH

I, Laurel S. Marsh, hereby declare as follows:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I am employed as Executive Director of ACLU Nebraska Foundation (hereinafter "ACLU Nebraska), which is a Nebraska non-profit corporation. ACLU Nebraska's corporate office is located at 941 O Street, Suite 706, Lincoln, Lancaster County, Nebraska, 68508.

2. ACLU Nebraska was formed in 1966. ACLU Nebraska provides assistance to members of the public regarding their civil liberties, including providing legal representation, informal advocacy and educational opportunities related to civil liberties violations.

3. ACLU Nebraska's mission is to protect the civil liberties of all Nebraskans, guaranteeing protection of their US Constitutional rights and their rights under the Nebraska State Constitution. Each year, ACLU Nebraska responds to approximately 600 requests for assistance from Nebraskans.

4. ACLU Nebraska employs three fulltime employees (an Executive Director, a Legal Director and an Executive Assistant) as well as one part time employee (a Community Organizer). In the past we have also hired part time law clerks both as employees and as independent contractors.

5. ACLU Nebraska employees have worked and will in the future work in Fremont, Nebraska. For example, I personally attended the Fremont City Council meeting held in July, 2008, in order to testify against the proposed housing and employment ordinance (hereinafter "Immigration Ordinance").

6. ACLU Nebraska Legal Director Amy Miller responds to requests for legal representation from Fremont residents. Most recently, she advocated on behalf of a Hispanic Fremont resident who was improperly subjected to racial profiling and denied renewal of her driver's license. Our Legal Director contacted the state Department of Motor Vehicles and resolved the problem successfully. Our Legal Director has also traveled to Fremont in the last month to meet with clients personally in regards to the newly passed Immigration Ordinance. She will be traveling to Fremont in the future for the same purpose as part of her employment with ACLU Nebraska.

7. Community Organizer Tristan Bonn is a part time employee who is working on police practices and community awareness of their rights with police. ACLU Nebraska has received a request to provide a "Know Your Rights" training session with Tristan Bonn presenting in Fremont. She will be traveling to Fremont for this purpose as part of her employment with ACLU Nebraska.

8. ACLU Nebraska is currently in the process of hiring a new Executive Assistant. I have placed advertisements for this position in the Omaha World Herald, the Lincoln Journal Star, and on the ACLU Nebraska website. It is possible that applicants for this position will include residents of Fremont.

9. ACLU Nebraska currently complies with federal law to verify the eligibility of its employees to work in the United States using the traditional "I-9" paper form, but ACLU Nebraska does not currently use the voluntary E-Verify program. If the Fremont Immigration Ordinance takes effect, ACLU Nebraska will be forced to use the voluntary E-Verify system to verify employment eligibility because we have employees who will perform work in Fremont in the future. ACLU Nebraska fears that if it does not use E-Verify, ACLU Nebraska may be sued by the Fremont City Attorney and have to expend resources defending against such litigation.

10. ACLU Nebraska is concerned that using E-Verify would impose added costs and obligations on ACLU Nebraska, including registering for the program, becoming familiarized with a sixty-page E-Verify User Manual, training its employees in the proper use of E-Verify, entering into and complying with the Memorandum of Understanding ("MOU") with the federal government, and using E-Verify for each new hire. Moreover, ACLU Nebraska will have to assist any employees who are authorized to work but who are not confirmed and have to resolve problems. These obligations will be particularly burdensome because ACLU Nebraska has

limited staff resources. If the Fremont Immigration Ordinance does not take effect, ACLU Nebraska will not use E-Verify and will not incur the attendant costs and obligations.

11. ACLU Nebraska believes that complying with the Fremont Immigration Ordinance will also harm ACLU Nebraska by requiring it to divert resources from its programs for implementation, training and proper use of E-Verify as a means of verifying employment eligibility of its employees. Because ACLU Nebraska spends a substantial portion of its budget on providing direct services to protecting Nebraskans' civil liberties, the diversion of resources that ACLU Nebraska faces as a result of timely compliance with the Fremont Immigration Ordinance (or defending against a suit by the City Attorney for failure to comply) will harm not just ACLU Nebraska, but the entire statewide community that ACLU Nebraska serves. As such, compliance with the Fremont Immigration Ordinance will likely result in a decrease of the revenue available to be spent on programs and services provided by ACLU Nebraska. If the Fremont Immigration Ordinance does not take effect, ACLU Nebraska will not use E-Verify and will not have to divert resources to the program.

12. ACLU Nebraska also believes the Fremont Immigration Ordinance will cause harm to workers that are legally authorized to work in the United States and to their families. ACLU Nebraska is particularly concerned that legally authorized workers, especially foreign-born workers and national origin minorities, will not be hired for employment in Fremont or other communities where the worker may reside but work in Fremont. ACLU Nebraska is aware that there are numerous reasons why a lawfully authorized worker may be mistakenly deemed ineligible to work by E-Verify, including delays in data entry into the applicable government database such as lags in inputting information for newly naturalized U.S. citizens, inaccurate

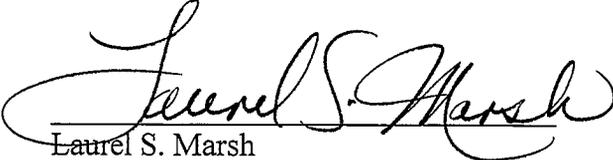
entry of information onto the form on the E-Verify website by the employer, or name changes or changes in immigration status that have not been updated in the government databases.

13. ACLU Nebraska further believes such workers will lose their jobs, will have to undertake additional efforts to demonstrate that they are authorized to work or will otherwise be harmed because of the Fremont Immigration Ordinance.

14. ACLU Nebraska is concerned that workers who are harmed by the Fremont Immigration Ordinance will seek assistance from ACLU Nebraska's legal program stemming from their inability to obtain or maintain employment as a result of implementation and enforcement of the Ordinance. ACLU Nebraska believes it will experience an increase in requests from persons harmed by the Ordinance seeking legal representation, advocacy and education on their rights. ACLU Nebraska is concerned that because of the diversion of resources from its programs and services to comply with the Ordinance, it will not be able to meet the increased demand for assistance that will occur as a result of the harm suffered by workers under the Ordinance.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of Nebraska and the United States of America.

Executed on this 21st day of July, 2010, at Lincoln, Nebraska.


Laurel S. Marsh

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

_____)	
MARIO MARTINEZ, JR., ET AL.)	
)	Civ. Action No. <u>4:10-cv-3140</u>
Plaintiffs,)	
)	
v.)	
)	DECLARATION OF
CITY OF FREMONT, ET AL.)	MICHAEL D. MARTY
)	
Defendants.)	
_____)	

I, Michael D. Marty, hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I am the Secretary and Treasurer of the United Food and Commercial Workers Union, Local 22 (hereinafter "UFCW"), which has an office at 2410 North Colorado Avenue, Fremont, NE 68025. I have been employed by the UFCW for 20 years.
2. The United Food and Commercial Workers Union of Nebraska ("UFCW") represents approximately 5,500 workers in the State of Nebraska. These workers are employed in the meat packing industry and as correction officers in Dodge County, Colfax County, and Hall County.
3. The UFCW provides collective bargaining services for its members, negotiating on behalf of its members to work out employment contracts with employers. The UFCW also ensures the health and safety of its workers by establishing safety committees at employer locations and monitoring the employer locations for compliance with the

contractual agreements between the UFCW's members and employers. The UFCW also provides assistance to its members as to grievance procedures for disputes and will assist its members with arbitration efforts as well. The UFCW also works with its members to assist with navigating the workers compensation system and ensuring health care benefits. The UFCW also provides interpretation services to its members in a variety of contexts, including, for example, employment disputes and health care visits.

4. The UFCW has eight full-time employees. Three of these employees are based in and work in Fremont full-time. The other five employees regularly work in Fremont, attending meetings in Fremont and providing interpretation services telephonically to the UFCW's offices in Fremont, for example. The UFCW also has 11 part-time employees, who attend meetings in Fremont at least four times a year. Ten of these part-time employees also receive a monthly salary for services they provide to the UFCW in Fremont. The UFCW also hires persons as independent contractors to perform janitorial services, lawn maintenance, and snow removal.

5. The UFCW also selects approximately 12 workers to participate in training conferences across the country. These workers receive wages from the UFCW for attending these conferences, including payment for lost time and expenses for the conferences.

6. The UFCW negotiates employment contracts with multiple employers from our offices in Fremont. UFCW employees work on drafting and editing the contracts from our offices in Fremont. They also meet with members in our offices in Fremont to discuss issues related to the negotiation of employment contracts.

7. UFCW employees also work out of the Fremont office in organizing workers in Nebraska. This includes setting up meetings with new employees, promoting the UFCW's services, and encouraging current member participation.
8. UFCW employees respond to inquiries and requests from members related to employer compliance with bargained employment contracts from our offices in Fremont. Meetings with members to discuss issues that arise as to the members' employment are held at our offices in Fremont. UFCW employees address contract compliance from our offices in Fremont, contacting employers from our offices to discuss issues that arise from our membership.
9. UFCW employees provide translation services at our offices in Fremont for members. These services are provided to our members for a range of issues related to enforcement of UFCW-negotiated employment contracts and related services.
10. The UFCW's board also meets at our offices in Fremont on a regular basis. These meetings include discussions on the enforcement of the bylaws and constitution of the UFCW as well as discussions on emerging issues that the UFCW will need to address.
11. The UFCW currently has no vacancies, but vacancies will open and the UFCW would need to hire employees to fill these vacancies after the effective date of the Fremont Immigration Ordinance. Indeed, as explained below, the UFCW believes it will need to hire a new employee in order to comply with the ordinance.
12. UFCW complies with federal requirements to verify the work authorization of its employees using the traditional "I-9" paper form. However, UFCW does not currently use the voluntary E-Verify program. Nor is UFCW otherwise required to use E-Verify.

If the Fremont Immigration Ordinance takes effect, UFCW will be forced to use the E-Verify system because of the work we do and will continue to do in Fremont.

13. The UFCW is very concerned about the costs and consequences of complying with the Fremont Immigration Ordinance's E-Verify mandate. I understand that E-Verify is a complicated federal program that would require UFCW to expend resources—both time and money—to set up, including signing a Memorandum of Understanding (MOU) with the federal government, registering for the program, familiarizing itself with the E-Verify User Manual (which is some sixty pages long), training employees how to use the program, and using E-Verify for each new hire. In addition, UFCW will have to ensure that it complies with E-Verify's processes on an ongoing basis, including assisting UFCW employees who are authorized to work but who are not confirmed and have to resolve such a problem in order to work for the UFCW. These obligations will be particularly burdensome because of the UFCW's limited staff resources.

14. The UFCW also fears that if it does not use E-Verify, UFCW may be sued by the Fremont City Attorney. Such a lawsuit would be burdensome and would require UFCW to expend time and funds to defend.

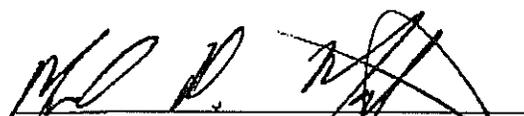
15. The UFCW believes that adhering to the Fremont Immigration Ordinance will further harm and burden UFCW by requiring it to divert resources from its current activities to set up E-Verify, comply with E-Verify's requirements, train employees in its proper use, and assist employees where problems arise. The UFCW also believes that in order to comply with the Ordinance it will need to hire a new employee to run the program, because its employees are already over-burdened. In addition, the UFCW would have to seek the approval of its membership to pay for the costs attendant to the E-

Verify system before it could begin to comply with the Ordinance. Because UFCW's core focus is on providing services to its members, including, collective bargaining, translation services, and assistance with a wide range of employment-related concerns, the diversion of resources that will be caused if the UFCW must comply with the Fremont Immigration Ordinance (or defending against a suit by the City Attorney for failing to comply with it) will harm not just the UFCW, but also the 5500 workers it represents.

16. Moreover, the UFCW, being a service-provider to workers and a resource to which workers can turn with regard to a range of issues concerning their employment, will likely be contacted by member workers who are being verified at their own jobs in Fremont in order to seek assistance and guidance on how to resolve issues with E-Verify in their own workplace. Thus, the Fremont Immigration Ordinance will likely decrease the staff time and other resources that the UFCW has available to spend on contract negotiation, services, and organizing activities that the UFCW traditionally provides and will require that more resources be devoted to usage of E-Verify as well as assistance to member workers who are now subject to E-Verify as a result of the Immigration Ordinance.

17. If the Fremont Immigration Ordinance does not take effect, UFCW will not use E-Verify and will not have to divert its resources to its installation, implementation, and ongoing use.

Dated: July 22, 2010


Michael D. Marty

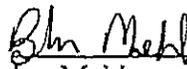
DECLARATION OF BRANDON MEHL

I, Brandon Mehl, hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I am a volunteer law clerk at the ACLU of Nebraska.
2. On Tuesday, June 22, 2010, the day after the Fremont vote on the immigration ordinance, I worked from 9 a.m. to 4 p.m.
3. On June 22, 2010, I answered around 15 phone calls.
4. All of the calls I answered that day expressed support for the immigration ordinance.
5. The worst call I had to take that day was from a man who said that people should shoot illegal aliens or form militias to do just that.
6. I don't remember any more details about the calls that day because they were so unpleasant that I made an effort to block out thinking about them.
7. All of the student volunteers, including me, were sent home early that day at 4 p.m. because of the unpleasantness and anger we had to deal with that day as a result of the Ordinance.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 21st day of July, 2010, Fremont, Nebraska.



Brandon Mehl

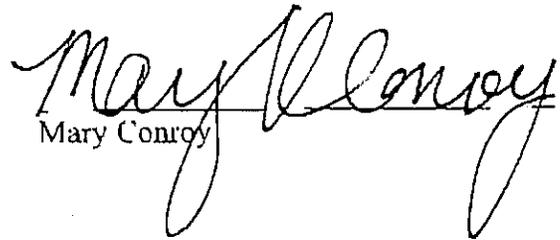
DECLARATION OF MARY CONROY

I, Mary Conroy, hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I am a volunteer law clerk at the ACLU of Nebraska.
2. On Tuesday, June 22, 2010, the day after the Fremont vote on the immigration ordinance, I worked from 9 a.m. to 4 p.m.
3. On June 22, 2010 I answered ten phone calls.
4. Most of the people whose calls I answered expressed strong support of the Ordinance.
5. Most of the people who calls I answered were rude and angry about the ACLU's stated intent to challenge the Ordinance. I developed the impression that people were just calling to yell at someone, and did not care what I had to say.
6. The worst calls I had to answer that day claimed that the ACLU was somehow culpable for murder. One elderly-sounding man told me that our decision to protect and fight for illegal immigrants was the same as murdering people. I asked for clarification, but that is exactly what he meant. Another person told me that illegal aliens would commit murder and that the guilt would be on us.
7. After answering ten phone calls, I felt too overwhelmed and did not want to take any more, so another volunteer took the calls for me.
8. All the student volunteers, including me, were sent home early that day around 4 p.m., because we were all so shell-shocked as a result of the hateful calls.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 21st day of July, 2010, Ames, Iowa.


Mary Conroy

DECLARATION OF KATELAN ENO

I, Katelan Eno, hereby declare:

I make this declaration based on my own personal knowledge; and if called to testify I could and would do so competently as follows:

1. I have been a volunteer at the ACLU of Nebraska since June 4, 2010.
2. I work at the office Monday through Friday, 9 a.m. to 5 p.m.
3. Since June 4, 2010, I have been responsible for reading the messages received from ACLU Nebraska's general email account, info@aclunebraska.org.
4. Between 7:28 p.m. on Sunday June 20, and 10:41 p.m. on Wednesday, June 23, we received approximately 106 emails specifically about the Fremont ordinance.
5. Of the emails regarding the Fremont ordinance, I estimate that 99 of them expressed support for the ordinance.
6. Of the 99 emails in favor of the ordinance, I estimate that between 75% to 80% can be characterized as clearly angry and antagonistic. Many of these messages were full of hostile or mocking language directed at the ACLU and its staff.
7. Among other terms, many of these messages called ACLU personnel "Un-American" or "assholes" or "idiots." Several wrote that everyone at the ACLU should "go to hell." One sender declared that "[t]he ACLU is more dangerous than Al Qaeda."
8. Among other terms, many of these messages characterized immigration of individuals to the U.S. as an "invasion" of "hordes" of "illegals" and "criminals." Many angrily declared that illegal immigrants "have no rights."
9. I attest that the attached documents, Exhibits "A," "B," "C," "D," "E," "F," and "G" are true and accurate copies of emails sent to the ACLU Nebraska general email account,

info@aclunnebraska.org, on Tuesday, June 22, 2010, the day after the vote on the Fremont ordinance.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of knowledge and recollection. Executed this 21st day of July, 2010, Fremont, Nebraska.



Katelan Eno

Exhibit A

-----Original Message-----

From: john kennedy [<mailto:johnkennedy603@gmail.com>]

Sent: Tuesday, June 22, 2010 12:21 AM

To: info@aclunabraska.org

Subject: My rights have been trampled

Hello. I'm hoping you can help me. I am a U.S. citizen, born and raised in New Jersey. I have a serious problem.

**my nation is being invaded!!!!!!
BY MEXICAN COCKROACHES!!!!
That are being protected by you
SCUMBAGS!!!!!!
STOP HELPING ILLEGAL
SCUMBAGS!
THIS COUNTRY DOES NOT NEED
ANY MORE PEOPLE.....SO, KISS MY
WHITE AMERICAN ASS!!!**

Exhibit B

-----Original Message-----

From: Randy Wilson [<mailto:rwilson@gentexcorp.com>]

Sent: Tuesday, June 22, 2010 9:16 AM

To: info@aclunebraska.org

Subject:

"Not only do local ordinances such as this violate federal law, they are also completely out of step with American values of fairness and equality," said Laurel Marsh, executive director of ACLU Nebraska.

SO, ENTERING THE COUNTRY ILLEGALLY, HAVING A JOB ILLEGALLY AND TAKING A JOB FROM AN AMERICAN CITIZEN, BANKRUPTING THE NATION, HAVING KIDS LIKE RABBITS AND EXPECTING THE AMERICAN TAXPAYER TO PICK UP THE TAB, NOT ASSIMILATING INTO THE AMERICAN FABRIC AND HAVING A F--K YOU ATTITUDE TO THE AMERICANS IS THE "AMERICAN VALUE OF FAIRNESS AND EQUALITY" YOU WANT TO UPHOLD.

ACLU BURN IN HELL, AND I MEAN THAT, REALLY...YOU ARE HELPING TO DESTROY THIS ONCE GREAT NATION.

I PRAY THAT JESUS, THE SON OF THE LIVING GOD, BURNS YOU IN HELL...

HAVE A NICE LIFE HERE, YOU WONT ON THE OTHER SIDE. I HOPE I EXPRESSED MYSELF CLEARLY.

Randy Wilson

Exhibit C

-----Original Message-----

From: davan clodfelter [<mailto:rclodfelter@stewireless.com>]

Sent: Tuesday, June 22, 2010 10:01 AM

To: info@aclunebraska.org

Subject:

Illegal is illegal. You are trying to ruin this country by supporting the criminals. Illegal is not a race. I hope someone goes to your property and steals your stuff and the court lets them off. Grow some balls and fight for our rights to not be victims of these illegal thieves.

YAY FREMONT AND ARIZONA

Dave C

Exhibit D

-----Original Message-----

From: Buddy Revell [<mailto:freudlemming@live.com>]

Sent: Tuesday, June 22, 2010 11:27 AM

To: info@aclunabraska.org

Subject: Protecting the rights of non-americans

Recently Laurel Marsh was quoted in a paper standing up for the rights of non-citizens in this country. Could you please refrain from doing so as it goes against your namesake. It amazes me that people in the US have no issues with millions of under educated unemployed liabilities from the third world invade our country illegally. These people are taking away American jobs at a time of high unemployment and have no right to be in this country. They have consciously decided to ignore the sovereignty of our country and you protect them? They are stealing ID's of law abiding tax paying citizens and using them for their own benefit. They are exploiting the finite resources of this country and you don't even see it. The people of Fremont don't want their community turned into a third world septic tank and I don't blame them. This has nothing to do with race and everything to do with self preservation. People like you will have dirt on their hands in the future when this forced acceptance of the ideals of the elite are crammed down our throat and the US is devolved into a lesser nation all because of your actions.

S. Damery

Exhibit E

-----Original Message-----

From: ACLU Nebraska [<mailto:info@aclunbraska.org>]

Sent: Tuesday, June 22, 2010 12:48 PM

To: info@aclunbraska.org

Subject: New entry added

A new entry has been added to Have Your Rights Been Violated? and contains the following data

Name : Patriot Warrior

Address : 911 Some Street

City : Dallas

State : TX

Zip : 75201

Phone : 555-555-1212

Email : theaclusucks@biteme.com

Briefly describe what happened to you, including dates, places, and the names of those involved, and clearly identify what government agency or employee was involved. : **I have been violated by the invading horde of illegal aliens coming into this country and the shameless defense that your organization is giving them. Where the hell are my rights as a citizen? Can you please tell me what it means to be a citizen? The days of this invasion are numbered...**

Were you given any explanation for what happened? If so, what was that explanation? :
Why do you think this happened to you? :

Have you done anything on your own to try to solve the problem (i.e. filed an appeal, written a public official)? If so, what happened? :

Have you contacted another agency? If so, what agency and what is the status of the complaint? :

Have you consulted an attorney? If so, what is the attorney's name and address? Can we contact this person for more information? :

What would you like the ACLU to do for you? :

What made you think to contact the ACLU? :

Exhibit F

-----Original Message-----

From: Robert Mayer [<mailto:rmayer1701@sbcglobal.net>]

Sent: Tuesday, June 22, 2010 4:27 PM

To: info@aclunabraska.org

Subject: Fremont

Something you need to read. Then, look at your organization's title. Do you see "Foreign Invading Criminals Civil Liberties Union"? Leave Fremont alone. Stop being part of the problem. Stand up for the Americans that you are supposed to represent.

R Mayer

American Suicide.....Very sobering

Wherever you stand on this issue, please take the time to read this; it should wake you from your careless slumber on this important truth.

We know Dick Lamm as the former Governor of Colorado. In that context his thoughts are particularly poignant. Last week there was an immigration-over-population conference in Washington,DC , filled to capacity by many of America's finest minds and leaders. A brilliant

college professor by the name of Victor Hansen Davis talked about his latest book, "Mexifornia," explaining how immigration - both legal and illegal was destroying the entire state of California. He said it would march across the country until it destroyed all vestiges of The American Dream.

Moments later, former Colorado Governor Richard D. Lamm stood up and gave a stunning speech on how to destroy America.

The audience sat spellbound as he described eight methods for the destruction of the United States. He said, "If you believe that America is too smug, too self-satisfied, too rich, then let's destroy America. It is not that hard to do. No nation in history has survived the ravages of time. Arnold Toynbee observed that all great civilizations rise and fall and that 'An autopsy of history would show that all great nations commit suicide.'"

"Here is how they do it," Lamm said:

" First, to destroy America, turn America into a bilingual or multi-lingual and bicultural country." History shows that no nation can survive the tension, conflict, and antagonism of two or more competing languages and cultures. It is a blessing for an individual to be bilingual; however, it is a curse for a society to be bilingual. The historical scholar, Seymour Lipset , put it this way: 'The histories of bilingual and bicultural societies that do not assimilate are histories of turmoil, tension, and tragedy.'Canada, Belgium, Malaysia, and Lebanon all face crises of national existence in which minorities press for autonomy, if not independence. Pakistan and Cyprus have divided. Nigeria suppressed an ethnic rebellion. France faces difficulties with Basques, Bretons, Corsicans and Muslims."

Lamm went on:

" Second, to destroy America , invent 'multiculturalism' and encourage immigrants to maintain their culture." Make it an article of belief that all cultures are equal; that there are no cultural differences. Make it an article of faith that the Black and Hispanic dropout rates are due solely to prejudice and discrimination by the majority. Every other explanation is out of bounds."

" Third, we could make the United States an 'HispanicQuebec' without much effort." The key is to celebrate diversity rather than unity. As Benjamin Schwarz said in the Atlantic Monthly recently: 'The apparent success of our own multi-ethnic and multicultural experiment might have been achieved not by tolerance but by hegemony. Without the dominance that once dictated ethnocentricity and what it meant to be an American, we are left with only tolerance and pluralism to hold us together.' Lamm said, "I would encourage all immigrants to keep their own language and culture. I would replace the melting pot metaphor with the salad bowl metaphor. It is important to ensure that we have various cultural subgroups living in America enforcing their differences rather than as Americans, emphasizing their similarities."

"Fourth, I would make our fastest growing demographic group the least educated." I would add a second underclass, unassimilated, undereducated, and antagonistic to our population. I would have this second underclass have a 50% dropout rate from high school."

" My fifth point for destroying America would be to get big foundations and business to give these efforts lots of money." I would invest in ethnic identity, and I would establish the cult of 'Victimology.' I would get all minorities to think that their lack of success was the fault of the majority. I would start a grievance industry blaming all minority failure on the majority placation."

" My sixth plan for America's downfall would include dual citizenship,

and promote divided loyalties." I would celebrate diversity over unity. I would stress differences rather than similarities. Diverse people worldwide are mostly engaged in hating each other - that is, when they are not killing each other. A diverse, peaceful, or stable society is against most historical precedent. People undervalue the unity it takes to keep a nation together. Look at the ancient Greeks. The Greeks believed that they belonged to the same race; they possessed a common language and literature; and they worshipped the same gods. All Greece took part in the Olympic games. A common enemy, Persia, threatened their liberty. Yet all these bonds were not strong enough to overcome two factors: local patriotism and geographical conditions that nurtured political divisions. Greece fell. "E. Pluribus Unum" -- From many, one. In that historical reality, if we put the emphasis on the 'pluribus' instead of the 'Unum,' we will "Balkanize" America as surely as Kosovo."

" Next to last, I would place all subjects off limits. Make it taboo to talk about anything against the cult of 'diversity." I would find a word similar to 'heretic' in the 16th century - that stopped discussion and paralyzed thinking. Words like 'racist' or 'xenophobe' halt discussion and debate. Having made America a bilingual/bicultural country, having established multi-cultum, having the large foundations fund the doctrine of 'Victimology,' I would next make it impossible to enforce our immigration laws. I would develop a mantra: That because immigration has been good for America, it must always be good. I would make every individual immigrant symmetric and ignore the cumulative impact of millions of them."

In the last minute of his speech, Governor Lamm wiped his brow. Profound silence followed. Finally he said, "Lastly, I would censor Victor Hanson Davis's book 'Mexifornia.' His book is dangerous. It exposes the plan to destroy America. If you feel America deserves to be destroyed, don't read that book."

There was no applause. A chilling fear quietly rose like an ominous cloud above every attendee at the conference. Every American in that

room knew that everything Lamm enumerated was proceeding methodically, quietly, darkly, yet pervasively across the United States today. Discussion is being suppressed. Over 100 languages are ripping the foundation of our educational system and national cohesiveness. Even barbaric cultures that practice female genital mutilation are growing as we celebrate 'diversity.' American jobs are vanishing into the Third World as corporations create a Third World in America. Take note of California and other states. To date, ten million illegal aliens are growing fast. It is reminiscent of George Orwell's book "1984." In that story, three slogans are engraved in the Ministry of Truth building: "War is peace," "Freedom is slavery," and " Ignorance is strength."

Governor Lamm walked back to his seat. It dawned on everyone at the conference that our nation and the future of this great democracy is deeply in trouble and worsening fast. **If we don't get this immigration monster stopped within three years, it will rage like a California wildfire and destroy everything in its path, especially The American Dream.**

If you care for and love our country as I do, take the time to pass this on just as I did for you.

NOTHING is going to happen if you don't!

If we ever forget that we're one nation under God, then we will be a nation gone under" - Ronald Reagan

Exhibit G

-----Original Message-----

From: biggitshredder@netscape.net [<mailto:biggitshredder@netscape.net>]

Sent: Tuesday, June 22, 2010 12:11 PM

To: info@aclunabraska.org

Subject: YOU

It's now apparent you assholes, along with the traitor Obama, want to provoke the next US civil war,

LOOKING FORWARD TO IT.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY



MARTIN LUTHER KING JR. FEDERAL BLDG. & U.S. COURTHOUSE
50 WALNUT STREET, P.O. BOX 419
NEWARK, NJ 07101-0419
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WILLIAM J. MARTINI
JUDGE

LETTER OPINION

April 8, 2009

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Re: *Maribel DelRio-Mocci, Linda Elliott, Robert Bolmer and Charlsey Sheppard v. Connolly Properties Inc., David M. Connolly, Dana Ayala, and Dania Molina*
Civil Action No. 08-2753 (WJM)

Dear Counsel:

This matter comes before the Court on a Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure by Defendants David M. Connolly, Dana

Ayala, and Dania Molina (collectively “Defendants”). There was no oral argument. Fed. R. Civ. P. 78. For the reasons stated below, Defendants’ Motion to Dismiss Count I of Plaintiffs’ Second Amended Complaint (“SAC”) is **GRANTED**.

BACKGROUND

Defendants manage multiple rental apartment complexes in New Jersey and Pennsylvania (Pl.’s SAC ¶ 22; Dft.’s Br. 5). Plaintiffs DelRio-Mocci, Elliott, Bolmer, and Sheppard (“Plaintiffs”) are present or former tenants of various Plainfield, NJ buildings run by Defendants (Pl.’s SAC ¶¶ 14-17). Plaintiff Bolmer (“Plaintiff” or “Bolmer”), the sole plaintiff bringing Count I, has resided at Defendants’ Pingry Arms building since February 2004, before the building was run by Defendants (Pl.’s SAC ¶ 16). Plaintiffs allege that the manner in which Defendants operate their rental real estate business violates the Racketeer Influenced and Corrupt Organizations Act (“RICO”), the Federal Fair Housing Act (“FFHA”), the New Jersey Fair Housing Act (“NJFHA”), and the New Jersey Conscientious Employee Act (“NJCEA”) (Pl.’s SAC ¶ 1).

Specifically, Plaintiffs allege that Defendants actively seek out illegal aliens as prospective tenants because their immigration status makes them easy to exploit. (Pl.’s SAC ¶ 4). The SAC asserts that Defendants believe illegal aliens are more inclined to accept sub-standard housing conditions, more willing to pay higher rents for apartments in disrepair, and less likely to report housing code violations to the authorities (Pl.’s SAC ¶ 7). As a result of renting to illegal aliens, Plaintiffs allege, Defendants are able to allow slum-like conditions to proliferate in their buildings without having to offer commensurate reductions in rent.¹

Plaintiffs further allege that Defendants engage in discriminatory housing practices, segregating their apartment buildings according to impermissible criteria such as race, national origin, immigration status, and source of income. (Pl.’s SAC ¶ 23). The alleged purpose of this segregation is to prevent tenants of different racial and ethnic backgrounds from interacting with each other, which Defendants supposedly believe will lead to fighting between the groups and attract the attention of the authorities. According to Plaintiffs, “by segregating illegal aliens and U.S. citizen tenant groups, [Defendants] decreased the risk of unwelcome investigations or enforcement-related visits to [the] properties by immigration agents, police officers, housing inspectors, or social agency personnel,” which could lead to the discovery of the illegal alien tenants (Pl.’s SAC ¶ 30).

¹ Among the slum-like conditions that Plaintiffs allege are broken locks, doors, windows, and plumbing, vermin infestations, and the use of common areas to conduct illegal activity.

Plaintiffs filed this suit in June 2008 seeking actual, compensatory, and punitive damages for FFHA, NJFHA, and NJCEA violations, treble damages for RICO violations, an injunction against Defendants from perpetrating further racketeering activity, equitable relief to remove the effects of existing housing discrimination and prevent it in the future, and attorney's fees and costs. Plaintiffs amended their complaint twice, filing the SAC in December 2008.

On December 22, 2008, Defendants filed this Motion to Dismiss Count I of Plaintiffs' SAC, the count alleging a RICO violation, pursuant to Fed. R. Civ. P. 12(b)(6). In short, Defendants allege that Count I of the SAC does not state a RICO violation and therefore fails to state a claim for which relief can be granted. Plaintiff Bolmer opposed Defendants' motion. Additionally, various public interest groups moved for leave to file and filed an amicus brief supporting the contention that Plaintiff failed to state a RICO violation. The motion was fully briefed on January 28, 2009.

ANALYSIS

A. Standard of Review

In deciding a motion to dismiss under Fed. R. Civ. P. 12(b), all allegations in the complaint must be taken as true and viewed in the light most favorable to the plaintiff. *See Warth v. Seldin*, 422 U.S. 490, 501 (1975); *Trump Hotels & Casino Resorts, Inc., v. Mirage Resorts Inc.*, 140 F.3d 478, 483 (3d Cir. 1998). When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court may take into account only the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the plaintiff's claims are based upon those documents. *See Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). If, after viewing the allegations in the complaint in the light most favorable to the plaintiff, it appears that no relief could be granted "under any set of facts that could be proved consistent with the allegations," a court may dismiss a complaint for failure to state a claim. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

Although a complaint does not need to contain detailed factual allegations, "the 'grounds' of [the plaintiff's] 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965, 167 L. Ed. 2d 929 (2007). Thus, the factual allegations must be sufficient to raise a plaintiff's right to relief above a speculative level. *See id.* at 1964-65. Furthermore, although a court must view the allegations as true in a motion to dismiss, it is "not compelled to accept unwarranted inferences, unsupported conclusions or legal conclusions disguised as factual allegations." *Baraka v. McGreevey*, 481 F. 3d 187, 211 (3d Cir. 2007).

B. RICO Conspiracy Claim

The RICO statute provides, in pertinent part, that it is unlawful for “any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c). Conspiring to violate the above provision is also prohibited. 18 U.S.C. § 1962(d). The statute defines a pattern of racketeering activity as committing two or more acts in violation of an enumerated list of federal and state laws. A violation of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1324, constitutes a predicate act of racketeering activity. 18 U.S.C. § 1961(1)(F) (incorporating § 274 of the INA).

Count I of the SAC alleges that Defendants have violated RICO’s conspiracy provision. Specifically, the Count states that Defendants have entered into a conspiracy to engage in an “Illegal Alien Rental Scheme” (“the Scheme”), renting apartments to illegal aliens under the theory that such individuals are more likely to over-pay for sub-standard housing and less likely to report housing code violations to the authorities (Pl.’s SAC ¶ 41). The alleged result of this activity has been to deny Plaintiff and other “lawful tenants” of “the full value of their leasehold” because it enables Defendants to keep the buildings in poor condition without reducing rents (Pl.’s SAC ¶ 7).

Plaintiff Bolmer asserts that the members of the Scheme have conducted their business by “knowingly harboring numerous illegal aliens in [Defendants’ buildings] as well as encouraging and inducing those illegal aliens to reside within [the buildings], in the last four years alone,” in violation of the INA (Pl.’s SAC ¶ 4). The harboring, encouraging, and inducing conduct is meant to represent a “pattern of racketeering” within the meaning of RICO. Plaintiff also alleges that Defendants Connolly Properties, Ayala, and Molina are “persons” pursuant to RICO, Connolly Properties constitutes a RICO enterprise, the harm to Plaintiff is cognizable under RICO, and it was proximately caused by Defendants (Pl.’s SAC ¶¶ 34, 75-76) .

The crux of Plaintiff’s argument is that renting apartments to illegal aliens constitutes racketeering activity because it constitutes harboring, encouraging, or inducing an illegal alien in violation of the INA. However, no court in this circuit or in any other has ever found this to be the case— without more, renting an apartment to an alien does not amount to harboring, encouraging, or inducing. Thus Plaintiff has not alleged a pattern of racketeering activity and the RICO claim cannot survive a motion to dismiss.

To violate the INA’s prohibition on harboring an illegal alien, it must be shown that a person “knows or recklessly disregards the fact that an alien is illegally in this

country... and conceals, harbors, or shields, or attempts to conceal, harbor, or shield, the alien from detection.” See 8 U.S.C. § 1324(a)(1)(A)(iii). A recent Third Circuit case held that to sustain a conviction under this section, the conduct at issue must (1) tend “substantially to facilitate an alien’s remaining in the United States,” and (2) “prevent government authorities from detecting” the alien’s unlawful presence. *U.S. v. Silveus*, 542 F.3d 993, 1003 (3d Cir. 2008). The second element is critical. *Id.* No court has ever held that the mere provision of housing to an illegal alien constitutes harboring, because the second element is lacking. See *id.* at 1004 (finding that Defendant’s conduct, allowing an individual whom she knew was in the U.S. illegally to live with her in her apartment, did not constitute harboring); see also *Zavala v. Wal-Mart Stores*, 393 F. Supp. 2d 295, 307 (D.N.J. 2005) (a “contractor’s ‘lodging’ of an undocumented worked and ‘putting him to work’ falls far short of alleging that Wal-Mart sheltered illegal aliens for the purposes of concealing them and avoiding their detection by immigration authorities”).

Moreover, the caselaw indicates that for conduct to satisfy the second element of the test, it must be affirmative and material. See *U.S. v. Ozcelik*, 527 F.3d 88, 99 (3d Cir. 2008) (advising an illegal alien to “lay low and to stay away from the address on file with the INS” did not constitute preventing the authorities from detecting an alien’s unlawful presence because the advice was “obvious information that any fugitive would know”). *But see U.S. v. Tipton*, 518 F.3d 591, 595 (8th Cir. 2008) (hiring undocumented aliens, finding them apartments, paying for their rent and utilities, providing them with transportation to and from their jobs to avoid their detection, and maintaining counterfeit immigration documents for them did constitute harboring).

Here, Plaintiff has not alleged facts sufficient to support the predicate act of harboring. Defendants rented the apartments to illegal aliens with the purpose of making a profit. This is easily distinguished from situations in which parties employ undocumented workers and then provide them with housing, free of charge or tied to their wages, in order to conceal their presence from the authorities. Defendants did not take any affirmative or material steps to prevent the authorities from learning about the existence of their illegal immigrant tenants. Plaintiff’s claim that Defendants’ practice of segregating the illegal aliens from the other tenants was done to prevent their detection from the authorities is not persuasive. Moreover, this behavior falls far short of the conduct that the caselaw recognizes as affirmative and material steps to conceal their presence from the authorities.

Similarly, Defendants’ behavior also fails to rise to the level of “encouraging” or “inducing” in violation of the INA. The District of New Jersey has found that the sale of counterfeit identity or immigration documents can constitute unlawful encouraging or inducing but that providing housing does not. *Zavala*, 393 F. Supp. 2d at 308.

Thus, Plaintiff has failed to allege a pattern of racketeering activity. Without such, there can be no RICO violation and no RICO conspiracy violation. Plaintiff has failed to state a claim for which relief can be granted, and consequently Count I cannot survive a motion to dismiss.²

CONCLUSION

For the reasons stated above, Defendants' motion to dismiss the SAC is **GRANTED**. An appropriate order follows.

/s/ William J. Martini
WILLIAM J. MARTINI, U.S.D.J.

²Defendants' Motion to Dismiss argues that Plaintiff's RICO count suffers from other infirmities beyond its failure to identify a pattern of racketeering activity. Specifically, Defendants claim that Plaintiff does not have standing to bring a RICO claim because Bolmer, as a tenant of the apartment and not an owner, he did not suffer injury to his business or property as required. Further, Defendants maintain that Bolmer has not demonstrated that Defendants were the proximate cause of its injuries. However, there is no need for the Court to address these deficiencies at length because in the absence of a pattern of racketeering activity, the Count cannot withstand a motion to dismiss.

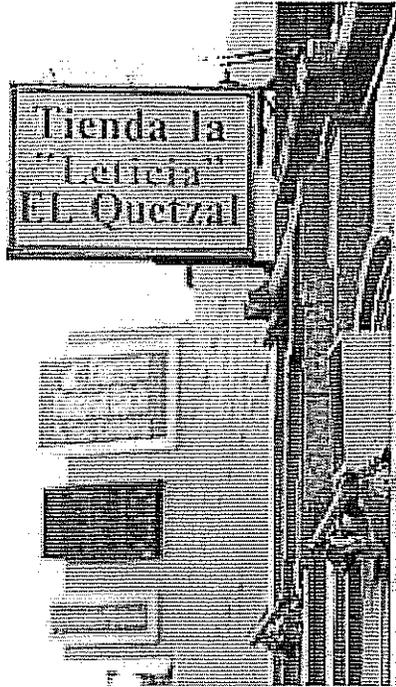
Published Jun 10, 2010

Published Thursday June 10, 2010

City torn by immigration proposal

By Leslie Reed

WORLD-HERALD STAFF WRITER



JAMES R. BURNETT/THE WORLD-HERALD

It has been two years since Fremont's City Council, with the mayor's tie-breaker, rejected a crackdown on illegal immigrants. On June 21, residents will vote on the proposal. At right, signs of a changing downtown.

FREMONT, Neb. — In some ways, this city seems an unlikely place for a dispute about illegal immigration.

Its older neighborhoods have a Norman Rockwell flavor, with Victorian-era homes and old-fashioned front porches, some adorned with American flag bunting. Its downtown district is dominated by antique stores and little shops with names like "Gramma's China Closet," "The Yankee Peddler" and "Country Traditions."

Many of its 25,000 residents commute down U.S. 275 to jobs in Omaha.

Increasingly, though, stores with names like "Epicentro," and "Supermercado" and "La Tapatio" have cropped up among the downtown businesses.

Two meatpacking plants just outside the city rely on immigrant workers. The Hormel Foods Corp. pork processing plant is the community's biggest employer. At Fremont Beef, 17 workers were arrested in March on federal charges of identity theft, document fraud and false claims of U.S. citizenship.

Dramatic growth in Fremont's foreign-born population and citizen concerns about illegal immigration's costs culminated in July 2008 with the City Council narrowly defeating a proposed ordinance aimed at clearing Fremont of undocumented workers.

Now that ordinance is back before voters June 21.

With the election less than two weeks away, there are few outward signs of campaigns on either side of the issue, though one opposition group reported Wednesday that it had raised \$8,000. A trip up and down Main Street reveals a community still torn by the issue and reluctant to discuss it.

Supporters of the ordinance remain angry over the problems they say are caused by illegal immigration and over the government's failure to take action. Hispanic residents — most of whom are citizens or legal residents of the U.S. — said they feel singled out and vulnerable.

Some business people said they were uncertain how the ordinance would affect them, and many didn't want to talk about it for fear of alienating customers over the touchy subject.

“Most of Fremont wants this election to be over with,” said Kristin Ostrom, a pro-immigration volunteer who is helping to organize a campaign against the ordinance.

A leader of the petition drive to get the ordinance on the ballot, Jerry Hart, said people already have their minds made up one way or another.

“The main thing is to get people out to vote.” said Hart, 62, a retired accountant who worked 30 years for the Internal Revenue Service.

Much has happened in the two years since the mayor cast a tie-breaking vote to reject the ordinance.

A mayor's task force proposed non-legislative policies to curb illegal immigration, but city officials never implemented those ideas. A pro-immigrant group launched a series of events to be more welcoming toward immigrants. City officials and citizen petitioners battled to the Nebraska Supreme Court over whether the public vote should happen.

The same day the Nebraska court ordered the Fremont election to proceed, Arizona's governor signed a law compelling local police to ask for proof of residency from people they suspect of being illegal immigrants, stepping up the debate over immigration nationally. Former Fremont City Councilman Charlie Janssen, who voted for the ordinance, now is a state senator who has said he plans to offer similar legislation for Nebraska.

Fremont historically has been 98 percent white, according to U.S. Census data, but today there are about 2,000 Hispanic people who live in Fremont — eight times more than the 1990 population. About 1,100 foreign-born residents, mostly from Latin America and Asia, live in Fremont.

Authorities don't know how many undocumented immigrants might be working in Fremont. Ordinance opponents, extrapolating estimates from the Pew Hispanic Center, estimate fewer than 350 people. Ordinance supporters think the problem is far more widespread and costly.

Former City Councilman Bob Warner said he is suspicious of the number of adults in Fremont who seem to have no knowledge of English.

Warner, 82, said that during his 32-year career as a supervisor with Hawkins Construction in Omaha, he often worked with Mexican laborers on his construction crews. He said he introduced the ordinance in 2008 because of citizen complaints about unpaid hospital bills at the Fremont hospital and about growing numbers of Spanish-speaking students enrolled in Fremont schools.

Hart said he joined the petition drive because Fremont residents were growing more concerned about the changes they were seeing in Fremont.

He said when he worked out at the YMCA, he heard people griping about visitors struggling with the weight machines who didn't speak English. At the Fremont Wal-mart, he heard other customers speaking in Spanish.

And, increasingly, his friends and neighbors were voicing anger that illegal immigrants were using the hospital

system without paying; overtaxing the school system with English classes for their children; and committing crimes.

“We've got gangs in Fremont now, which we never used to have,” Hart said. “There's both financial costs and social concerns. When you've got people coming here illegally, they've already broken the law. Is that the only law they're going to break?”

Opponents of the ordinance, however, say the concerns are misplaced and exaggerated, and the ordinance isn't a solution, anyway.

“The supporters of this ordinance are alarmed by a significant increase in the Hispanic population,” said Scott Jensen, 45, a hospital chaplain who represents Fremont-area church ministers. “They're different from us, and the perception is that they must be here illegally.”

Jensen said it is low-income U.S. citizens who generate most unpaid bills at the Fremont Area Medical Center, while most students being taught English at the Fremont schools are legal residents of the U.S.

Mike Marty, secretary-treasurer for the United Food and Commercial Workers Local 22 at the Hormel plant, said jobs there pay between \$13 to \$20 an hour and include benefits. He said 98 percent of the plant's workers get health insurance coverage — meaning they're not contributing to the unpaid bills at the hospital.

Hispanic residents said they find the community more intimidating than before.

“It's all about stereotypes, singling Hispanics out,” said Susana Patino, a factory worker who has lived in Fremont 10 years. She is a U.S. citizen from Texas, and she and her husband own their home and have two small children.

When she and her mother recently visited a nail parlor, the other women started talking about the proposed ordinance. Patino said she got the message.

“I think it's just rude,” she said. “I'm not going to go flash my ID to prove I'm legal at a nail parlor.”

Alfredo Velez, who moved to Fremont in 1998 to work at the Hormel Plant and now owns a Latino grocery store, picked Fremont as a good, safe place to rear his family. Though born in Mexico, he has lived in the U.S. since 1976 and became a citizen more than 25 years ago.

More recently, he received an anonymous letter falsely accusing him of harboring illegal immigrants and someone broke out the front window of his store. Velez said he has dropped plans to start another business because he fears his customers might be driven away.

Don Hinds, a retired real estate agent who moved to Fremont 47 years ago, is co-chairman of a business-backed committee fighting the illegal immigration ordinance. He said the ordinance could cost the city millions to defend and would simply promote racism.

“Fremont is one of the most caring, compassionate, concerned communities I've ever seen,” he said. “I just hate to see that feeling or reputation being assailed like this.”

Ordinance supporters say it's “a weak point” to accuse them of racism.

“That's not at all what we're intending this to be, I cannot stress that enough,” said John Wiegert, who teaches fifth grade in Yutan, Neb. “We're for immigration, we're against illegal immigration.”

Both sides in the fight accuse the other of allowing “outsiders” to influence Fremont's decision.

Opponents say supporters are allowing Fremont to be used as a test case by the Federation for American

Immigration Reform. FAIR's legal arm, the Immigration Reform Law Institute, arranged for University of Missouri-Kansas City law professor Kris Kobach to defend the petitioners and any court case challenging the ordinance.

Backers, however, point to the original city council hearing where they say people from outside Fremont crowded local residents out of the auditorium. They say the National Chamber of Commerce, the Nebraska Applesseed Center for Law in the Public Interest and ACLU Nebraska are stage-managing the opposition.

Warner said that when he introduced the ordinance, "nobody outside the city of Fremont knew I was going to do it."

"Once I did it," he said, "and with this Internet, I got over a hundred calls from outside of Fremont, mostly in support. There were three calls that said I was wrong, but a hundred said I was right."

If passed, the ordinance would require businesses within city limits to use E-Verify, a federal immigration data base, to doublecheck new hires' identification documents. In addition, landlords could rent housing only to people who had first obtained a \$5 occupant's license after submitting their identification to the Fremont Police Department for verification.

Bill Ekeler, a businessman who headed the mayor's task force on immigration, formed after the council rejected the ordinance, said it won't solve the problems cited by Warner and other supporters.

The mayor's task force studied immigration's impact on the schools, the hospital system, welfare, the courts and law enforcement and issued reports that generally concluded that local officials already were doing all they're able to do under current federal law to investigate and enforce immigration requirements.

Although the task force also recommended that Fremont employers be required to use E-Verify, it mostly called for an education-oriented approach to Fremont's immigration issues.

Ekeler and his father own Overland Products, a tool and die and metal stamping business. He said he began hiring Hispanic workers six to eight years ago to fill a handful of positions with chronic turnover. Today about a dozen of his 80 workers are Hispanic.

Ekeler said the ordinance won't apply to Hormel and Fremont Beef because they're outside city limits. Many of the trailer courts where Fremont's Hispanic immigrants live also are outside city limits.

In addition, Ekeler said, most major employers already voluntarily use the E-Verify system. That includes Hormel and Fremont Beef, where suspected illegal immigrants were arrested in March. The system, he said, only verifies whether an ID is valid — not whether it actually belongs to the person using it.

Ordinance supporters say it's time to do more about illegal immigration.

"I'm sick and tired of the federal government not doing a thing about it," said Wiegert. "I'm sick and tired of city government not doing anything. The people need to step up and do something about it."

Warner said he's eager for the election to settle the issue. "It's been a really angry topic here and I can't blame the people of Fremont."

Said Jensen, of the minister's group: "I know people on both sides are good people. They have good hearts. They have good intent. We all do. How can we pause, take a deep breath, and really address the immigration issue as it relates to Fremont?"

Contact the writer:

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City in Nebraska Torn as Immigration Vote Nears

By **MONICA DAVEY**

FREMONT, Neb. — In this city of 25,000, far from any international border, the fight over illegal immigration has boiled over.

This is ordinarily a serene place with polite politics and votes that sail through City Hall 8 to 0. But in a special election Monday, residents will decide whether to ban businesses from hiring illegal immigrants and bar landlords from renting to them. Residents demanded the vote, fighting off challenges by some of their elected leaders all the way to the State Supreme Court.

The election has opened a rare and raw divide. There are awkward silences for some who fear offending their neighbors (whose position they cannot be certain of), and, for others, volleys of suspicion.

Wanda Kotas, who pushed for the special election, said her family's cat, Mr. Sippi, was killed by a pellet gun not long after her efforts, an act she suspects is related. Kristin Ostrom, who has spoken against the referendum, said a rock was heaved through her front window, an old

barbecue grill was dumped at her doorstep, and, this week, an e-mail message arrived promising in red letters to “shed blood” to take back the country. And Alfredo Velez, who once worked at one of Fremont’s meatpacking plants and now owns a Mexican grocery, received an anonymous letter accusing him of harboring illegal immigrants, and said someone screamed at him on these neatly kept streets: “Go back to Mexico!”

The Hispanic population, while growing, still makes up less than 10 percent of Fremont, yet some say they blame illegal immigrants for what they see as a rise in crime here, the loss of good jobs for local residents and a shift in the culture.

Some complain about shoppers speaking Spanish at the Wal-Mart, businesses with phone messages saying “Press 1 for English,” and the need for two interpreters last fall at the annual “kindergarten round-up” where children meet their teachers.

Perhaps these are ordinary growing pains for Midwestern cities like Fremont, anchored by meatpacking plants with many immigrant workers, some of whom residents here suspect of being in this country illegally.

But the struggle has taken an unusual turn. After Fremont’s political leaders rejected an ordinance intended to keep illegal immigrants out, residents fought back and insisted, finally getting approval in the Nebraska Supreme Court to take the matter straight to voters.

This is a legally complicated realm given the federal role in handling immigration; a lawsuit is all but certain if it passes. In other places where such immigration laws have been pondered (and often contested later), state lawmakers and local governing bodies have usually made the call, not citizens by referendum.

“In this very quiet little town where this hasn’t been an issue, it’s uncomfortable,” said Michelle Knapp, who opposes the anti-illegal immigrant law but acknowledges that she has at times only whispered her view. “You don’t know what people are listening.”

The battle began two years ago when a City Council member suggested that the city should take on illegal immigration. As in other towns, leaders here said they were frustrated by what they viewed as a failure by federal authorities to manage the problem.

By July 2008, a second hearing on the City Council’s proposal drew such a crowd that the meeting was moved to the high school auditorium (for the first time in memory) and the large crowd (under the watch of the police) voiced pointed views on all sides. The City Council waived plans for another hearing and instead voted, 4 to 4. Donald B. Edwards, the longtime mayor, gave an emotional speech, then voted no, to cheers and hoots.

“Everyone including myself is strongly against illegals,” Mr. Edwards told the crowd. “That’s not the issue.” Every legal mind he consulted led him to believe that immigration was a federal matter and that city action would lead to costly litigation. “I can’t change the law.”

This 1850s-era railroad and farming town, about 30 miles northwest of Omaha, included 165 Hispanic residents in 1990 by some estimates. The number is closer to 2,000 now. No one really knows how many illegal immigrants live here, but peoples’ claims about statistics vary wildly.

Dean Skokan, the city attorney, who spoke on behalf of city officials who he said were barred by statute from voicing opinions on city time regarding ballot questions, says crime has risen over time. But he says he knows of no data compiled here on crimes by ethnicity or national origin.

But that is little comfort to residents like Jerry Hart, a retired Internal Revenue Service worker who recalls a time when Fremont's doors did not need locks.

The area's meatpacking plants — including Hormel, the largest employer and a presence since 1947 — look different, he said.

“How can you be against following the law,” said Mr. Hart, who spent months helping to collect more than 4,000 signatures to put the question on the ballot.

If the population changes have shifted the way Fremont feels, so has the coming anti-illegal-immigration referendum. Hispanic residents say they once felt welcomed here — or, at least, not noticed — but the increasingly loud political fight, they say, seems to have changed the tone.

“I know what they're thinking when they look at me: Am I legal? Am I illegal?” said Luis Canahui, who came here from Guatemala. “I can feel it.”

A woman who asked not to be identified because her legal status has run out grew tearful at what Fremont had once felt like to her. “I like this town, but this is the place for my kids, not for me anymore,” she said.

Opponents of the immigration law here nearly always cite practical considerations — the likely cost of litigation, above all — as the reason to reject it. One television spot, playing up the costs, shows a blank check signed by “Citizens of Fremont” and a narrator's booming voice: “Say no to needless spending! Say no to cuts in community services!”

City officials have said the cost of fighting court challenges — presumably, claims that the law would improperly infringe on federal authority — would probably run into the millions. Laws in towns like Hazleton, Pa., and Farmers Branch, Tex., remain in court, and other cities have, faced

with legal fights, repealed laws or dropped plans for them.

Fremont's proposal, which was written with help from an author of Arizona's new anti-immigration law, would require Fremont businesses to use a federal database, E-Verify, to check new employees' information, and landlords to rent only to those who get a new city occupancy license (for \$5) after turning over information to the police.

Skeptics, like Les Leech, the president of the Fremont Beef Company, said plants here already use E-Verify, but that does not stop those using stolen Social Security numbers. In March, immigration officials arrested 17 workers from Fremont Beef. "This ordinance will not change the complexion of this county one bit," Mr. Leech said, "because E-Verify doesn't work."

Oddly enough, the meatpacking plants, including Hormel, are just outside city limits, and would not be subject to the new law.

Supporters say it does not matter. "We have to start somewhere," said John Wiegert, a resident. "Hiding under your desk in a city office isn't going to help."

Brent McDonald contributed reporting.