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PROBLEMS IN THE CURRENT EMPLOYMENT VERIFICATION AND WORKSITE ENFORCEMENT SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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PROBLEMS IN THE CURRENT EMPLOYMENT VERIFICATION AND WORKSITE ENFORCEMENT SYSTEM

TUESDAY, APRIL 24, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:04 a.m., in Room 2226, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Berman, Jackson Lee, Delahunt, Sanchez, Conyers, King, Gallegly, and Gohmert.

Staff present: Ur Mendoza Jaddou, Chief Counsel; J. Traci Hong, Majority Counsel; Benjamin Staub, Professional Staff Member; and George Fishman, Minority Counsel.

Ms. LOFGREN. This hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public who are here today at the Subcommittee's fourth hearing on comprehensive immigration reform issues.

At our first hearing at Ellis Island in the shadows of the Statue of Liberty and in the Great Hall where 12 million immigrants were processed in a controlled, orderly and fair manner, we heard from witnesses who explained why our Nation needs comprehensive immigration reform.

Our border patrol chief, David Aguilar, said we need comprehensive immigration reform to secure our borders. Demographer Dowell Myers said comprehensive immigration reform is critical to prepare for the declining birthrates and aging population. Economist Dan Siciliano explained that immigration is good for the economy, good for jobs, and a critical part of our Nation's prosperity. Historian Daniel Tichenor told us that each new wave of immigrants has been scorned by critics only later to be among our most accomplished and loyal citizens.

At our second and third hearings last week, we learned about the shortfalls of the 1986 and 1996 immigration legislation to ensure that we do not repeat the mistakes made in those last two reforms of immigration law.

One theme that arose in both hearings is the inability of the current paper and electronic systems to accurately verify the immigration status and employment eligibility of workers in the United States.

Since one of the main reasons for undocumented immigration is the lure of jobs in the United States, it is imperative that comprehensive immigration reform include an employment verification system that prevents employment of unauthorized immigrants.

We will learn today that the employment verification systems created in 1986 and 1996 fail to meet that goal.

In our second hearing on unemployment verification, currently scheduled on Thursday, we will look for some of the potential solutions that will help end illegal immigration.

Employment verification is the one component of comprehensive immigration reform that will affect all workers in the United States, including U.S. citizens, lawful permanent residents, and others legally authorized to work in the United States.

Thus it is imperative that Congress ensure that any employment eligibility verification system enacted as part of comprehensive immigration reform is designed and implemented properly.

I look forward to hearing from our witnesses today, who will each provide an explanation of the problems of our current employment verification system, each from their own perspective, including the perspective of employers who attempted to follow the law but still got caught up in an enforcement action by Immigration Customs and Enforcement.

With these problems identified, we can move to our next hearing to exam proposed solutions for an employment verification system in comprehensive immigration reform.

[The prepared statement of Ms. Lofgren follows:]

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public that are here today for the Subcommittee's fourth hearing on comprehensive immigration reform.

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ployment verification system that prevents employment of unauthorized immigrants. We will learn today that the employment verification systems created in 1986 and 1996 fail to meet that goal. In our second hearing on employment verification on Thursday, we will explore some of the potential solutions that will help end illegal immigration.

Employment verification is the one component of comprehensive immigration reform that will affect all workers in the U.S., including U.S. citizens, lawful permanent residents, and others legally authorized to work in the U.S. Thus, it is imperative that Congress ensure that any employment eligibility verification system enacted as a part of comprehensive immigration reform is designed and implemented properly.

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With these problems identified, we can then move to our next hearing to examine proposed solutions for an employment verification system in comprehensive immigration reform.

Ms. LOFGREN. I would now recognize our distinguished Ranking minority Member, Mr. Steve King, for his opening statement.

Mr. KING. Thank you, Madam Chair, and thank you for holding this hearing.

In the Immigration Reform and Control Act, known as IRCA, in 1986, Congress tried to end the job magnet that drew illegal aliens to the United States by making it unlawful to knowingly hire illegal aliens and by requiring employers to check the documents of new employees.

In the mid-1990's, failure of the Federal Government to enforce employer sanctions that were set out in IRCA and the failure of the Employment Eligibility Verification provisions in IRCA to help curb the illegal employment of aliens—all those failures led to calls for a better way to ensure that employers hire only citizens and aliens eligible to work in the United States.

In 1996, the Illegal Immigration Reform and Immigration Responsibility Act answered those calls by establishing the Basic Pilot Employment Eligibility and Verification Program. That Basic Pilot program allows employers to check workers' Social Security and Alien Identification Numbers against Social Security Administration and DHS workers in order to ensure that new hires are genuinely eligible to work.

The program is voluntary for employers in all 50 States and is now used by over 15,500 employers, one of whom will be before us today.

When using the Basic Pilot program, an employer has 3 days from the time they hire an employee to contact the Federal Government by Internet to determine the validity of the employee's Social Security Number or Alien Identification Number. The numbers are checked against Social Security Administration's database and DHS database.

Within 3 days, the employer will receive a confirmation that the employee is eligible to work or a tentative non-confirmation indicating that the work eligibility of the employee cannot be validated.

Once a tentative non-confirmation is received, the employee can request secondary verification and contact DHS or SSA to determine how government records differ from the information submitted by the employee.

DHS has another 10 days in which to further investigate the discrepancy, after which the employer will receive a confirmation or a denial of work eligibility number. If the employer receives a final non-confirmation, they can then fire the employee.

The Basic Pilot program has been remarkably successful. A study found that an overwhelming majority of employers participating found the Basic Pilot program to be an effective and reliable tool for employment verification. In fact, according to a recent National Federation of Independent Business survey of its members, 76 percent said use of a phone or Internet employment verification system would be a minimal burden or not a burden at all.

Last Congress, this House passed legislation that would have made it mandatory. The Basic Pilot is not perfect. In fact, a recent high-profile case highlights that a business's use of Basic Pilot does not ensure that it is not hiring illegal immigrants because the program is vulnerable to identity theft.

Swift & Company, whose representative, Mr. Shandley, will be testifying at this hearing, has participated in the Basic Pilot program since 1997. However, last December exactly 1,282 of its employees were arrested by the Immigration and Customs Enforcement during a worksite enforcement action. ICE suspected a pattern of identity theft and conducted the enforcement action. Many of the Social Security numbers submitted by Swift employees were genuine but had been stolen or purchased and were being used illegally.

So, there is no doubt that Basic Pilot needs some tools to deal with identity theft. DHS needs to have access to Social Security Administration data so that it can investigate situations in which a single Social Security number was submitted more than once for the same employer but where a number was submitted by multiple employers in a manner that suggested fraud.

The vast majority of American businesses want to hire legal workers. And most would like a quick and easy system to verify employee work eligibility. The Basic Pilot program holds out the promise that it can meet these goals.

I look forward to the testimony and hope we can minimize the burden and still provide for a more effective Basic Pilot program.

Madam Chair, I thank you, and I yield back the balance of my time.

Ms. LOFGREN. Thank you.

Mr. King, Mr. Conyers will join us later and will be able to give us his opening statement at that time. I don't know if Mr. Smith is expected, but we would extend the same courtesy to him.

We have two panels today. The first panel is by himself.

And I would ask that other Members submit their statement for the record so that I can introduce Deputy Director of U.S. Citizenship and Immigration Services Jonathon Scharfen.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Today marks the third hearing in a series of hearings dealing with comprehensive immigration reform. This subcommittee previously dealt with the shortfalls of the 1986 and 1996 immigration reforms, and a consistent theme throughout both hear-

ings was the difficulty that employers encountered when they attempted to verify that potential foreign employees have work authorization. Making a mistake could subject an employer to fines or more serious sanctions for employing a foreign worker who does not have work authorization. Some employers avoid that risk by simply refusing to hire foreign-looking employees. Therefore, as Members of the 110th Congress we must ensure that we find practical solutions to fixing the employment eligibility verification system.

HISTORY

In 1986 Congress passed the Immigration Reform and Control Act of 1986 (IRCA). Congress' intent was to create a system that could verify the employment eligibility of potential foreign workers, and impose sanctions on employers from knowingly hire workers who do not have employment authorization. that were not authorized. IRCA established the I-9 Form employment eligibility verification system. Under this system a potential foreign employee has to present valid documentation to establish his identity and his authorization to work in the United States, such as a U.S. passport, permanent resident card, driver's license, or Social Security card.

However, with any system relying on documents the potential for fraud was great, and this became evident in the years after the legislation was enacted. The prevalence of fraudulent documents, either counterfeit or real but used fraudulently, makes it difficult for employers to determine who has legal authorization to work in the United States. Also, employers have to be mindful against discrimination during the verification process. In addition, the executive branch has not made a sustained, determined effort to enforce employer sanctions.

BASIC PILOT PROGRAM

In reaction to an ongoing problem with the employment of undocumented workers that was only exasperated by the shortcomings of IRCA, Congress created the Basic Pilot Program (BPP). The BPP involves verification checks of the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases, using an automated system to verify the employment authorization of all newly hired employees. Participation in this program has been voluntary, and free to participating employers. The intent of the BPP was to remove the guesswork from document review during the I-9 process; allow participating employers to confirm employment eligibility of all newly hired employees; improve the accuracy of wage and tax reporting; protect jobs for authorized United States workers. The program has been available to all employers in the States of California, Florida, Illinois, New York, and Texas since November 1997 and to employers in Nebraska since March 1999. The program originally expired in November 2001, but was extended to November 2008 thru the Basic Pilot Program Extension and Expansion Act of 2003.

The Pilot Program has had numerous problems ranging from inaccurate and outdated information in the DHS and SSA databases, misuse of the program by employers, and a lack of adequate privacy protections. In 2002, the Government Accountability Office (GAO) issued a report stating, "existing weaknesses in the program, such as the inability of the program to detect identity fraud, delays in entering data into DHS databases, and some employer noncompliance with pilot program requirements, could become

more significant and additional resources could be needed if employer participation in the program greatly increased or was made mandatory."

Therefore, as we move forward in this immigration debate, we need to adhere to practicality. We can not allow emotion, and our ambition to cater to all of the interested parties to cloud our view. Comprehensive immigration reform must include a viable employer sanctions system in addition to creating an opportunity for undocumented workers to earn legal status, and securing our borders. In the end, this debate is really about the American worker and the American family, and what we are doing to protect them, because when we protect the American worker from wage and workplace exploitation we protect everyone in pursuit of the American dream.

Ms. LOFGREN. Prior to assuming his post at USCIS, Mr. Scharfen served for 25 years in the U.S. Marine Corps, retiring in 2003 at the rank of colonel. Mr. Scharfen is no stranger to the House of Representatives, however, where he served as both Chief Counsel and Deputy Staff Director for the House International Relations Committee following his military service.

Mr. Scharfen received his bachelor's degree from the University of Virginia, his JD from the University of Notre Dame, and his LLM from the University of San Diego.

Mr. Scharfen, your written statement will be made part of the record in its entirety, so I would ask that you now summarize your testimony in 5 minutes or less.

And to help you stay within the time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow, and then to red when the 5 minutes are up.

And I would let all the Members who are present know that our mikes are live at all times.

Mr. Scharfen, if you would begin.

TESTIMONY OF JONATHAN R. SCHARFEN, DEPUTY DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY

Mr. SCHARFEN. Thank you very much, ma'am. I am grateful for this opportunity to appear before the Subcommittee to discuss the Employment Eligibility Verification program administered by United States Citizenship and Immigration Services, USCIS.

Previously known as the Basic Pilot program, this unique program provides employment eligibility information on newly hired employees to more than 16,000 participating American employers.

Any company anywhere in America can try the Employment Eligibility Verification System, EEVS, and use it for free over an easy-to-use government web site. EEVS is a valuable tool that helps employers comply with immigration law while also strengthening worksite enforcement.

This year, the program is growing by over 1,000 employers every month. We project that the EEVS system will verify over 3 million new hires this fiscal year at more than 71,000 worksites.

Chairwoman Lofgren, California has 2,104 participating employers in this program, representing over 12,000 sites.

In the state of Iowa, Ranking Member King, there are 148 participating employers, representing 659 sites.

For fiscal year 2007, USCIS received $114 million from Congress for the expansion and improvement of EEVS to better support an increasing amount of employers. Appropriations have been used to test the photo screening tool, incorporate additional data sources to deter fraud and cases of identity theft and streamline the employer enrollment process by making it completely electronic.

USCIS is improving the program in many other ways, including updating training materials, creating more user-friendly web pages, providing better customer support and exploring additional query access methods that could be used by employers that do not have Web access. We are also continuing to conduct independent evaluations to provide additional input for improving the program.

An accurate and secure Employment Eligibility Verification program is a critical component of efforts to improve worksite enforcement. Better worksite enforcement is a key component of any proposal to create a Temporary Worker Program. The success of the TWP will be essential to reducing the pressure on our border.

A secure border will allow us to free up much needed resources, enforce our laws and protect our homeland against foreign threat.

It is all connected. Each link in this chain is critical to its overall integrity and our Nation's homeland security.

The ultimate success of a future electronic eligibility verification program will rely on public-private cooperation and active employer participation in government partnerships to secure our workforce. Our work is critically important to the future of our Nation and directly impacts national security, our economy and individual lives. We all share in the responsibility to make our Nation greater.

I look forward to working with you to advance our mutual interests and assist those who come here seeking freedom, prosperity and hope for a better future.

Thank you, and I look forward to answering your questions.

But at this time, Chairwoman, I would like to ask permission to have Ms. Gerri Ratliff, who is the Director of our Verification Division, join me at the table here, so she can do a quick demonstration on the EEVS system.

Ms. LOFGREN. Without objection.

Ms. RATLIFF. Good morning.

This is the employer's homepage for the Basic Pilot. When an employer is ready to perform a query on a new hire, they go to this screen and input information from the Form I-9. So you can see it is basic information, very simple: name, date of birth, SSN, citizenship status.

You can see here in the middle of the screen, where it says "employment authorized"—or you may not be able to see. In the middle of the screen, it says "employment authorized," and this happens 92 percent of the time for queries. The employer then is essentially done with the verification.

In the percentage of cases, about 7 percent, where there is a mismatch, the employer gets a screen like this that will indicate the type of mismatch.

Our latest functionality that we wanted to show you today is a pilot with about 40 employers called the photo screening tool. This is a query by card number. It is a query for new hires who are noncitizens showing a green card or employment authorization document for Form I-9 purposes, and we are querying by that card number to display on the screen the photo that we, USCIS, put on that card.

If the photo does not match the photo on the document the employee showed the employer 100 percent, then the card has been either photo substituted or is completely a fraudulent card. And this pilot has already detected one case of fraud in about 300 queries that have been run, and that employee did not contest that it was a fraudulent document.

The information is also verified against our databases in addition to showing the photo that should be on the screen.

Thank you very much.

Ms. LOFGREN. I should note for those whose vision is not good enough to see the writing on that screen, that we do have the PowerPoint attached to the testimony of the witness for our review.

Thank you very much for your testimony.

[The prepared statement of Mr. Scharfen follows:]

PREPARED STATEMENT OF JOHNATHAN R. SCHARFEN

U.S. Citizenship and Immigration Services

STATEMENT

OF

JOCK SCHARFEN
DEPUTY DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"Problems in the Current Employment Verification and Worksite Enforcement System"

BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION

April 24, 2007
11:00 AM
2226 Rayburn House Office Building

I. Introduction

I am grateful for this opportunity before the Subcommittee to discuss the Employment Eligibility Verification (EEV) Program administered by United States Citizenship and Immigration Services (USCIS). Previously known as the Basic Pilot Program, this unique program provides employment eligibility information on newly hired employees to more than 16,000 participating American employers.

Any company anywhere in America can try the Employment Eligibility Verification System (EEVS) and use it for free over an easy-to-use government website. Currently, over 92% of queries from employers receive an instantaneous employment authorized response within three seconds. EEVS is a valuable tool that helps employers comply with immigration law while also strengthening worksite enforcement. In FY 2007, USCIS has been making progress to further improve and expand the program.

In his speech at the U.S.-Mexico border in Yuma, Arizona, President Bush laid out five elements of a comprehensive immigration policy. One of these elements is the need to hold employers accountable for the workers they hire. The President emphasized that an accurate and secure Employment Eligibility Verification Program is a critical component of efforts to comprehensively reform our immigration laws. Today, USCIS is actively taking steps to improve the overall performance of the system, add new capabilities, and continuing to simplify the process for employers.

II. The Current Employment Eligibility Verification Program

USCIS received $114 million in FY2007 for the expansion and improvement of EEVS to better support an increasing amount of employers who are choosing to electronically verify the employment eligibility of workers.

In FY2007, USCIS continues to improve the Employment Eligibility Verification Program by:

- Improving our ability to help identify instances of document fraud and identity theft by pilot-testing a photo screening tool.
- Reducing the percentage rate of Department of Homeland Security (DHS) and Social Security Administration (SSA) mismatches by incorporating additional data sources on immigrants and nonimmigrants into the program and implementing a new capability to query by DHS card number.
- Streamlining the enrollment process for employers by making it completely electronic.
- Beginning to monitor EEVS data for patterns to detect identification fraud, verification-related discrimination, and employer misuse of the program.

- Conducting outreach with effective force multipliers such as human resource and employer associations to educate employers about the program.

USCIS is also improving the program in many other ways, including updating training materials, creating more user-friendly web pages, providing better customer support, and exploring additional query access methods that could be used by employers who do not have web access. We are also continuing to conduct independent evaluations to provide additional input for improving the program.

Additionally, USCIS and ICE are working collaboratively on worksite enforcement and all employers enrolled in the ICE Mutual Agreement between Government and Employers (IMAGE) are required to participate in the EEV Program. IMAGE is a joint government and private sector voluntary initiative designed to build cooperative relationships that strengthen overall hiring practices.

III. History of the Basic Pilot Program

With that brief overview of the accomplishments we've made so far in FY2007, I'd like to take this opportunity to outline the history of the Basic Pilot, how it works, and how USCIS plans to expand and improve the program.

Congress established the Basic Pilot as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), creating a program for verifying the employment eligibility, at no charge to the employer, of both U.S. citizens and noncitizens. The Basic Pilot program began in 1997 as a voluntary program for employers in the five states with the largest immigrant populations -- California, Florida, Illinois, New York, and Texas. In 1999, based on the needs of the meat-packing industry as identified through a cooperative program called Operation Vanguard, Nebraska was added to the list. Basic Pilot was originally set to sunset in 2001, but Congress has twice extended it, most recently in 2003, extending its duration to 2008 and also ordering that it be made available in all 50 States. Although only a small percentage of U.S. employers participate, we have seen a large increase in users over the last two years. In 2006, the number of employers doubled. This year the program is growing by over 1,000 employers every month. We project that the 16,000 participating employers will verify over 3 million new hires this fiscal year at more than 71,000 work sites. Chairwoman Lofgren, California has 2,104 participating employers in the program, representing 12,174 sites. In the state of Iowa, Ranking Member King, there are 148 participating employers, representing 659 sites.

IV. How the Employment Eligibility Verification Program Works

After hiring a new employee, an employer takes information from the Form I-9 (Employment Eligibility Verification form) and submits a query, including the employee's name, date of birth, Social Security number (SSN), and whether the person claims to be a U.S. citizen, lawful permanent resident, or other work-authorized noncitizen. For noncitizens, a DHS issued identifying number is also submitted. Within seconds, the employer receives an initial verification response.

For an employee claiming to be a U.S. citizen, the system transmits the new hire's SSN, name, and date of birth to SSA to match that data, and SSA will confirm citizenship status on the basis of its NUMIDENT database. For those employees whose status can be immediately verified electronically, the process terminates here; in the remaining minority of cases, the system issues a tentative nonconfirmation to the employer.

The employer must notify the employee of the tentative nonconfirmation and give the employee the opportunity to contest that finding. If the employee contests the tentative nonconfirmation, he or she has eight business days to visit an SSA office with the required documents to correct the SSA record. The employee must be allowed to keep working while the case is being resolved with SSA and cannot be fired or have any other employment-related action taken because of the tentative nonconfirmation.

When a noncitizen's SSN information does not match in the NUMIDENT database, the individual is referred to a local SSA field office to resolve the mismatch. If information does match with SSA or the issue is resolved, then a noncitizen employee's name, date of birth, DHS ID number, and work authorization is matched against a USCIS database. If the system cannot electronically verify the information, the system automatically forwards the information to a USCIS Immigration Status Verifier who researches the case and usually provides an electronic response within one business day, either verifying work authorization or issuing a DHS tentative nonconfirmation.

If the employer receives a tentative nonconfirmation, the employer must notify the employee and provide an opportunity to contest that finding. An employee has eight business days to call a toll-free number to contest the finding and cannot be fired or have any other adverse employment-related action taken during that time because of the tentative nonconfirmation. Once the necessary information from the employee has been received, usually by phone or fax, USCIS generally resolves the case within three business days, by issuing either a verification of the employee's work authorization status or a DHS final nonconfirmation.

V. Program Improvements

As previously noted, in FY2007, the program received $114 million in appropriations which is being used to expand and improve the EEV through the incorporation of improved data sources into the program, launching initiatives to help combat identity fraud, streamlining employer registration, working with SSA to address mismatch issues, and beginning to monitor system usage. A recent independent evaluation revealed that in 2006, nearly 92% of initial queries were found to be employment-authorized instantaneously.

A June 2006 study by the Government Accountability Office (GAO) stated that Basic Pilot, "shows promise to enhance the current employment verification process, help reduce document fraud, and assist ICE in better targeting its worksite enforcement efforts." However, the GAO report also identified a number of weaknesses including Basic Pilot's inability to detect identity fraud and delays within DHS to timely update

information. This report, along with feedback from employers, has been helpful in targeting our improvements to EEVS. We are directly addressing these issues and others as part of our effort to improve the performance of EEVS.

Photo Tool Incorporation

In March 2007, USCIS began testing a pilot program to enhance the EEV system by allowing an employer to make a query using the new hire's USCIS-issued card number, when that worker uses a secure I-551 ("green card") or secure Employment Authorization Document, both of which include photographs of card recipients. When available, the system displays the photo that DHS has on file for the given card number, allowing the employer to make a visual match of identical photos. This prevents employees from successfully using a fraudulent or photo-substituted document for verification purposes. The initiative is currently being tested by 40 participating employers in the program and is expected to be expanded to all EEV employers this summer. To date, over 200 queries have been processed using this new tool.

The current EEV system is not fraud-proof and was not designed to detect identity fraud. However, the photo tool functionality helps detect identity fraud from a fraudulent document or photo-substituted card because the system-issued photo should be the identical photo shown on the document presented to the employer. Employers noticing any variation between the photo in the system to the photo on the card presented to them are instructed by the system to issue a DHS tentative nonconfirmation and send the case to DHS for further review. In this test phase, we have already encountered a case where an employer detected a fraudulent green card presented by a new hire.

Additional Data Sources

USCIS has also been working to decrease DHS and SSA data mismatches (for example, changes in immigration status or name changes that are not reflected in SSA's database) in the program by incorporating additional data sources into the EEV program. Evaluation of the program reveals that less than one percent of initial system nonconfirmation responses are a result of data mismatches in DHS systems. Earlier this year, the Verification Division incorporated two important data sources into the system: the Custom and Border Protection's real-time arrival and departure information for nonimmigrants, and USCIS information about immigrants who have had their status adjusted or extended. Although these data sources have been available for only a short time, they appear to be increasing the number of cases verified instantaneously.

As mentioned earlier, data mismatches found to exist within the SSA's NUMIDENT database require a contesting employee to visit an SSA office with the required documents to correct their SSA record. Many of the individuals receiving SSA tentative nonconfirmations include naturalized citizens whose citizenship data have not been updated in the NUMIDENT database. To address these issues, DHS and SSA are working to develop a streamlined, automated process to reduce the need for individuals to visit SSA offices.

Automated Registration

Earlier this year, USCIS simplified and completely automated the EEV registration process for interested employers voluntarily choosing to sign up to use the program. This significant programmatic improvement decreases the time burden on employers desiring to participate in EEV and positions the program well for timely registration of all seven million U.S. employers if the program becomes mandatory.

Monitoring & Compliance

No electronic verification system is foolproof or can fully eliminate document fraud, identity theft, or intentional violation of the required procedures. Likewise, no system can fully prevent employers from intentionally circumventing the law by hiring or continuing to employ unauthorized persons. USCIS is developing a monitoring and compliance unit to help detect unauthorized employment, to prevent verification-related discrimination or employer misuse of the program, and to detect identity and document fraud.

The new USCIS unit will monitor employers' use of the system and conduct trend analysis to detect potential fraud and discrimination. Findings that are not likely to lead to enforcement action (e.g., a user has not completed training) will be referred to USCIS compliance officers for follow-up. Findings concerning potential fraud (e.g., SSNs being run multiple times in improbable patterns; employers not indicating what action they took after receiving a final nonconfirmation) may be referred to ICE worksite enforcement investigators. A memorandum of understanding (MOU) with ICE will be developed to implement this process.

With the ability to of the Employment Eligibility Verification Program to help identity fraud and system misuse, it is also important that the system contain security and other protections to guard personal information from inappropriate disclosure or use and to discourage use of the system to discriminate unlawfully or otherwise violate the civil rights of U.S. citizens or work-authorized noncitizens.

VI. Conclusion – The Future of an EEV

An accurate and secure Employment Eligibility Verification Program is a critical component of efforts to improve worksite enforcement. Better worksite enforcement is a key component of any proposal to create a Temporary Worker Program (TWP). The success of a TWP will be essential in reducing the pressure on our border. A secure border will allow us to free up much needed resources, enforce our laws, and protect our homeland against foreign threats. It's all connected. Each link in this chain is critical to its overall integrity. This is why we must take a comprehensive approach to reforming our immigration laws.

Legislative proposals phasing in an EEV program recognize the challenges of implementing a mandatory national system and seek to minimize the burdens placed on employers. A gradual approach to mandatory verification could be based either on

employer size or by industry, starting with the most vulnerable critical infrastructure sectors, to first help ensure homeland security. We favor having the discretion to phase in certain industry employers ahead of others, as a phased-in implementation schedule on a carefully drawn timeframe will allow employers to begin using the system in an orderly and efficient way.

USCIS is also committed to constructing a system that responds quickly and accurately. In order for this system to work, it must be carefully implemented and cannot be burdened with extensive administrative and judicial review provisions that could effectively tie up the system, and DHS, in litigation for years.

Our ultimate success with future implementation of an Electronic Employment Eligibility Verification program will rely on public-private cooperation and active employer participation in government partnerships to secure our workforce. With a bipartisan, cooperative effort we can set a positive tone. Our work is critically important to the future of our Nation and directly impacts national security, our economy, and individual lives. We all share in the responsibility to make our Nation greater, and I look forward to working with you to advance our mutual interests and assist those who come here seeking freedom, prosperity, and the hope for a better future.

Thank you; I look forward to answering your questions.

Employment Eligibility Verification Program

U.S. Citizenship and Immigration Services

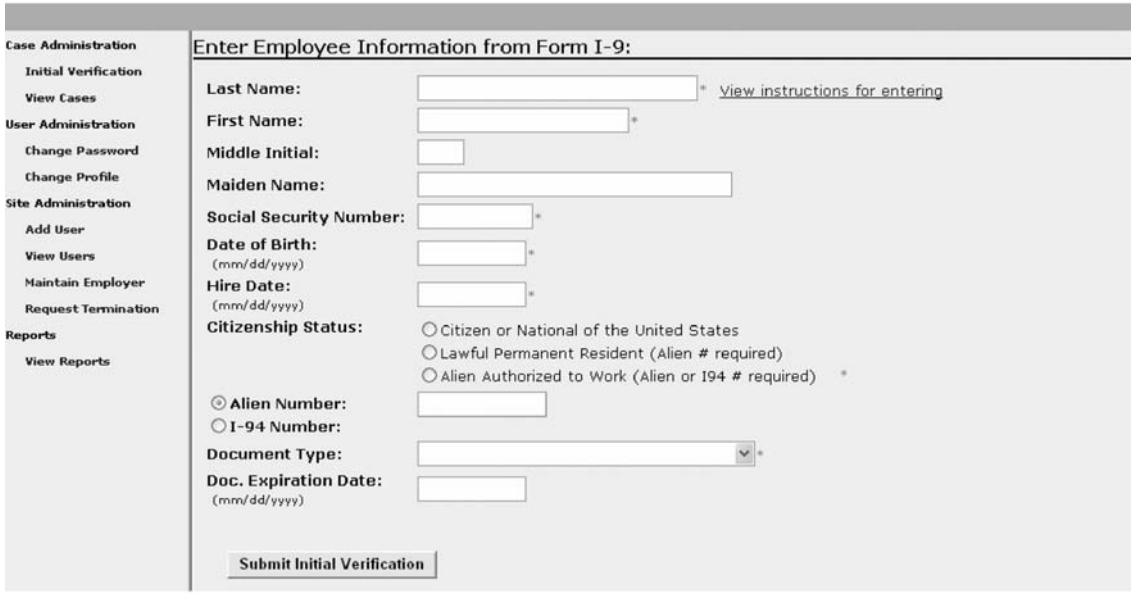
April 2007

Home Page

U.S. Citizenship and Immigration Services

April 2007

Initial Verification Page



U.S. Citizenship and Immigration Services

April 2007

Employment Authorized

Case Details - Microsoft Internet Explorer provided by ICE (v6.0-SP1-ICE01)

File Edit View Favorites Tools Help

U.S. Citizenship and Immigration Services
WEB-BP Case Details

On-Line Resources | Tutorial | Return to Home | About | Exit

Case Verification Number: 2006299091325RV

Case Administration
- Initial Verification
- View Cases

User Administration
- Change Password
- Pwd Challenge Q&A
- Change Profile

Site Administration
- Add User
- View Users
- Maintain Company
- Request Termination

Reports
- View Reports

Initial Verification

Last Name:	nutt	First Name:	coco
Middle Initial:		Maiden Name:	
Social Security Number:	216-47-4203	Date of Birth:	07/31/1926
Hire Date:	10/23/2006	Citizenship Status:	Alien Authorized to Work (Alien or I94 # required)
Alien Number:	072735834	I-94 Number:	
Document Type:	I-688A	Doc. Expiration Date:	02/22/2007
Initiated By:	RGREEN02	Initiated On:	10/26/2006

Initial Verification Results

Last Name:	NUTT	First Name:	COCO
Initial Eligibility:	EMPLOYMENT AUTHORIZED		

Print Case Details | Request Additional Verification | Resolve Case | Close

* = required entry

Internet

SSA Tentative Nonconfirmation

Case Verification Number: 2

- Case Administration
  - Initial Verification
  - View Cases
- User Administration
  - Change Password
  - Change Profile
- Site Administration
  - Add User
  - View Users
  - Maintain Employer
  - Request Termination
- Reports
  - View Reports

Initial Verification

Last Name:	Doe	**First Name:**	John
Middle Initial:		**Maiden Name:**	
Social Security Number:	111-11-1111	**Date of Birth:**	04/04/1954
Hire Date:	03/15/2004	**Citizenship Status:**	Lawful Permanent Resident (
Alien Number:	123456789	**I-94 Number:**	
Document Type:	I-551	**Doc. Expiration Date:**	
Initiated By:	RMURBP01	**Initiated On:**	03/19/2004

Initial Verification Results

Last Name:		**First Name:**	
Initial Eligibility:	SSA TENTATIVE NONCONFIRMATION SSN is invalid		

Print Case Details | View Tentative Non-Confirmation Notice | Initiate SSA Referral

Close

U.S. Citizenship and Immigration Services

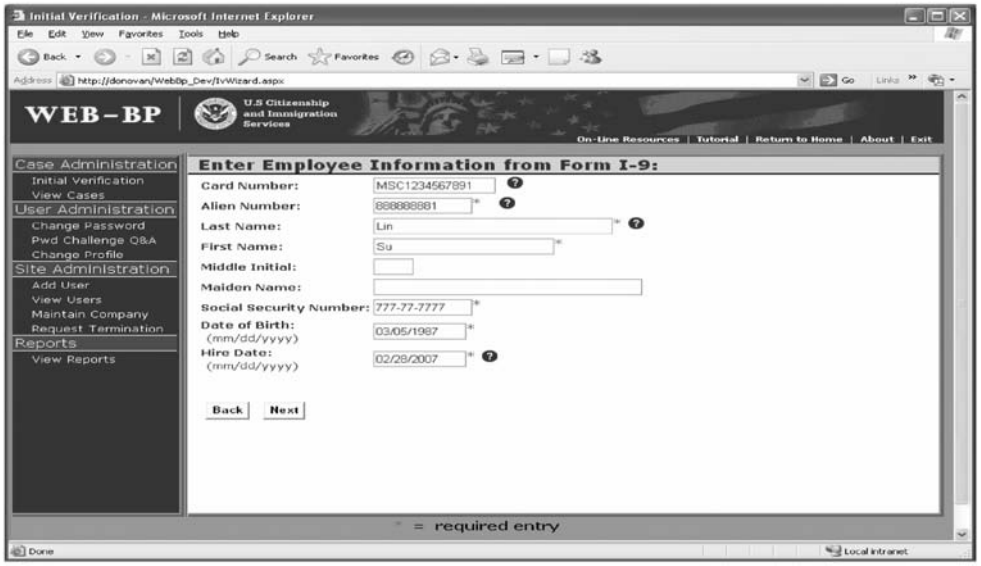
April 2007

EEV Photo Screening Tool

U.S. Citizenship
and Immigration
Services

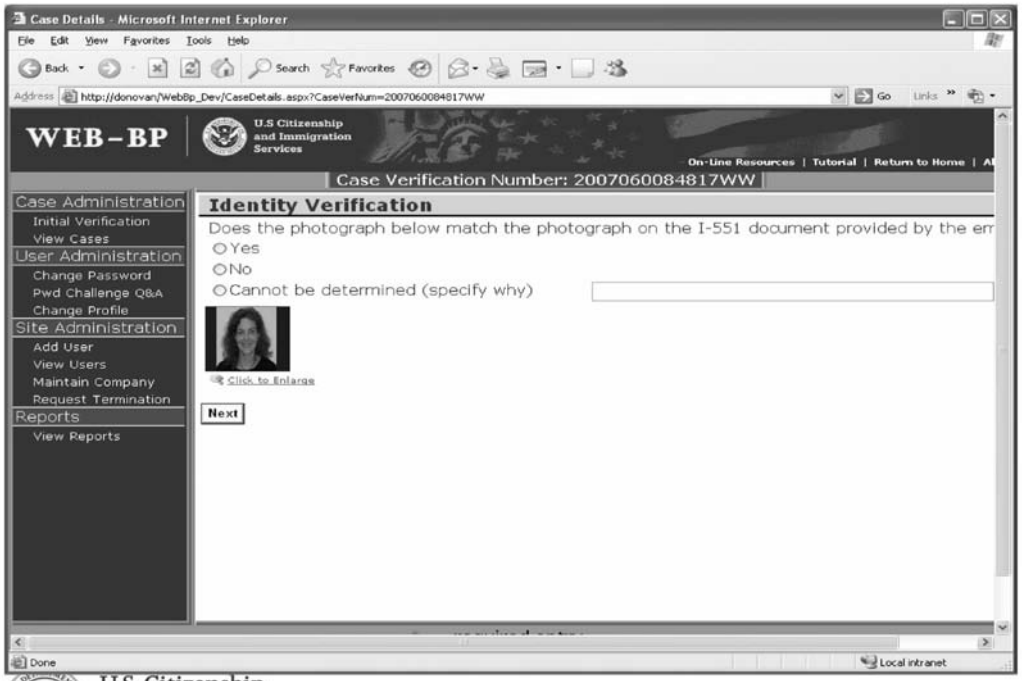
April 2007

Provide I-9 Information



U.S. Citizenship and Immigration Services

April 2007


Case Details - Microsoft Internet Explorer
File Edit View Favorites Tools Help
Back Search Favorites
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Go Links
WEB-BP
U.S Citizenship and Immigration Services
On-Line Resources | Tutorial | Return to Home
Case Verification Number: 20070600084817WW
Case Administration
Initial Verification
View Cases
User Administration
Change Password
Pwd Challenge Q&A
Change Profile
Site Administration
Add User
View Users
Maintain Company
Request Termination
Reports
View Reports
Identity Verification
Does the photograph below match the photograph on the I-551 document provided by the er
Yes
No
Cannot be determined (specify why)
Click to Enlarge
Next
Done
Local intranet

Case Details - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address http://donovan/WebBp_Dev/CaseDetails.aspx?CaseVerNum=20070600084817WW

WEB-BP

U.S Citizenship and Immigration Services

On-Line Resources | Tutorial | Return to Home | About | Exit

Case Verification Number: 20070600084817WW

Case Administration
- Initial Verification
- View Cases

User Administration
- Change Password
- Pwd Challenge Q&A
- Change Profile

Site Administration
- Add User
- View Users
- Maintain Company
- Request Termination

Reports
- View Reports

Initial Verification

Last Name:	Lin	**First Name:**	Su
Middle Initial:		**Maiden Name:**	
Social Security Number:	777-77-7777	**Date of Birth:**	03/05/1987
Hire Date:	02/26/2007	**Citizenship Status:**	Lawful Permanent Resident (Alien # required)
Alien Number:	888888881	**I-94 Number:**	
Card Number:	MSC1234567891		
Document Type:	I-551	**Doc. Expiration Date:**	
Initiated By:	LSHABP01	**Initiated On:**	03/01/2007

Initial Verification Results

Last Name:	Lin	**First Name:**	Su
		Expire Date:	INDEFINITE
Initial Eligibility	EMPLOYMENT AUTHORIZED		

Click to Enlarge

Print Case Details | Request Additional Verification | Resolve Case | Close

* = required entry

Done | Local intranet

U.S. Citizenship and Immigration Services

Ms. LOFGREN. I I will begin the 5 minutes of questioning.

Mr. Scharfen, you say that over 92 percent of the queries from employers receive an instantaneous clearance within 3 seconds, but it is that 8 percent that we need to resolve. The Bureau of Labor and Statistics estimates that the total number of employees in the United States is 146.3 million. Eight percent of that workforce would be 11,704,000.

As the United States contemplates the Basic Pilot program and expansion, are you equipped to deal with that volume of inquiries? And, if so, in what timeframe?

Mr. SCHARFEN. Yes, ma'am. Right now, we are taking 3 million inquiries a year. Our current capacity is for 25 million inquiries a year. However, we are also taking approximately 10 million inquiries a year from the State programs. So that puts us at 13 million. We have capacity for 25 million. So right now, we are about half-capacity.

Ms. LOFGREN. I see.

Mr. SCHARFEN. So we could double it today.

Ms. LOFGREN. I want to make sure I understood your testimony correctly. Was it your testimony that the Social Security Administration Numident database and the USCIS database are not currently interoperable?

Mr. SCHARFEN. I am sorry, Madam Chairwoman. If the databases——

Ms. LOFGREN. USCIS and the Social Security Numident, are they interoperable databases?

Mr. SCHARFEN. What we do is we make an electronic query to the Social Security——

Ms. LOFGREN. So it is a query system.

Mr. SCHARFEN. Yes, ma'am.

Ms. LOFGREN. I am going to give you an example, and I want you to tell me how this could happen and how what you are doing will change it. It is a real-life story that happened with an employee of the House of Representatives who was hired on March 2.

This individual is a United States citizen, came to the United States as a child in 1980 and has been a U.S. citizen since 1992. Because the United States House of Representatives participates in screening, she went down to the Committee, completed the I-9, showed them her United States passport, and it came back as a tentative non-confirmation.

So this person, the next day, got 8 Federal Government work days to resolve it—even though it was actually dated the day after she found out, so it ended up being only 7—and ended up having to go to several meetings, to the Social Security office, back to her employer, to House Employee Services. I mean, it took about six or seven meetings. And luckily this person had her passport on her.

She was told that even though she has always been legal to work, I mean, she came as a lawful permanent resident, that that didn't matter, that wouldn't be reflected in the Social Security database.

And I am just mindful that Ms. Hong here, who is our counsel, if that is what is happening to her in the Basic Pilot, what is happening to someone who isn't an immigration lawyer, who doesn't work for the Immigration Subcommittee, who doesn't have access

to the Social Security Office in the Rayburn Building, and whose boss is not the Chair of the Immigration Subcommittee? [Laughter.]

Mr. SCHARFEN. That is a good question, Madam Chairwoman. I will try to answer as best I can.

We understand that the system today is not perfect, and we are taking the large investment that Congress has made, $110 million, and during the past year we have been trying to make improvements to the system.

Unfortunately, there is a fact pattern there that has occurred previously, where someone has been born outside the United States, whether as a citizen or otherwise, when they come to the United States they have been having some problems with the EEVS process. And so that is one fact pattern unfortunately that we are struggling with.

Some of the ways that we are trying to correct that is that we are adding to the databases that make up the system on the USCIS side. We are also working closely with the Social Security Administration, working through those types of issues as well.

Ms. LOFGREN. So are you saying that it—we have, for example, in Silicon Valley a tremendous percentage of our population is a naturalized citizen. I mean, these are engineers from all over the world, that they are all going to get a hit as possible non——

Mr. SCHARFEN. No. But there have been—any of these types of hits, obviously, are too many. And in looking at the data that we have of non-confirmations that should have been confirmations, we have found this sort of information, this sort of fact pattern.

Ms. LOFGREN. I am going to end because my time is up and I want to set an example, so I will turn now to Mr. King for his 5 minutes of questions.

Mr. KING. Thank you, Madam Chair.

Mr. Scharfen, as I review this testimony, it occurs to me that we have also been talking, and the President, as I recall, has been talking about biometrics in addition to anything you might be using right now with your improvement in the photo tool incorporation.

Have you considered incorporating biometrics into that? Because as I recall the gentlelady's testimony about matching the picture on the card with the picture that is in the database, what about matching the face that is in front of you at the same time?

Mr. SCHARFEN. Yes, sir. The current photo pilot is doing just that.

What we have done is, we have taken the data, we have increased our database and are taking the photographs from the I-551s, the green cards, and the EADSs, the work permits, and we have taken those photographs and we have put them into the system so that when you do—when a participating—we have 40 employers right now in the pilot participating with this photo——

Mr. KING. Can you identify the distinction between twin brothers or sisters?

Mr. SCHARFEN. I am sorry, sir. Can you——

Mr. KING. What I really want to know is, does the employer have the authority to determine by visual identification, if the picture on

the card matches the picture in the database but does not match the face in front of them, can you then dismiss that employee?

Mr. SCHARFEN. Well, yes. He would be able to then try to ask for confirmation. You go through that process that you had described.

Mr. KING. Would there be repercussions on the employer if he made a bad judgment call and they happened to be twins?

Mr. SCHARFEN. I would hope that in a situation like that, that discretion would play into any type of enforcement action.

Mr. KING. The reason I ask the question is because I think when you get into this judgment call, we had that problem in the judgment call of reasonably determining that the documents are valid. Now there is this question about the judgment call of being able to verify that the person in front of you matches the picture.

So I submit that, can you incorporate fingerprints into this, like ICE has, where you put the index fingers on a cheap little camera and the picture shows up that matches those fingerprints? Have you considered going down that path with real biometrics?

Mr. SCHARFEN. Right now, sir, we are just working with the photo pilot, and we are not working with using any of the fingerprints at this time. There are other biometrics that are conceivably possible with this program, but right now we are working on the photo.

And getting back to the photo, I think that with our current system under the pilot, the emphasis has been just making sure that the photograph that comes up through the computer, on the computer screen, and the photo in front of you are one and the same and that they haven't been doctored.

Mr. KING. And I will concede that is a very good start. And hopefully we will also plant some seeds here that we know we are going to have to be facing a requirement for biometrics to really get this right in the longer term.

In your written testimony, you state or indicate that we can "protect our homeland against foreign threats by implementing a temporary worker program." I wonder if you could explain to this panel, how letting in millions of foreign workers is going to make the United States safer.

Mr. SCHARFEN. I think that the President's position would be that it has to be part of a comprehensive immigration reform plan.

Mr. KING. The point of legalizing millions of people that are here today illegally, how does that make America safer, though? Do you have an understanding of that or is that the Administration's position and that is where we are today?

Mr. SCHARFEN. I do. I think that the Administration's position is defensible in terms of looking at a comprehensive reform plan and that taking one piece of that reform plan in isolation won't get you the right answer.

But in terms of putting it in the larger context of the immigration reform proposal, you would increase security because you would be brining people out of the shadows who are working——

Mr. KING. At least those that felt comfortable that they would be legalized. Those that suspect that they would not be, I suspect would not come out of the shadows.

I point out also that many of the people who are here illegally don't have a legal existence in their own country, and how would

we go about doing background checks or verifying them since they don't have a birth certificate if they are not born in a hospital?

Mr. SCHARFEN. We would be doing a full series of background checks that we do on immigrants coming in or other non-immigrants coming in through our systems today, whether it is the FBI name check, whether or not it is the arrests and warrants system. We would do the full security check and fingerprint check on these——

Mr. KING. But if someone has committed a felony in a foreign country and come into the United States illegally and they don't have a legal existence in their home country, then do you have a way to verify that? Or do you just have to take them at their word?

Mr. SCHARFEN. I think that currently our system checks are with the FBI and with the other arrest and watch warrants that feed into that process. Whether or not they would have some of the foreign information on that, I think would be questionable, but not necessarily preclude it, sir.

Mr. KING. Thank you, Mr. Scharfen.

Thank you, Madam Chair. I yield back.

Ms. LOFGREN. Thank you.

The gentleman from California, Mr. Berman, is recognized for 5 minutes.

Mr. BERMAN. Thank you, Madam Chairman.

Could you explain how doing nothing will make us safer?

Mr. SCHARFEN. I am not certain I could do that, Mr. Berman.

Mr. BERMAN. Because it wouldn't.

Mr. SCHARFEN. Yes, sir.

Mr. BERMAN. On the Basic Pilot, that is not a photo verification system. That is simply a Social Security number authenticity check?

Mr. SCHARFEN. Yes, sir. Basically, today, the current Basic Pilot is taking a look at the information behind different cards that are given to the employer on the I-9 form so that you go back and you check the Social Security number first with the Social Security Administration and then if it is a non-citizen, you check the USCIS data to see whether the individual is——

Mr. BERMAN. The Social Security Administration has a special designation for legitimate Social Security numbers held by non-citizens?

Mr. SCHARFEN. That is correct.

Mr. BERMAN. What the system doesn't tell you is whether the person who is asserting his or her Social Security number is in fact the person who has that number.

Mr. SCHARFEN. Yes, sir. And that is the problem we had with the Swift case, where there was identity theft and identity fraud, sir.

Mr. BERMAN. Let us assume for a second that wasn't a problem. In order to expand that Basic Pilot program into a mandatory national system, how much time would you need? And how many new employees would you need? And how much more than—this year it was $114 million—in appropriations would you need?

Mr. SCHARFEN. Yes, sir. I will try to give you that answer as best that I can, sir.

It depends on what sort of program the EEVS is, whether or not you are going to have all new, just all new employees covering everybody——

Mr. BERMAN. Let us assume that it would be universal in terms of employer coverage, but it would only apply to new employees.

Mr. SCHARFEN. We currently have a capacity of 25 million queries right now. We would have to double that to 53 million. We think we could do that with the current system and that all we would be adding onto that system would be servers. And so we think we could do that in short order and on the hardware capacity side of it we could add on to that system rather easily.

Our intake here, the Web intake, is large. The pipe is large, if you will. And just adding on to the servers would not be that difficult or technical——

Mr. BERMAN. Just quantify "short order."

Mr. SCHARFEN. It would be less than a year, I believe.

Mr. BERMAN. And quantify "cost of additional servers."

Mr. SCHARFEN. Right now, it costs $75 million just to run our current system a year. We would anticipate that it would be in the hundreds of millions of dollars, sir, to expand that. I would probably leave it at that magnitude, sir, if I could.

Mr. BERMAN. Tell me about the photo pilot. The individual who applies for the job, in order to participate in this pilot, what does the employer have to get from the individual other than the Social Security number?

Mr. SCHARFEN. The way for this to work, sir, you have to have a green card or an EADS, a worker authorization card.

Mr. BERMAN. Some kind of nonimmigrant worker——

Mr. SCHARFEN. Yes, sir, or a green card that has the photo, the biometric, there.

And what happens, and I will let Ms. Ratliff describe this in more detail since it is her program, but basically you pull it up, you put the number of the card into the system. It pulls up the photo in the system and the employer matches the two photos, but I will let Ms. Ratliff add anything to that.

Ms. RATLIFF. Sir, it is query by card number so that it is a one-to-one match against our repository where we store the data that we put on the card, the green card or the EAD. So we are collecting an additional data field for card number.

And this applies today, in sort of Phase 1, to non-citizen new hires who show a green card or employment document for the Form I-9.

Mr. BERMAN. Let me just interject. But the employer determines that the card he is seeing on the screen matches the picture? There is no machine verification?

Ms. RATLIFF. Correct. Today it is just a matter of the visual verification that the photo on the card and the photo on the screen are 100 percent the same, because it is the photo we put on the card.

For the purpose of this pilot, we are moving very carefully, and if the employer thinks there is a mismatch, we are having them send us copies of the document so we can also visually inspect because it is just such a huge leap forward to begin incorporating this biometric. We want to do it quite carefully.

Mr. BERMAN. I think my time is expired.

Ms. LOFGREN. The gentleman's time has expired.

The gentleman from California, Mr. Gallegly, is recognized for 5 minutes.

Mr. GALLEGLY. I appreciate the opportunity, but since I came in in the middle of the hearing, I will defer.

Ms. LOFGREN. All right. Let me call, then, on Mr. Gohmert, who has been here from the beginning.

Mr. GOHMERT. Thank you, Madam Chairwoman.

I appreciate you being here to testify. There are so many problems, it is kind of hard to know where to start.

First of all, we had heard testimony in the last couple of years in this Immigration Committee that when a name is processed, wanting the right to come into the United States, it is put in the most generic form, put into the computer for potential hits or flags, and when those come, it goes to adjudicators, if I understood the process—is that correct?—to check out those flags and see if it is something they should be worried about or that this couldn't possible be the person.

Mr. SCHARFEN. Essentially, that is it. There is a two-step process and it goes to verifiers at the USCIS, who then work on the case, sir.

Mr. GOHMERT. And one of the things that concerned me greatly in trying to get at why it is taking so long to process things here was that many of the adjudicators didn't have the security clearance; they had not gone through the process because it costs money.

They didn't have adequate security clearances in order to access the FBI files, the documents, the files, the records that would allow them to make that determination, and that in some cases, because of time restraints, they eventually either just made a guess, passed it on or left the flag on.

So I am wondering, how are we doing for getting security clearances for adjudicators to make those determinations, so they don't just sit there?

Mr. SCHARFEN. Sir, I think there are two issues here. One is the EEVS system and then the other is the FBI name check——

Mr. GOHMERT. Right.

Mr. SCHARFEN. And the checks of watches and warrant type checks there.

As to the second there, we are giving this our attention at both the agency and at DHS to improve our ability to do our name checks in a quicker, expedited and more accurate fashion, and we have looked at that process from start to finish.

And as a matter of fact, I am meeting today after this hearing with the FBI to work on a pilot program that we hope will increase the efficiency with which we do our FBI name checks to make sure——

Mr. GOHMERT. I appreciate that, but I would sure—I am so pleased that the Chairwoman would have this meeting, and I hope will have more so we can find out what progress they are making in this regard.

An anecdotal situation, but I am afraid from what I hear this is true across the country. We had a business in Belgium that wanted

to locate in one of the towns in my district, and they wanted to hire workers in the community. Most of them would have been Democrats. [Laughter.]

But all they were asking was that we have the plant manager from Belgium. And after about a year and a half, they are going—this is people we could have had working for a year, year and a half, and all we are trying to do is get this guy through.

I ended up talking to the company's lawyer in New York. They said they were told, gee, if you pay $1,000 it will put it on the expedited path. So they paid $1,000. Months later, they checked, said we thought it was expedited, and they were, according to him, oh, yeah, it was expedited on that one part, but now if you want it expedited on the next part, pay another $1,000.

And I am going, my goodness, it sounds like the United States is a corrupt, third-world country that may, actually, in talking to others that come in, they say it is easier and quicker to go into a third-world country and get a visa to move in there than it often is in the United States.

So with all our millions, with all our technology, I am really concerned about our image abroad, and especially when we leave people without jobs simply because we can't process one visa, one right to come into this country and help all of us.

So I would like your comment on that.

Mr. SCHARFEN. Yes, sir. We admit that it is a serious problem, and it is a problem that, in terms of the backlog, unfortunately, has been——

Mr. GOHMERT. And is there a bribe system like that, that helps smooth the path? An official, I mean, not illegal bribe. Just a legalized bribe system to move it forward?

Mr. SCHARFEN. No, sir. There are some——

Mr. GOHMERT. So you are saying you can't pay $1,000 so we need to run down who they paid the $1,000 and where it ran and who got the $1,000?

Mr. SCHARFEN. There are some expedited processes in our immigration services.

Mr. GOHMERT. So you can pay extra money to move it along.

Mr. SCHARFEN. In some of the immigration transactions, yes, sir, there are expedited processes and fees that you can pay. However——

Mr. GOHMERT. You understand how that looks to the outside world, and even to some of us in this one?

Mr. SCHARFEN. Yes, sir. What happens, though, if—and I don't know the facts of this case, sir, and I would be happy to go back and take a look at it carefully, but——

Mr. GOHMERT. Well, he is in now, finally.

Mr. SCHARFEN. I am glad to hear it.

Mr. GOHMERT. And the Democrats are working, as they wanted to do all along.

Mr. SCHARFEN. What happens, though, is that we don't want anyone, we can't allow anyone to get into the United States unless the FBI name check has been cleared. And that is really where we have this terrible backlog. And it is affecting any number of people.

It is affecting our laws. We are being sued tremendously over this. It is requiring a—there is a real cost. There are costs to lives,

individuals' plans and their families. It is a cost to our economy and a cost to our Nation's security, and we are working hard to fix the problem, sir.

Mr. GOHMERT. Okay.

Thank you, Madam Chairwoman.

Ms. LOFGREN. The gentleman's time has expired.

Mr. Delahunt, the gentleman from Massachusetts.

Mr. DELAHUNT. Thank you, Madam Chair.

Let me just pick up on the theme—it is good to see you, Jock.

Mr. SCHARFEN. Nice to see you, sir.

Mr. DELAHUNT. Let me pick up on the theme that was laid out by my colleague, Mr. Gohmert. We have a real problem in terms of welcoming people to the country. In the year 2005, our share of the international visitors market, what we should have had, has been estimated at a loss of some $43 billion in that single year.

You know, the problem, as Mr. Gohmert referenced, it is my understanding, and there is significant evidence to establish this premise, is that international businesses are now making decisions to relocate elsewhere rather than in the United States because of the problem in the anecdote that was described by my friend.

That is serious. You know, we are a Nation of immigrants and all that, and we do have to provide for security, but it would appear to be in terms of the admission process, and we are talking people who we want in this country for our own economic prosperity, are being discouraged.

It would just seem, and I am just giving you an opinion. I have had in my own Subcommittee which I chair, I have had a series of hearings on America's image abroad as well as this issue of the decline in tourism and travel internationally that we are witnessing.

I don't want to get into the weeds, but it would appear, Mr. Secretary, that we have a real mess here in terms of the technology, and it is very, very frustrating. I don't know what the current status is in terms of the biometric passports. I just recently returned from Germany. We were besieged by German officials to expand the visa waiver program and to enhance the Visit USA every time we turned around.

Let me just pose a question, because I think this goes to Mr. Gohmert's point and to the Chairwoman's point in this case. Is there, within USCIS, an ombudsman? Do we have, within the agency, a significantly sized resource to expedite these kinds of problems that I think are hurting our image and are clearly impacting in a negative way our national economy in an economy that is increasingly subject to globalization?

Mr. SCHARFEN. Yes, sir, we do. We have an ombudsman who has been there for about 4 years, and he has addressed these issues, and they are of concern to him, sir.

Mr. DELAHUNT. But, I mean, I guess what I am talking about, Mr. Scharfen, is, it is one thing if you are counsel to the House Committee on Immigration, but, again, going to the problem that Mr. Gohmert talked about, a year and a half is just totally unacceptable. It is just totally unacceptable.

I mean, what is the size of his staff? Are we talking five people or are we talking hundreds of people so that those whom we want

in this country that are being impeded can pick up a phone and talk to somebody and have them walk through the process so that we can get these issues resolved?

Mr. SCHARFEN. No, sir, he does not have 100 individuals. It is significantly less than that.

Mr. DELAHUNT. What I am saying, I think these problems are everywhere, all over the system. We don't seem to be doing well in the technology. You just referenced the FBI. I mean, we had a debacle in terms of $180 million computer appropriation that didn't work. I mean, here we are, a leading technological Nation and we just can't seem to get it together. And as a result, our image abroad is hurting.

If you look at these surveys, people are opting to go elsewhere for school. They are going elsewhere in terms of their recreational travel. And they are relocating elsewhere—their business decisions are being impacted by what they perceive to be an unfriendly Nation in a system that they don't want to navigate any longer.

Ms. LOFGREN. The gentleman's time has expired.

The gentlelady from California is recognized for 5 minutes for her questions.

Ms. SANCHEZ. Thank you, Madam Chair.

Mr. Scharfen, can you tell me if Basic Pilot can detect in cases when an employer probably knowingly hires an undocumented worker, doesn't enter them into the system, but then enters them into the system later, say, after they have filed a labor complaint?

Mr. SCHARFEN. Right now we are working to improve that area of our program, ma'am.

We have $110 million appropriated to us, and some of the improvements we are doing is in the monitoring and compliance side of it, and what we would like to do, we have the data but we are not right now monitoring it, and we are putting it into systems and adequately monitoring it to pick up the patterns that you have just identified.

We would like to do that, and so we have a program where we are hiring and starting to develop different monitoring software and analysts so that we can look for those sorts of patterns in the data, so that we can make those sorts of judgments and then go from monitoring to compliance.

Ms. SANCHEZ. Because right now, participation in the Basic Pilot program requires signing of a memorandum of understanding and there are certain conditions that employers have to abide by for the use of the program as well as the prohibited practices for using the program.

But my understanding is that in an external evaluation that was done by Temple University, they found many employers were misusing the system and violating the terms of the memorandum of understanding, things like giving non-authorized people access to the database or information, prescreening job applicants, taking adverse actions against employees after receiving a tentative confirmation.

Do you have any updates in terms of what percentage of employers who are currently using the Basic Pilot program might be misusing it?

Mr. SCHARFEN. I don't have that at my fingertips, here. Ms. Ratliff might have some of the data.

But before I allow her to add that in, I would say that that sort of illegal conduct, some of the conduct that you just identified, is clearly against the law. And whether it is discrimination or otherwise. And the monitoring program that I was just discussing would be aimed at looking for that sort of pattern as well, where an employer is illegally screening out foreign workers, for instance, or on other grounds.

That may be evident when we start doing the monitoring of that, and then that would go into the compliance side of it, and it would be on any one of those grounds.

Ms. Ratliff, can you add to that?

Ms. RATLIFF. I would just add that that Temple report is based on data that is 5, 6, 7 years old.

Ms. SANCHEZ. Do you have any more current data?

Ms. RATLIFF. Westat is doing an independent evaluation with updated information. We have an interim report that came out in April and the final report is due out this summer, that we would be happy to make available.

Ms. SANCHEZ. Okay. I would appreciate that.

Can you please tell me what actions are currently taken against employers that misuse that system? The compliance side of it.

Mr. SCHARFEN. I would think that we would refer that to the enforcement side of the department. We would refer it to ICE and give it to them for any appropriate enforcement.

Ms. SANCHEZ. To your knowledge, do you know if there have been instances of misuse where action has been taken against employers or if any employers have been penalized for misusing the system?

Mr. SCHARFEN. There have been instances where the use of the EEVS has been cut off, but as to other types of enforcement, I will have to look into that and get back to you, ma'am.

Ms. SANCHEZ. Would you have any recommendations for ensuring that employers use the system properly and ways in which we could penalize, what would be effective methods of penalizing those who violate the terms of——

Mr. SCHARFEN. I think getting back to the original point that I had made, ma'am, is that we first have to monitor it and then go from there onto the compliance side of it, and that the first step is to identify in a more systematic way those instances of violations and then treat those appropriately, both programmatically and in individual instances, and I think if we did pick up individual instances, we would refer those to ICE for enforcement.

Ms. SANCHEZ. Thank you.

I yield back.

Ms. LOFGREN. The gentlelady's time has expired.

I will note that the record is held open for 5 legislative days so that written questions can be directed to the witnesses. And all Members are asked to pose those questions within the 5 days, and we ask that answers be made as promptly as possible.

We do thank you, Mr. Scharfen, for your testimony today and for your further information and answers to follow-up questions. And

we do look forward to the April interim report, which we do not have, and we look forward to getting that.

Mr. SCHARFEN. Yes, ma'am. Thank you for the opportunity to testify.

Ms. LOFGREN. Thank you so much.

I am now going to ask the second panel to come forward to the table. While we are getting organized, I will start the introductions.

First, we are pleased to introduce John Shandley, the Senior Vice President of Human Resources at Swift & Company. Before his work with Swift & Company, Mr. Shandley directed several units within the Labor Relations Division at Nestle USA and store operations at Ralph's Grocery Company.

A former aide to the commanding Army general in Okinawa, Japan, and the assistant commanding Army general in Fort Hood, Texas, Mr. Shandley holds a B.S. degree from the University of Southern California and graduated from the Food Industry Management Program, also at the University of Southern California.

We are also pleased to have Stephen Yale-Loehr join us from the law firm of Miller Mayer. Mr. Yale-Loehr has practiced immigration law for more than 20 years and has co-authored the leading multi-volume treaties on U.S. immigration law, titled, *Immigration Law and Procedures.*

In addition to his practice, Mr. Yale-Loehr teaches Immigration and Asylum Law at Cornell University's Law School as an adjunct professor. He holds his bachelor and law degrees from Cornell.

Finally, I would like to welcome Dr. Marc Rosenblum, a professor with the Political Science Department at the University of New Orleans. In addition to his scholarship on immigration policy and U.S.-Latin American relations, Professor Rosenblum has served as an international affairs fellow at the Council on Foreign Relations and a visiting fellow at the Migration Policy Institute.

Professor Rosenblum earned his B.A. from Columbia University and his Ph.D. from the University of California in San Diego.

Each of you have provided written statements, which I have read and I am sure the other Members have as well. They were very helpful. The entire statements will be made part of the official record.

I would ask that you summarize your testimony in 5 minutes, and to help you stay within that timeframe we have a very helpful little light here. And when you have about 1 minute remaining, the yellow light will go on. And when it turns to red, it means that your time is up.

So, again, thank you for being here.

And let us start with Mr. Shandley.

TESTIMONY OF JOHN SHANDLEY, SENIOR VICE PRESIDENT HUMAN RESOURCES, SWIFT & COMPANY

Mr. SHANDLEY. Chairwoman Lofgren, Ranking Member King, Members of the Subcommittee, good morning. My name is Jack Shandley, Senior Vice President of Human Resources for Swift & Company. Thank you for inviting me.

Today I will cover background on Swift, our experiences with employment verification, worksite enforcement systems, and recommendations.

Swift is the third-largest processor of fresh beef and pork in the United States. Annual sales exceed $9 billion. All but one of our seven domestic plants have union representation. We employ 15,000 people domestically, pay production employees more than twice the Federal minimum wage, offer retirement and comprehensive health care benefits, and possess industry-leading employee safety records.

Swift's hiring process goes above and beyond what is required by Federal and State law in terms of identity determination and work authorization.

First, every new Swift employee is required to complete an I-9 form, provide government-issued photo identification, usually a State identification card or driver's license. Employers must accept identification documents that on their face seem valid and not specify which of the 29 authorized forms of identification the applicant must supply and are prohibited from asking for additional documents.

In fact, Swift was sued for $2.5 million by the Department of Justice in 2001 for allegedly going too far in trying to determine applicant eligibility. We settled the case for less than $200,000 with no admission of wrongdoing.

Second, Swift has voluntarily participated in the Federal Basic Pilot program since 1997. Every production employee hired since has received a Social Security number and name validation through this government system.

Third, last year, with the assistance of third-party immigration compliance consultants, we implemented a hiring process improvement program called, informally, Connect the Dots. It enhanced our interviewing and information evaluation procedures to allow us to better detect identity fraud in a nondiscriminatory way.

For example, we now automatically flag new applicants who were either previously employed with or denied employment at another Swift location.

Simply put, a company cannot legally and practically do more than we have done to ensure the legal workforce under the current regulations and tools available from the government. Despite these procedures, the government raided six Swift production facilities on December 12, 2006, detaining 1,282 employees. This event cost Swift more than $30 million and disrupted communities and livestock producers.

The raids came after numerous attempts over many months by senior management, outside counsel and others to understand ICE's concern. We sought a collaborative way of apprehending all potential illegal workers and criminals in order to minimize disruption to the company, the communities and the livestock producers. All efforts to generate a collaborative solution were repeatedly rebuffed by ICE under the guise of an ongoing criminal investigation.

After 14 months of investigation, the government has not accused or charged Swift or any current or former member of management with any wrongdoing in connection with this immigration worker investigation and we have no reason to believe they shall do so in the future.

DHS continues to unfairly insinuate that Swift is somehow guilty. We believe it is past time for it to publicly admit to the company that it is not guilty of violating immigration laws.

These ICE raids dramatically highlighted flaws in the Basic Pilot program. Criminals today are able to substitute counterfeit identification documents with genuine ones obtained under fraudulent terms. For example, State identification cards obtained with valid copies of birth certificates or Social Security cards. Furthermore, Basic Pilot does not detect duplicate active records in its database. The same Social Security number could be used at multiple employers across the country.

Today we are confronted with a prolific and sophisticated document fraud industry now capable of providing unauthorized workers with documents and identities that challenge our ability to detect fraud and seem to defeat the Basic Pilot program relied upon by employers. Let me reiterate: Basic Pilot is the only government tool available to employers and it is fatally flawed.

Employers like Swift, who follow the law, are not the problem within the immigration reform debate. The immigration system is the problem. We need a legislative solution to the issue of employment verification, a more broadly comprehensive immigration format that includes a revamped Basic Pilot program; standardized State identification requirements; tamper-proof or biometric identity documents; tough penalties for employers who break the law and protection for those who don't; a refocused initiative for ICE that includes a collaboration with employers who play by the rules; a guest worker program; and earned status adjustment for a large portion of the estimated 12 million individuals illegally here today, whether as citizens or permanent alien residents.

Thank you for having me.

[The prepared statement of Mr. Shandley follows:]

PREPARED STATEMENT OF JOHN W. SHANDLEY

Swift & Company®

TESTIMONY BY

JOHN W. (JACK) SHANDLEY
SENIOR VICE PRESIDENT, HUMAN RESOURCES
SWIFT & COMPANY
GREELEY, COLORADO

REGARDING

PROBLEMS IN THE CURRENT EMPLOYMENT VERIFICATION AND WORKSITE ENFORCEMENT SYSTEM

BEFORE

THE HOUSE SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY UNITED STATES CONGRESS

APRIL 24, 2007
WASHINGTON, DC

Chairwoman Lofgren, Ranking Member King, members of the Subcommittee, and other guests – good morning. My name is Jack Shandley I am Swift & Company's Senior Vice President of Human Resources. Thank you for inviting me to testify today.

This morning I will cover some background on Swift, our experience with employment verification and worksite enforcement systems, and recommendations for improving such systems.

Swift is the third largest processor of both fresh beef and pork in the U.S. Our annual sales exceed $9 billion. We employ 15,000 people domestically and operate seven major processing plants in seven states.

All but one of our seven domestic plants have union representation. Swift's production wages are at or above average rates in the communities within which we operate; mean take home pay is $28,000. We offer affordable healthcare and retirement benefits to eligible employees. Approximately 80% of our employees elect to participate in our health plans. Our production employee turnover rate is lower than industry figures for leisure and hospitality, construction, and retail trade. Swift's worker safety record, as measured by lost time injury incidence, is better than all manufacturing businesses in the U.S. In short, employee safety and satisfaction is of utmost importance to Swift.

Our hiring processes go above and beyond what is required by federal or state law in terms of identity determination and work authorization.

First, in accordance with federal law, every new Swift employee is required to complete an I-9 form and provide one or more forms of government issued photo identification, usually a state identification card or driver's license. I would like to note that state requirements for issuing identification cards or driver's licenses vary greatly. Many do not require proof of legal presence in the U.S. The state level is the government's first line of defense in preventing unauthorized workers from obtaining employment.

Not only must employers accept designated identification documents that on their face seem valid, we cannot specify which of the 29 authorized forms of identification the applicant must supply. Employers are also prohibited from asking for additional documents. In fact, in 2001, Swift was sued for $2.5 million by the Department of Justice for discrimination because the company allegedly went too far in trying to determine applicant eligibility. We subsequently settled the case for less then $200,000 with no admission of wrong doing.

Second, less than one tenth of one percent of all employers use the government's Basic Pilot program. Swift has participated in this program since 1997 and every production employee hired since then has had his or her Social Security number run through a government data base that subsequently returned an employment authorization, meaning the Social Security number was valid and matched the name of the applicant hired and was authorized to work.

Third, during the summer of 2006, and with the assistance of third party immigration compliance consultants, we implemented a hiring process improvement program called Employee, Eligibility, Identification, Verification Program (EEIVP) or "connect the dots." In simplest terms, we enhanced our standard new hire interviewing and information evaluation procedures to allow us to better detect identity fraud in a non-discriminatory way. For example, we implemented an internal IT program that flags an applicant that was previously employed or denied employment at another Swift location.

Simply put, a company cannot legally and practically do more than we have done to ensure a legal workforce under the current tools and regulations available from the government.

Despite these facts, the government raided six Swift production facilities on the morning of December 12th, 2006, and detained 1,282 employees. This event cost the company more then $30 million and disrupted communities that Swift has worked hard to enrich.

The raids came after numerous attempts over many months by senior management, outside counsel and others to understand ICE's concerns. We asked for information, meetings, and a collaborative way of apprehending and removing all potential illegal workers and criminals in order to minimize disruption to the company, communities and livestock producers. All attempts to generate a collaborative solution were repeatedly rebuffed by ICE under the guise of an 'ongoing criminal investigation'

Please note that after 14 months of investigation the government has not accused or charged Swift or any current or former member of management with any wrongdoing in connection with its immigrant worker investigation. We have no reason to believe it will do so in the future. DHS and ICE do however continue to unfairly insinuate that the Company is somehow guilty in some unspecified way by parrying all inquiries with the reply of "there's an ongoing investigation." We believe it is past time for ICE to publicly admit that the Company is not guilty of violating immigration laws.

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 – flaws that we've discussed with Congress and other interested parties several times over the past year.

The Basic Pilot program, along with increased employer sophistication in processing identity documents, was reasonably effective at its inception in helping to eliminate the use of counterfeit paperwork in the job application process.

However, in response to Basic Pilot the underground market evolved by replacing counterfeit documents with genuine identification documents obtained under fraudulent terms. For example, the most common form of I-9 documents produced – state

identification cards or driver licenses – are obtained with valid copies of birth certificates and social security cards. As I stated earlier, an employer is required by law to accept eligible documents on face value. We believe this challenge will continue, as valid birth certificates can be resold to another undocumented worker for reuse in obtaining yet another official state identification card.

Furthermore, over time fatal flaws in the Basic Pilot Program came to light. As currently structured, Basic Pilot does not detect duplicate active records in its database. The same Social Security number could be in use at another employer, and potentially multiple employers, across the country.

As a result, today employers are confronted with a prolific and sophisticated document fraud industry now capable of providing unauthorized workers with documents and identities that challenge our ability to detect identity and document fraud and seem to defeat the government's Basic Pilot Program that we depend upon to gauge our effectiveness. Let me underscore this point: Basic Pilot is currently the only government tool provided to employers today and it is fatally flawed.

As you can see, employers have no foolproof way to determine if a new hire is presenting valid identification documents obtained under fraudulent circumstances. Furthermore, attempts to use additional means to determine employee eligibility place employers in jeopardy with government agencies who try to protect the rights of our employees. From our point of view, employers like Swift who are trying to abide by the law are not the problem in the immigration reform debate – the current immigration system is the problem.

Our country needs a legislative solution to the issue of employment verification – and more broadly comprehensive immigration reform – that includes:

- revamped federal work verification systems such as an improved Basic Pilot program that ensures one worker, one identification number;
- standardized state identification / driver's license requirements, that provide robust validation of U.S. work authorization;
- tamper-proof, biometric identity documents;
- tough penalties for employers who break the law with protection from disruptive and costly enforcement actions like Swift experienced on December 12th for those who follow the law;
- a re-focused mission for ICE that includes true cooperation with employers who play by the rules;
- a guest worker program; and
- earned status adjustment for a large portion of the estimated 12 million individuals illegally here today, whether as citizens or permanent alien residents.

Swift & Company is working diligently under current regulations and available resources to bar the employment of unauthorized workers in our workforce. Thank you for inviting me to speak today and for your ongoing efforts to implement common sense, balanced and comprehensive immigration reform legislation.

Ms. LOFGREN. Thank you very much.

Mr. Yale-Loehr?

TESTIMONY OF STEPHEN YALE-LOEHR, MILLER MAYER, LLP, ADJUNCT PROFESSOR, CORNELL LAW SCHOOL

Mr. YALE-LOEHR. Thank you. The Subcommittee asked me to give you a brief history about employer sanctions. I also want to talk with you about some systemic problems with the current employer sanctions regime and conclude with some recommendations.

First, a brief history. Congress enacted employer sanctions in 1986. Until then, it was not illegal for an employer to hire someone who did not have proper work authorization. It was illegal for the worker to be here without proper work authorization, but it was not illegal for an employer to hire them.

That changed in 1986 when Congress enacted employer sanctions as part of IRCA. IRCA did four things relating to this hearing today.

First, it prohibits employers from knowingly hiring undocumented workers.

Second, it requires all employers to verify identity and work eligibility of all job applicants, U.S. citizens or foreign nationals.

Third, IRCA created anti-discrimination protections.

And, fourth, although it wasn't in the statute, one flaw of IRCA was that it failed to provide for a temporary worker program to allow future flows of temporary workers to enter the United States legally.

Congress was concerned that the enactment of employer sanctions might increase discrimination against foreign-looking and foreign-sounding job applicants, so it asked the Government Accountability Office to do a series of three reports.

In 1990, the final version of that report came out and the GAO found that IRCA's employer sanctions provisions created "a serious pattern of discrimination." The GAO found that because of employer sanctions, discrimination against foreign-looking and foreign-sounding job applicants increased by 19 percent.

Despite that finding by the GAO, Congress did not do much to repeat or to modify employer sanctions. Employer sanctions effectively has created a paradox. We have a high degree of paperwork compliance, but a low degree of actually stopping undocumented workers from entering the United States or working here.

Employers complain about the paperwork burdens and they do not want to be junior immigration inspectors. Fraud and discrimination have increased with employer sanctions over the last 20 years.

What to do about it? Well, in 1994, Representative Barbara Jordan headed a commission that looked into this issue and they came up with a proposal to take verification away from employers and put it on the government. They recommended a computerized registry of looking at Social Security and immigration databases. That was the genesis of the Basic Pilot program that Congress enacted in 1996.

I am not going to talk about the Basic Pilot program because the other panelists will talk about that in more depth. What I next

want to focus on are some of the systemic problems in our current employer sanctions regime.

First, the political compromise that created employer sanctions floundered against the economic reality of the fact that we did not have a legal way to bring in needed temporary workers to the United States legally. Therefore, they had to enter illegally and use fake documents many times.

Second, employer sanctions enforcement has been inconsistent. It was fairly good right after enactment of IRCA in 1986, but has then declined. For example, the Immigration and Naturalization Service audited almost 10,000 employers back in 1990, but only 2,200 in fiscal year 2003, a decline of 77 percent. Similarly, back in 1992 the Immigration Service issued over 1,460 notices of intent to fine against employers who violated employer sanctions. By 2004, that had dropped to three, a decline of 98 percent.

So what do we do? Well, I have several recommendations in my written testimony. I call them the 3 E's: enforcement, evaluation, and entry.

First, on enforcement, we need consistent, vigorous and adequately funded enforcement that is funded by the Congress over the long haul, not just for a few years. Moreover, we need to target employers who intentionally violate whatever employer sanctions regime is enacted.

Second, evaluation. We need to properly, quickly and accurately evaluate a person's documents so that we know those documents are not fraudulent and that they do relate to the person presenting those documents. We also need to continually evaluate any new system to make sure that it is working properly with very few errors and is not causing any increase in discrimination or privacy problems.

Third, entry. We need to have a temporary worker program as part of comprehensive immigration reform that is large enough to accommodate our labor shortages. Those people then will be able to enter legally and with proper documents. That will reduce incentives to enter illegally or use false documents.

These three elements are the three legs of the stool that can reform our employer sanctions regime. All three legs need to be adequately funded and enforced over time or they may fall apart.

In sum, employer sanctions is a very important component of comprehensive immigration reform, perhaps the most important component because it affects all Americans, not just immigrants. For that reason, Congress must handle this issue carefully and thoughtfully.

Thank you.

[The prepared statement of Mr. Yale-Loehr follows:]

PREPARED STATEMENT OF STEPHEN YALE-LOEHR

Testimony of

Stephen Yale-Loehr
Adjunct Professor
Cornell University Law School

Hearing on
Problems in the Current Employment Verification and Worksite Enforcement System

Before the
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.

April 24, 2007

Madam Chairwoman and Distinguished Members of the Subcommittee:

My name is Stephen Yale-Loehr. I teach immigration law at Cornell University Law School. I am also co-author of Immigration Law and Procedure, a 20-volume immigration law treatise. It is considered the standard reference work for U.S. immigration law. It has been cited by courts more than 400 times, including several times by the U.S. Supreme Court. I also chair the business immigration committee of the American Immigration Lawyers Association. I am testifying in my personal capacity.

Thank you for inviting me to testify about the current employer sanctions program and recommendations to improve it through an electronic employment verification system (EEVS). I have been following and writing about this issue since 1986, when Congress first enacted employer sanctions.

My testimony first provides a history of employer sanctions. I then discuss the Basic Pilot Program, which is the administration's current effort to improve employer sanctions. Next, I discuss some systemic problems in the current employer sanctions program. I conclude with some recommendations.

1. History of Employer Sanctions

A. Pre-1986: The Texas Proviso

Until 1986 no law made it illegal for an employer to hire an undocumented worker. In fact, in 1952, in passing legislation making it illegal for any American to "harbor" an undocumented individual, Congress stated that it was specifically *not* illegal to hire such an individual.[1] This came to be known as the "Texas Proviso." It meant that employers were free to hire whomever they chose, without having to verify an individual's eligibility to work. If an unauthorized worker was among the ranks of their employees, nobody questioned it and the employer was free to go on with business as usual without worry; it was simply up to the undocumented worker to avoid being caught by immigration authorities and deported.[2]

B. 1986: IRCA Enacts Employer Sanctions

As Congress considered immigration reform in the early 1980s, debate over whether to enact employer sanctions was long and intense. The theory behind employer sanctions is twofold: (1) imposing penalties on employers of undocumented workers will deter the hiring of such noncitizens; and (2) because securing employment is the primary reason for illegal entry and residence, this will reduce incentives for illegal entry.

Some members of Congress argued that an employer sanctions program might place an undue burden on employers. Not only would all employers be subject to new paperwork obligations;

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[1] Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163.
[2] *See generally* Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, Immigration Law and Procedure § 7.01 (rev. ed. 2006).

employer sanctions also raised the specter that employers would have to become experts in immigration law to identify which categories of noncitizens were authorized to work.[3]

Another area of concern was what kind of documentation would suffice to establish eligibility for employment. Congress was aware of the huge market that exists in fraudulent documents. Some proponents argued that a form of counterfeit-proof documentation ought to be devised to ensure the effectiveness of any employer sanctions program. The risk that this might lead to a "national identity card," however, caused many members of Congress to shy away from such a requirement. Those opposed to an identity card won.

A third major concern was that employer sanctions would lead to discrimination against those who looked foreign or sounded foreign, and that existing fair employment laws would not provide a remedy. For example, Title VII of the Civil Rights Act of 1964[4] applied only to employers with fifteen or more full-time employees. Moreover, it barred national origin discrimination but not discrimination based solely on alienage.[5]

Congress addressed these competing concerns in the Immigration Reform and Control Act of 1986 (IRCA).[6] IRCA employed a three-pronged approach regarding the hiring of undocumented workers. First, it did away with the Texas Proviso and specifically prohibited employees from knowingly hiring undocumented workers.[7] Second, it required employers for the first time to verify, by use of the paper I-9 form still in use today, the identity and authorization to work of all their employees, including U.S. citizens.[8] For those individuals who failed to comply with or meet the new verification requirements, employers were required to refuse employment. Third, Congress included antidiscrimination provisions to prohibit employers from discriminating on the basis of national origin or citizenship status in hiring and firing employees.[9] Failure to comply with any of these provisions resulted in penalties being imposed, ranging from small monetary fines for first time, minor paperwork violations to criminal sanctions for repeat offenders, including jail time of up to six months.

To monitor whether employer sanctions would contribute to discriminatory practices, Congress asked the General Accounting Office (GAO) to prepare three annual reports on the employer sanction program's implementation. Under the statute, the employer sanctions program would terminate if: (1) the final GAO report found that a "widespread pattern of discrimination" resulted from employer sanctions; and (2) Congress enacted a joint resolution stating that it approved the GAO findings.[10]

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[3] *See generally* Maurice A. Roberts & Stephen Yale-Loehr, *Employers as Junior Immigration Inspectors*, 21 International Lawyer 1013 (1987).
[4] 42 U.S.C. § 2000e-2.
[5] *See* Espinoza v. Farah Manufacturing Co., 414 U.S. 86 (1973).
[6] Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99–603, 100 Stat. 3359.
[7] INA § 274A(a), 8 U.S.C. § 1324a(a).
[8] INA § 274A(b), 8 U.S.C. § 1324a(b).
[9] INA § 274B, 8 U.S.C. § 1324b.
[10] IRCA, *supra* note 6, § 101 (enacting INA § 274A(j)-(n), 8 U.S.C. § 1324a(j)-(n)).

C. 1990: GAO Finds Employer Sanctions Causes Discrimination

The GAO issued its final report in March 1990.[11] It was based on a survey of over 9,400 employers, which statistically projected to a universe of about 4.6 million employers. The GAO report found that the enactment of employer sanctions had created "a serious pattern of discrimination." Overall, the GAO estimated that 19 percent of all employers began one or more discriminatory practices as a result of IRCA's enactment.[12] The GAO report concluded that IRCA's employer sanctions provisions failed to deter undocumented workers and increased discrimination against foreign-looking and -sounding workers because of: "1. lack of understanding of the law's requirements, 2. confusion and uncertainty on the part of employers about how to determine employment eligibility, and 3. the prevalence of counterfeit and fraudulent documents that contributed to employer uncertainty over how to verify eligibility."[13]

Despite the GAO report, Congress did not terminate employer sanctions. Over time, it became clear that employer sanctions was not working effectively. This was due in part to the conflicting interests that the sanctions try to satisfy and the lack of a mechanism to verify a worker's actual identity and employment eligibility. Most importantly, the government never fully committed to seeing this new employee verification program through to fruition. The appropriate and necessary resources required to run the program were never devoted to it. As a direct result of this, and as the 1990 GAO report underscored, employers were simply unequipped to properly handle the large volume of fraudulent documents. At the time of IRCA's implementation, 29 different types of documents were acceptable to verify work authorization and identity. With so many different documents allowed, this provided ample opportunity for fraud to take place. Employers, often having had little or no training in detecting fraudulent documents, were faced with the dilemma of either blindly accepting these documents or acting on a hunch and rejecting the documents but then facing penalties or lawsuits as a result of IRCA's antidiscrimination provisions. In the end, fraud and discrimination took over the system.

D. 1994: The Jordan Commission Proposes Government Verification

Employer sanctions created a paradox: a fairly high degree of supposed compliance but a relatively low degree of deterrence. Add the cost to businesses of paperwork and the documented increase in discrimination, and many people questioned the wisdom of continuing employer sanctions. One possible solution is to switch the burden of employment verification from employers to the government. The theory is that a government verification program could defeat the impact of fraudulent documents and also decrease discrimination by providing assurances to employers that the person they have hired is in fact authorized to work in the United States. The Commission on Immigration Reform, also known as the Jordan Commission after its chair, Rep. Barbara Jordan, was a leading proponent of testing such an approach.

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[11] General Accounting Office, Immigration Reform-Employer Sanctions and the Question of Discrimination (1990) [hereinafter GAO Report].
[12] *Id.*
[13] *Id.*

The Jordan Commission proposed having the government verify employment information by reviewing data from the Social Security Administration (SSA) and the immigration agency (at that time the Immigration and Naturalization Service (INS)).[14] Employers would submit employees' social security numbers to a computerized registry system. The government would then verify that the number belonged to someone authorized to work.[15]

E. 1996: IIRAIRA Changes

Congress tried to address problems in the employer sanctions regime as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).[16] The 1996 law, however, did not appropriate significant and necessary resources to improve workplace enforcement. Nor did it do much to improve the existing employer sanctions provisions. And even regarding document fraud, virtually the only measure taken by Congress in IIRAIRA was to slightly reduce the number of documents allowed for the purpose of verifying work authorization and identity, from 29 to 27. However, IIRAIRA did enact three pilot projects to strengthen and improve the employee verification process. Of these three projects, only one remains: the Basic Pilot Program.[17] The Basic Pilot Program is similar in concept to the Jordan Commission's recommendation for a computerized registry system.

2. The Basic Pilot Program: Not Ready for Prime Time

The Basic Pilot Program, or the Employment Verification Pilot Program as U.S. Citizenship and Immigration Services (USCIS) now calls it, is a voluntary program whereby employers enter Form I-9 data (name; date of birth; Social Security number) into a computer within three days of an employee's hire date.[18] This information is then compared with centralized databases at the SSA and the immigration agency (originally at the INS; now in the USCIS of the Department of Homeland Security (DHS)) to verify identity and citizenship. The data is then checked against a DHS database to verify employment eligibility.[19] If eligibility cannot be confirmed immediately, employers must notify their employees of the finding. The employees have the right to contest tentative nonconfirmation findings by contacting SSA or USCIS, as appropriate, to resolve any inaccuracies in their records. This contesting process is normally limited to 10 federal workdays. During this time, employers are not permitted to take any adverse actions against employees based on the tentative nonconfirmation finding. When employees contest their tentative nonconfirmation findings, USCIS informs their employers of the employees' work-authorization

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[14] U.S. Commission on Immigration Reform, U.S. Immigration Policy: Restoring Credibility (1994).
[15] *Id.* at xi-xvii.
[16] Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (enacted as Division C of Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009).
[17] *Id.* § 403.
[18] *See generally* U.S. Citizenship and Immigration Services, Registration for Employment Verification Pilot Program, *at* https://www.vis-dhs.com/EmployerRegistration/StartPage.aspx?JS=YES.
[19] *See generally* USCIS, Report to Congress on the Basic Pilot Program (2004), *at* http://149.101.23.2/graphics/aboutus/repsstudies/piloteval/BasicFINAL0704.pdf.

status. When employees do not contest their findings within the allotted time, they receive final nonconfirmation findings. Employers are supposed to terminate 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.[20]

The Basic Pilot Program is not a perfect solution to the employer sanctions problem. The most fundamental problem remains the fact that for the system to work, DHS must run the identity information it receives against the SSA database, a database that is otherwise outside the Basic Pilot Program system and that is not intended to be used for immigration purposes. While the verification process now runs relatively quickly for citizens, processing times will certainly increase if all employers are required to use the system.[21] The processing times will be even longer for noncitizens. Because the DHS and SSA databases are not fully integrated and often have difficulty communicating with each other in an efficient manner, the process can take two weeks or longer for noncitizens. This is simply too long for many employers to wait.

Furthermore, a high number of errors continue to be reported, slowing the process even more. It has been estimated that about 20 percent of all initial Basic Pilot Program entries are false-negatives, meaning that the applicant is originally thought to be not work eligible, but that a later review determines him or her to be work authorized.[22] Many of these initial errors occur for simple reasons, such as the transposition of a first and last name, or a name change because the worker recently married.

With the Basic Pilot program running inefficiently and ineffectively on a voluntary basis, and with only 15,000 participants, expanding Basic Pilot in its current state and requiring participation by all 8.4 million employers would be a bureaucratic nightmare. Full scale implementation would also cost at least $11.7 billion per year, according to a 2002 study.[23]

3. Systemic Problems with the Current Employer Sanctions Regime

Several reasons exist for the failure of the current employer sanctions regime:

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[20] *Id.* at 2-3.

[21] PowerPoint presentation by Gerri Ratliff, Chief of the U.S. Citizenship and Immigration Services (USCIS) Verification Division (June 26, 2006), *at* http://myrick.house.gov/Verification%20presentation%20June%2026.ppt.

[22] Immigrant Employment Verification and Small Business: Hearing Before the Subcomm. on Workforce, Empowerment, and Government Programs of the H. Comm. on Small Business (2006) (statement of Angelo Amador, Director of Immigration Policy, U.S. Chamber of Commerce) [hereinafter Amador testimony], *at* http://www.uschamber.com/NR/rdonlyres/epssu7le6fzvb7aju33ys5p2fmvzvap74pqz544pn6ldmwmd4trff2nidhyfx5eyv7llftk6chqiueb7hs5d6wilxxd/060627_amador_employment_verification.pdf.

[23] Institute for Survey Research & Westat, INS Basic Pilot Evaluation Summary Report 49 (Jan. 29, 2002), *at* http://www.uscis.gov/files/nativedocuments/INSBASICpilot_summ_jan292002.pdf.

- First, the political compromise that formed the basis of employer sanctions in 1986 foundered on the economic reality of the continuing need for workers and the inability of our immigration system to provide them legally. That reality continues today.

- Second, as stated above, employer sanctions has created a paradox: a fairly high degree of compliance but a relatively low degree of deterrence. Employers are checking workers' papers, as they are supposed to. But many of the verification documents may be fraudulent, or belong to a different person than the one who is presenting them. Until we solve the problem of fraudulent documents, employer sanctions will not work.

- Third, employer sanctions enforcement has not been consistent.

These themes are fleshed out below.

As recently as 2005, a Government Accountability Office study said that correcting the many problems out of the employee verification system remains the single biggest step in curtailing illegal migration and unauthorized employment.[24] But part of the problem is that we lack enough legal channels for foreign workers to come to the United States legally. Any comprehensive immigration reform bill must include temporary worker provisions if employer sanctions is to work.

Another part of the problem is inconsistent enforcement of employer sanctions. As early as 1991, for example, Doris Meissner, former INS Commissioner, and Robert Bach, former head of INS policy and planning, warned that "evidence is building that the early effort among employers to comply in response to publicity about the new law and wide-ranging INS contacts is dissolving into complacency as employers experience the low probability of an actual INS visit."[25] Their concerns proved valid. Government audits of employers to measure compliance with employer sanctions peaked at almost 10,000 in 1990, and then fell 77 percent to less than 2,200 in fiscal year (FY) 2003.[26] Notices of intent to fine companies for employer sanctions violations also dropped precipitously. From FY 1992 to FY 2004, notices of intent to fine fell 98 percent, from 1461 notices in 1992 down to just three in 2004.[27] Reflecting these trends, in 1999 the INS placed employer sanctions enforcement last in a list of five interior enforcement priorities.[28]

Employer sanctions enforcement has increased over the last two years. U.S. Immigration and Customs Enforcement (ICE) has begun what DHS Secretary Michael Chertoff calls a "strategic

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[24] Government Accountability Office, No. GAO-05-813, Immigration Enforcement: Weaknesses Hinder Employer Verification and Worksite Enforcement Efforts 2 (2005) [hereinafter GAO Report], *at* http://www.gao.gov/new.items/d05813.pdf.
[25] Doris Meissner & Robert Bach, *in* The Paper Curtain: Employer Sanctions' Implementation, Impact and Reform (Michael Fix, ed., 1991).
[26] Peter Brownell, *The Declining Enforcement of Employer Sanctions*, Migration Information Source, Sept. 2005, *at* http://www.migrationinformation.org/Feature/display.cfm?id=332.
[27] GAO Report, *supra* note 11, at 35 (figure 4).
[28] Brownell, *supra* note 26.

shift" in enforcement by focusing on employers that knowingly or recklessly hire illegal immigrants. Those employers often face criminal charges — including money-laundering charges — and seizure of assets rather than administrative fines.

"We found that [administrative] fines were not an effective deterrent," Julie L. Myers, assistant secretary for ICE, told the New York Times. "Employers treated them as part of the cost of doing business."[29] While the former INS brought 25 criminal charges against employers in 2002, ICE arrested 716 employers in 2006.[30]

"Companies that utilize cheap, illegal alien labor as a business model should be on notice. ICE is dramatically enhancing its enforcement efforts against employers that knowingly employ illegal aliens," said Ms. Myers in mid-2006. "Criminal indictments . . . are the future of worksite enforcement."[31]

That trend is continuing with some well-publicized raids. For example, just a few days before Labor Day last year, federal immigration agents descended on Stillmore, Georgia and surrounding areas just before midnight, entering homes and swarming the Crider chicken processing plant. Over three days, some 125 undocumented workers were rounded up and detained.[32]

This effort to increase worksite enforcement became even more evident on December 12, 2006, when ICE agents raided Swift & Company production facilities located in six states.[33] This was despite the fact that Swift participated in the Basic Pilot Program. While I am not here today to address the human costs of the shortcomings of our immigration system, I would like to note here that the stepped-up enforcement efforts of ICE come at the steep if not incalculable cost of the lives of hard working families being torn apart. More quantifiable is the economic price of our failed employment verification system. Swift has stated that the raids, which displaced over 1,300 of their workers, would cost the company $30 million. A third of that will go to expenses tied to hiring incentives and work-retention efforts; the rest is tied to lost operating efficiencies.[34]

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[29] Julia Preston, *U.S. Puts Onus on Employers of Immigrants*, N.Y. Times, July 31, 2006, at A6.
[30] Matthew Dolan, *Restaurant Owners Face Sentencing; Trio Seek to Avoid Prison in Immigration Case*, Baltimore Sun, Mar. 28, 2007, at 1B. *See generally* Stanley Mailman & Stephen Yale-Loehr, *Criminalizing Employer Sanctions: Employers Walk a Tightrope*, New York Law Journal, Aug. 25, 2006, at 3.
[31] Paul Cuadros, *The New Tactics of Immigration Enforcement*, Time Magazine, Aug. 7, 2006, *at* http://www.time.com/time/nation/article/0,8599,1223600,00.html.
[32] Associated Press, *Immigration Raid Cripples Georgia Town*, Sept. 15, 2006.
[33] Nicole Gaouette, *Six Meat Plants are Raided in Massive I.D. Theft Case*, Los Angeles Times, Dec. 13, 2006, at A18.
[34] Robert Pore, *Swift's Beef Operation Still Feeling Effect of Immigration Raid*, Grand Island (NE) Independent, Apr. 11, 2007, *at* http://www.theindependent.com/stories/041107/new_swift11.shtml.

Immigration raids nationwide have continued to increase this year, with recent raids in New Bedford, MA, Baltimore, MD and Santa Fe, NM, to name a few.[35] Enforcement of a broken system does not seem to be the just or economical approach that we, as a nation, should be taking. We are simply throwing good money after bad. Instead, we need to reform our employment verification system.

4. Recommendations for a Workable Electronic Employment Verification System

This much is clear: Some kind of workable, efficient, and accurate electronic employment verification system (EEVS) is necessary. The question remains, however: What steps need to be taken for this to be achieved?

- First and foremost, worksite enforcement must be part of a broader package of comprehensive immigration reform, which includes opening more—and more efficient—legal channels for foreign workers to enter the United States. Enforcement measures alone simply will not work. We must face economic reality and recognize that a labor shortage exists. For businesses to prosper and our country to remain competitive in the global economy, and to dissuade individuals from bypassing lengthy wait times and making unauthorized border crossings in search of jobs, employers need legal and efficient access to foreign workers.

- Second, the government must assist employers in making an employment verification system work, both through appropriate funding and by making all necessary resources, including money, technology, and additional training and manpower, available to them. The resources needed, while not fully identified at this point, assuredly will be great, and employers should bear some of the burden. But employers cannot be expected to comply with the law, verifying the identities and work authorization of tens of millions of potential employees fully on their own, without additional help from the government.

- Third, the government must make use of existing technology to create an efficient, workable EEVS. This includes continuing to implement and perfect biometric identification technology, possibly developing a biometric Social Security card, and simplifying the process for employers by allowing the use of a single swipe card containing information currently asked for on the I-9 form. The only documents that should be allowed to verify a noncitizen's identity, immigration status, and eligibility to work are biometric Social Security cards, legal permanent resident ("green") cards, and immigration work authorization cards.

- Fourth, once the problems with Basic Pilot or any other EEVS system are worked out--and they must be certified to have been worked out before full scale implementation—the system must require all employers to participate. Until that happens, however, the system must be phased in gradually, both to allow time for any necessary technological and/or efficiency fixes and to allow employers to acquire the tools necessary (biometric scanners, etc.) to implement and operate the system effectively. Given employers' urgent

[35] *See generally* http://www.ice.gov/pi/news/newsreleases/index.htm.

needs for foreign workers, premature full scale implementation will result in skepticism in the program and an unwillingness to participate on the part of employers, who will choose to risk penalties and operate outside of the system.

- Fifth, DHS must establish some kind of entity to monitor the progress of new measures and the efficiency and accuracy of the program in general, and to help encourage employer participation.

- Sixth, any new employment verification system must be designed to protect privacy and ensure that the discrimination caused after IRCA's enactment does not reoccur. To this end, the concerns of both employers and individual workers must be addressed. Any privacy violations or discrimination in the workplace must be quickly investigated and punished.

- Seventh, employer sanctions enforcement must be vigorous, consistent, and sustained. Employers initially complied with IRCA's employer sanctions regime, in part because of vigorous enforcement across all industries. As enforcement waned in the 1990s, however, businesses began to worry less about employer sanctions compliance. Congress must appropriate enough money every year to ensure that employers comply with the law, and that ICE actively enforces it.

It is relatively easy to state these goals. It is harder to know how to effectively implement them. For example, some people have advocated adding biometric information to Social Security cards so that they could be used as a reliable identity document for employment verification purposes.[36] The Social Security subcommittee of the House Ways and Means Committee held a hearing on this issue in March 2006.[37] That testimony deserves a careful reading. It is sobering. As Dr. Stephen T. Kent, chair of the National Research Council's Committee on Authentication Technologies and Their Privacy Implications, testified, developing identity systems is much more complex than it initially appears:[38]

> Success . . . depends not only on the card technology we use but on all of the ways the system components have to work together. The high cost of fixing or even abandoning a

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[36] *See, e.g.*, Doris Meissner & James Ziglar, *The Winning Card*, N.Y. Times, Apr. 16, 2007, at A19.

[37] Fourth in Series of Subcommittee Hearings on Social Security Number High-Risk Issues: Hearing before the Subcomm. on Social Security of the H. Comm. on Ways and Means (2006) [hereinafter Social Security Hearing], *at* http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=4979.

[38] *Id.* (statement of Stephen T. Kent, chairman, National Research Council Committee on Authentication Technologies and Their Privacy Implications), *at* http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=4979#Kent [hereinafter Kent testimony]. *See also* Committee on Authentication Technologies and Their Privacy Implications, National Research Council, IDs--Not That Easy: Questions About Nationwide Identity Systems (Stephen T. Kent & Lynette I. Millett, eds., 2002), *at* http://books.nap.edu/html/id_questions/.

> system makes it essential that potential ramifications are explored very thoroughly prior to making decisions about design details and deployment of a system. . . . No method of ensuring that the person presenting the card is the proper owner can be completely reliable. A key decision for any system of this sort would be determining an acceptable threshold of false rejection and false acceptances, none of which are going to be zero in any practical technology. . . . In conclusion, . . . none of the issues raised by development and deployment of large scale identity systems are simple. The questions posed . . . should be carefully and thoroughly applied, not only from a privacy perspective but from a security, usability and effectiveness perspective as well.[39]

Frederick G. Streckewald from the Social Security Administration testified at the same hearing that it would cost over $25 per card to issue a Social Security card with enhanced security features, such as biometric identifiers.[40] The SSA estimated that the cost of replacing Social Security cards for all 240 million Social Security cardholders would be approximately $9.5 billion.[41] That would not include the startup costs to buy the equipment needed to produce and issue such a card.

Even assuming such the privacy, security, and cost issues could be worked out, other potential problems remain in using a biometric Social Security card or other national ID card. For example, such a card should not be issued to foreign nationals first. Otherwise, massive discrimination problems could result.

Similarly, it is hard to know at what point any EEVS system will be reliable enough to impose on all employers. As numerous commentators have noted, even an error rate of just 1 percent would still translate into over a million people a year being erroneously disqualified or terminated from work.[42] Most of these would be U.S. citizens.

We also need to have buy-in from employers and workers. Any system has to involve both groups to be effective. For that reason Congress should enact a provision to create an employer/worker advisory group to work with DHS in establishing an effective EEVS.[43]

Finally, Congress should carefully consider the privacy implications of any electronic system to verify work eligibility. Employers will be forced to demand the required cards so it will become impossible to work in this country without carrying an identification card. This would be a fundamental policy change, because it would mandate ID as the cost of living and working in the United States. It would represent a fundamental reorientation of the relationship between the individual and government. Instead of being free to work, with the burden on the government to intercede where illegality is suspected, it would create an America where employees must seek

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[39] Kent testimony, *supra* note 38.
[40] Social Security Hearing, *supra* note 37, *at* http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=4979#Streckewald.
[41] *Id.*
[42] Amador testimony, *supra* note 22, at 7.
[43] *See* Independent Task Force on Immigration and America's Future, Immigration and America's Future: ¬A New Chapter 50-52 (2006).

the affirmative permission of government to work through the construction of a complex of databases and identity papers. And once that national identity infrastructure is created, privacy advocates worry that it would inevitably be expanded to many other purposes beyond preventing undocumented labor, including the routine monitoring and control of other activities.[44] Any EEVS system must have robust procedures to allow people to quickly fix errors.

Many of these recommendations accord with provisions already in the Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE Act) (H.R. 1645). For example, the STRIVE Act would require ICE officials to spend at least 25 percent of their time on worksite enforcement.[45] That will help keep enforcement consistent and vigorous. Similarly, The STRIVE Act would expand existing antidiscrimination protections by applying them to the new EEVS set up under the bill.[46] The bill would make it an unfair immigration-related employment practice to terminate an individual based on a tentative nonconfirmation notice or to use the EEVS to screen an applicant before an offer of employment, among other things.[47] The STRIVE Act would also attempt to protect individuals' privacy rights by storing only limited information in the EEVSA computer system.[48] The bill would also require employers to make sure others did not have access to the system.[49]

Conclusion

Employer sanctions is a multifaceted problem. It requires a multifaceted solution. It is like a three-legged stool. I call these the three Es--Enforcement, Evaluation, and Entry:

- Enforcement: We must have consistent and vigorous enforcement of our employer sanctions laws.

- Evaluation: We must have a mechanism of properly evaluating a person's documents to know that they are not fraudulent and that they relate to the person presenting them. We must also continually evaluate any new employment verification system to make sure it is working properly and accurately, without creating adverse discrimination or privacy problems.

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[44] *See* Tim Sparapani, Problems with Employment Eligibility Verification Legislative Proposals (Dec. 7, 2005), at http://www.aclu.org/privacy/workplace/22415leg20051207.html. *See also* Social Security Hearing, *supra* note 37 (statement of Marc Rotenberg, Executive Director, Electronic Privacy Information Center), *at* http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=4979#Rotenberg; Electronic Privacy Information Center, Spotlight on Surveillance: Expansion of Basic Pilot Would Steer Employment Verification Toward Disaster (Apr. 2006), *at* http://www.epic.org/privacy/surveillance/spotlight/0406/.
[45] H.R. 1645 § 305(b).
[46] *Id.* § 303.
[47] *Id.* § 303(c).
[48] *Id.* § 301.
[49] *Id.*

- Entry: We must create a temporary worker program large enough to allow most foreign workers to enter the United States legally. That will reduce the incentive to enter illegally.

The three parts must be equally strong for employer sanctions to work. Failure to adequately address any of the three legs of this stool will mean that we will back here 20 years from now, discussing the same problem.

Each of the three legs of the employer sanctions stool is a large problem itself. The overall problem cannot be corrected overnight. Congress and the American people need patience. Moreover, no one magic bullet exists for any of the legs. For example, the types of enforcement efforts may need to vary over time to keep up with new trends. Congress may need to try various pilot EEVS programs and then evaluate them. And more than one temporary worker program may need to be implemented.

However, employer sanctions is a very important component of comprehensive immigration reform. It is perhaps the most important component, because it affects all Americans, not just immigrants. For that reason, it is imperative that we handle this issue carefully and thoughtfully. We may never be able to eliminate all undocumented workers, but we can work to make the problem manageable.

Ms. LOFGREN. Thank you.

Now, finally, Dr. Rosenblum.

TESTIMONY OF MARC ROSENBLUM, Ph.D., DEPARTMENT OF POLITICAL SCIENCE, UNIVERSITY OF NEW ORLEANS

Mr. ROSENBLUM. Thank you very much, Madam Chairwoman and Members of the Committee. It is a great honor to be here with you today. I appreciate the opportunity to talk to you about the challenges of employment verification and worksite enforcement.

The failure of existing immigration law to prevent undocumented employment has been well documented and establishing more effective employment-based immigration controls has rightly been identified by advocates of comprehensive immigration reform as a top priority.

In short, the current system fails to provide employers the tools they need to identify undocumented employees. The I-9 document-based verification system is vulnerable to document fraud, the use of fake IDs, and both the I-9 system and the Basic Pilot Electronic Eligibility Verification System are vulnerable to identity fraud with the fraudulent use of borrowed or stolen identity documents pertaining to another person.

In addition, enforcement of employer sanctions has never been a priority for INS or DHS, as we have just discussed, and penalties for noncompliance are low. These verification problems mean that even conscientious employers may unknowingly hire undocumented immigrants and weak enforcement provisions mean that unscrupulous employers may knowingly do so because the expected penalty is simply not a deterrent.

So we need to address both the conscientious employers and the unscrupulous employers, and they require sort of separate solutions.

These obstacles to effective enforcement are well known, and I will therefore focus on three additional problems which have received less attention.

First, even as the current system fails to prevent undocumented employment, it also denies authorization to some U.S. citizens and other legal workers. False negatives occur during the I-9 process because the system is complex and many employers recognize their inability to accurately determine a job applicant's status.

So some employers err on the side of caution by refusing to hire people who seem like they might be unauthorized to work, a phenomenon known as defensive hiring.

The Basic Pilot was conceptualized in part to address this problem by eliminating the need for subjective employer judgment, but Basic Pilot database errors are surprisingly widespread—we have talked a little bit about this. They exist on a scale that would affect hundreds of thousands and perhaps millions of workers in a universal system.

These errors demand our attention, because the logic of electronic verification runs counter to the judicial principle of presumed innocence. Under Basic Pilot, all job applicants are presumed unauthorized until proven otherwise, so the burden is on the U.S. citizen or other legal worker to correct database errors, often after considerable time and expense, or lose their job.

A second problem is that these false negatives disproportionately affect persons born outside of the United States so that our overall employment verification system becomes a de facto source of employment discrimination. Legal workers who look or sound foreign born are more likely to fail an employer's eyeball test or to be subject to additional scrutiny in the context of ambiguous verification procedures.

Faced with these doubts, some employers refuse to hire such job applicants as a function of their appearance and other employers hire questionable job applicants but pass along the risk of doing so in the form of lower wages.

A well-functioning electronic eligibility verification system could ameliorate this problem, but the Basic Pilot exacerbates the problem because database errors in Basic Pilot are far more likely to affect naturalized citizens and legal immigrants than native-born citizens.

A third unintended consequence of the current system is increased exploitation of undocumented workers by unscrupulous employers. Ambiguity in the verification process allows employers to turn a blind eye to fraudulent documents at the point of hire and then discover an employee's undocumented status later, perhaps in response to an employee's demand for fair working conditions or their efforts to join a labor union.

Because current rules place greater emphasis on migration control than they do on holding employers accountable or enforcing U.S. labor law, some employers actively seek out undocumented employees knowing it puts them in a position to deport their labor problem later.

Once again, the harmful effect on wages and standards are felt throughout the U.S. economy, not just by undocumented workers.

As Congress considers comprehensive immigration reform, I believe you confront a fundamental tension in this area. Most steps to limit undocumented employment, strengthening verification and enforcement procedures, tend to increase the risk of false negatives, employment discrimination and worker exploitation.

Setting aside the politics, it is technically difficult to design a system which screens out those who should be screened out without causing collateral damage to legal workers and conscientious employers.

This tension may best be resolved by providing employers and employees with clear and effective verification procedures so that straightforward compliance prevents the overwhelming majority of undocumented employment.

Once such a verification system exists, enforcement efforts and penalty structures must be substantially increased to create a real deterrent to undocumented employment with a special focus on going after "bad apple" employers.

Most importantly, we now have two decades of unambiguous evidence about the harmful, unintended labor market consequences of worksite enforcement. Yet even as Congress has been made aware of these adverse effects, flawed enforcement practices have not only been committed to continue, but they have been expanded in direct opposition to the conclusions of key reports on this subject.

So as Congress once again prepares to strengthen worksite enforcement, as it should, I urge you to learn from these studies and, simultaneously, to take steps to prevent the predictable increase in false negatives, discrimination and exploitation, which are sure to result.

Thank you again for the opportunity, and I would be happy to elaborate.

[The prepared statement of Mr. Rosenblum follows:]

PREPARED STATEMENT OF MARC R. ROSENBLUM

Testimony of Marc R. Rosenblum
Robert Dupuy Professor of Pan-American Studies and Associate Professor of Political Science, University of New Orleans
Fellow, Migration Policy Institute

Before the U.S. House of Representatives Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

April 24, 2007

Madam Chairwoman and Distinguished Members of the Subcommittee:

My name is Marc Rosenblum, and I am the Robert Dupuy Professor of Pan-American Studies and Associate Professor of Political Science at the University of New Orleans as well as a Fellow at the Migration Policy Institute. It's an honor to be here with you today and I appreciate the opportunity to talk to you about the challenges of employment verification and worksite enforcement.

In my comments today, I will begin by identifying three basic limitations in our current worksite enforcement regime which undermine efforts to prevent undocumented employment. These obstacles to effective enforcement are well known, and I will therefore focus much of my attention on three additional problems which have received less attention. First, even as the current system fails reliably to prevent undocumented employment, it also denies authorization to some US citizens and other legal workers. These so-called "false negatives" result in substantial lost employment opportunities for US workers. Second, for a variety of reasons, false negatives disproportionately affect persons born outside the United States, including foreign-born US citizens, so that worksite enforcement unintentionally promotes employment discrimination. Third, ambiguities in the worksite enforcement system, and asymmetries between labor and immigration law create incentives for unscrupulous employers to intentionally seek out unauthorized workers in order to take advantage of their vulnerability at the worksite. While undocumented immigrants are the immediate victims of these practices, the downward pressure on wages and standards which results affects all US workers.

As Congress prepares to consider comprehensive immigration reform, I believe you confront a fundamental tension in this area: steps to limit undocumented employment—strengthening verification and enforcement procedures—tend almost inevitably to increase the risks of false negatives, employment discrimination, and worker exploitation. Setting aside politics, it's technically difficult to design a system which screens out those who should be screened out

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without causing collateral damage to legal workers and to conscientious employers. This tension may best be resolved by providing employers and employees with clear and effective verification procedures so that straightforward compliance prevents the overwhelming majority of undocumented employment. Once such a verification system exists, enforcement efforts and penalty structures must be substantially increased to create a real deterrent to undocumented employment, with a special focus on going after "bad apple" employers.

Most importantly, we now have two decades of unambiguous evidence about the harmful unintended labor market consequences of worksite enforcement. Yet even as Congress has been made aware of these adverse effects, flawed enforcement practices have not only been permitted to continue, but they have been expanded in direct opposition to the conclusions of key reports on this subject. As Congress prepares once again to strengthen worksite enforcement—as it should—I urge you to learn from these studies and simultaneously to take steps to prevent the predictable increase in false negatives, discrimination, and exploitation which are sure to result.

Background: Overview of Current System

The 1986 Immigration Reform and Control Act (IRCA) made it illegal for employers to "knowingly employ" undocumented immigrants.[1] The primary mechanism for preventing the employment of undocumented immigrants within the United States is the so-called I-9 document review process. Under this system, employees and employers are jointly required to complete a federal I-9 form for each newly hire employee. The I-9 form requires an employee to provide his or her identity information, including Social Security number and Alien identification number if applicable, and to attest under penalty of perjury to his or her legal residency status (citizen, lawful permanent resident, or employment-authorized immigrant). Federal law also requires employers to review one or more documents proving the identity and work-eligibility of the new employee, to make a record of the document reviewed on the I-9 form, and to attest under penalty of perjury that the documents appear genuine and to relate to the named employee. Employers must retain completed I-9 forms for three years after the date of hire or one year after the date employment ends, whichever is later.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which included provisions to establish three separate pilots programs to address weaknesses in the I-9 system by allowing employers to verify job applicants' status through phone or internet connections to the INS and SSA eligibility databases.[2] Two of the three pilots have since been discontinued, but the so-called Basic Pilot remains in operation and was expanded from its original six states to become a nationwide voluntary program in 2004. As of June 2006, approximately 8,600 employers were registered to use the Basic Pilot program out of about 6 million employer firms nationwide (.1% of all employers), though only 4,300 employers were active users of the program (.05% of all employers).[3]

Under the Basic Pilot system, participating employers still fill out the I-9 form as above, and then also submit employees' identification data (name, Social Security number, date of birth, Alien

[1] Pub L. No. 99-603, 100 Stat. 3359.
[2] Pub.L. 104-208, Div. C, 110 Stat. 3009-546
[3] General Accounting Office 2006a. Recent comments by USCIS personnel indicate a total of 15,000 registered users.

identification number if applicable) via a secure website for verification of the employee's work eligibility status. Electronic verification proceeds in four steps. First, all employees' data is automatically checked against the Social Security Administration's primary database, the Numident file. If an employee's data match information in the Numident database and SSA's records reflect that the person is a U.S. citizen, the Basic Pilot issues an immediate confirmation that the employee is work-authorized. Second, if the data are not automatically confirmed by the SSA, the website returns a tentative non-confirmation (TNC). US citizens may appeal the TNC by personally visiting a SSA field office to resolve the problem. If the employee fails to appeal a TNC and resolve the data mismatch, a final non-confirmation is issued and employment must be terminated.

Third, for non-citizens, the SSA verification or tentative non-confirmation is followed by a secondary analysis by the US Citizenship and Immigration Service (USCIS), where identity and immigration status data from the I-9 are checked against the USCIS' Customer Processing System (CPS) database. If the CPS confirms the individual's work authorization, a confirmation is issued. If not, the case is automatically referred to an immigration status verifier (ISV), who manually checks the data against additional DHS databases before issuing a confirmation (if the individual's status can be verified) or a second TNC. Fourth, the job applicant then has an opportunity to appeal the second TNC, a process which typically requires the employee to contact the ISV by telephone. If the employee is able to provide missing information necessary to resolve ambiguities in the record, a confirmation of work authorization is issued. If database ambiguities cannot be resolved, or if the individual fails to contest the TNC, a final non-confirmation is issued and employment must be terminated.[4]

Regardless of whether employers verify employees' work authorization through the paper-based I-9 system or the Basic Pilot EVS, the ability of these procedures to prevent undocumented employment ultimately depends on oversight and enforcement by the Immigration and Customs Enforcement (ICE) Office of Investigations, within the Department of Homeland Security. Historically, investigations of immigration employment violations have been rare, and have focused on individual businesses on the basis of leads provided by private citizens, the Department of Labor, and other local, state, and federal law enforcement agencies. A secondary strategy has been to target larger groups of firms on the basis of their industrial and regional characteristics. A small number of firms were randomly selected for inspection during the late-80s and 1990s, but random targeting was discontinued in 1998 due to its inefficiency. Once a firm is targeted, the primary investigatory tool has been the audit of I-9 forms and other personnel records. Audits may be followed by on-site inspections. Where investigators find evidence of non-compliance (slightly less than half the time), penalties may range from a formal warning to a "paperwork" fine (for unintentional non-compliance), to a "substantive" fine (for intentional non-compliance), to the initiation of criminal charges (for engaging in a repeated pattern or practice of violations).[5]

[4] See Jernegan 2005 for a more detailed treatment of the history and mechanics of the Basic Pilot program.
[5] See Rosenblum 2005 for a more detailed discussion of existing enforcement practices.

Why the Current System Fails to Prevent Undocumented Employment

It is widely recognized that the status quo verification and worksite enforcement system fails to prevent undocumented employment, leaving in place the so-called "jobs magnet" that motivates much undocumented migration to the United States.[6] These failures are the result of "false positives" (i.e., cases in which undocumented immigrants are incorrectly identified as work-authorized) in the existing document-based and electronic verification systems and of inadequate enforcement efforts and modest penalty structures which make the expected cost of non-compliance an acceptable business expense for many non-compliant employers.

1. Verification of Status

For the overwhelming majority of employers, status verification is governed by the I-9 process: employees must present one or two identity and eligibility documents and attest to their work eligibility; and employers must attest to having verified that the documents reasonably appear on their face to be genuine. This document-based process is an ineffective screening mechanism for two reasons:

- Document fraud. Employees may present fraudulent documents ("fake ID's") to complete the I-9 form. Fake ID's are readily available in all American cities as well as most countries of origin, and employers lack expertise to distinguish between legitimate and fraudulent documents.
- Identity Fraud. Employees may present borrowed or stolen *genuine* documents, or may fraudulently obtain genuine documents containing the identity and eligibility data pertaining to some other work-authorized individual. In these cases, an employer may correctly judge the document(s) to be genuine, but fail to recognize that the document does not pertain to the individual presenting it.

Any document-based system is vulnerable to these two types of fraud, but these weaknesses are exacerbated in the US case by regulatory complexity and lax document security standards. First, the I-9 rules allow job applicants to present one or two documents from a list of 29 alternatives, many of which in turn are plural categories (e.g., state and territory driver's licenses, tribal identity documents) so that the actual number of acceptable documents is larger still. Even the most conscientious employers find it difficult to familiarize themselves with the full range of permissible documents. Second, many acceptable identity and eligibility documents are paper-based and/or lack anti-fraud security features, making them vulnerable to counterfeiting. Third, birth certificates and other "breeder documents" are particularly diverse and lacking in security features, creating ample opportunities for sophisticated individuals to fraudulently obtain genuine identity documents.

The Basic Pilot electronic eligibility verification system improves upon the I-9 process by guarding against the most basic type of document fraud. In particular, any functional EVS will detect crude fake ID's because the data on the fraudulent document does not match records in the EVS database. Fabricated identity and eligibility data submitted to the Basic Pilot will result in a non-confirmation of the employee's status. *Yet the ability of the Basic Pilot or any EVS reliably*

[6] See e.g., Commission on Immigration Reform 1997; Cornelius et al. 2004; General Accounting Office 2006a; Massey et al. 2002.

to detect unauthorized workers is limited by the vulnerability of the system to identity fraud: an unauthorized worker presenting borrowed or stolen identity data pertaining to a work-authorized individual will be confirmed by the Basic Pilot. Thus, in the absence of a system for decisively linking identity cards to their bearers—a process which typically requires biometric data collection at the point of document presentation—even a universal electronic eligibility verification system would fail reliably to detect unauthorized workers and would require additional measures to guard against identity theft.

2. Oversight and Enforcement

Weaknesses in the I-9 and Basic Pilot program ensure that even conscientious employers cannot reliably determine the work authorization status of their employees for the reasons discussed above, and they create opportunities for willful non-compliance on the part of indifferent or unscrupulous employers. Weak oversight and enforcement measures make it difficult to obtain convictions or enact penalties, and exacerbate non-compliance by the latter two categories of employers.

At the policy enforcement stage, the single greatest barrier to targeting non-compliant employers, prosecuting cases, and implementing sanctions is the fact that no agency, office, or division has made a priority of worksite enforcement. In general, both the INS and ICE have emphasized the apprehension and removal of undocumented immigrants rather than worksite enforcement. After a modest initial investment, attention to worksite enforcement lagged during the 1990s, especially after the initial success of the Border Patrol's "prevention through deterrence" strategy caused Congress to focus overwhelmingly on border enforcement and detentions, rather than interior investigations. The INS' 1999 Interior Enforcement Strategy focused remaining investigations resources on a small number of high-profile cases, a move which highlighted widespread abuses of IRCA provisions, but which also insured that most employers would not be investigated. Institutional commitment to employer sanctions reached a new low after the 2001 terror attacks, as ICE's counter-terrorism mission (as distinct from the INS's migration control mission) shifted the focus of interior enforcement to the nation's critical infrastructure and away from industries which tend to employ undocumented immigrants.[7]

Thus, while spending on border enforcement and detention facilities increased from $800 million to over $4.5 billion between 1986 and 2002, spending on interior enforcement and investigations only increased from $100 million to $500 million.[8] Even these number radically overstate the commitment to worksite enforcement, as just *two percent* of interior investigations targeted worksites in 2003.[9] Out of over 2,500 agent work-years devoted to immigration-related investigations in 2003, only 90 agent work-years were devoted to worksite enforcement nation-wide; and these investigations resulted in a total of just three notices of intent to fine being issued to employers.[10] These numbers received substantial attention from Congress during 2006, and the Bush administration has recently emphasized worksite enforcement, including through a

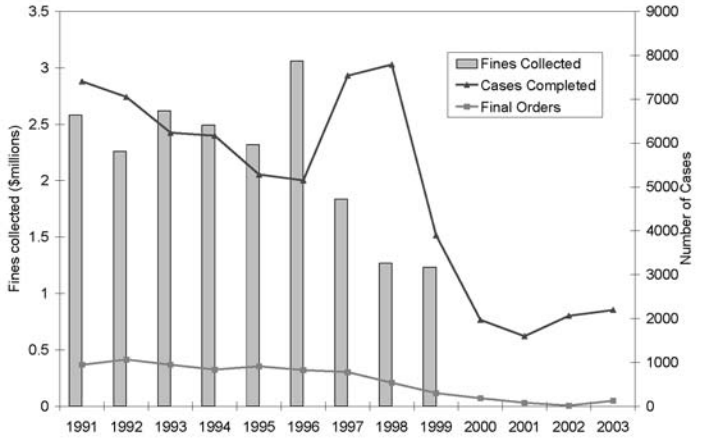
[7] Rosenblum 2005.
[8] Dixon and Gelatt 2005.
[9] Ibid.
[10] General Accounting Office 2006a.

number of high profile worksite raids during the last nine months; but detailed budget and agent work-year data for the current period is not yet available.

Finally, even on the rare occasions that employers are targeted for enforcement, a number of factors make it difficult to obtain convictions or collect penalties for non-compliance. Fundamentally, the flawed verification procedures described above ensure that it is difficult to meet the standard for conviction—that employers *knowingly* employed unauthorized workers. In short, as long as employers have completed an I-9 form for every employee on the payroll—regardless of the quality of documents reviewed—it is difficult for investigators to prove non-compliance. As a result, some employers may protect themselves from prosecution by complying with the letter of the law even while knowingly hiring unauthorized workers. In other cases, employers hire undocumented immigrants as "independent contractors" in order to immunize themselves against document verification requirements; or they contract with fly-by-night subcontractors who assume the liability for verification violations but then go out of business if they become the subject of an immigration investigation. ICE investigators, aware of the difficulty of obtaining convictions under these circumstances, often negotiate modest settlements with employers rather than pursuing civil or criminal penalties.

These limitations are illustrated by figure one. Between 1991 and 2003, fewer than 5,000 employer investigations were completed per year, targeting less than one in a thousand U.S. worksites. While evidence of undocumented employment was found in almost half of these cases, only ten percent led to final orders to fine, and an average of just $2.2 million in fines were collected nation-wide (the bars in figure one; data limited to 1991-1999).

Figure One: Employer Sanctions Enforcement Outcomes



Source: INS Statistical Yearbook, various years; Peter Brownell 2005.

In sum, the existing status verification and worksite enforcement fails to provide adequate tools for confirming the work eligibility of employees and fails to provide a meaningful threat of enforcement against substantive non-compliance. As a result, while highly vigilant employers may use existing tools to screen out most unauthorized employees, a larger class of employers may comply with both the letter and the spirit of the law and still unwittingly hire undocumented immigrants. Most troubling, the system makes it safe for "bad apple" employers to comply with the letter of the law even as they seek out undocumented immigrants as a strategy for holding down labor costs.

False Negatives

Document Imprecision in the I-9 and Basic Pilot verification systems is not limited to the problem of false positives discussed above, but may also lead to the opposite problem: "false negatives," or cases in which an employer wrongly concludes (or assumes) a US citizen, permanent resident, or work-authorized non-immigrant lacks work authorization. While false positives undermine immigration control efforts by leaving in place the job magnet, the problem of false negatives represents a very different kind of threat: imprecise verification procedures—especially if combined with credible enforcement and oversight—could require millions of US citizens and legal immigrants to spend substantial time and resources clarifying their status, or could result in their being denied legal employment.

Both the I-9 document-based system and the Basic Pilot electronic eligibility verification system produce false negatives. Despite the due process protections discussed above—i.e., the requirement that employers accept documents that appear on their face to be genuine—the I-9 process is inherently subjective and relies on employer judgment to make determinations about the legitimacy of documents and about whether or not they pertain to their bearers. Risk-averse employers reluctant to expose themselves to possible prosecution will err on the side of caution by refusing to hire people who seem like they *might* be unauthorized to work, a phenomenon known as "defensive hiring." The risk of defensive hiring is exacerbated by the complexity of the I-9 system, as confused employers may subject diverse employees (and documents) to different degrees of scrutiny.

In principle, the Basic Pilot or another electronic eligibility verification system should mitigate this problem by eliminating the need for employers to make judgments about document authenticity. But in practice the Basic Pilot continues to rely on employers as the point of interface between employees, their identity documents, and the electronic verification process; and the system re-creates problems found in a document-based system as a result. Employers continue to make subjective judgments about whether a given document pertains to the individual presenting it, and continue to apply different rules to their employees as a function of these subjective judgments.

In addition to this familiar problem, the Basic Pilot introduces an important new source of false negatives: errors in the SSA and DHS databases and in the electronic verification process. In short, the structure of the Basic Pilot system places the burden of proof of work authorization on job applicants. If the system fails automatically to confirm a job applicant for whatever reason, the applicant must prove that an error has occurred or, by law, be terminated from their place of

employment. It bears emphasis that the logic of this system runs counter to the judicial principle of presumed innocence: *under the Basic Pilot all job applicants are presumed unauthorized until proven otherwise*. The verification process itself produces false negatives for four distinct reasons:

- Data entry error by employers at the point of hire. If an employer enters incorrect information into the Basic Pilot system, searches of the SSA and DHS databases will fail to confirm an employee's work authorization. The burden is on the employee in this case to discover and correct the employer's mistake.
- Delays in database maintenance. Neither the SSA nor the DHS databases are reliably up-to-date. The most common errors in the SSA database pertain to legal name changes, which often take as long as a year or more to be recorded in the SSA database. New US citizens and temporary immigrants also experience delays in being entered into the SSA database. Historically, the most common errors in the DHS databases have resulted from the failure of USCIS and other DHS agencies and field offices to transmit information about status changes to the USCIS CPS database in a timely manner, with delays of several days or even weeks being common. Although recent procedural changes intend to eliminate some of these delays, the effectiveness of the new procedures have not yet been evaluated.
- General database errors. Both the USCIS and SSA databases contain general errors, especially in cases related to complex or unusual names, transliterated names which may be spelled multiple ways, or names with ambiguous word order (e.g., because individuals have multiple last names, hyphenated last names, or because the individual's family name precedes his or her given name in normal usage).
- Immigration status verifier (ISV) error. Where non-citizens' data are not confirmed automatically by the CPS database, the system is vulnerable to human error by the ISV assigned to a particular case. Again, the burden is on the employee to discover and correct the ISV's mistake.

In an era of ATM machines and credit card purchases it is tempting to place a great deal of faith in our ability to manage large databases with a high degree of accuracy, but the SSA and DHS databases remain highly error prone:

- A 2006 analysis of the SSA's NUMIDENT database found that 4.1 percent of cases analyzed contain discrepancies which would lead to incorrect responses in a Basic Pilot query. This error rate would correspond to 17.8 million potential false negatives in a universal electronic eligibility verification system based on the existing data.[11]
- A 2006 analysis of the DHS system for tracking A-files, the primary record for all immigrants in the United States, found that between one and four percent of all records could not be located. Missing A-files were much higher in some regions, including a 20 percent missing record rate in the San Diego field office.[12]
- A 2002 independent analysis of the Basic Pilot program found that 42 percent of employees who received *final non-confirmations* after their cases were referred to the INS for review (a non-random sub-sample of all final non-confirmations) were in fact work-authorized at the time of their referral.[13]

[11] Social Security Administration 2006.
[12] General Accounting Office 2006b.
[13] Institute for Survey Research 2002.

- Overall, thirteen percent of all Basic Pilot queries analyzed for the 2002 study resulted in final non-confirmations after employees failed to appeal a tentative non-confirmation; analysts concluded that a "sizeable number" were false negative responses.[14]

Employer subjectivity and database errors together create an additional source of false negatives when electronic verification results in a tentative non-confirmation (TNC). On paper, employers are required to respond to TNC's by providing an opportunity for the employee in question to provide additional information prior to a final determination; the Basic Pilot relies on employers to provide employees with the tools to do so. Yet the same factors which may cause employers to engage in defensive hiring and to practice differential document verification standards under the I-9 system may also cause employers—in violation of Memorandum of Understanding governing their participation in the Basic Pilot—to engage in "defensive firing" or other adverse employment practices upon receipt of a TNC response, rather than taking the time and trouble to assist employees with their right to appeal such an interim result. Especially where employers have their own doubts about an employee's immigration status, defensive firing represents a cost-savings over the TNC appeal process because employers prefer not to invest in training a new employee in the absence of certainty about the employee's status; moving on to a different job applicant may provide that certainty. Short of terminating an employee following a Basic Pilot TNC, employers may also suspend their training or otherwise place them in provisional status pending a final determination of the employee's status. Previous studies indicate that these practices, though illegal, are widespread:

- Thirty percent of Basic Pilot employers admitted restricting work assignments while employees contest a tentative nonconfirmation.
- Among a sample of employees who contesting tentative nonconfirmations, 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.
- Overall, 73 percent of the employees who should have been informed of work authorization problems were not informed. These employees were not aware that they had verification problems and were thus precluded from resolving these problems.
- Thirty-nine percent of employees who did appeal TNC results did not recall receiving printed instructions from their employers as required by law.[15]

What are the consequences of these false negatives? The immediate effect is lost work opportunities for an unknown number of US citizens and work-authorized non-citizens.[16] It is

[14] Ibid. More recent data provided by USCIS suggest that eight percent of all Basic Pilot queries result in tentative non-confirmations at this time: the vast majority of these continue to result in final non-confirmations because employees fail to appeal the findings.

[15] All statistics from Institute for Survey Research 2002.

[16] A second consequence of false negative responses is that employees and federal agencies must spend significant time and resources correcting these errors, though these efforts may be viewed as a necessary investment in fixing the verification system. The burden of correcting errors in US citizen records will be particularly acute for SSA field offices, which have already seen a 40% increase in visitors since passage of the Intelligence Reform and Terrorism Prevention Act (IRTPA). Security requirements associated with the IRTPA have caused the number of people who must make multiple trips to an SSA office in order to obtain a new card or clear up database error to increase from 20% to 33% of all visitors. In many cases, especially in western districts, that extra trip to an SSA field office may involve up to 400 miles of round trip driving.

particularly difficult to estimate the scope of this problem, since in most cases victims of I-9 false negatives may never have an opportunity to apply for a job, and no legal violation occurs. The data also fail to provide an exact estimate of the error rate in the Basic Pilot databases—we do not know what percentage of those who fail to appeal their TNC's are in fact work-authorized—but we do know that most employers fail to notify workers that they have received a TNC response or to provide adequate information for a TNC appeal, as discussed above. For this reason, *it is not safe to assume that an employee who fails to appeal a TNC is unauthorized to work in the United States*; and many legal workers have undoubtedly lost their jobs as a result of false Basic Pilot non-confirmations. These numbers would increase exponentially in a nation-wide Basic Pilot program, including because Basic Pilot expansion would likely lead to increased database errors and erroneous non-confirmations as system capacity is expanded and new ISV's are hired and trained.[17] For these reason, *the 2002 Temple/Westat analysis recommended against requiring additional participation in the Basic Pilot program.* Although results of a 2006 update to this study have not yet been released, several individuals familiar with its contents have said that it concludes that employer non-compliance with Basic Pilot procedures, false TNCs, and erroneous final non-confirmations continue to plague the program. *Members of Congress should demand access to this report prior to finalizing plans regarding expanded participation in the Basic Pilot program.*

Additional Adverse Consequences: Employment Discrimination

Thus, both the I-9 document-based system and the Basic Pilot electronic eligibility verification system result in a significant number of false negatives—cases in which US citizens, legal permanent residents, and work-authorized non-immigrants are incorrectly identified as unauthorized to work. While it bears emphasis that all Americans confront this risk, legal immigrants and citizens of foreign descent, and Latino Americans in particular, are especially vulnerable to false non-confirmation; and poorly-designed verification and worksite enforcement rules are therefore a de facto source of employment discrimination.

As with false negatives in general, employment discrimination related to verification and worksite enforcement is the result of both subjective employer judgment and systemic database errors. In the first case, where risk-averse employers may engage in defensive hiring, many employers use an "information shortcut" by assuming that all Latin Americans or all "foreign-looking" individuals may be undocumented. A 1990 General Accounting Office analysis of employment practices found that this type of defensive hiring was widespread in the immediate aftermath of IRCA's passage, at which time employers were especially concerned about the threat of workplace enforcement:

- Five percent of employers in their study "began a practice, as a result of IRCA, not to hire job applicants whose appearance or accent led them to suspect that they might be unauthorized aliens."[18]

[17] Currently, the Basic Pilot program generates about 70 TNC's per day, which are processed by four independent status verifiers (with 70 additional ISV's responding to TNC's generated by the SAVE program). To increase the number of Basic Pilot by queries a factor of 50 as would be required under a universal system would require the recruitment and training of at least 200 additional ISV's.
[18] General Accounting Office 1990.

- Nine percent of employers said that because of IRCA they "began hiring only persons born in the United States or not hiring persons with temporary work eligibility documents."[19]
- A "matched pair" survey of job applicants found that Anglo job applicants received 52 percent more job offers than Hispanic job applicants with identical records.[20]

Employers who require different employees to submit different types of documents or who subject some documents to more scrutiny than others are likely to employ similar shortcuts.[21] Because employers are uncertain about a job applicant's legal status, many employers assume all Latino workers may be undocumented and hold them to different standards in a variety of ways:

- The 1990 GAO study found that 7.5 percent of employers only required individuals to fill out I-9 forms if the person "had a 'foreign' appearance or accent."[22]
- Overall, the 1990 GAO survey found that 19 percent of all employers in their population engaged in one or more forms of national origin or related discrimination after IRCA's implementation.[23]

A third way in which subjective employer responses to the threat of enforcement produces discriminatory outcomes is in the form of wage discrimination. Many employers hire Hispanic job applicants, but pass the risks of immigration enforcement along to their employees by paying individuals who "look or seem undocumented" lower wages than those paid to similarly-qualified applicants who appear native-born. All US workers see their wages decline through ripple effects from this immigrant-based wage depression.[24] Several studies have specifically documented the post-IRCA discriminatory wage effects of worksite enforcement:

- Latino non-agricultural wages fell by 9.6 relative to Latino agricultural wages during the initial post-IRCA period in which only non-agricultural employers were required to check status.[25]
- Latino wages fell by 6-7 percent relative to non-Latino wages as a result of the introduction of employer sanctions in general.[26]
- The real wages of legal immigrants fell 35 percent between 1980 and 1993. Analysts attribute most of this wage drop to IRCA, as wages fell 9 cents per year prior to IRCA and 27 cents per year after IRCA.[27]
- An analysis of US Census data found that workers of Mexican descent—including US citizens of Mexican descent—saw a "sizeable" decline in their hourly earnings relative to Cuban and Puerto Rican workers and relative to non-Latino white workers following IRCA's passage. This analysis concluded that employer sanctions adversely affected the earnings of Mexican workers.[28]

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[19] Ibid.
[20] Ibid.
[21] Christi 1995.
[22] General Accounting Office 1990.
[23] Ibid.
[24] Borjas et al. 1996.
[25] Raphael 2001.
[26] Ibid.
[27] Massey et al. .2002.
[28] Bansak 2005.

In addition to these employer-driven sources of discrimination, the Basic Pilot is an independent source of de facto discrimination because errors in the SSA and DHS databases disproportionately affect immigrants and foreign-born US citizens relative to native born citizens.[29] First, the systemic database errors discussed above (misspellings, reversed name order, etc.) are disproportionately likely to affect foreign-born individuals and individuals with atypical (from a US perspective) names. Second, the SSA database is, for a variety of reasons, more accurate than the USCIS database. One of the most significant advantages to the Social Security database is that numbers are typically issued at birth, and individuals have numerous opportunities to correct errors in their social security file prior to the point at which the Numident database is queried at the point of hire. Third, as noted above, the various DHS databases covering work eligibility are not networked, so that newly legal immigrant workers routinely face delays before their change of status is recorded in the CPS database. Fourth, many naturalized citizens experience delays in establishing records with the Social Security Administration, causing them to be wrongly non-confirmed until their records can be clarified.

For all of these reasons, the Basic Pilot produces significantly more incorrect TNC's and false final non-confirmations for non-citizens and citizens of foreign descent than for native-born US citizens.

- Among legitimately work-authorized job applicants approved by the Basic Pilot, 99.8 percent of US citizens are approved by an electronic screen of SSA data, compared to just 88.6 percent of foreign-born citizens and 48.8 percent of non-citizens. Thus, a majority of work-authorized non-citizens are subject to delays, during which time they are often penalized at the workplace as discussed above.[30]
- Only 82.6 percent of non-citizens approved by the Basic Pilot are confirmed by USCIS through primary electronic checks.[31]
- Overall, over 99 percent of US citizens appear to be automatically approved by the system on a first or second pass, but fewer than 90 percent of work-authorized non-citizens.[32]

Additional Adverse Consequences: Worker Exploitation

Finally, just as "bad apple" employers may exploit weaknesses in the system to knowingly or willingly hire undocumented immigrants, so too may the same employers take advantage of asymmetries in the system to gain leverage over their undocumented employees during bargaining over wages and working conditions. Despite the ambiguities in the I-9 and Basic Pilot processes, savvy employers gain information about their workers' immigration status during the document verification process. Unscrupulous employers may intentionally hire workers they believe to be undocumented—a low-risk strategy in light of the limitations on effective enforcement discussed above—and use this information to threaten employees with immigration

[29] Designers of the Basic Pilot system hoped that the program would reduce discrimination by taking the guesswork out of the document review process. While a plurality of employers self-reported being more willing to hire immigrants since enrolling in the program, the Temple/Westat study's analysis of actual hiring patterns found no evidence that use of the Basic Pilot changed employers hiring patterns.
[30] USCIS 2004.
[31] Ibid.
[32] Ibid.

enforcement in response to complaints about unfair wages or working conditions or union activism. Ironically, the Basic Pilot (or any employer-based EVS) may exacerbate this problem by providing these employers more certainty about workers' undocumented status, especially where employers pre-screen job applicants, a practice illegal under the Basic Pilot Memorandum of Understanding but widespread nonetheless.[33] Employers also benefit from ambiguities in the I-9 process, claiming that employee documents appeared genuine but then "discovering" their undocumented status when a worker files a labor claim.

The Supreme Court's 2002 *Hoffman Plastics Compounds v. NLRB* decision gave employers an additional reason to adopt such a strategy: under this ruling employers convicted of violating wage and standards laws are not required to compensate undocumented workers for back pay, the only monetary remedy available under the National Labor Relations Act (NLRA). Thus, unscrupulous employers who intend to violate wage and standards laws have a positive incentive to seek out undocumented immigrants, in effect taking out insurance against the possibility of future wage and standards convictions by reserving the option to "deport their problem" later.[34]

By its nature, this type of exploitation is often difficult to document, but evidence suggests it is widespread:

- While the passage of IRCA had no measurable impact on the ability of undocumented immigrants to obtain employment in the United States, the imposition of employer sanctions made it "much more likely" that undocumented immigrants would earn below the US minimum wage, contrary to the pre-IRCA finding.[35]
- A recent study of immigrant workers in post-Katrina New Orleans found that thirty-four percent of undocumented workers reported receiving less money than they expected to be paid, compared to 16 percent for documented workers. Twenty-eight percent of undocumented workers said they had problems obtaining payment, compared to 13 percent of documented workers. The average hourly wage among documented workers is $16.50 compared to $10.00 for undocumented workers. Twenty percent of undocumented workers received time-and-a-half for overtime hours, compared to 74 percent of documented workers.[36]
- Undocumented Latin-American men and women experience statistically significant wage penalties—22% and 36%, respectively—after controlling for length of U.S. work experience, education, English proficiency, and occupation. Undocumented immigrants report working in unsafe conditions at considerably higher rates relative to immigrants with legal status. Moreover, immigrants without legal status also report alleged wage and hour violations at considerably higher rates relative to documented workers.[37]

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[33] Among a sample of individuals who received Basic Pilot TNC responses and were surveyed as part of the Temple/Westat study, 28 percent never received job offers from the employer submitting the query, indicating that these applicants were pre-screened (Institute for Survey Research 2002).

[34] Note that current law prohibiting citizenship status discrimination (enforced by OSC) does not prohibit discrimination with respect to terms and conditions of employment. Thus, for example, it may be legal for employers to pay US citizens less than aliens (to dissuade citizens from being employed, leading to more exploitable workforce).

[35] Donato et al. 1992; Massey et al. 2002.

[36] Fletcher et al. 2006.

[37] Mehta et al. 2002.

- A number of federal court cases have upheld employees Fair Labor Standards Act claims against employers who have exploited immigration law to engaged in retaliatory action against employees involved in union activism.[38]

Recommendations

Developing a fair and effective system of status verification and worksite enforcement requires Congress to strike a difficult balance because steps to limit undocumented employment—strengthening verification and enforcement procedures—tend almost inevitably to increase the risks of false negatives, discrimination, and exploitation. *In general the solution is to limit subjective employer discretion by providing employers and employees with clear rules and unambiguous answers during the eligibility verification stage*. Most employers are willing to play by the rules, and their straightforward compliance with the law under these circumstances will prevent the overwhelming majority of undocumented employment. A minority of employers will still attempt to game the system in an effort to hold down wages and working conditions. Thus, even with an effective verification system is in place, stronger enforcement efforts and more punitive penalties for non-compliance are necessary to compel reluctant employers to comply with the law. *Finally, we can predict with a high degree of certainty that an increased threat of enforcement will also lead to defensive hiring, discrimination, and exploitation, so these efforts to prevent undocumented immigration must be accompanied by concrete counter-measures to prevent these unintended consequences.*

Changes at each stage of the verification and enforcement processes would enhance efforts to prevent undocumented employment while guarding against false negatives and other unintended consequences:

Document review process

1) Limit the number of acceptable I-9 documents and insure that all I-9 documents include strong anti-fraud measures. While it is not possible to produce fraud-proof identity cards, requiring that all I-9 documents include basic state-of-the-art security measures like holograms and multi-colored ink will raise the cost of document fraud and make it easier for conscientious employers to identify fake ID's. Restricting acceptable documents to a handful of categories—passports, green cards, DHS-issued employment authorization documents, and state-issued driver's licenses and non-driver identity cards—would further assist employers in making this determination.
2) Regulations governing document verification requirements must make allowances for the difficulties many US citizens, permanent residents, and work-authorized nonimmigrants will encounter in obtaining secure documents—a process which may be prolonged by security requirements related to birth certificates and other original documents. Thus, issuing agencies must be required to issue temporary identification certificates where permanent cards are delayed, and employers must be required to accept temporary cards as interim proof of work eligibility in such circumstances. In addition, citizens should not be penalized for living in states which have reject REAL ID licensing requirements; any secure state-issued license or identity card should be acceptable.

[38] E.g., *Contreras v. Corinthian Vigor Insurance Brokerage, Inc.*, No. C98-2701 SC (N.D.Cal. Oct. 26, 1998); *Singh v. Jutla, et al.*, 214 F. Supp. 2d 1056 (N.D. Cal. 2002).

3) Document review requirements must not require employers to make subjective judgments, which are a burden on conscientious employers and a weapon in the hands of "bad apples." Thus, even though a document-based system will leave in place some risk of document and identity fraud, standards for document verification should continue to require employers simply to confirm that documents reasonably appear on their faces to be genuine and to pertain to the individuals bearing them. Employers should also be required to make a photocopy of the card to document compliance. Employers who comply in good faith with these requirements should be granted a safe harbor from prosecution; such safe harbors minimize the burden on conscientious employers and the risk of defensive hiring.

Expansion of the Basic Pilot or a similar electronic eligibility verification

1) An electronic eligibility verification system eventually should be expanded to cover all employers; but full implementation of the system should be linked to third-party certification that database error rates are less than one percent. Such linkage could be accomplished through a phased implementation with each successive level of participation requiring such a certification, as would be required under the STRIVE Act; or by requiring that the EVS return default confirmations in ambiguous cases until these standards are met, as would have been required under the Senate's Comprehensive Immigration Reform Act of 2006. An advantage to the default confirmation procedure found in S.2611 is that it would protect against wrongful non-confirmations while still allowing USCIS to begin enrolling a larger set of employers in the Basic Pilot program on an expedited basis, building a database for the purpose of future enforcement and increasing employers' and employees' level of comfort with electronic verification requirements.
2) A broader EVS must be accompanied by strong due process protections to guard against remaining false negatives, including opportunities for employees to be notified directly of TNC's and to correct erroneous records, and opportunities to appeal final non-confirmations and receive compensation for lost wages in cases of system or employer errors.
3) Provisions now found in the Basic Pilot Memorandum of Understanding to prevent employer abuse or misuse of EVS screening must be codified as part of EVS law. These changes should be accompanied by employer education about, and enforcement of these and other regulations proscribing unfair immigration-related employment practices (pre-screening of employees, adverse employment practices in response to a TNC, etc.). Penalties for non-compliance with these EVS procedures and other unfair immigration-related employment practices should be increased.
4) An EVS must include a mechanism to detect identity fraud. In the long run this could be accomplished by incorporating biometric data into the verification process, including, for example, by requiring some employers to collect biometric data (e.g., a finger print scan or digital photograph) as part of the verification process. Such a biometric component will require substantial new infrastructure, and will never cover all worksites. Thus, in the short-run, the only realistic strategy for detecting identity fraud is through an analysis of verification patterns to detect cases in which the same names and identification numbers appear "too often." Once participation in an EVS is widespread, the data analysis necessary for detecting identity fraud will not require information sharing between DHS and SSA/IRS as has been proposed in recent House and Senate legislation, though an initial period of limited data sharing will enhance counter-identity fraud measures prior to the time that a significant EVS participation record exists.

5) In the absence of a biometric system for linking cards to their owners, an unintended consequence of increased employer participation in an EVS is likely to be a rise identity theft, a crime already affecting nine million Americans in 2006, at an estimated cost of $56.6 billion.[39] Given existing problems with federal database security,[40] expanded participation in an EVS must also be accompanied by strong measures to protect private data and to prohibit the use of EVS data for purposes other than worksite enforcement.

Oversight and enforcement

1) Substantially increase penalties for non-compliance with verification procedures, targeting "bad apple" employers in particular. Improved verification procedures will allow conscientious employees to comply more effectively with worksite immigration laws, but intentionally non-compliant employers will continue to hire undocumented immigrants unless they are confronted with a realistic risk of detection and punishment.
2) Subcontractors should be held liable for verifying the immigration status of their employees, allowing primary employers to safely delegate these responsibilities in most cases. However, where subcontractors are found to violate immigration law and are cannot be brought to account, responsibility for fines and potential criminal penalties should transfer to the primary employer. While this practice will, in the short run, diminish the efficiency of subcontracting relationships in some industries, such a policy will create a market demand for subcontractor firms providing documented workers.
3) The current system is overwhelmingly focused on detecting and deporting undocumented immigrants, largely to the exclusion of any effort to hold unscrupulous employers accountable. Special units should be dedicated to enforcement against non-compliant employers (rather than undocumented workers), and should target for enforcement a minimum number of worksites—perhaps five percent per year—based on a mix of random and risk-based selection criteria. Placing these special units in the Department of Labor, rather than DHS, and providing undocumented immigrants with whistle-blower protection in cases of labor law violations, would encourage workers to report on employers who hire undocumented immigrants for the purpose of depressing wages and working standards.
4) Employers who fail to comply with fair and reasonable verification requirements should be subject to far higher penalties than currently exist. Intentional employment of undocumented immigrants for the purpose of depressing wages and working conditions should be discouraged by imposing criminal penalties against employers found to be employing undocumented immigrants while also violating related labor laws. Congress should pass legislation overturning or limiting the *Hoffman Plastics* decision so that employers can be held financially liable for labor law violations related to undocumented immigrants.

[39] Privacy Rights Clearinghouse 2007.
[40] See General Accounting Office 2007.

References

Bansak, Cynthia. 2005. "The Differential Wage Impact of the Immigration Reform and Control Act on Latino Ethnic Subgroups." *Social Science Quarterly* 86, 5 (December 2005): 1279-1298.

Borjas, George J., Richard B. Freeman, and Lawrence F. Katz. 1996 . "Searching for the Effects of Immigration on the Labor Market." *The American Economic Review* 86, 2 (May): 246-251.

Brownell, Peter. 2005. "The Declining Enforcement of Employer Sanctions," *Migration Information Source* (September 1). Available at: http://www.migrationinformation.org/Feature/display.cfm?id=332.

Christi, Muzaffar. 1995. "Immigration Law: Its Application in the Workplace." *Human Rights: Journal of the Section of Individual Rights & Responsibilities* 22, 1 (Winter 1995): 18-21.

Cornelius, Wayne A., Takeyuki Tsuda, Philip L. Martin, and James F. Hollifield, eds. 2004. *Controlling Immigration: A Global Perspective* Second Edition. Stanford: Stanford University Press and the Center for Comparative Immigration Studies at the University of California, San Diego.

Dixon, David, and Julia Gelatt. 2005. "Immigration Facts: Immigration Enforcement Spending Since IRCA." Migration Policy Institute Task Force Fact Sheet No. 10 (November) Washington, DC: Migration Policy Institute. Available at: http://www.migrationpolicy.org/TTFIAF/FactSheet_Spending.pdf.

Donato, Katherine M., Jorge Durand, and Douglas S. Massey 1992. "Stemming the Tide? Assessing the Deterrent Effects of the Immigration Reform and Control Act." *Demography* 29: 139-158.

Fletcher, Laurel, Phuong Pham, Eric Stover, Patrick Vinck. 2006. "Rebuilding After Katrina: A Population-Based Study of Labor and Human rights in New Orleans" UC Berkeley Boalt School of Law International Human Rights Clinic and Tulane University Payson Center for International Development and Technology Transfer. Available at: http://www.hrcberkeley.org/download/report_katrina.pdf.

Institute for Survey Research, Temple University and Westat. 2002. *INS Basic Pilot Evaluation Summary Report.* Washington, DC: Institute for Survey Research.

Jernegan, Kevin. 2005. "Eligible to Work: Experiments in Verifying Work Authorization." Migration Policy Institute Task Force Insight #8 (November); Washington, DC: Migration Policy Institute.

Massey, Douglas S., Jorge Durand, and Nolan J. Malone. 2002. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Free Trade*. New York: Russell Sage Foundation.

Mehta, Chirag, Nik Theodore, Iliana Mora, Jennifer Wade. 2002. "Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions." University of Illinois at Chicago Center for Urban Economic Development. Available at: http://www.uic.edu/cuppa/uicued/Publications/RECENT/undoc_full.pdf.

Privacy Rights Clearinghouse. 2007. "How Many Identity Theft Victims Are There? What Is the Impact on Victims?" Available at http://www.privacyrights.org/ar/idtheftsurveys.htm.

Raphael, Stephen. 2001. "Immigration Reform and the Earnings of Latino Workers: Do Employer Sanctions Cause Discrimination?" *Industrial and Labor Relations Review* (January).

Rosenblum, Marc R. 2005. "Immigration Enforcement at the Worksite: Making it Work." Washington, DC: Migration Policy Institute. Policy Brief #6 (November).

US Commission on Immigration Reform. 1997. *Becoming an American: Immigration and Immigrant Policy*. Washington DC: US GPO.

US General Accounting Office. 1990. *Immigration Reform: Employer Sanctions and the Question of Discrimination* GAO/GGD 90-62. Washington, DC: US GAO.

_____. 2006a. *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts* GAO 06-895T. Washington, DC: US Government Printing Office.

_____ 2006b. *Immigration Benefits: Additional Efforts Needed to Help Ensure Alien Files Are Located When Needed* GAO 07-85. Washington, DC: US GAO.

_____. 2007. *Homeland Security: Continuing Attention to Privacy Concerns is Needed as Programs Are Developed* GAO 07-630T. Washington, DC: US GAO.

US Citizenship and Immigration Service. 2004. *Report to Congress on the Basic Pilot Program.* Washington, DC: USCIS.

US Social Security Administration. 2006. *Congressional Response Report: Accuracy of the Social Security Administration's Numident File* A-08-06-26100. Washington, DC: Social Security Administration Office of the Inspector General.

Ms. LOFGREN. Thank you very much. Very helpful from all of you.

I will begin the questions.

Mr. Shandley, thank you for coming in voluntarily to give us your perspective. You have suggested that ICE's behavior with respect to action against Swift, have been problematic. I am wondering, I mean, in your written testimony you say that Swift lost more than $30 million as a consequences of this raid.

Could you talk about what steps ICE took or didn't take that they should have taken, in your judgment, to deal with the situation you found and the financial ramifications for your business?

Mr. SHANDLEY. I would address from this way, Madam: It is what they didn't take.

We repeatedly, through various avenues, including attempts at direct contact, to work with them in a collaborative format. And ultimately, you know, if they are looking for criminals, we volunteered to help them. We said we would move heaven and earth to get to those criminals and do everything we can.

At the end of the day, they raided our facilities and basically detained thousands of employees to get at the 1,282, of which only a few hundred actually had criminal issues associated, and that was well documented in the press.

So at the end of the day, I think it could have been a far more collaborative effort in its process without having to shut down our operations in what we would consider to be—well, it was an unprecedented manner.

Ms. LOFGREN. I am wondering, Mr. Yale-Loehr, you talked a little bit about the need to phase in a system over time, and as we think about a biometric system, too often we don't think about the database that is needed to support that system.

But we really actually have to make this work for every employee in America, which is a lot of people. And I think about standing in the line—which I don't much care for. I am pretty sure that our American citizen constituents are not going to be very happy about that. Everybody thinks this will apply to somebody else.

What do you envision in terms of phase-in to make this actually work in a way that will be seamless for the United States citizens who are impacted?

Mr. YALE-LOEHR. Because it is such a large problem, we do need to phase it in over time. We probably need to have checkpoints at each step of the process so that we know that there is an accuracy rate that we can live with before we move on to the next step of the process.

For that reason, it may take even a decade before we get to a system that we all can agree on that meets certain fundamental requirements of speed, accuracy, privacy considerations, and non-discrimination. I don't have a specific timetable in mind.

Hopefully, if this could be done well, it would not necessarily be an actual line but it would be more of a virtual line in that you present your documents to the employer and they can find out very quickly by dialing or using the Internet the answer that they need.

But there are going to be some costs to U.S. citizens and the question is what is the price of that versus getting control over knowing who our workers are.

Ms. LOFGREN. Dr. Rosenblum, you are an expert on these technology issues and I appreciate very much your willingness to be here.

Some people say if every employer had the ability to just do a card swipe like we do at the checkout stand, that that would solve our problems. It seems to me that although that kind of a system might eliminate some errors, that is really not going to solve the whole thing.

Can you talk about the biometric needs as opposed to where we are on databases and what needs to be done?

Mr. ROSENBLUM. Thank you.

Well, you are certainly correct. Simply adding a card swipe to the current system would not solve all our problems. And the main reason is that the card swipe doesn't tell you anything about who is doing the card swiping. So we still have the same identity fraud problem that we have now.

Ultimately, the only way that we are going to—there are two ways that we can conceivably address identity fraud, and one is through some kind of a biometric database.

And when we think about a biometric database, one option—what that requires is, ultimately, for every U.S. citizen to submit biometric data, a digital photograph or fingerprint, to DHS, and so there would be an enrollment period where everybody would submit that data.

One option then is that we would have something like the photo screening tool that Ms. Ratliff was describing earlier, where the employer would see a picture of what that person is supposed to look like and then could make a judgment about whether that person was in fact in front of them.

So I would submit that this would essentially address the problem for conscientious employers. Most conscientious employers could make a judgment. I mean, you would still have some false negatives as a result and some discriminatory outcomes.

The only way that you would really decisively confirm the identity fraud issue is to take biometric data at the point of hire. So to have either fingerprint scanning or some kind of digital image scanning when employees get their jobs, and this is a massive infrastructure investment and a massive shift in how we think about relations between the States and individuals and their employers.

The one thing that we should bear in mind when we think about the cost of that is that ultimately we have to choose between front-loading the cost by building some kind of a biometric database and having problems like what we have seen in the Swift case, back-loading the cost. We are either going to make a lot of mistakes in enforcement and have employers who comply but nonetheless hire undocumented immigrants, or we are going to have to make this investment in some sort of biometric database.

Ms. LOFGREN. My time is expired, but I will just note that compared to the $30 million Swift company lost on this raid, they probably wouldn't have minded to spend a small amount to enroll their employees.

But I would yield now to Mr. King for the 5 minutes.

Mr. KING. Thank you, Mr. Rosenblum.

And thank you, Madam Chair.

I thank all the witnesses.

A point that I didn't hear emphasized, Mr. Rosenblum, is that 99.8 percent of U.S. citizens are approved in the first attempt to pass Basic Pilot. And would you agree that U.S. citizens should be our first priority if we are going to clean up this database and work our way through this process until we get it all right?

Mr. ROSENBLUM. As long as there are these—the problem with—certainly I think that, you know, your first concern is to your constituents, U.S. citizens. As long as the system has these large, systematic errors, then we are going to end up with mistakes and we are going to have problems like the Swift case.

Mr. KING. Are there distinctions between the rights of U.S. citizens and the rights of, I will say, visa holders and legal workers here in the United States?

Mr. ROSENBLUM. Certainly, there are.

Mr. KING. And you would acknowledge that we would have a priority to set here in this Congress, would you not? Do you just prefer not to make that philosophically yourself?

Mr. ROSENBLUM. I don't have a problem with Members of Congress making that distinction, and I recognize that there are differences in the rights of citizens versus non-citizens.

My concern is that until we have a verification system that is accurate and reliable and employers are making judgments, as you commented before, then we are going to end up with a lot of mistakes and we are going to end up with employers continuing to comply with the law and still hiring undocumented immigrants.

Mr. KING. Okay. Thank you.

On Page 14 of your testimony, you state that a minority of the employers will still attempt to game the system. And you also address that we need to address both the contentious and the unscrupulous employers.

Do you have any reference that I have missed in unscrupulous employees? And what percentage of the employees would you suspect are unscrupulous?

Mr. ROSENBLUM. Well, all of the undocumented ones are attempting to break our law. I would agree with that.

Mr. KING. Thank you. A well-stated point, and I appreciate that.

Turning to Mr. Yale-Loehr, how would you suggest Congress determine the number and type of needed workers? Would you put a cap on that? Listening to some of your testimony, I didn't get that sense that you would.

Mr. YALE-LOEHR. I think that is a large issue, and I think it needs to be considered carefully.

There have been various proposals about how to handle any temporary worker program. The Migration Policy Institute, for example, convened a task force of experts last year and came out with some very good recommendations on how to deal with the temporary worker program, generally.

I think there has to be collaboration between the government and employers to be able to figure out what the true labor shortages are, and I think some kind of advisory panel to say that we

have a labor shortage in this industry this year, therefore we need workers, would be one way to deal with it.

So I don't know that we need to have a fixed cap. I think that we have seen in other areas of immigration law, like the H-1B area, that fixed caps do not work. On the other hand, I am not for open borders where anybody can just cross the borders.

Mr. KING. I just happened to notice that in your written testimony it says that we need a temporary worker program large enough to allow most foreign workers to enter the United States legally. And in your verbal testimony, your statement was large enough to accommodate our labor shortages.

What criteria would you use? Would you let the market demand determine, as long as there was a willing employer and a willing employee? Doesn't that connote that we are then a Nation that is an economic Nation, a Nation of opportunity, a giant ATM, rather than a Nation of people that has a soul and a heart and a culture and interests beyond those of an employer that is willing to hire an employee regardless of the price of that wage?

Mr. YALE-LOEHR. Well, I think President Bush has said that he wants to match willing workers with willing employers, and I think——

Mr. KING. You concur?

Mr. YALE-LOEHR [continuing]. That as long as we do that carefully, I think that is an appropriate way for Congress to act.

Mr. KING. You would make the economic decision only, then. You wouldn't consider the cultural implications that I have mentioned.

Mr. YALE-LOEHR. I think those are one factor, but I think immigration generally is healthy in the United States. So I think that has helped our culture over time.

Mr. KING. How would you measure that?

Mr. YALE-LOEHR. I think that is very hard to measure. I don't have a way to put that into a concrete system.

Mr. KING. Thank you.

Mr. Shandley, I want to say first off, as the Member of Congress who represents the number-one pork production district in America, we appreciate Swift & Company. You provide a fantastic market for our producers there. And whatever we discuss with regard to immigration has no implication upon the character or the efficiency or the people whatsoever. And I want to thank you for providing that market. That has been an interest of mine as well.

I wanted to ask you—and you have gone through quite a lot since last December, and I have watched it closely since Worthington, Minnesota, is to my north and Marshalltown, Iowa, is just to my east. We pay attention. Also, Grand Island, Nebraska, to my west.

Have your competitors undergone the same scrutiny that Swift & Company has?

Mr. SHANDLEY. To our knowledge, no.

Mr. KING. Do you consider that to be a disadvantage now to you competitively? Or there is another way to phrase that around the other way. Do your competitors have an advantage that you don't have because they have not undergone the same scrutiny?

Mr. SHANDLEY. We believe that is the case, both at the customer level as well as at the employment level.

Mr. KING. Have you made the case to ICE or to Justice that you have been now put with a spotlight on you in the Nation and it puts you at a competitive disadvantage?

Mr. SHANDLEY. We have made that case to anybody that will listen, including ICE.

Mr. KING. Then I assume you welcome that question, as well, and appreciate that.

In the past, is there a history of INS or ICE raids with Swift that have gone on in previous year? How many times has this happened?

Mr. SHANDLEY. You know, the industry has gone through raids. The most recent part of that was in the late 1990's. And Swift & Company in Nebraska had facilities in Nebraska when those raids occurred.

Mr. KING. Thank you, Mr. Shandley.

Appreciate all your testimony.

Thank you, Madam Chair. I yield back.

Ms. LOFGREN. Thank you very much.

I now recognize the gentleman from California, Mr. Berman, for his questions.

Mr. BERMAN. My first one really isn't so much about employers, but I do hope to be able to get into that. It is this willing employer/willing worker. The fact is, scarcity or shortage is a way by which workers can increase what they get paid or get better conditions. That is the marketplace.

In a universe where you decide the number of guest workers by a willing employer/willing worker standard, for all intents and purposes, you remove that friction or that scarcity because there is somebody in Bangladesh who will do it.

Now, you have minimum wage laws, but now you are essentially condemning lots of workers to being at the legal bottom and I just want to make that observation, without getting into——

Mr. YALE-LOEHR. If I could respond to that, if you don't mind.

I certainly believe we have to have full enforcement of all of our labor protections and I agree entirely with Dr. Rosenblum's comments in his written testimony, that we need to, for example, repeat Hoffman Plastics. We need to have a lot more vigorous labor protection so that immigrant workers, as well as U.S. workers, get the full protection of our labor laws.

Mr. BERMAN. I agree with that very strongly, but that doesn't really deal with the underlying point, that the minimum labor protections, even if strongly enforced, are not necessarily what—at some point, that farm worker who has been there 10 years has some expectation of getting more than the minimum wage in a willing employer/wiling worker universe, somebody is quite willing to take his or he job for the minimum wage.

But anyway, there is a—even in my own mind, there is a tension here. I do think we need a legal avenue for people to come in and perform jobs. How expansive it is, to what extent it should be capped, and what the tests for industries or jobs that are eligible for those folks are is a tougher question.

On the verification, I guess, Dr. Rosenblum, since the Chair introduced you as an expert on the technologies, you essentially described the most fulsome kind of system and the most effective sys-

tem, the system that will avoid the Swift problem, most likely, as a fairly intrusive system with a great deal of forward-funding for infrastructure.

The government is going to essentially—or employers are going to underwrite equipment and communication systems that give quick and accurate answers very quickly. I don't think this thing works without that. I think otherwise we have some sort of repeat of 1986 again.

What can we do to take that element, which you made a brief reference to—changing the whole nature of questions of privacy and individual liberty and misuse of information. Can we both make the investment and decide to implement as effectively and quickly as possible that kind of system, and at the same time safeguard and limit the change in the nature of those relationships such that concerns about misuse of information can be alleviated to the greatest extent possible?

Mr. ROSENBLUM. I think that is exactly the right question, and the record so far, including the Federal Government's record in protecting private data, doesn't give us a lot of reasons to be confident that we can——

Mr. BERMAN. Well, let me interject.

One area that I was particularly focused on, in the 1986 law, one of the arguments against the legalization program was people will come forward to get legalized, if they didn't qualify they will be turned over to enforcement and they will be immediately deported. I am unaware of a single—we put in prohibitions on that kind of sharing—and I am unaware of one instance where that actually happened.

Why can't you create firewalls and limitations on the use of information that by and large will be effectively maintained and enforced and thereby protect——

Mr. ROSENBLUM. I think the reason it is challenging to protect that data is that, as we invest the data with a lot of importance in the context of this system, we create a market for it. So there will be people who, you know, will seek to obtain it, and so the more valuable it is, the more vulnerable it is.

I think that there are ways to phase in this system, even before we assemble the complete biometric database that is such a threat in the ways that you just observed, by relying on sort of data-mining strategies to look for probable cases of noncompliance.

In doing that, we will end up targeting employers who intend to comply but aren't able to do so successfully. But to my knowledge and in my estimation, there is no way to come up with a truly foolproof verification system without building this database and building that database is inherently a threat to our privacy and inherently restructures our relationship with the State and with employers.

So I think that Congress should certainly invest a lot of time and energy in doing what you can to safeguard that data and to try to limit it to the purposes of employment verification and both the Strive Act and last year's Senate S.2611 have some very sensible provisions that way, but I think that we should go into it with our eyes open and recognize that those protections are going to be imperfect.

Ms. LOFGREN. The gentleman's time is expired.

The gentlelady from California, Ms. Sanchez, is recognized.

Ms. SANCHEZ. Thank you.

Mr. Yale-Loehr, you mentioned that Congress didn't terminate employer sanctions following a 1990 GAO report that showed sanctions have created a serious pattern of discrimination. You also note that over time it has become clear that employer sanctions aren't working effectively and I think in your written testimony you said that in the end, fraud and discrimination took over the system.

Can you explain a little bit how fraud and discrimination took over that system?

Mr. YALE-LOEHR. Well, I think, as I mentioned in my testimony, as it became clear that the immigration agency was not effectively enforcing employer sanctions, employers decided they didn't really have to worry about it, and they were more willing to take fake documents.

Similarly, particularly back in the 1980's, it was easy to obtain fake documents. We didn't have the same kind of counterfeit resistant documents that we do today. So it was easy for fraudulent documents to flood the market. So that is why employer sanctions gradually came to be seen as a joke.

Ms. SANCHEZ. Do you know what percentage of employers ever got investigated or fined?

Mr. YALE-LOEHR. Yes. There are some statistics in my testimony as well, and Dr. Rosenblum's testimony. I don't recall what the overall percentage of U.S. employers is, however.

Ms. SANCHEZ. So you don't think employer sanctions was an effective deterrent in that regard?

Mr. YALE-LOEHR. In part because we didn't have consistent enforcement.

In 1999, Immigration and Naturalization Service made worksite enforcement the lowest of its five investigatory priorities. So with that kind of background, it is hard for any system to be effective.

Ms. SANCHEZ. We hear terms all the time, the cost of doing business, the businesses take the risk because what they save in terms of wages that they have to pay far exceeds their risk for enforcement of being caught employing people that they shouldn't be employing and paying whatever minimal fines at the end of the day end up being assessed.

What recommendations do you have for protecting against discriminatory hiring practices?

Mr. YALE-LOEHR. I think we have some decent provisions in current law. We also have expansions of that proposed in the Strive Act that I think are worth considering.

I also think we need to give more money to the Office of Special Counsel and the Department of Justice so they can go out and enforce those laws.

Ms. SANCHEZ. And any suggestions on how we could protect against the fraudulent aspects of verification?

Mr. YALE-LOEHR. I think Dr. Rosenblum has expressed the fact that it is hard to make sure that the person who presents the documents really is the person who belongs to those documents, and that is a large challenge that we all have to face.

Ms. SANCHEZ. Okay.

Mr. Rosenblum, in your written testimony, you discuss at length the problem of false negatives and how they can adversely effect even United States citizens.

In your opinion, when the Basic Pilot program or any new system is built, who should compensate work eligible citizens who are wrongly denied the right to work by DHS data errors or by bureaucratic errors?

Mr. ROSENBLUM. Well, certainly, if the errors are on the part of DHS and the government database, then I would see it as the government's responsibility to compensate the workers for those lost wages, both the Strive Act and last year's Senate bill had provisions for that.

Ms. SANCHEZ. Okay, great. Thank you.

I have no further questions. I yield back my time.

Ms. LOFGREN. Thank you.

The gentlelady yields back.

We have been joined by the Chairman of the full Committee, Mr. Conyers, who advises me he wishes to put his opening statement in the record but does have questions.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

As we heard during the course of last week's two hearings, prior immigration reform efforts—especially the 1996 reforms—sought to substantially toughen enforcement of our immigration laws, but their implementation has been virtually nonexistent. Nowhere is this better illustrated than our broken worksite enforcement system.

After years of utter neglect, the Administration has just recently stepped up its worksite enforcement efforts. This increased flurry of activity comes at about the same time that the Administration is calling for long-term immigration solutions and the normalization of undocumented workers.

These recent large-scale raids at various businesses across the Nation, however, reveal massive problems with our current worksite enforcement system.

First, worksite enforcement should not be a used as a tool of retaliation—whether in response to formal organizing activities or as a way to punish individual employees who demand their rights as workers. Such retaliatory actions are an abuse of the legal process. Such misuse of our limited enforcement resources is unfair not only to the workers and their representatives, but to the federal immigration agents who must conduct these enforcement efforts. Worksite enforcement should not be used to profit unscrupulous employers.

Second, employers should be able to rely—in good faith—on an employment verification system, such as under the Basic Pilot program. Such voluntary participation should be rewarded, not punished. We must ensure that businesses that participate in a verification process do not instead end up as targets of that very system as a result of their participation.

Third, many of these worksite enforcement actions have caused humanitarian crises in their wake. As we know, many undocumented workers belong to blended families, often comprised of legitimate immigrants and American citizens. In the course of several recent worksite enforcement raids, however, many of these families were torn apart. Children were abruptly separated from their parents who had no means to communicate with their children or to make alternative care arrangements. These children were unexpectedly stranded or left to fend for themselves while their parents were detained.

If we are to achieve a controlled, orderly, and fair immigration system, we must look at the flaws in the current system. Yes, enforcement is important. But so are people and the communities in which they live. The enforcement regime can be fixed. It must be fixed.

We must keep that in mind as we move forward on comprehensive immigration reform.

Ms. LOFGREN. Welcome, Mr. Conyers.

Mr. CONYERS. Thank you, Madam Chairman and my dear friend.

We are happy that this is the third hearing trying to examine how we got to where we are from the 1996 reforms.

But we had enforcement, tough enforcement, but there was no implementation. Now we are looking at broken worksite enforcement systems.

And, Mr. Shandley, I just want to try to capsulize your testimony about the company, the union, that represents your workers and how you have addressed the needs of this vulnerable population. What do you suggest employers do to avoid the fix that you ended up in, trying to cooperate?

Mr. SHANDLEY. Well, I don't know if an employer can, that has the power—especially an employer like Swift, who has complied with the laws of the land. And ultimately we do believe that it is immigration reform.

We focus on the documents, not on the individuals, when we hire, and the key is that the quality of the documents and do they relatively or reasonably relate to the individual in front of us. And the testimony that is at hand would go a long way toward helping employers continue to abide by the laws of the land.

Mr. CONYERS. I am glad to see that you don't have a chip on your shoulder and you don't bring a bad attitude to this hearing. We were thinking that you would been put in a pretty awkward place through the selective enforcement of these worksite requirements.

Should I sleep better in my bed at night knowing that it wasn't as bad as we were hearing that it was?

Mr. SHANDLEY. No, sir. Absolutely not. The chip is just deep inside right now. [Laughter.]

Mr. CONYERS. Well, thank you very much.

I just wanted to, on the record, commend you and the representative of your workers in the collective bargaining system for the work you are doing. And we would invite you to follow along with us as we try to shape a whole new approach in immigration legislation that minimizes what happened to you.

Because, otherwise, let us face it, what is the point if you are going to get busted for trying to comply and comport with the law? And that is the spirit that I bring to this Committee, and I certainly admire your spirit to come and testify before us.

Thank you, Madam Chairman.

Mr. SHANDLEY. Put us at the head of the line on cooperation.

Ms. LOFGREN. Will do.

I would like to recognize now the gentlelady from Texas for 5 minutes.

Ms. JACKSON LEE. Good afternoon.

Let me thank the Chairwoman and the Chairman of the full Committee and the Ranking Member. This is an instructive way of creating what I call a pathway to a sensible response to our immigration crisis.

Let me characterize what many have described as government officials doing their job and, might I say, that the line officers on the ground, the ICE officers on the ground, are to be commended for their service. They are obviously being instructed on the basis of

policy and on the basis of believing that they are correcting the crisis in the immigration structure in the United States.

I claim it to be a reign of terror, because it does not create order. It does not create adherence to the law. It creates chaos and confusion.

I come from Houston, Texas. Any number of times I will tell you of the panic that runs through the community when rumor has it that apartment buildings will be raided, that jobsites will be raided. Nothing constructive comes out of it. And as you have your meatpacking responsibilities, we happen to have an energized construction effort.

Now, I would make the argument that there are wide numbers of Americans that can be employed and we know together we are going to make an effort to ensure that happens. But we also know that there are many times jobs going longing, wanting, and there are employers, even though we have been faulty in enforcement, there are employers who simply ask, such as my construction industry, give me a system, let me follow an adequate system and I will comply.

So we failed on two ends. One, whether or not this Pilot program is even effective, one because there are inaccuracies, wrong names. It makes it very difficult and we don't know if it works, and I understand the witness said hundreds of millions of dollars for it to work.

So I am going to start with Dr. Rosenblum, whose experience I think started on the Senate side. Would a more corrected system of identification, of who is here, accurate, orderly system of documentation, something like we are trying to frame as we move forward in comprehensive immigration reform—several bills, as you know, have been filed. The Senate is still looking. But the concept is to find order where there is disorder and chaos.

Would that begin to build a serious employer verification program?

Mr. ROSENBLUM. Certainly, knowing who is here, bringing people out of the shadows, but also knowing, building a database, a reliable database of U.S. Citizens as well, because it is the same database, because when an employer is checking an employee's status, the employer doesn't know. So the database has to have access to both U.S. citizen data and immigrant data.

Ms. JACKSON LEE. That is interesting.

Mr. ROSENBLUM. And that is absolutely the critical step in any kind of employment verification process, is to verify somebody's work eligibility. So without that, we can't possibly do it properly.

Ms. JACKSON LEE. And any efforts to merge a system that has citizens and non-citizens or undocumented would be at least a step going in a corrective direction.

Mr. ROSENBLUM. There has been a lot of focus on the interoperability of the FSA and the DHS databases. Currently, what happens is that Basic Pilot basically queries both databases. It is a system of systems system. And database experts don't really consider that particularly problematic. It is not ideal, but that is not really where the problem is.

The problem is that both of these databases have lots of errors in them.

Ms. JACKSON LEE. Clean it up.

Mr. ROSENBLUM. Clean them up. And the real challenge is that ultimately the only way we can clean them up is to query them, is to have people go through the system. So we won't really know until we start enrolling people.

And so what the Senate bill conceived last year was to go ahead and start that query process, but to not non-confirm people until we are sure that we have got all those errors fixed and so to do the query and give people the opportunity to clear up their records, but to not fully turn on the enforcement until we have done that enrollment through the program.

Ms. JACKSON LEE. John Shandley, thank you very much. There is only one employer, I believe, sitting here, so we are going to put the heavy burden of employers on you.

Are you coming to this Committee complaining that you don't want to be part of a process of verification or are you asking for relief in the instance of a corrected list, a list that works, error-free list? What are you saying about employer compliance with knowing who they are employing?

Mr. SHANDLEY. Swift wants to be part of the solution, and the solution requires a whole systematic fix, both in the databases as well as the processes, ultimately down to how does the U.S. allow people to come into the U.S. to work.

But, you know, we are not here to complain. We feel that we were unfairly treated, especially for somebody who complies with all of the laws. But, you know, that is water under the bridge.

What we do have to do as an employer going forward, we do have to find a system of which we have the confidence that the government looks at and we look at in the same light, that is truly accurate and workable from a legal standpoint.

Ms. JACKSON LEE. Madam Chairperson, I know the time is out, but I just simply want to make the statement on the record. For some reason, it has been given to the public that those of us who believe in comprehensive immigration reform are running away from legal structure. Employer verification is one. It is a very sensitive issue.

I would like to be on the record that I am not running away from it, but I think that you cannot have employer verification that works without a system that documents those who are undocumented and a fair system of immigration reform.

With that, I thank you, and I yield back.

And I thank the witnesses for their testimony.

Ms. LOFGREN. Thank you very much.

Thanks to all of the witnesses for their testimony today.

Without objection, Members will be given 5 legislative days to submit any additional written questions to these witnesses as well as the first panel. And we ask that witnesses answer questions as promptly as they can so that the answers can be made part of the record.

And, without objection, the record will remain open for 5 legislative days for the submission of any other additional material.

I think this hearing today has helped to illuminate numerous issues about the Nation's employment verification and worksite en-

forcement system. It has been very helpful to me, and I think it will be helpful to the Congress as we move forward.

Somebody asked me earlier what are we doing with these hearings, and I said we have a secret plan to be well-informed when we actually take action.

So to that end, our next hearing is planned for 9:30, Thursday morning, in the room downstairs, 2141. That will be potential solutions to some of the issues that have been outlined here today.

We are aware that we lost our dear colleague, Juanita Millender-McDonald. The funeral arrangements are being made. If the funeral for Juanita conflicts, our hearing will be postponed to the following week. Otherwise, we will proceed at 9:30.

And, again, thank you so very much for taking your time to help the Congress on this very important questions.

This meeting is adjourned.

[Whereupon, at 12:46 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

LETTER FROM JONATHAN R. SCHARFEN, DEPUTY DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY TO THE HONORABLE JOHN CONYERS, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY

U. S. Department of Homeland Security
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

CO 703.831

The Honorable John Conyers, Jr.
Chairman
Committee on Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
U.S. House of Representatives
Washington, DC 20515

MAY 8 2007

Dear Chairman Conyers:

I am pleased to have had the opportunity to testify before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law on the Employment Eligibility Verification (EEV) system administered by U. S. Citizenship and Immigration Services (USCIS). I appreciated your participation as the hearing provided an excellent venue to discuss this important system.

As I stated during the hearing, I believe both Congress and USCIS share the common goal of supporting United States employers in their efforts to hire legal workers, and the EEV system provides businesses with an essential tool to support that endeavor. In addition to streamlining employer registration, working to address mismatch issues, and improving data sources, USCIS recently launched an initiative to combat identify fraud – a photo tool that allows employers to make a visual match between the employee, the photo provided on the worker's identification card, and the photo on file in the EEV database. Lastly, to discourage employer abuse and ensure accountability, USCIS recently established a monitoring and compliance unit to analyze trend data and detect potential fraud and discrimination. Each of these enhancements have made the EEV system more efficient, accurate and able to support employers seeking to comply with United States immigration laws, a key component of comprehensive immigration reform.

Thank you again for the opportunity to appear before the Subcommittee. Please be assured that USCIS is committed to the continued improvement and expansion of the EEV system, and that the agency is prepared to provide the resources necessary to ensure its proper operation if proposals to phase in a mandatory national verification program are implemented. I look forward to working closely with you on the broader immigration issues currently facing our nation as well as our continuing efforts to strengthen and expand EEV in the future. Please contact me if I can be of further assistance.

Sincerely,

Jock Scharfen

Jonathan "Jock" Scharfen
Deputy Director

INS BASIC PILOT EVALUATION SUMMARY REPORT SUBMITTED TO THE U.S. DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE, PREPARED BY THE INSTITUTE FOR SURVEY RESEARCH, TEMPLE UNIVERSITY, AND WESTAT ON JANUARY 29, 2002

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

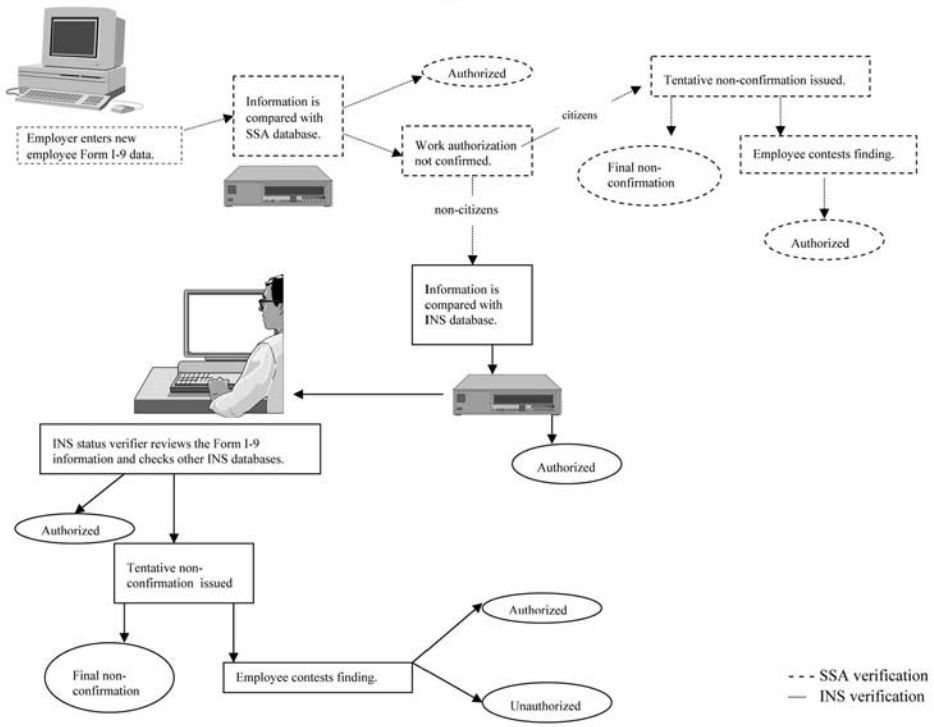
Employers wishing to participate in the Basic Pilot sign a Memorandum of Understanding (MOU) with INS and SSA promising to follow all pilot procedures. INS sends the employer the system software, manuals, and other materials needed to use the pilot program.

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

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[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 x (number of respondents)/(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

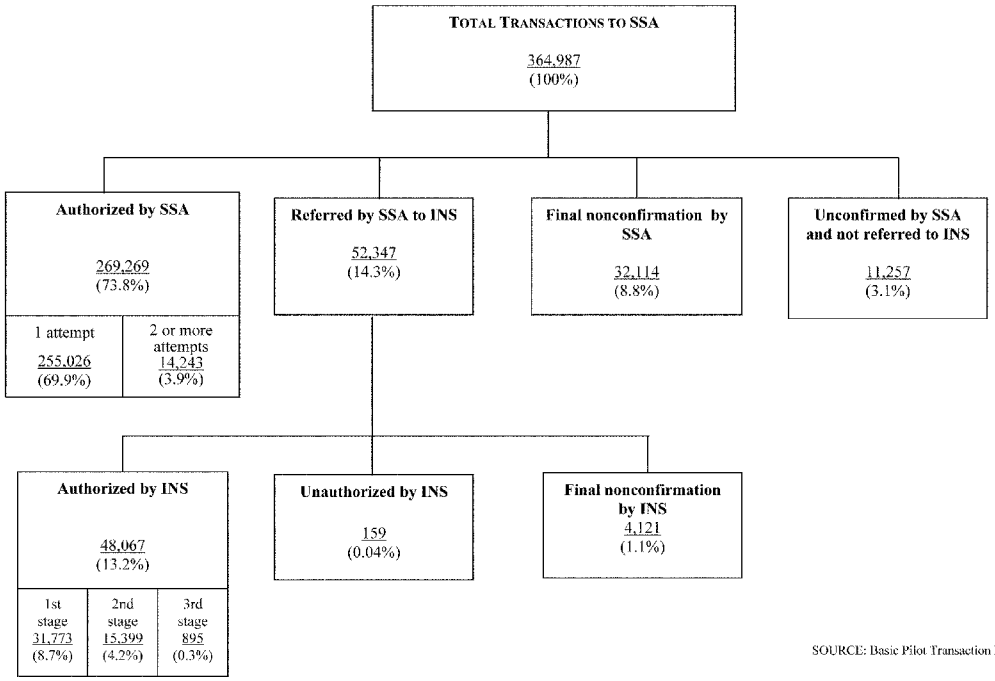
Since the Basic Pilot compares employee information with Federal database information, it would be expected to be better at deterring the employment of persons who present fraudulent documents and who make false claims to U.S. citizenship than the I-9 paper verification process alone. However, since 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.

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[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 east 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.

INTERIM FINDINGS OF THE WEB-BASED BASIC PILOT EVALUATION SUBMITTED TO THE U.S. DEPARTMENT OF HOMELAND SECURITY, PREPARED BY WESTAT IN DECEMBER 2006, AND ACCOMPANYING LETTER FROM JONATHAN R. SCHARFEN, DEPUTY DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY TO THE HONORABLE ZOE LOFGREN, CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

U. S. Department of Homeland Security
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

CO 703.3011

JUN 15 2007

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Madam Chairwoman:

Thank you for giving me the opportunity to testify April 24, 2007, before the House Immigration Subcommittee on behalf of U.S. Citizenship and Immigration Services (USCIS) on employment eligibility verification. During that hearing a copy of the interim report on the independent Basic Pilot evaluation was requested. I apologize for the delay in delivering this report to you. This interim report was created to guide internal work to improve the Basic Pilot as it was being rapidly expanded. It also forms the foundation for the final report, which we expect to release later this summer. The final report will include additional analyses of the data sources discussed in the interim report as well as some new data sources.

I am pleased to send you a copy of the December 2006 *Interim Findings of the Web-Based Basic Pilot Evaluation*. The interim evaluation included Web surveys of over 1,000 employers and detailed case studies of five employers and some of their employees. It also includes analyses of data on verification outcomes from the Web-Based Basic Pilot system.

I have also enclosed a summary of the actions USCIS has taken to date to address the recommendations made in the interim report. You will see that we have made considerable progress since the last major report to Congress, which was submitted in 2002. The Basic Pilot is now able to instantly verify 92 percent of all queries, compared with the 79 percent reported in the 2002 Report. The news is particularly good for work authorized employees. Overall, 99.3 percent of all queries of employees who are eligible to work legally in the United States are found to be work authorized through the Basic Pilot system.

The Honorable Zoe Lofgren
Page 2

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Congressional Relations at (202) 272-1940.

Sincerely,

Jonathan Scharfen
Deputy Director

Enclosures

cc: The Honorable Linda Sanchez
The Honorable Steve King, Ranking Member

Chairwoman Lofgren,
The Director and I appreciate the close working relationship we have with your subcommittee staff and you. We're looking forward to our discussions with the Stanford faculty.
Respectfully,
Jack

USCIS Action on Evaluation Recommendations for Improving the Web Basic Pilot (EEV) Program

USCIS and SSA need to address the unacceptably high tentative nonconfirmation rate for foreign-born U.S. citizens.

USCIS is working with SSA on a three-phased plan to reduce the erroneous tentative nonconfirmation rate for naturalized citizens. First, we are working on a systems change so that prior to SSA tentative nonconfirmations issuance, the Electronic Employment Verification (EEV) system will take the naturalized citizen's verification request and check it against the USCIS database of naturalized citizens. This will significantly decrease the erroneous tentative nonconfirmations of naturalized citizens. Second, we are working on altering the SSA tentative nonconfirmation notice to include an option for naturalized citizens to call USCIS to correct the record. This will save the employee time, since they would otherwise have to physically go to a local SSA office. Finally, we are working with SSA on the feasibility of allowing USCIS to update the SSA database with a constant feed of information on newly naturalized citizens. This would allow SSA to have the same information on naturalized citizens that USCIS has.

USCIS should continue recent and proposed efforts to explore options for using the transaction database to identify employers that are not properly following Basic Pilot procedures.

USCIS has established EEV Monitoring and Compliance Units that will identify and provide corrective action to employers who are not properly following Basic Pilot procedures and will also provide referrals to Immigration and Customs Enforcement (ICE) and the Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) for employers who egregiously misuse the Basic Pilot system. Both units are currently staffing up and are beginning to develop standard operating procedures for specific functionalities. They are also developing system enhancements to support the reporting requirements of the functionalities and establishing liaisons with ICE, OSC and other essential partners to achieve our monitoring and compliance goals.

USCIS should establish guidelines for employers that provide specific time frames for notifying employees of tentative nonconfirmations and for terminating employees.

USCIS is currently updating the Basic Pilot User Manual and Tutorial to include more instruction on timeframes for notifying employees of tentative nonconfirmations. The time-frame currently suggested when an employer asks USCIS for instruction on this issue is 3 to 5 days. USCIS is also looking into what time frames should be established for terminating employees after receipt of a final nonconfirmation.

SSA should institute a process through which tentative nonconfirmations resulting from SSA mismatches are controlled through an automated system similar to that which USCIS uses.

USCIS is currently working with SSA to develop and deploy the SSA Basic Pilot Automated Secondary Verification System, which would be accessible to every employee in SSA field offices. The SSA Basic Pilot Automated Secondary Verification System is similar to the Status Verification System used by USCIS Immigration Status Verifiers to handle cases that are referred for manual processing. The implementation of an automated SSA secondary verification process will further reduce processing time by allowing SSA field office staff to update and communicate the status of tentative nonconfirmation cases directly to the employer. Currently, SSA field offices can not communicate with the employer electronically, and the system relies on employees carrying paper notices back to their employers.

Additional changes should be made to the tutorial to further improve its effectiveness.

USCIS is currently revising the Basic Pilot Tutorial and User Manual using new features to enhance instruction and learning, as well as including new sections on anti-discrimination and system security.

The Web Basic Pilot System should be modified to further enhance its user-friendliness.

USCIS is currently revising all aspects of the Web Basic Pilot to enhance user-friendliness. One way USCIS has enhanced user friendliness is through the use of a "Wizard" during the electronic registration process, which helps the registrant select the type(s) of access method that is best suited for their verification use. Other user friendly enhancements that are currently in production include an electronic acknowledgement for Basic Pilot and Designated Agent Memorandums of Understanding and updated helper text that is easier to access.

USCIS also has additional projects scheduled that will enhance user friendliness and further reduce unnecessary burdens on employers, including:

- Translating the Tentative Nonconfirmation Notices, Referral Letters and Poster into additional languages,
- Developing and deploying the SSA Basic Pilot Automated Secondary Verification System, and
- Re-engineering the verification process so that naturalized citizen information can be verified by DHS prior to issuing an SSA tentative nonconfirmation.

The transaction database should be modified to capture additional information needed for evaluation and monitoring.

As stated above, USCIS is currently staffing their monitoring and compliance units. These units will be making decisions on how to modify the system to capture additional information needed for evaluation and monitoring. For example, USCIS is considering changing the system so that it tracks whether the employer is printing/downloading all notices that are supposed to be given from the employer to the employee, including the tentative nonconfirmation, referral notices, posters, and rights and responsibilities documents.

Efforts to integrate employers' Human Resources systems and the Web Basic Pilot system should be continued to minimize duplicate data entry by employers.

The Basic Pilot currently offers web-services and employer batch methods. These access methods allow employers to take information from either an existing personnel system or electronic I-9 and send it to USCIS as a Basic Pilot query. However, since there is no standard personnel system that all employers use, the employers who choose to use one of these methods must develop the front end communication piece that would pull and send the data to Basic Pilot.

Procedures for the routine automated cleaning of the transaction database should be developed to obtain more meaningful reports for management information and monitoring purposes. For example, cases which employers close as employer data entry errors should not be categorized as final nonconfirmations for these purposes.

USCIS is exploring a way to pull out data entry errors and make a new "error" category. Additionally, USCIS is using cleaned data from the evaluation in official reports and briefings.

INTERIM FINDINGS OF THE WEB-BASED BASIC PILOT EVALUATION

December 2006

Report Submitted to:
U.S. Department of Homeland Security
Washington, DC

Prepared by:
Westat
Rockville, Maryland

EXECUTIVE SUMMARY

A. BACKGROUND

1. INTRODUCTION

This report is an interim report summarizing the findings to date of the evaluation of the Web Basic Pilot program, 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 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, known as the Web Basic Pilot, incorporates a number of recommended enhancements from the evaluations of the initial pilot programs.

The focus of the current report is on the Web Basic Pilot. 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 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 recently collected information from Federal employees and contractors, Web Basic Pilot employers, and employees whose work authorization status was verified by the Web Basic Pilot.

2. LEGISLATIVE HISTORY

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

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 Service (USCIS) electronic employment verification program available to employers.

Under the Web Basic Pilot, a USCIS I-9 form is completed for all newly hired employees. After registering for the Web Basic Pilot, signing a Memorandum of Understanding (MOU) with USCIS and SSA, and completing required online training, participating employers should perform electronic verification of every newly hired employee. To verify a newly hired employee, the employer submits information (SSN, name, date of birth, citizenship and alien status, and, if relevant, A-number) from the Form I-9 to SSA over a secure connection to the Internet. This information goes first through SSA and then, if necessary, through USCIS.

When SSA receives the data, the information is matched against the SSA database. 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 and shows that the employee has permanent work-authorization, 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, 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 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 the records are straightened out, the employee is verified. If the employee does not contest the tentative nonconfirmation or fails to contact SSA or USCIS within 10 Federal working days, the Web Basic Pilot system issues a final nonconfirmation finding and, to comply with the law, the employer must terminate the worker's employment.

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

- The Web Basic Pilot uses the Internet to register new employers, provide employer verification staff with training in how to use the system, and to communicate with employers.
- The training materials have been redesigned and employer staff members are now required to pass a test on the material presented in the training module prior to 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.

4. Web Basic Pilot Evaluation Questions

The goals, objectives, and resulting research questions of the Web Basic Pilot evaluation, in large part, reflect 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-based Basic Pilot program?
  - Were modifications of the original Basic Pilot that had been designed to better meet employer needs reflected in increased employer satisfaction?
  - Were modifications of the original Basic Pilot 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 Study

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:

- A web survey of all 1,030 establishments that had signed MOUs at least one year earlier and had used the system in specified months prior to the survey;
- Analysis of Web Basic pilot system transaction data entered by employers and the Federal Government, supplemented by additional information from SSA records. This database is referred to as the transaction database in this report;
- Case studies, including on-site in-person interviews of five employers and record reviews for 371 of their employees that the transaction database indicated had received tentative nonconfirmation findings and in-person interviews of 79 of these employees;
- System testing to determine the ease of use of the Web Basic Pilot from the employer's perspective; and
- 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 is always subject to inaccuracies due to a variety of factors, such as respondents' not understanding questions or not providing accurate answers for one reason or another; the survey of Web Basic Pilot employers is, of course, subject to these limitations. The case study component of the evaluation was 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 obtained directly from the transaction database is based on all 1.3 million cases (defined as a single hiring of a specific individual by a specific employer) on that database or on specific subgroups of these cases (such as all foreign-born U.S. citizens or all noncitizens.) These may have some error resulting from merging SSA and USCIS information and removing duplicate records.

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 possible outcomes from June 2004 through March 2006. During this time, employers made over 1.3 million verification attempts, 85 percent of which were verified by SSA as being work-authorized. Another 8 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, the employee did not contest a tentative nonconfirmation response from SSA or USCIS either because the employees decided not to contest or because their employers did not follow the proper notification procedures. In addition, about 0.1 percent (or 299 cases) were found by USCIS to be unauthorized to work in the United States.

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

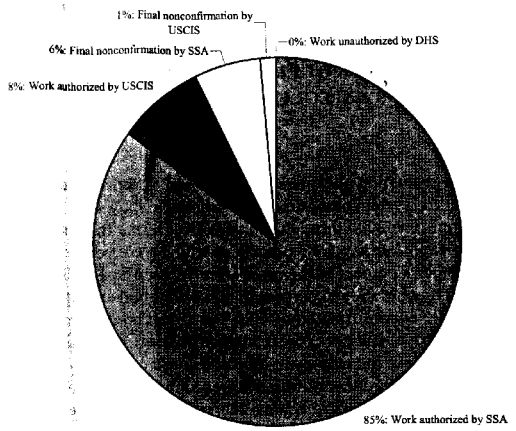
The key implementation findings related to the Federal Government's design and implementation of the Web Basic Pilot program are as follows:

- The Web Basic Pilot instantly verified the work-authorization status of employees more frequently than did the original Basic Pilot program. In the Web Basic Pilot, 92 percent of cases were initially found to be work-authorized compared to 79 percent[1] in the original Basic Pilot.[2]

[1] Calculations are based on unrounded numbers, so that the rounded value of a total may not be equal to the sum of the rounded numbers. In this case, adding the unrounded values of 85 percent and 8 percent results in a value that rounds to 92 percent.

[2] These percentages differ from USCIS data because cases closed in error and other identified duplicate queries have been deleted.

Exhibit 1: Overall finding of outcomes from the Web-based Basic Pilot program (June 2004 through March 2006)



- 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 accommodates this problem by providing for manual review that is time consuming and can lead to discrimination against work-authorized foreign-born persons during the period that the verification is ongoing, especially naturalized citizens.

- The Web Basic Pilot software includes a number of new editing features, designed to reduce employer data entry errors. However, there is room 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.

- The technical changes made in the Web Basic Pilot appear to have resulted in 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 online registration process was easy to complete and that the online tutorial adequately prepared them

to use the system. Further, a large majority of the 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 the benefits 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 and some who 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, since they are not allowed to take adverse actions against employees while the employees are contesting the tentative nonconfirmation finding.

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 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.
- Changes to procedures for verifying noncitizens with permanent work authorization in October 2005 appear to have resulted in a desired increase in the Basic Pilot's ability to detect employees without work authorization but also an undesired increase in the erroneous tentative nonconfirmation rate. Under these changed procedures, all noncitizen cases are referred to USCIS if they have information on name and date of birth that is consistent with the SSN in SSA's records. Prior to the change, SSA was able to confirm work-authorization for these noncitizens when their records indicated that the noncitizen had permanent work-authorization.

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 unacceptably high, which decreases the ability of the program to reduce unauthorized employment and diminishes the effectiveness of safeguards designed to protect the due process 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 the 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, which is prohibited by statute primarily due to a concern that employers would fail to hire employees receiving erroneous tentative nonconfirmations, thereby discriminating against foreign-born employees.[3] However, some employers that prescreen do allow job applicants the opportunity to contest tentative nonconfirmations, mitigating the seriousness of prescreening.
  - 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 due process rights.
  - Some employers encouraged employees they believed not to be work-authorized to say they would contest so they could extend the length of time they worked.

[3] Even when job applicants are notified of their rights to appeal, they may well experience adverse actions during the period allowed for contesting the case if applicants without tentative nonconfirmations are permitted to work during this time.

- 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.
- 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. For instance, the transaction database does not permit identifying cases in which employees said that they did not wish to contest the finding.

- USCIS does not currently have a strong monitoring and compliance program needed to determine whether employers are adhering to Web Basic Pilot procedures. Such a program would presumably reduce the number of employer violations. USCIS has said it plans on developing such a capability with part of the funding Congress appropriated for the program in FY 2007.

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 Web Basic Pilot cannot substantially improve employers' ability to detect fraud when borrowed or stolen documents with information that could reasonably relate 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. 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.

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 is 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.

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:

- As expected, some employees without work authorization are found to be unauthorized to work or receive final nonconfirmations, leading to their employment being terminated, thus reducing the employment of employees without work authorization at participating employers.

- 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 nonpilot employers.

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 or 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, the percentage of ever-authorized employees found to be work-authorized after a tentative nonconfirmation was 1.3 percent for noncitizens compared to 10.9 percent for naturalized citizens. The erroneous tentative nonconfirmation rate for naturalized citizens is unacceptably high. Reducing it will take considerable time and will require better data collection and data sharing between SSA and USCIS 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 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, anecdotal evidence from SSA 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 were considerably below those for the original Basic Pilot. Furthermore, as discussed above, most employers were satisfied with the program and they reported that the benefits of using the Web Basic Pilot outweighed its disadvantages.

E. Recommendations for Improving the Web Basic Pilot Program

Because of the high level of interest in expanding the Web Basic Pilot, this report provides a list of recommended changes to the Web Basic Pilot program, even though the evaluation is not yet complete. It is possible that the additional data analyses planned for the final report will lead the evaluation team to revise some of the recommendations below, as well as add new recommendations. Furthermore, because of the ongoing nature of the evaluation, some of the following recommendations flow out of work that has not yet been fully incorporated into earlier chapters. The primary recommendations are as follows:

- USCIS and SSA need to address the unacceptably high tentative nonconfirmation rate for foreign-born U.S. citizens. Measures to do this include 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 future new citizens. In the future, USCIS should collect SSNs for all persons at the time they apply for naturalization, including children who will derive citizenship from their parents' naturalization. USCIS should also work with the U.S. Department of State's Passport Agency to obtain information from them when they first document that a foreign-born person is indeed a U.S. citizen. Furthermore, the tentative nonconfirmation procedures should be modified to allow employees receiving initial SSA tentative nonconfirmations because their citizenship status could not be verified to provide their prior A-numbers so that USCIS records can be checked. Outreach efforts should also be implemented to encourage naturalized citizens to notify SSA of their change in citizenship status.

- USCIS should continue recent and proposed efforts to explore options for 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.

- USCIS should establish guidelines for employers that provide specific time frames for notifying employees of tentative nonconfirmations and for terminating employees subsequent to receiving final nonconfirmation or unauthorized findings. Without these specific timeframes, employers can allow the verification process to become protracted and unauthorized workers to work for extended periods, thereby reducing the effectiveness of the program.

- SSA should institute a process through which tentative nonconfirmations resulting from SSA mismatches are controlled through an automated system similar to that which USCIS uses. This would tighten SSA procedures and make SSA more accountable for providing results for cases they resolve, would decrease SSA field staff and employer burden, and make the transaction database more accurate.

- Additional changes should be made to the tutorial to further improve its effectiveness. For example, periodic retesting and, if need be, 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 test. Training modules for staff other than system users and administrators should be developed to help prevent violations of program procedures that are the responsibility of staff other than system users. For instance, Human Resources staff may be unaware that the policies they promulgate on training or pay while tentative nonconfirmations are being contested are in violation of the MOU and the statute.

- The Web Basic Pilot System should be modified to further enhance its user-friendliness. For example, USCIS should 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 ensure that materials are clear to those who will be taking the training and using the system.

- The transaction database should be modified to capture additional information needed for evaluation and monitoring. For example, data fields should be added to permit entry of information about the resolution of cases after issuance of a final nonconfirmation.

- Efforts to integrate employers' Human Resources systems and the Web Basic Pilot system should be continued to minimize duplicate data entry by employers. For instance, the Basic Pilot could be modified to permit employers to include employee ID numbers in their query and to have that identifier returned to them with the case findings.

- Procedures for the routine automated cleaning of the transaction database should be developed to obtain more meaningful reports for management information and monitoring purposes. For example, cases which employers close as employer data entry errors should not be categorized as final nonconfirmation cases for these purposes.

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CHAPTER I. BACKGROUND

A. INTRODUCTION

This report presents preliminary results from analyzing data collected for the evaluation of the Web Basic Pilot program. Additional analyses of data already collected are planned for the final report. It is possible that some of these additional analyses will provide new insights into the issues discussed in the report and may lead the evaluation team to modify some of the conclusions. This report is intended for limited distribution to inform U.S. Citizenship and Immigration Service (USCIS) in making policy decisions with respect to the Basic Pilot program that cannot wait until issuance of the formal report and should not be cited.

1. PURPOSE OF THE REPORT

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, was expanded in scope and extended until November 2008 in the Basic Pilot Program Extension and Expansion Act of 2003 (Pub. Law 108-156). A Web-based version of the Basic Pilot Program (Web Basic Pilot), incorporating many improvements growing out of experiences with the original Basic Pilot program and evaluations of the pilot programs, was implemented in June 2004.

The focus of the current report is on the Web Basic Pilot. The report's goals are the following:

- 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 recently collected information from Federal employees and contractors, Web Basic Pilot employers, and employees verified by the Web Basic Pilot. 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) and on subsequent evaluation activities related to the IIRIRA pilot programs.

2. Report Organization

The rest of this chapter provides an overview of the history of the employment verification pilots, describes the basic procedures constituting verification under the Web Basic Pilot, and presents the research questions to be discussed in this report. The second chapter describes the methodology used in this report. The third chapter describes the report findings related to program implementation, and the fourth chapter presents findings related to policy questions. This report is designed as an interim report and, therefore, does not include a chapter describing the report conclusions and recommendations. Such a chapter will be included in the final report after all data analyses are complete.

B. Legislative Background

1. Passage of Employer Sanctions

Congress passed employer sanctions legislation in late 1986 as part of 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.[4] 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 the I-9 form 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 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. Evaluation of the Impact of Employer Sanctions Implementation

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 have their privacy rights violated.

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

[4] 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, INS was incorporated into the U. S. Citizenship and Immigration Services (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.

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 all 50 States on a voluntary basis.

At the time of this interim report, 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 employees and employers would be included and also differ in their implementation time tables for implementation.

{Because of the current legislative uncertainty which may well be resolved prior to making this report available, discussion of the new legislative efforts has been postponed to the next version of the paper.}

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) developed earlier for this purpose. The ASVI is 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 early pilot programs are summarized in Exhibit I-2.

Exhibit I-2: Early Employment Verification Pilot Programs

Year	Early Pilot	Location	Input Method	Action
1992	Telephone Verification System (TVS)	CA, FL, IL, NY, TX	SAVE procedures and point-of-sale device over telephone lines using INS ASVI database; paper/mail secondary verification if needed	Demonstrated feasibility of telephone verification for newly hired noncitizens
1995	Telephone Verification Pilot, Phase II (TVP)	Los Angeles area	PC and modem to access INS database; paper/mail secondary verification if needed	Tested impact of noncitizen verification in defined geographic area
1996	Employment Verification Pilot (EVP)	Across the U.S.	PC and modem with automated secondary verification process	Tested verification of newly hired noncitizens in different environments
1997	Joint Employment Verification Pilot (JEVP)	Chicago area	Touchtone telephone to access SSA; PC/modem to access INS; automated secondary verification process	Tested verification of all newly hired employees with SSA and, if necessary, INS

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.

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 to resolve the discrepancy.

[8] See Appendix B for a copy of the MOU signed by employers and USCIS.

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 pilot 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. When SSA data could not determine the current work-authorization status of employees attesting to being work-authorized noncitizens, a further check was made through INS. The two agencies initiated this joint pilot in the Chicago area in July 1997 with 38 employers.

2. The IIRIRA Pilots Prior to the Web Basic Pilot

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. The 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 Citizenship Attestation Verification Pilot (CAVP), and the Machine Readable Document Pilot (MRDP). These pilot programs, as initially authorized and implemented, are summarized in Exhibit I-3.

Exhibit I-3: 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, Department of Homeland Security (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 the Basic Pilot Program Extension and Expansion Act of 2003 (Pub. Law 108-156), which also extended the Basic Pilot to November 2008.

The Basic Pilot, launched in November 1997, is similar to the earlier JEVP. Like JEVP employers, Basic Pilot employers electronically verify the status of all newly hired employees, first with SSA and then, if necessary, with USCIS. However, the Form I-9 documentation requirements imposed by IIRIRA are more stringent than those of the JEVP in that they require employees to present an identity document with a photograph.

The June 2002 evaluation of the Basic Pilot (Findings of the Basic Pilot Program Evaluation, http://USCIS.gov/graphics/aboutus/repsstudies/piloteval/pilotevalcomplete.htm) 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 MOU provisions

The Basic Pilot Program Extension and Expansion Act of 2003 (Pub. Law 108-156) extended the Basic Pilot to November 2008 and mandated the expansion of the Basic Pilot Program to all 50 states. This expansion was announced in a Federal Register notice December 20, 2004. The same notice announced the new Web-based version of the Basic Pilot.

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 the I-9 form to being work-authorized noncitizens. Employers did not electronically verify the work-authorization status of persons who attest to U.S. citizenship, who are 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 evaluation team 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 transmit 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 is proffered. If the case must be referred to INS, the employer was prompted for 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 the Basic Pilot procedures. During the time the MRDP was in operation, Iowa changed its licensing procedures, resulting in a system that was no longer consistent with the original criteria for participating in the program. Given these practical problems, 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:

- Assess the benefits and costs of the pilot programs and the degree to which they assist in the enforcement of employer sanctions.
- Assess the degree of fraudulent attestation of U.S. citizenship.
- 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 the 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-based Basic Pilot program (Web Basic Pilot) 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 are 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 and employer staff are now required to pass a test on the material presented in the training module prior to 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 (i.e., the Federal Government has made changes to the system since its introduction in June 2004 and continues to make plans for additional enhancements).

This section describes the primary features of the Web Basic Pilot.

2. Becoming a Web Basic Pilot Program Employer

The first step toward using the Web Basic Pilot system is to register online to use the program. During this registration process, the employer prints out a copy of a MOU (see Appendix B), agreeing to adhere to Basic Pilot requirements.

Once the employer has signed and returned the MOU, the program administrator must complete an online tutorial and pass a Mastery Test before being granted access to the verification system or being able to register additional users. Likewise, any new users must complete the tutorial and pass the Mastery Test before their user names and passwords will be granted access to the verification system. The tutorial covers both how to use the online 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.

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

3. DESCRIPTION OF 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 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 I-9 form to certify having examined the documents presented by the employee and having found 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 further employment under this system.

b. WEB-BASED 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 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 I-9 form, and any expiration date of documents.

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 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.

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.[9]

If the employee information input by the employer for a case forwarded from SSA to USCIS matches the USCIS ASVI 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 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 I-9 form, or print a copy of the transaction record and retain it with the I-9 form.

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 written notification of the finding and their right to contest the finding, if they wish to do so. Employees are required to indicate whether they wish to contest the tentative nonconfirmation finding.

When employees say that they wish to contest tentative nonconfirmations, employers are instructed to provide them with a written referral to SSA or USCIS, as appropriate, to correct the discrepancy and to record the referral date on the Web Basic Pilot database. The Web Basic Pilot system provides a referral form that explains the employees' rights and responsibilities during the resolution period. Employees must contact the SSA or USCIS office 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 that they do not wish to contest the case 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

[9] Prior to October 21, 2005, SSA also notified employers that the employee was work-authorized if their database indicated that the employee was a legal permanent resident, refugee, or asylee.

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 work 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.

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.

The major steps of the Web Basic Pilot verification process are illustrated in Exhibits I-4 and I-5.[10] The current procedures described here reflect a procedural change implemented on October 21, 2005. Prior to that date, SSA issued a finding of work-authorized for individuals who stated on the Form I-9 that they were work-authorized noncitizens and the SSA information on employees' citizenship status confirmed permanent work-authorized status. This process that was in effect during much of the time covered by this evaluation is depicted in Exhibit I-6.

[10] The process described assumes that employers follow the Basic Pilot procedures.

Exhibit I-4: Verification Process for Persons Claiming to be U.S. Citizens on Form I-9

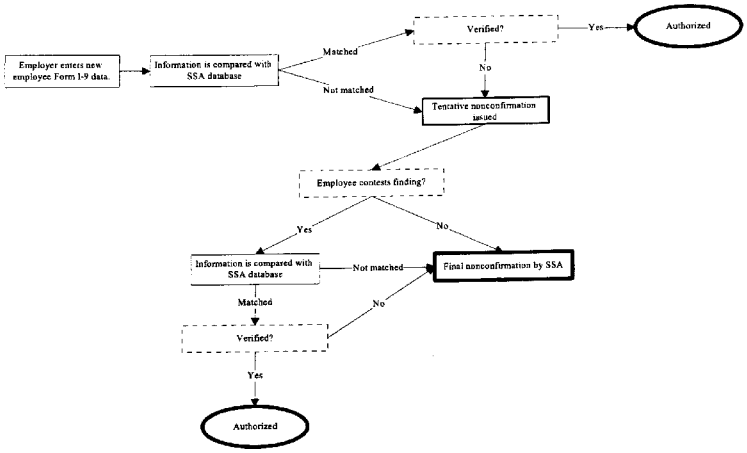


Exhibit I-5: Post-October Verification Process for Persons Claiming to be Noncitizens on Form I-9

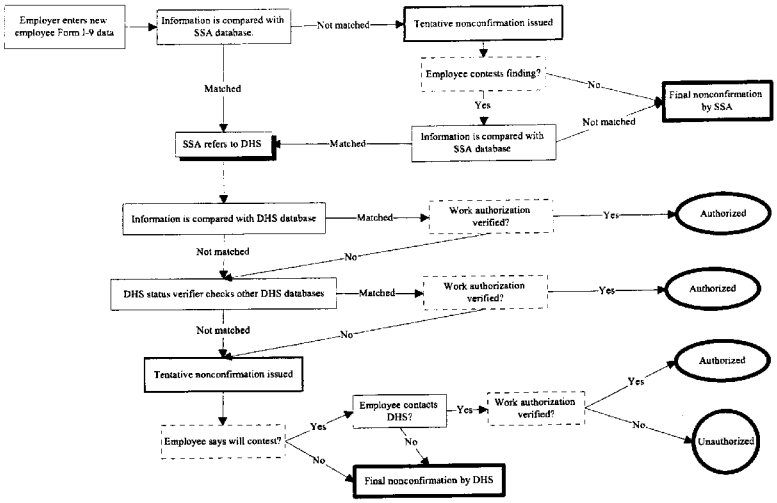
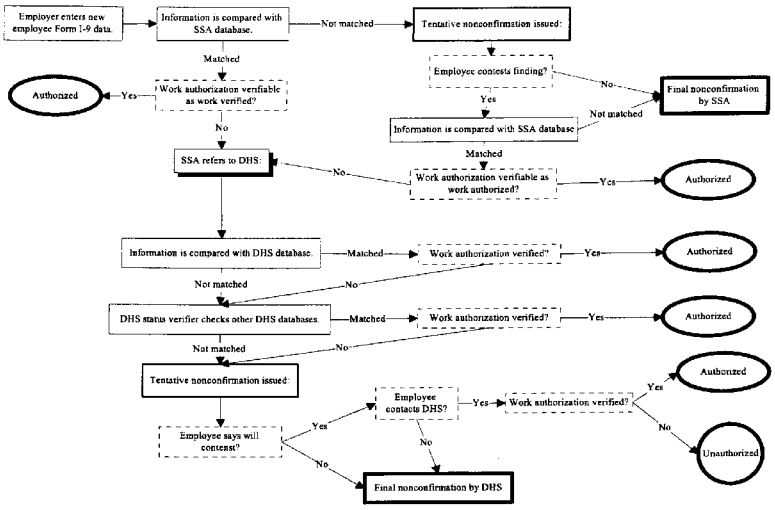


Exhibit I-6: Pre-October 2005 Verification Process for Persons Claiming to be Noncitizens on Form I-9



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 such 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.

The goals, objectives, and resulting research questions of the Web Basic Pilot evaluation, in large part, reflect the goals and objectives of the earlier evaluations: (1) Do the pilots operate as their designers intended (i.e., were they properly implemented)? (2) Do the pilots reduce employment of unauthorized workers? (3) Do the pilots reduce discrimination? (4) Do the pilots protect employee civil liberties and privacy? (5) Do the pilots 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 which could not be fully answered in the evaluation

work done to date. The major research questions addressed in this report are described below.

1. How Well Was the Web-based Basic Pilot Program Implemented?

The first question, addressed in Chapter III of this report, is to determine how well the Web-based Basic Pilot program has been implemented. This process evaluation is critical to ensure that we understand 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.

Since 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 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 earlier 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 improve employer compliance 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-based Basic Pilot program also has implications for 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-based Basic Pilot program. These goals are to create a system that would 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 implementing 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-

based Basic Pilot program, it also addresses the question of whether the Web-based Basic Pilot adequately safeguards privacy.

G. SUMMARY

In sum, the Web Basic Pilot program is an enhancement of the original Basic Pilot program, one of three IIRIRA pilot programs that build upon prior experience with automatic employment verification in an attempt to decrease unauthorized employment while protecting against discrimination, privacy infringement, and undue employer costs. The primary differences between the Web Basic Pilot and the original Basic Pilot program are as follows:

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

This interim report focuses on the two 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?

These questions are addressed in Chapters III and IV, respectively. Chapter II provides information about the evaluation methodology. The final chapter, which has not yet been written, will focus on recommendations for further changes to the program.

CHAPTER II. RESEARCH METHODS

A. INTRODUCTION

The evaluation team for the Web-based Basic Pilot (Web Basic Pilot) adopted a multimodal approach to data collection. Sources included the following:

- Web survey of employers using the Web-based version of the Basic Pilot (Web Basic Pilot) program;
- Case studies, including interviews with establishment representatives, record reviews and interviews of employees who received tentative nonconfirmations;
- Web Basic Pilot transaction database analyses;
- 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. WEB SURVEY OF EMPLOYERS

A web survey of all employers was conducted as part of the evaluation. The target of the survey was employers that had been actively using the Web Basic Pilot for at least 1 year.

a. SAMPLE SELECTION

The sample of employers for the employer web survey consisted of all employers meeting the following criteria:

- The employer had signed a Memorandum of Understanding (MOU) before April 1, 2005;
- The employer had not notified the U.S. Citizenship and Immigration Service (USCIS) 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 had transmitted at least one case in February or March 2006.

The employers that participated in the case studies and case study pretest were excluded from the employer web survey.

b. Selection of Questions for Survey

Many of the questions asked in the employer survey were adapted directly from the Active Basic Pilot employer mail survey 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-based Basic Pilot program:

- Deletion of questions that are irrelevant to the Web-based Basic Pilot program. For example, the question "From the time this establishment first received materials needed to install the Basic Pilot system, how long was it before the system was installed?" is irrelevant to the Web-based Basic Pilot program.
- Deletion or modification of questions found not to be useful in the Basic Pilot program analyses. For example, 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 found not to be useful in the original Basic Pilot evaluation and has been excluded.
- Addition of relevant questions from the Citizenship Attestation Verification Pilot (CAVP) and Machine Readable Document Pilot (MRDP) surveys that were added or modified as a result of experiences with the original Basic Pilot employer surveys that were the first surveys administered.
- Addition of key questions from the on-site Basic Pilot program and MRDP surveys that could be adapted for use in a self-administered survey.
- Addition of questions needed to obtain information about some of the unique features of the Web-based Basic Pilot program.
- Addition of a set of questions targeted to employers who participated in both the Basic Pilot program and the Web-based Basic Pilot program to determine what they perceive to be the strengths and weaknesses of the Web-based Basic Pilot program compared to the Basic Pilot program.

c. Pretesting the Draft Survey

The initial draft of the web survey was pretested on 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. This was done by conducting an online focus group, using WebEx, a web-based hosting service for integrated teleconferencing. Modifications to the survey were made based on input from the focus group. A copy of the final web survey is contained in Appendix C.

d. Creating and Testing the Web Survey

Programming staff created an online version of the web survey. The process used to develop the web application was an iterative one. Programming staff then provided research staff with a draft instrument that had been tested by programmers. Research staff then tested the functionality of the survey and requested changes to the visual appearance of the survey and its 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 Westat's online survey:

- It makes use of logins, passwords, and Secure Sockets Layer (SSL) to ensure limited access and data security.
- Programmable conditional and skip logics are built in. Respondents are automatically navigated to the correct location on the survey based on their responses.
- Validations and edits were designed to alert respondents to missed questions or inconsistent responses.
- Respondents can save, close the survey, and then return to the next unanswered question at any time before the survey is 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 box, text area, text box, radio buttons, and check boxes).
- Respondents are able to navigate back through the survey and change prior responses without data loss.
- Downloadable versions of the online survey are available to respondents in both PDF and MS Word format.
- When respondents complete the survey, they are offered the opportunity to print a copy of their responses. This printed copy also informs them which questions were part of a skip pattern, as well as which ones were not answered.
- A receipt control module is built into the system to provide the research team with information on response rates and other survey statuses.

e. Staff Training

The evaluation team provided thorough training to the telephone callers and data entry staff who worked on the employer survey. For the telephone staff, who obtained correct email 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 the calling duties, and

role-playing scenarios. For data entry staff that used the management system, training consisted of an explanation of the purpose of the survey, review of result codes and edits, and practice sections inputting data into the management system.

f. Data Collection

The initial contact with employers was via an email from Westat with an attached letter from USCIS on letterhead that explained the survey, reminded participants of their responsibility to cooperate with the evaluation as stated in the MOU that they had signed, informed them that Westat will be conducting the survey, and stressed the confidential nature of their participation. This email requested that recipients either confirm that they are the correct contact person or provide information on who should be contacted.

When emails bounced back as undeliverable, an email was sent to the alternate contact person if one was listed on the file. If there was no alternate contact person or the email to the alternate contact person also proved to be undeliverable, the employer was called to ascertain the correct contact person.

When the initial email did not elicit a response, a reminder email was sent. When necessary, this was followed by a phone call to the contact person. Once a confirmed contact person was available, Westat sent the contact person the initial login email containing the information necessary to log into the system and complete the survey.

If after approximately 2 weeks from the time the initial login email was sent, the survey had not been completed, Westat sent a reminder email to the employer. Approximately, 2 weeks later a second email reminder was sent. For those sample members who still had not responded 1 week later, phone call reminders were made.

A hard-copy version of the survey was made available to respondents online for downloading. However, to minimize mode effects, submission of the survey in hard copy was not encouraged; however, this was available as an alternative if the phone callers believed it necessary to secure a response during the nonresponse calling process. However, no hard-copy responses were received and all interviews were done by respondents using the web program.

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. Since the response rate for the survey was 86 percent and experience with prior employer surveys had indicated that nonresponse adjustments had trivial effects on the final estimates, there were also no adjustments made for nonresponse.

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. An extract from this file was created containing variables for which comparable data existed on the original 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.

i. Measurement and Data Analysis

Most of the variables used in analyzing the employer web survey data were measured in a straight-forward 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, the only variable measured using a scale derived with advanced statistical techniques is employer satisfaction. To assess the employers' overall satisfaction level with the pilots systematically, item response theory methodology was used to construct this scale to measure the employers' satisfaction with the pilots. It is a modification of the one 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. To construct the satisfaction scale, 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 items 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 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
- Procedure: The tasks required by the pilot overburden
- Procedure: It is impossible to fulfill employer obligation required
- Overall, the pilot is an effective tool for employment verification
- Any difficulties with the pilot after setup
- Benefits of the system outweigh disadvantages

Most of the analyses done using the employer survey 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-based Basic Pilot program and the Basic Pilot program to questions about their perceptions of the differences between the programs. In comparing responses of Web-based Basic Pilot program employers with Basic Pilot program employers on relevant questions asked of both groups, tests of significance were used. More specifically t-tests, ANOVA, and Chi-square tests were used.

2. CASE STUDIES

a. 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.

b. SAMPLE SELECTION AND RECRUITMENT

i. 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 a sufficiently large number of employees 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.[11]

The employers selected for participation in the case study were sent an initial email asking for their cooperation with an attached letter from USCIS endorsing the study and asking for their cooperation. Because of the complex nature of the case study, all followup was conducted by telephone.

A total of 18 employers received an email requesting their participation in the case study portion of the evaluation. Eight of these employers either refused to participate or failed to return phone calls. Efforts to recruit were discontinued after five employers had agreed to participate.

[11] To protect the confidentiality of the case study interviewees, detailed information about the selected employers is not provided.

ii. Employee Sample

The employee sample for each employer consisted of a purposive sample of up to 100 employees who the evaluation team believed had received tentative nonconfirmations. Selection of the employees for inclusion in the initial employee sample was based on the recency of the cases and the case outcome (Social Security Administration [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 have 50 percent of the employees interviewed from the group that had 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. They also gave preference to employees who spoke (were likely to speak?) either English or Spanish, since interviewers proficient in languages other than English and Spanish were not used in the study and interviewing through an interpreter is somewhat problematic. They were also instructed to give preference to obtaining interviews with those employees who had puzzling records. Within these limitations, the interviewers were free to select interviewees based on the ease with which they could locate them. For example, it made sense to try to interview potential respondents who live close to one another in a single trip.

c. *Instrument Design and Development*

i. 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, interviewers were given a great deal of leeway in what questions they asked of 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 no comparisons between the employees interviewed in the case studies and employees previously

interviewed were planned, 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 online 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. These forms were individualized for each employee on the list. It contained information necessary to verify that the correct employee's record had been provided by the employer and also contained 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 the interviewer to describe any discrepancies, including missing documents.

ii. Pretest of Instruments

Because the instruments developed for the case study differed substantially from previously used instruments, they were pretested. 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 a research 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 researcher observed in order to identify and correct any deficiencies in the initial drafts of the instruments that might interfere with achieving the research goals of the evaluation. 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 pretest prior to conducting the actual site visits. (See Appendices D, E, and F for copies of the protocols and the review form.)

d. Interviewer Selection, Training, and Monitoring

Conducting ethnographic observations and interviews requires using highly educated and experienced interviewers. It also requires intensive training of these interviewers. Accordingly, the evaluation team selected experienced interviewers known to the interviewer supervisor. Two of the selected individuals 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 online tutorial and passed the Mastery Test. Next, the interview guides and observational protocols were carefully reviewed with the interviewers and, finally, role-playing exercises were used to give interviewers an opportunity to practice the interviewing techniques they would use. 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 email with interviewers.

e. 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 of the primary contact person for the Web-based Basic Pilot program. The contact person also identified and invited other establishment staff members who were 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 records[12] 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 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; and/or
- Some records were duplicates since the transaction database contained duplicates due to data entry errors that were not detected during the cleaning process.

[12] 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.

Subsequent visits to the establishment were made, if needed, to complete the record review, clarify information obtained during the record review or employee interviews, and/or to interview employees if the establishment 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 drivers' licenses used to prove identity in the verification process that were 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 an alternate agreed upon site. A small number of interviews were conducted over the telephone because the employee lived in an area that interviewers were not comfortable visiting and an alternate location could not be identified for the interview. An in-person interview had been 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 individuals, and the limited English language proficiency of some employees in the sample. Bilingual interviewers conducted the interviews for 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.

The goal was to complete 20 employee interviews for each employer to obtain a total sample of 100 employees. A total of 79 employees were interviewed from approximately 150 attempted employees. Because of the nature of the sample and the procedures, calculation of a formal response rate is not appropriate. On the basis of additional information obtained during the site visits, it was decided that 14 of these interviewees had been erroneously classified as tentative nonconfirmation cases; one additional interviewee

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.[13]

f. Data Analysis

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 the employees and evidence of whether employers were following Web Basic Pilot procedures designed to minimize the negative impacts of tentative nonconfirmations on them. A synopsis of the individual employer summaries was then prepared and is included in Appendix G.

Some quantitative data were collected that could usefully be summarized using descriptive statistics. Some of these data were collected in the employee interviews. For example, cost information collected permitted calculating the average financial burden incurred by employees who received tentative nonconfirmations and also allowed calculation of the range of the reported values. Because the employee samples are not designed to be statistically representative, these statistics should not be over-interpreted by extrapolating them to a larger population; however, they do provide insights into the costs of erroneous tentative nonconfirmations.

3. Web Basic Pilot Transaction Database Analyses

The transaction database provides information on the extent to which employers use the pilot program and also provides information on the verification outcomes. Westat constructed a transaction database of all cases submitted to the Web-based Basic Pilot from the start of the program in June 2004 through March 2006. Since this database was designed to implement the Department of Homeland Security (DHS) and SSA program goals rather than for analytic purposes, the analysis of the transaction database required complex file manipulation and cleaning.

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 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 in such cleaning programs, the resulting database is a truer reflection of the actual case processing than the original database was.

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[13] 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 doing the Transaction Database Analyses reported in this paper.

Data from the contractors' employer files and from special files provided by SSA 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. In constructing the 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 occur.

4. Discussions with Federal Officials and Contractors

During the course of the original Basic Pilot evaluation, the evaluation team interviewed 15 senior officials and contractors from SSA and 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 relevant updated financial and programmatic information for the evaluation.

5. 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 online resources. They tested the functionality and usability of each feature of the online program. Tests were also performed to determine how much leniency the system tolerated in employees' names and dates of birth (e.g., does the system accept typos or nicknames). No attempt was made to break into the system database.

C. 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 do not constitute a representative sample of all establishments. For instance, prior evaluations have indicated that pilot participants tend to be larger than most establishments, have higher proportions of foreign-born employees, and are more concentrated in certain industries and locations. Therefore, the results of this study represent only those establishments that participated in the program.

It is also important to understand that pilot establishments volunteered to participate. The generally favorable attitude that comes with volunteering 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 survey. 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.

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 who agreed to use the program have performed their respective roles in implementing the Web-based Basic Pilot (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 employers using the Web Basic Pilot. Since the employers constituted a population of all active employers that had been using the Web Basic Pilot for over a year, sampling error is not an issue for the survey.[14] However, like all surveys, the employer survey is subject to nonsampling errors, such as nonresponse bias and measurement error.

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 tentative nonconfirmation employees.[15] The case study is designed to provide more in-depth insights into the Web Basic Pilot than can be obtained solely from more structured methodologies but should not be generalized to a larger population using statistical methodologies.

Information obtained directly from the Web Basic Pilot transaction database for June 2004 through March 2006 is based on over 1.3 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 United States Citizenship and Immigration Services (USCIS) and Social Security Administration (SSA) data provided from employer verification transactions contained some errors due, for

[14] See Chapter II for more information on the exact sample specifications.

[15] See Chapter II for additional information on the methodology of the report.

example, to employer input errors. Although the data were cleaned, it is not possible to rectify all errors.[16]

3. System Outcomes

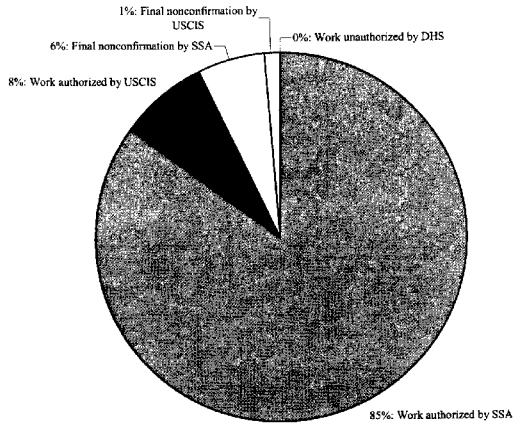
a. *Introduction*

To answer the process evaluation questions in this chapter, it is necessary to have an understanding of what the system outcomes were. These outcomes are described here and then referred to later in the report, as relevant to understanding the findings. Summary information about system outcomes is contained in Exhibit III-1 and more detailed information is contained in Exhibits III-2, III-3, and III-5. The more detailed exhibits examine separately three groups of cases: cases for those who claimed to be U.S. citizens on their Form I-9s; those who claimed to be work-authorized noncitizens and had their cases initiated before October 21, 2005; and those who claimed to be work-authorized noncitizens and had their cases initiated after case processing procedures changed in October 2005.

During June 2004 through March 2006, employers made over 1.3 million verification attempts. As shown in the Exhibit III-1, 85 percent of the verification attempts were confirmed by SSA, and 8 percent 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, the employee did not contest a tentative nonconfirmation response from SSA or USCIS either because the employees decided not to contest or because their employers did not follow the proper notification procedures. In addition, about 0.1 percent (or 299 cases) were found by USCIS to be unauthorized to work in the United States.

[16] See Chapter II for additional information on the methodology of the report.

Exhibit III-1: Overall Finding of Outcomes From the Web-based Basic Pilot Program (June 2004 through March 2006)



SOURCE: Web Basic Pilot Transaction Database

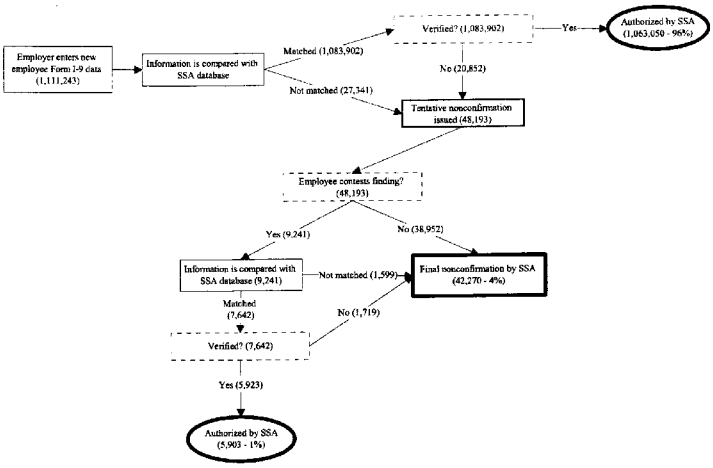
b. Case Outcomes for Persons Claiming to be U.S. Citizens

In the 22-month period from June 2004 through March 2006, over 1.1 million verification attempts were made by employers for persons claiming to be U.S. citizens on the Form I-9, using the Web Basic Pilot.[17] The outcome 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 48,200 (4 percent) of the cases received tentative nonconfirmations.

Among U.S. citizen cases receiving tentative nonconfirmations, approximately 12 percent (5,900) were contested and found to be work-authorized. This group of cases constituted less than 1 percent of all transactions for persons attesting to being U.S. citizens.

[17] Additional cases were verified through the original Basic Pilot during the early months of the Web Basic Pilot before its elimination in July 2005.

Exhibit III-2: Verification Process for Persons Claiming to be U.S. Citizens on Form I-9 (June 2004 thru March 2006)



SOURCE: Web Basic Pilot Transaction Database

Four percent (approximately 42,270 cases) of all transactions for persons attesting to being U.S. citizens represent final nonconfirmation outcomes from SSA queries. In those cases, SSA was unable to confirm the individual's work authorization during its automated matching processes.

For a variety of reasons, the original inconclusive findings were not followed to completion. For instance, the transaction database records indicate that 38,952 (81 percent) of the final nonconfirmation cases were ones in which employees were not referred to SSA. In some of these cases, the employees were informed of problems but decided not to contest the findings, because they were not work-authorized or for other reasons. In other cases, the employer did not inform the employee or did not provide all the information needed to contest in a way that the employee could understand.

In the remaining 9,241 final nonconfirmation cases, 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 that they would contest, but did not do so because they were not work-authorized or for other reasons. For example, at one case study employer, many employees were instructed to mark "contest" on the Tentative Nonconfirmation Notice so that they could work longer, even if they were not work-authorized. Of the 20 employees interviewed from this employer, most reported that they

had marked the contest line on the notice but only four actually intended to go through with the contesting process.

The final nonconfirmation cases referred to SSA but not resolved also probably include cases in which employees resolved their cases by going to SSA, but the employer failed to resubmit the cases, as required by the Web Basic Pilot after the employee went to SSA. For example, one case study employer told the interviewers that they re-entered employees' information as new cases when they returned from SSA or USCIS with additional documentation or further proof of work-authorization, thereby creating multiple Web Basic Pilot cases for many employees. Because this employer also did not close any of its cases, it is difficult to determine case outcome from the transaction database.

If a query was not immediately confirmed as "employment authorized," the system captured the reason for the tentative nonconfirmation. This SSA response code indicated that among these tentative nonconfirmation cases for those attesting to being U.S. citizens:

- Six percent (2,971 cases) had an invalid Social Security number (SSN) when compared to SSA data.
- Twenty-two percent (10,672 cases) of tentative nonconfirmations occurred because either the date of birth (DOB) or the name disagreed with SSA database (16 percent and 9 percent, respectively).
- In 32 percent (13,698) of the cases, both name and DOB disagreed with the SSA database.
- The remaining 35 percent of nonconfirmations occurred for some other reasons (e.g., SSN, name, and DOB were matched, but citizenship status was not available).

c. Case Outcomes for Persons Claiming to be Noncitizens

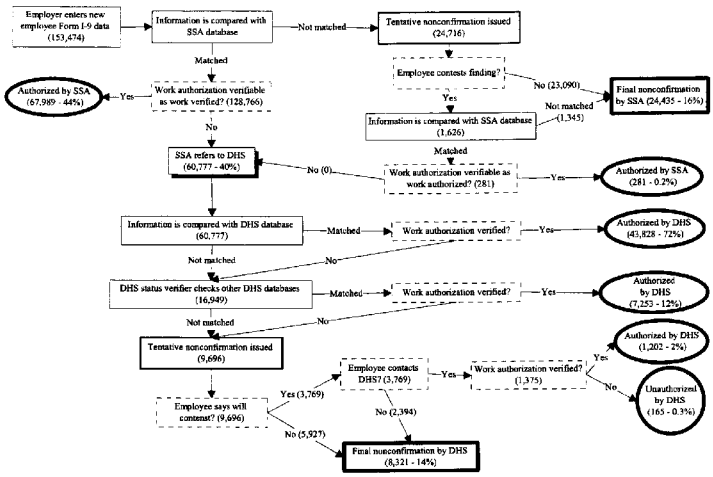
Because of a significant procedural change affecting noncitizens that was implemented on October 21, 2005, separate outcome information is provided for cases submitted prior to the change and those submitted after the change. As discussed in Chapter I, prior to the changed procedures, persons attesting to being work-authorized noncitizens were found to be work-authorized if SSA records contained adequate information to confirm their work-authorization status. After procedures were changed, all noncitizen cases having information on name and DOB that are consistent with the SSN in SSA's records are referred to USCIS, regardless of the work-authorization information in SSA records.

i. Cases Submitted from June 2004 through October 20, 2005

During June 2004 through October 20, 2005, almost 160,000 cases were submitted to the Web-based Basic Pilot system for persons attesting to being work-authorized noncitizens on their Form I-9s. The outcome of these verification attempts are displayed in Exhibit III-3. Another 16 percent became final SSA nonconfirmation cases, when an SSA tentative nonconfirmation that was not contested. As illustrated, 44 percent of the noncitizens were confirmed as work-authorized by SSA at the first verification attempt and 0.2 percent were

confirmed as work-authorized by SSA after two or more attempts. In addition, based on the transaction database information, 16 percent of the cases became SSA final nonconfirmation cases. It is likely that some of these cases were found to be work-authorized by SSA, but the employer relying solely on the letter from SSA for confirmation, did not resubmit information on the case. For example, one case study employer did not resubmit information when employees returned with a letter from SSA (this employer did not provide employees with the SSA referral letter and instead asked them for "further proof" of work authorization). The employer re-entered employees' information as new cases when they returned from SSA, creating duplicate cases, some of which may not have been detected in the cleaning routines used in this study.

Exhibit III-3: Verification Process for Persons Claiming to be Noncitizens on Form I-9 (June 2004 thru September 2005)



SOURCE: Web Basic Pilot Transaction Database

Of those SSA final nonconfirmations, 19 percent had an invalid SSN and 21 percent had an invalid date of birth or name (not shown in table). Sixty percent were due to both name and date of birth disagreeing with the SSA database. The remaining 0.4 percent of these final nonconfirmations were attributable to other reasons (e.g., the information was matched, but the individual was deceased).

Over 60,000 (or 40 percent) of all noncitizen transactions in which electronic comparisons to SSA records were made indicated—either initially or after the case was successfully contested—that the SSA records had information about the SSN, DOB, and name that were consistent with the information input by the employer but needed to be referred to

USCIS, because SSA did not have adequate information to determine that the person was work-authorized. The employer-submitted information for noncitizens was then electronically matched against the USCIS database. Of those USCIS referred cases, 72 percent were confirmed as work-authorized by USCIS at the first attempt and 14 percent were confirmed as work-authorized after two or more attempts. Furthermore, 0.3 percent (165 cases) were found to be unauthorized to work in the United States by USCIS. Finally, 14 percent of cases became USCIS final nonconfirmation cases, because they received tentative nonconfirmations that weren't contested.

Similar to the SSA portion of the system, the USCIS portion captured the reason for the tentative nonconfirmation when a query was not immediately confirmed as "employment authorized." As shown in Exhibit III-4, the reasons why the pre-October 21 USCIS final nonconfirmation cases received tentative nonconfirmations originally were: no match in initial of first name (36 percent); Alien number not found (28 percent); no match on the DOB (8 percent); and other reasons (28 percent). According to the closure code, 41 percent of USCIS final nonconfirmation cases were closed as "self terminated," which suggest that the employee quit during the resolution of work authorization. However, anecdotal information during the pretest indicated that not all employers understood that "self" meant the employee receiving the tentative nonconfirmation rather than the person inputting information into the system. Twenty-six percent of the tentative nonconfirmations were closed as "resolved unauthorized/terminated." This closure code indicates that employers terminated the employment of those workers because they did not resolve their tentative nonconfirmations. Six percent were closed for other reasons. Twenty-eight percent of USCIS final nonconfirmation cases had no closure codes.

Exhibit III-4: USCIS Response and Closure Code for USCIS Final Nonconfirmation Cases Between June 2004 and March 2006

	Percent	
Category	**6/04-10/20/05**	**10/21/05-3/06**
USCIS response		
No match in initial of first name	36	48
Alien number not found	28	26
No match on the date of birth	8	9
Other	28	17
Closure code		
Self terminated	41	43
Resolved unauthorized/terminated	26	19
Other	6	4
Unknown	28	34
Number of cases	8,321	8,611

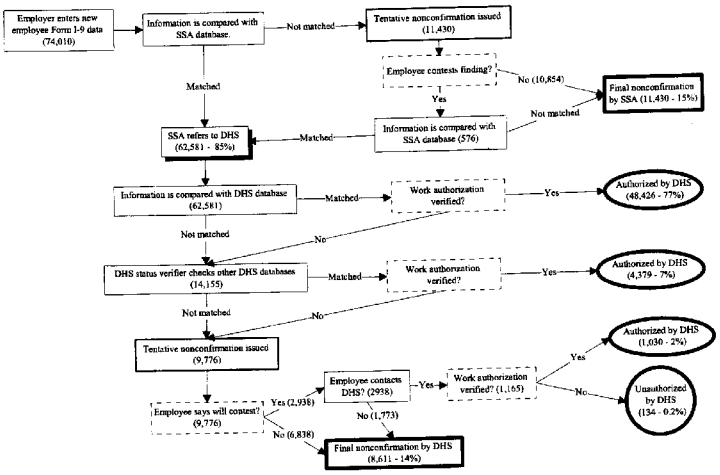
SOURCE: Web Basic Pilot Transaction Database

ii. Cases Submitted from October 21, 2005 through March 20, 2006

During October 21, 2005, through March 2006, employers submitted cases for approximately 74,000 persons claiming to be work-authorized noncitizens on their Form I-9s. The outcome of these verification attempts are displayed in Exhibit III-5. As

illustrated, in 15 percent of these cases, the information about name, SSN, and DOB 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. As would be expected, this is essentially the same as the 16 percent SSA final nonconfirmation rate prior to October 21, 2005. Nineteen percent of those cases had invalid SSNs, and 20 percent had an invalid DOB or name (not shown in table). Sixty-one percent were due to both name and DOB disagreeing with the SSA database. Again, as expected, this was essentially unchanged from the pre-October 2005 information. The remaining 0.4 percent were for other reasons (e.g., the information was matched, but the SSN belonged to someone who was dead).

Exhibit III-5: Verification Process for Persons Claiming to be Noncitizens on Form I-9 (October 2005 thru March 2006)



SOURCE: Web Basic Pilot Transaction Database

More than 62,000 cases (85 percent) of cases 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 information on SSA. The SSA finding usually was made instantaneously; however, some of these finding were made after a resolved tentative nonconfirmation. This 85 percent forwarding rate is, of course, much higher than the pre-October rate (40 percent).

Since SSA cannot find noncitizens to be work-authorized, it is possible for noncitizens to resolve a tentative nonconfirmation with SSA and then receive a tentative nonconfirmation from USCIS.[18] During the 6-month period from October 21, 2005, through March 20, 2006, there were 86 cases in which SSA found a noncitizen case to be work-authorized after the employee contested it. Five of these cases received tentative nonconfirmations from USCIS in addition to SSA. In three of these five cases, the employee resolved the USCIS tentative nonconfirmation as well as the SSA tentative nonconfirmation. In the other two cases, the cases became USCIS final nonconfirmation cases. Thus, receiving tentative nonconfirmations from both SSA and USCIS is unusual; however, it does occur.

The employer-submitted information for noncitizen cases forwarded to USCIS is electronically matched against the USCIS database. Of those USCIS referred cases, 77 percent were confirmed as work-authorized by USCIS at the first attempt, compared to 72 percent prior to October 21, 2005. Nine percent were confirmed as work-authorized after two or more attempts, compared to 14 percent prior to October 2005. Interestingly, 86 percent of all cases were ultimately found to be work-authorized by USCIS under both systems, even though a much higher percentage of cases were forwarded to USCIS after the change in procedures.

The reasons why the post-October 20 USCIS final nonconfirmation cases received tentative nonconfirmations were no match in initial of first name (48 percent); Alien number not found (26 percent); no match on the DOB (9 percent); and other reasons (17 percent) (Exhibit III-4). Based on the closure codes, 43 percent of the final nonconfirmation cases were closed as "self terminated," which suggests that the employee quit during the resolution of work authorization. Nineteen percent of them were closed as "resolved unauthorized/terminated," that indicates employers terminated the employment of those workers because they did not resolve their tentative nonconfirmations. Although the system requires that employers close all queries after receiving an outcome, employers do not always comply. Thirty-four percent of USCIS final nonconfirmations were cases without closure codes.

B. How Well Did the Federal Government Design and Implement the Web Basic Pilot?

1. Introduction

This section focuses on how well the SSA and USCIS performed their roles[19] in designing and implementing the Web Basic Pilot. Several approaches to this task are used. First,

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[18] Prior to October 21, 2005, SSA was permitted to find legal permanent residents and other noncitizens with permanent work-authorization to be work-authorized. They could not however make a final decision about the work authorization of other noncitizens.

[19] USCIS has the primary responsibility of designing, implementing, and operating the IIRIRA pilot programs. SSA's responsibilities were largely limited to providing the SSA data for the initial verification process and any necessary follow-up with employees receiving SSA tentative nonconfirmations.

information from the transaction database is used in subsection 2 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 if employers don't use the Web Basic Pilot program, the program cannot contribute to a reduction in unauthorized employment.

The third subsection examines the question of whether the system provided employers with appropriate and timely information about the work-authorization status of its employees and the fourth 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.

Since many of the modifications of the original Basic Pilot program that were implemented in the Web-based pilot program were made in response to employer suggestions on ways the program could be improved, subsection five examines the question of how satisfied employers are with the program. This information is, in large part, obtained from the employer web survey. Where feasible, the Web Basic Pilot is compared with the original Basic Pilot program results. These comparisons are accomplished in two ways: (1) through the analysis of questions about the relative merits of the programs, asked of employers that have used both versions of the program; and (2) comparisons of results from the current evaluation with those of the original Basic Pilot program evaluation. Information from the case studies is used in this section to obtain a more in-depth understanding of employers' perceptions of the Web Basic Pilot.

2. Employer Usage of the Web Basic Pilot

One key aspect of the process evaluation is program usage. This includes information both on whether employers are signing up for the program and the extent to which employers that have signed up for the program are actually using it. It should be noted that mandating the use of the 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 for the program may well point to potential problems in the implementation of a mandatory national system.

The number of employers enrolled in the Web Basic Pilot is greater now than in the past. From June 2004 through March 2006, 3,734 employers enrolled in the Web Basic Pilot; these employers verified approximately 1.3 million new employees[20]. This is in contrast to the 1,189 establishments enrolled in the Basic Pilot program as of July 1999 and the approximately 364,000 employee verifications conducted from November 1997 through December 1999. Although this demonstrates substantial progress in expanding the program, most U. S. employers are not enrolled and most new employees are not verified

[20] USCIS reports that as of October 30, 2006, there were 11,871 employers registered.

electronically. The national figures are approximately 7 million employers and 58 million new employees a year.[21]

Web Basic Pilot employers were more likely to start verifying cases within 3 months of signing up for the program than were original Basic Pilot employers. Exhibit III-6 shows the length of time between signing the Memorandum of Understanding (MOU) and when the employer first transmitted a case to the system. Only those employers signing the MOU at least 1 year prior to the transaction database construction are included. It is seen there that 60 percent of the 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 used the original Basic Pilot system by the third month after signing the MOU. This is not surprising, since many original Basic Pilot employers reported significant problems and delays in setting up the program to run on their PCs and the web-based system should require little effort to set up.

Exhibit III-6: Length of Time From Signing the MOU Until First Verification

	Web-based Basic Pilot	
Employer usage statistics	**Number**	**Percent**
Same day	51	2.2
Within 3 months	1,322	58
Between 3 to 6 months	182	8
Between 6 to 9 months	116	5.1
Between 9 to 12 months	51	2.2
Had not used after 12 months	557	24.4
Total	**2,279**	**99.9**

NOTE: Based on employers that signed the MOU on or before March 20, 2005.

SOURCE: Web Basic Pilot Transaction Database

Some employers signing up for the Web Basic Pilot program never use it. Among those signing up for the Web Basic Pilot at least a year before the database was constructed, 24 percent had not used the program after a year. Only 7 percent of those not using the system at the end of the year went on to use the system during the remainder of the time for which transaction database records were available for this study.

Although strictly comparable data for the original Basic Pilot and the Web Basic Pilot are not available at this time, it appears likely that the percentage never using the web-based system is not dramatically different from the comparable percentage for the original Basic Pilot. According to the analysis of the original Basic Pilot transaction database, after 5 months, 34 percent of pilot participants had still not used the system compared to an estimated 29 percent of Web Basic Pilot employers. Although a survey of employers signing up for the program but not using it was not done for the Web Basic Pilot evaluation, information from such a survey in the Basic Pilot evaluation provides some

[21] Estimated from U.S. Department of Labor, Bureau of Labor Statistics data in JOLTS and Business Patterns 2002.

insights into why some employers do not use the system after signing up for it. In that study, the majority (73 percent) of those signing up for the Basic Pilot without using it were employers that reported they had not hired any employees. Similar Web Basic Pilot employers obviously would not have used the Web Basic Pilot or any other verification system during the same time. Another 20 percent of the original Basic Pilot non-users said they had technical difficulties. Given the improvements in the Web Basic System, it is likely that fewer employers are in this category, possibly explaining the reduction in the rate of non-users among MOU-signers.

3. Did the Web Basic Pilot Provide Employers With Appropriate and Timely Information about the Work-Authorization Status of Employees?

Another process evaluation question is whether the system is providing employers with 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 91 percent (1.2 million cases) of the 1.3 million cases electronically processed. An additional 0.9 percent of cases (11,600 cases) were verified after initial review by an Immigration Status Verifier (ISV). According to the transaction database, 85 percent of these second stage verification cases are resolved within 1 day of case submission, and by the fourth day, almost all cases were verified. Many of the cases that were not quickly resolved were cases in which employees were not work-authorized.

The percent of Web Basic Pilot cases found work-authorized automatically is considerably higher than the comparable figure from the original Basic Pilot program. In the original Basic Pilot, 79 percent of cases were initially found to be work-authorized by either SSA or INS compared to the 92 percent initially found to be work-authorized in the Web Basic Pilot.

The total percentage of cases found to be work-authorized in the Web Basic Pilot was also higher 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 verification attempts were eventually found to be work-authorized (85 percent by SSA and another 8 percent by USCIS). This improvement is presumably at least in part due to improvements in the SSA and USCIS databases. However, it is also possible 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 status.[22]

[22] This issue will be explored in more depth in the final report.

The Web Basic Pilot did not capture the specific number of unauthorized workers among unresolved cases. Seven percent of all verification attempts were never resolved (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 they were not work-authorized. However, some of these cases are undoubtedly cases in which the employee failed to contest for some other reason (e.g., they quit the job for reasons unrelated to the program or the employer never informed the employee of the tentative nonconfirmation). Furthermore, the case study indicates that, in some cases, the employee does decide to contest, but the employer does not correctly record the information in the Web Basic Pilot.

4. Did the Web Basic Pilot Meet the IIRIRA Requirements for Data Accuracy?

Overall, a tentative nonconfirmation finding was issued in less than 1 percent (0.7 percent) of all Web Basic Pilot cases found to be work-authorized at some point in the verification process.[23] Although 0.7 percent is not necessarily an unacceptably high error rate, the rate for foreign-born citizens (10.9 percent) is much higher than this, as discussed in Chapter IV.

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.

IIRIRA states that "the… [legacy] Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information…" (Section 404(g)). USCIS officials reported that although major improvement in the timeliness and accuracy of the USCIS databases have been made, the database used for verification is still not always up to date. The USCIS staff also report that they expect that more expeditious access to data sources and USCIS business and systems transformation efforts currently underway will improve USCIS data accuracy in the future.

The Web Basic Pilot software includes a number of editing features, designed to reduce data entry errors that were not included in the original Basic Pilot. 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 birth date 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 have been made into fields on the verification screen, a red error marker appears next to the field. If improper entries

[23] The final report will include additional information on trends in accuracy rates and will compare the original Basic Pilot results with the Web Basic Pilot.

are submitted without being corrected, error messages will appear that require the entries to be corrected before verification as in the following:

- 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 SSN 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]."[24]
- A date of birth 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.

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 date of birth was mistakenly entered as 7/18/1800, no error message appears for an out-of-range entry;
- The edit checks should at least require a "soft edit" when the age of the employee is calculated to be below a specified cut-off age (e.g., 13).[25]
- The edit for the permissible hire date for employees could be strengthened by using a soft edit that prohibits entering employees hired more than X days earlier (e.g., 30 days).[26]

Note that edit checks cannot eliminate all data input errors. For example, data input software would not correct for inputting some errors in dates (0508) rather than (0805) or number transpositions in the entry of the SSN. In fact, when the employers were asked about the Web Basic Pilot computer system, 29 percent indicated that it is easy to make errors when entering employee information into the system. While most of the tentative

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[24] As noted in the recommendations,

[25] A "soft edit" provides the user with a warning to recheck the data instead of preventing entry of data, as takes place with a "hard edit." Soft edits are appropriate when a situation appears unlikely (e.g., a small child may receive income from modeling work; however, occurrences of small children working are rare and most birth date entries indicating a young child will be erroneous entries.)

[26] If pending legislation requiring use of the Web Basic Pilot to verify existing employees is passed, this edit check would need to be de-activated.

nonconfirmation findings were not the result of data entry errors, there are a considerable number of tentative nonconfirmations that were due to mistakes when entering the I-9 information into the Web Basic Pilot system. It is possible that additional error checks could further decrease inaccuracies.

According to the employers completing the employer survey, 52 percent had received at least one tentative nonconfirmation finding that was due to data entry mistakes. Of those, 88 percent of employers had had tentative nonconfirmations due to errors that they discovered themselves. Twenty-three percent of employers reported that they also had 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 Web Basic Pilot data before sending the information to SSA and USCIS, since tentative nonconfirmations due to data entry errors are potentially costly for employers, employees, and the Federal Government. The Web Based 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 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-based 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, web-based access responds to employer problems and costs encountered in installing software required to use the original Basic Pilot on the employer's computer.

Employers expressed satisfaction with many aspects of the Web Basic Pilot. When employers were asked to rate their experiences with the Web Basic Pilot system registration and start-up process, almost all (99 percent) reported the online registration process was easy to complete and most (87 percent) indicated that the registration did not consume much of their time (Exhibit III-7). In addition, employers reported that the online tutorial provided adequate information about the use of the system (85 percent), adequately prepared them to use the system (96 percent), and was easy to use and understand (97 and 98 percent, respectively).

Exhibit III-7: Employer's Experience With the Web Basic Pilot Registration and Start-up

Category	Strongly agree (%)	Agree (%)	Disagree (%)	Strongly disagree (%)
The online registration process was easy to complete	39.3	59.3	1.3	0.1
The online 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 online tutorial was easy to understand	28.1	69.7	1.8	0.4
The online tutorial was hard to use	0.2	2.6	75.9	21.2
The tutorial adequately prepared us to use the online verification system	29.8	66.5	2.9	0.8
The tutorial answers all of our questions about using the online 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 burden to have to pass the Mastery Test before being allowed to use the online verification system	2.7	13.1	64.9	19.3
It is important to have to pass the Mastery Test before allowed to use the online 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 helpdesk	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

SOURCE: Web Basic Pilot Employer Survey

When employers 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 helpdesk, reports to monitor the status of employee cases, and the online tutorial were very helpful resources to complete the verification process (not shown in table).

The technical changes made in the Web Basic Pilot appear to have resulted in reduced employer burden and improved *employer* satisfaction. When employers were asked what direct costs the establishment incurred in setting up the pilots, computer hardware is cited by only 9 percent of those who responded to the Web Basic Pilot employer survey, compared to 37 percent of employers who responded to the original Basic Pilot employer survey. Similarly, 15 percent of employers reported computer maintenance as an annual direct cost in the Web Basic Pilot survey compared to 42 percent of employers who cited computer maintenance as an annual direct cost incurred to maintain the pilot 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 when employers were asked to rate the extent to which establishing employment eligibility became a burden because there were so many tentative nonconfirmations only 5 percent of employers that responded to the Web

Basic Pilot survey agreed or strongly agreed, compared to 15 percent of employers that responded to the original Basic Pilot survey. This decrease may be attributable, at least in part, to increased accuracy in SSA and USCIS databases rather than attributable to programmatic changes.

Further, a large majority of the 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 stronger, compared to the original Basic Pilot. In addition, as shown in Exhibit III-8, more than 70 percent of the employers reported 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, 60 percent suggested that the tutorial in the Web Basic Pilot is improved considerably over the original Basic Pilot. About 34 percent reported there is no difference in verification costs between the Web Basic Pilot and the original Basic Pilot, and 30 percent indicated the reliability of verification is about the same between the Web Basic Pilot and the original Basic Pilot.[27]

Exhibit III-8: Employers' Evaluation of the Web Basic Pilot in Comparison to the Original Basic Pilot

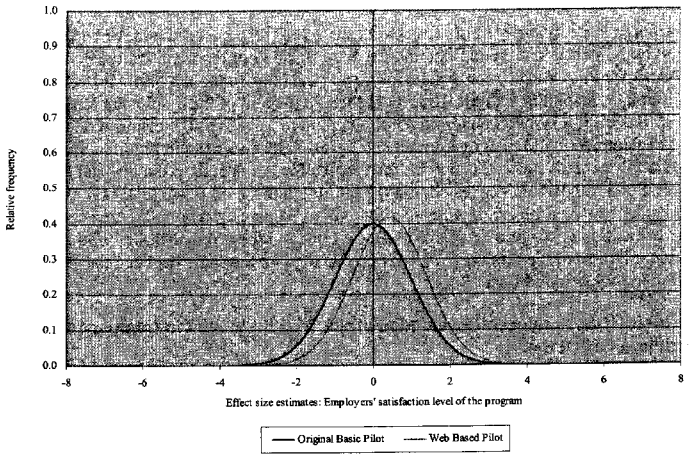
Category	Web Basic Pilot is much better (%)	Web Basic Pilot is somewhat better (%)	No difference (%)	Original Basic Pilot is somewhat better (%)	Original Basic Pilot is much better (%)
Time required to verify	72.2	13.0	13.5	0.7	0.6
Technical features	70.9	18.4	10.7	0.0	0.0
Burden of verification	62.2	10.6	26.5	0.4	0.4
Tutorial	60.7	24.5	14.0	0.4	0.4
Verification costs	55.9	9.7	33.9	0.2	0.2
Reliability of verification	55.6	13.8	30.0	0.4	0.2
Other available resources	48.9	21.8	28.4	0.6	0.2
Other	52.0	16.0	32.0	0.0	0.0

SOURCE: Web Basic Pilot Employer Survey

The results of the analyses based on the satisfaction scale developed for this report also indicate that there was a significant improvement in employer satisfaction with the Web Basic Pilot compared to the original Basic Pilot. Exhibit III-9 shows the normal distribution of satisfaction scores for the two programs. The effect size estimate of 0.4 (on a scale ranging from 0 to 1) suggests there is a medium-size difference between the satisfaction level with the Web Basic Pilot and the original Basic Pilot.

[27] Additional analyses of employer responses to questions comparing the Web Basic Pilot program and the original Basic Pilot program are planned for the final report.

Exhibit III-9: Frequency Distributions of Scores for Employers' Satisfaction with the Web Basic Pilot and with the Original Basic Pilot



SOURCE: Web Basic Pilot Employer Survey

Additional information of relevance to understanding how satisfied employers are with the Web Basic Pilot was obtained in the case studies. All five case study employers reported being somewhat satisfied to being very satisfied with the Web Basic Pilot program. These employers reported very few difficulties with the online 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 prior to the Web Basic Pilot indicated that they liked the original better.

b. What Did Employers Perceive As Advantages and Disadvantages of the Web Basic Pilot?

This section examines responses to the web survey and employer case study interviews to questions about the advantages and disadvantages to employers of using the Web Basic Pilot, including questions that deal with the experiences with the system registration and start-up process, resources and features of the system, and the 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, 90 percent surveyed agreed or strongly agreed that the Web Basic Pilot is

an effective tool for employment verification. In addition, 88 percent agreed or strongly agreed that the Web Basic Pilot 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 employers (96 percent) disagreed or strongly disagreed that the tasks required by the system overburden the staff (Exhibit III-10). Furthermore, although not shown here, 70 percent of employers reported the Web Basic Pilot was very user-friendly and an additional 29 percent indicated the Web Basic Pilot was somewhat user-friendly on the system navigation and data entry.

Exhibit III-10: 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 changes of getting a mismatched SSA earnings letter	6.6	5.8	34.6	53.0

SOURCE: Web Basic Pilot Employer Survey

The general enthusiasm employers expressed in the web survey was also reflected in most of the responses 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 case study employer stated that the benefits of using the system greatly outweigh the costs of maintaining the system.

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 employers who responded to the employer survey reported that they had encountered difficulties with using the Web Basic Pilot, such as unavailability of the system during certain times (13 percent), accessing the system (12 percent), or training new staff to do verifications using the system (12 percent). Employers also identified other problems of the Web Basic Pilot system, such as problems related to passwords or cases with tentative nonconfirmations. Exhibit III-11 provides some examples of problems that employers reported in the employer survey.

Exhibit III-11: Examples of Difficulties With the Web Basic Pilot That Employers Encountered

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 email 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 online.
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 reenter the entire verification online 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 sometime 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 needing INS verification the program does not update the status as indicated.
Sometimes it shows non-confirmation, our employee goes to SSA or USCIS, they say they match but still the program says non-confirmation
We have encountered difficulties when staff has questions in regard to unique situations---sometimes help desk personnel does 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 US Citizenship.

SOURCE: Web Basic Pilot Employer Survey

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 they had to invest in hiring and training employees without certainty that these new workers would be able to continue employment. This employer reported a higher turnover rate as a result of using the Web Basic Pilot, and significant costs due to providing training, safety equipment, and handbooks to so many employees who were ultimately lost due to Final Nonconfirmation findings.

c. *What Are the Employer Costs for the Web-based Pilot Program?*

The Web Basic Pilot was designed to be much simpler and less expensive to set up and operate than the original Basic Pilot program that required users to install specified software on a dedicated computer and required use of a modem with specified parameters to communicate with the Federal database. Web Basic Pilot employers estimate that they spent an average of approximately $125 for setting up the Web Basic Pilot and $727 annually for operating the program. This is considerably less than the comparable figures for the original Basic Pilot program. The original Basic Pilot employers reported that they spent $777 ($916 in 2006 dollars) for set up and $1,800 ($2,121 in 2006 dollars) annually for operating costs.[28]

C. Is Electronic Employment Verification Through the Web Basic Pilot Working Better than When the Original Basic Pilot Evaluation Was Conducted?

1. Training Improvements

Training materials and requirements to pass the tutorial were improved. In implementing the Web Basic Pilot, modifications were made to the original Basic Pilot to increase employer compliance with the requirements of the pilot program. The primary modifications were enhancements to the training materials available to employers, including a mandatory online tutorial, and the requirement that employers must pass a Mastery Test on pilot procedures prior to using the system. These changes were consistent with prior evaluation recommendations.

System testing revealed that it was not possible for new users to access the verification screens prior to viewing all screens of the tutorial and passing the Mastery Test. However, on the Mastery Test, once a user received an "incorrect answer" response, it was possible for the user to use the "back button" at the top of the Internet browser to access the previous screen and re-submit a different answer until the correct answer has been selected. This enables new users to pass the test without understanding the correct procedures. When a user gave incorrect answers on the Mastery Test but subsequently passed the overall test, the user also was not provided with the correct responses to the questions answered incorrectly.

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.

[28] Estimates of 2006 dollars were made using the Bureau of Labor Statistics Inflation Calculator (http://data.bls.gov/cgi-bin/cpicalc.pl).

- Periodic retesting and, if need be, refresher training could help ensure that material is not forgotten.
- Training modules for staff other than direct users (e.g., human resources management) could help prevent procedural violations that are not the responsibility of most of the system users. For example, management needs to be aware that they may not take adverse actions during the period the employee is resolving a tentative nonconfirmation.

2. Comparison of Web Basic Pilot and Original Basic Pilot Outcomes

In the original Basic Pilot, employers made 364,987 verification attempts between November 1997 and December 1999 (Exhibit III-12). The SSA determined the work-authorization status of 86 percent of these cases and USCIS determined the work-authorization status for the remaining 14 percent of the cases. In the Web-based Basic Pilot, 798,533 cases were processed between June 2004 and September 2005 to determine their work-authorization. Ninety-two percent of them were processed by the SSA while only 8 percent of transactions were referred to USCIS. This finding suggests that SSA increased its ability to determine the work-authorization status of a much larger percent of the cases. At least some of this improvement is presumably due to improvements in the SSA data file. However, changes in the types of employers and their employees enrolled in the program may also contribute to the trends.[29]

The other case outcome findings for the pre-October 21 cases also suggest that the Web-based Basic Pilot is functioning better than the original Basic Pilot program did from 1997 to 1999. For example, the percentage of cases authorized automatically by SSA and USCIS both increased. For SSA, the increase was from 70 percent to 86 percent for the pre-October 21 cases and for USCIS, it went from 61 percent to 72 percent. There were corresponding decreases in the percentage of cases found work-authorized other than by using automated matches. These improvements presumably reflect reported database improvements.

3. Did the October 21 Processing Change Improve the Program's Ability to Detect Employees without Work Authorization?

As indicated previously, a significant procedural change affecting the verification of noncitizens 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 they had permanent work-authorization status. After procedures were changed, all noncitizen cases having information on name and date of birth that are consistent with the SSN in SSA's records are referred to USCIS, regardless of the work-authorization information in SSA records.

[29] Additional analyses are planned for the final report to shed light on this.

Exhibit III-12: Outcome Comparison Between Original Basic Pilot and the Web Basic Pilot

	Original Basic Pilot	Web Basic Pilot	
Outcome	**Nov. 97 thru Dec. 99**	**June. 04 thru Sept. 05**	**Oct. 05 thru March 06**
Total transactions	364,987	798,533	540,194
SSA portion of transactions	86%	92%	88%
USCIS portion of transactions	14	8	12
Outcome (SSA portion)	364,987	798,533	540,194
Initial work-authorized by SSA	70%	86%	83%
Work-authorized by SSA after two or more attempts	4	1	0
Final nonconfirmation by SSA	12	6	5
Cases that were referred to USCIS	14	8	12
Outcome (USCIS portion)	52,347	60,787	62,581
Initial work-authorized by USCIS	61%	72%	77%
Work-authorized by USCIS at second attempts	29	12	7
Work-authorized by USCIS at third attempts	2	2	2
Work not authorized by USCIS	0	0	0
Final nonconfirmation by USCIS	8	14	14

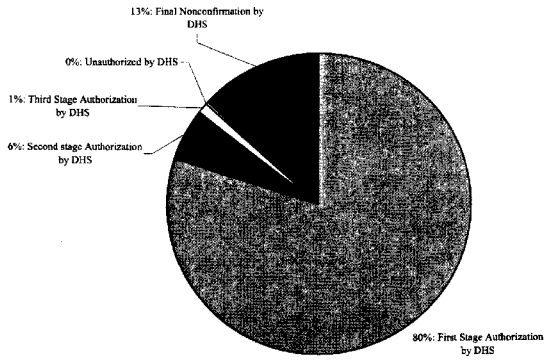
NOTE: Nine cases in continuance at the time of file creation are excluded (eight during June 04 and Sept. 05; and 1 during Oct. 05 and March 06). Details do not add to total because of rounding.

SOURCE: Web Basic Pilot Transaction Database

Exhibit III-13 provides an overview of the findings for post October 20 cases that would have received a work-authorized finding if the procedures had not been changed. It is seen there that most cases that SSA would have found to be work-authorized under the pre-October 21 system were also found to be work-authorized under the new procedures. However, 13 percent of the cases were either found to be not work-authorized or became final nonconfirmation cases.

Most noncitizen cases that would have been found to be work-authorized by SSA under the old procedures were also found to be work-authorized using the post-October 2005 procedures. Exhibit III-14 provides a breakdown of the outcomes by whether the SSA work-authorization finding would have been at the first or second stage. Among the 33,524 noncitizen cases that would have been found work-authorized by SSA at first stage, 80 percent (26,801) were found to be work-authorized by USCIS based on the USCIS automated match. For these cases, there is neither an increase in cost per case for processing under the current billing system nor any increase in burden for employers or employees. There is, of course, also no change in the accuracy of the findings for these cases.

Exhibit III-13: Outcomes for Cases Processed Under the New Procedures That Would Have Received an SSA Finding of Work-authorized Under the Old Procedures (October 21, 2005 thru March 2006)



SOURCE: Web Basic Pilot Transaction Database

Exhibit III-14: Case Findings of Post-October 20 Noncitizen Cases That Would Have Been Authorized by SSA as First or Second Stage SSA Work-authorized

Finding if case had been processed under pre-October 21 rules	Actual case finding					
	First stage authorization by USCIS	Second stage authorization by USCIS	Third stage authorization by USCIS	USCIS final nonconfirmation	Unauthorized by USCIS	Total
First stage SSA						
Number	26,801	1,906	381	4,380	56	33,524
Percent	79.9	5.7	1.1	13.1	0.2	100
Second stage SSA						
Number	79	2	3	2	0	86
Percent	91.9	2.3	3.5	2.3	0.0	100
Total						
Number	26,880	1,908	384	4,382	56	33,610
Percent	80.0	5.7	1.1	13.0	0.2	100

SOURCE: Web Basic Pilot Transaction Database

Approximately 6 percent of the noncitizen cases that would have received a first stage SSA authorization finding using the pre-October 21 rules were authorized by USCIS at the second stage. These cases incurred an additional 48 cents system processing fee plus costs for the manual verification process performed by Immigration Status Verifiers. However, the only impact of this extra step on employers and employees would be a delay of approximately one day in obtaining information on the work-authorization status of the employee.

Only 1 percent (381) of the cases that would have been found work-authorized at the first stage by SSA became third stage USCIS work-authorized cases under the new rules. In these cases, employees and employers incurred the burdens associated with erroneous tentative nonconfirmations and the Federal government incurred additional processing expenses.

It seems likely that the revised procedures have resulted in identifying more persons without work-authorization than was true under the prior procedures. A small number (56 or 0.2 percent) of the cases that would have been first stage SSA work-authorization cases under the pre-October 21 rules were found to be unauthorized by USCIS and another 13 percent became USCIS final nonconfirmation cases. Although probably not all of these final nonconfirmation cases lacked authorization to work, based on the prior IIRIRA pilot evaluation findings, it is likely that a high percent are not work-authorized. It, therefore, appears that the revised process is more effective than the previous process in identifying additional employees without work-authorization.

D. Have Employers Generally Complied with Web Basic Pilot Requirements?

1. Introduction

This section explores the extent to which employers complied with the Web Basic Pilot requirements. Most of the analysis is based on employers' self-reported behavior. Even though employers were given assurances that information provided would be kept confidential, it is possible that employers not adhering to required procedures under-report such noncomplying behavior. The case study provides some insights on whether this is true. Although respondents generally appeared to be candid in their responses about non-compliant behavior, it was clear that, at least for some large employers, the central office respondent was not aware of what was actually happening in the field locations where procedures were implemented.

2. Did Employers Follow the Training Procedures Implemented for the Web Basic Pilot?

Not all employers followed the Web Basic Pilot procedures with respect to training employees on the Web Basic Pilot system. When asked how many staff had completed the Web Basic Pilot online tutorial, 84 percent of employers indicated that all staff that currently used the system for verification had completed the tutorial. This percentage was 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. Only 1 percent of employers indicated that no current system users had completed the tutorial.

3. 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 (85 percent) used the Web Basic Pilot to verify all new employees—including employees who claimed to be U.S. citizens and employees who claimed to be noncitizens. All five case study employers indicated that they also 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 reported that they used the Web Basic Pilot for job applicants. In addition, almost one-third (31 percent) of employers reported that they used the Web Basic Pilot to verify work authorization before an employee's first day of paid work. This second finding suggests that even though some employers may be using the system correctly to verify hired employees, they might not allow these employees to start work if they don't receive a work-authorized response.

Two case study employers used the system to screen job applicants before they allowed them to start working for the company. Neither employer gave any indication that they were aware of their misuse of the system. In fact, one employer indicated that the only time that they were not able to follow proper procedure is when they had to first hire employees and have them start working before they had time to enter the employees' 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 with 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 who 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 of the reasons for prohibiting verification of job applicants is that these persons are likely to be denied employment without having an opportunity to contest tentative nonconfirmation findings. However, at least some employers who do verify prior to hiring employees also notify these job applicants of the problem.

Among the 16.5 percent of web survey employers that indicated that they used the system to screen job applicants only 2.5 percent reported that they did not usually notify employees of tentative nonconfirmation findings. The majority (84 percent) of these employers notified applicants on the same day that they received the finding.

Of the two case study employers that screened job applicants found to have the skills required for the jobs applied for, one employer notified most applicants who received tentative nonconfirmation findings immediately and instructed them that they could go to SSA or USCIS to correct a 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.

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 all employers who reported that they used 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. One staffing agency commented on the survey that everyone who meets their hiring criteria and completes an I-9 form is considered an employee and they verify all employees 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.[30]

Employers could not always verify new employees' information with the Web Basic Pilot within 3 days of the employees' hire dates. Although most employers (72 percent) reported that they used the system within the specified timeframe, the case studies revealed some difficulties with adhering to this requirement. Of the three case study employers that correctly used the system to verify only newly hired employers, two employers reported that they frequently had trouble entering employees' information within three days of their hire dates. Both employers were large employers where 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 would not arrive at the Human Resources office in time for Human Resources staff to enter each new employee's information into the Web Basic Pilot system within three days of their hire dates. Both employers strongly recommended extending this timeframe.

Information in Exhibit III-15 from the transaction database confirms that employers were generally inputting employee information into the Web Basic Pilot system promptly—48 percent of cases were entered on the date the employee was hired and another 36 percent were entered within a week of hire.[31] However, 11 percent of the transactions were for employees that had been hired more than a week before the transaction was submitted.

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[30] 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 are expected to include these employers as well.

[31] The distribution is based on calendar days, which means that some of the cases entered within a week were entered more than 3 Federal work days after the hire date.

Exhibit III-15: Calendar Days Between Hire Date and Initial System Entry Date

Category	Number	Percent
All transactions, total	1,338,736	100.0
The same day	646,541	48.3
Within 7 days	480,531	35.9
Within 14 days	84,231	6.3
Within 21 days	33,496	2.5
Within 30 days	23,493	1.8
More than 30 days	70,444	5.3

SOURCE: Web Basic Pilot Transaction Database

Very few employers used the Web Basic Pilot to verify employees hired before they enrolled in the Web Basic Pilot. Only 5 percent of employers in the web survey 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 screening 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 pre-existing employees.

4. 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 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.

At two of the case study employers terminations were often delayed because the Human Resources staff employers relied on department staff to implement the termination which often led to delays in the process. Employee interviews revealed that supervisors at one of the establishments frequently manipulated the contesting process to prolong the amount of 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 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 reported that they would terminate any employees who were not work-authorized.

Some employers did not consistently follow-up on tentative nonconfirmation findings. Two case study employers that prescreened employees sometimes ignored the tentative nonconfirmation findings and hired applicants without telling them about problems with their verification. One case study employer sometimes "ignored" tentative nonconfirmation findings if they did not think the tentative nonconfirmation findings were accurate. 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.

5. 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 receiving a tentative nonconfirmation with written notice of this finding, along with notification of their right to contest.

Employers did not consistently post the Web Basic Pilot notice in an area where it is likely to be noticed by job applicants. Three case study employers displayed the Web Basic Pilot Poster in their Human Resources offices; however, at two of these employers the application process occurred at the department-level 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 their job postings that informed 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 form that explains the procedures for resolving tentative nonconfirmation findings with SSA or USCIS.[32] Both SSA and USCIS notices also explain to employees that employers cannot take adverse actions against employees while they are contesting the tentative nonconfirmation.

Many employers (84 percent) always provide written notification of tentative nonconfirmation findings. This is the same percentage of employers that reported always providing written notification during the original Basic Pilot evaluation. Although not required, 81 percent of employers also reported that they always provide in-person notification of tentative nonconfirmation findings—this was also the same percentage that was found during the original Basic Pilot evaluation. Three of the five case study employers provided written notification by using the Tentative Nonconfirmation Notices

[32] Refer to Appendix H for copies of the referral forms.

provided by the system, and four of the five employers notified employees in person. The fifth employer did not regularly notify employees at all.

The case studies revealed that most but not all interviewed employees who had received a tentative nonconfirmation reported that they had been notified of a problem with their paperwork—either written or verbal. In addition to the three employers that provided employees with written notice, another employer reported that they turned the computer monitor to show the applicant the computer screen indicating a tentative nonconfirmation finding. The fifth case study employer rarely told applicants of a problem with their paperwork and when they did, they did not provide the tentative nonconfirmation notice or any information about contesting options.

Even though most employers notified employees of the 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 5 percent of employers indicated that they did not encourage employees to contest tentative nonconfirmations because the process required too much time, and/or employment authorization rarely results. This is significantly lower than the 17 percent of employers that indicated that they did not encourage employees to contest for the same reasons in the original Basic Pilot evaluation.

There was no evidence from the case studies that employers actively discouraged the contesting process, although not all employers provided all employees with sufficient information to successfully contest their tentative nonconfirmation findings.

6. 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 employer survey indicate that 19 percent of employers restricted work assignments while employees were contesting a tentative nonconfirmation finding—a significantly lower percentage than the 30 percent of employers who indicated that they restricted work assignments on the original Basic Pilot evaluation. However, during the Web Basic Pilot evaluation, some employers also reported that they delayed training until after employment authorization is confirmed (14 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 reported that they were not authorized to work; however, one employee who was work-authorized reported that he received harsher treatment because the supervisor assumed he was an unauthorized worker. Employees reported that the supervisors assumed that all employees who received tentative nonconfirmation findings were unauthorized workers and therefore took advantage of these employees by requiring them to work longer hours and work in poor 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. None of the interviewed employees reported any mistreatment from the employer.

7. Did Employers Follow Other Web Basic Pilot Verification Procedures?

Many employers did not comply with the Web Basic Pilot procedure of entering closure codes for all cases. Although the Web-based Basic Pilot procedures require that employers provide the closure codes that explain why the tentative nonconfirmation results were unresolved, the Basic Pilot system does not force the user to enter such codes. As mentioned earlier, 28 percent of USCIS final nonconfirmation cases have no closure codes. In SSA final nonconfirmation cases, 36 percent did not have closure codes.

Only three case study employers made an effort to close all Web Basic Pilot cases with closure codes. A fourth employer was aware that they should be closing all cases but felt that the process was too time consuming. The fifth employer was unaware that they 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 will be much more critical if a mandatory employment verification program is instituted, when more extensive employer monitoring, using the transaction data, will be implemented.

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 online 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 27 percent (4,571 cases) of the USCIS 16,932 final nonconfirmation cases.

From the information on the transaction database, it is not clear what percentage of the tentative nonconfirmation cases without referral dates are attributable to employees not contesting the finding, what percentage are attributable to employers' not properly informing employees about their tentative nonconfirmation findings, and what percentage are due to failure to refer cases through the system.[33] Only three of the five case study employers initiated referrals through the Web Basic Pilot system. One of the two employers who did not initiate referrals was instructing employees to correct their verification problems with SSA or USCIS but not following the procedures set out for the referral.

Regardless of whether automated employment verification becomes mandatory, it would be helpful to revise the closure codes. The goal of these revisions would be to reduce employer confusion about the meaning of the codes and to provide additional information for future evaluations and monitoring efforts. For example, there is no specific code for employees whose employment was terminated because they decided not to contest the tentative nonconfirmation. There is also no code to indicate that employees quit working immediately after being notified that they received a tentative nonconfirmation.

E. What Recommendations for Improvements to the Web-based Basic Pilot Were Made by Employers?

Employers made several recommendations for improvements to both the overall Web Basic Pilot process and the administrative features of the online system. Based on their hands-on experience in using the Web Basic Pilot in an employment setting, the web survey and case study employers were in a position to suggest changes to both the Web Basic Pilot process and the administrative features of the online system that would make the Web Basic Pilot more practical and user-friendly for all employers.[34]

- **Employers recommended that the requirement to enter employees' information into the Web Basic Pilot system within three work days be lengthened.** Some large employers felt that the requirement that employees' information be entered into the Web Basic Pilot within 3 work days of hire was impractical for large employers with multiple hiring departments.
- **Many employers recommended that pre-screening be permitted.** When asked for their opinion about changing the Web Basic Pilot procedures to allow the verification of job applicants, 64 percent of the 1,024 employers responding to the employer survey supported this change, 22 percent opposed the change, and 14 percent had no opinion. Two case study employers suggested that the Web Basic

[33] These proportions cannot be determined because closure codes were not input to indicate the exit status of a substantial number of employees.

[34] Although the evaluation is not complete and a comprehensive set of recommendations cannot be made at this time, the evaluation team has pulled together a list of interim recommendations, based, in part on employer recommendations, that are included as a separate document.

Pilot system should be used by all employers to pre-screen applicants before they are hired or start working.

- **Many employers would also like to use the system to verify employees hired prior to their start of the program.** When asked for their opinion about changing the Web Basic Pilot procedures to allow the verification of employees hired before the pilot was started, 50 percent of the 1,021 employers responding to this question on the employer survey supported the change, 25 percent opposed the change, and 25 percent had no opinion.

- **Employers would appreciate more compatibility between the Web Basic Pilot system and their existing Human Resources systems.** One employer recommended that the Web Basic Pilot allow for some employer personalization, such as allowing the employer to enter in 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.

- **Some employers made recommendations for how to streamline the administrative processes for using the online system.** One employer suggested that instead of requiring users to navigate through two screens to resolve cases which were not initially work-authorized, the system could automatically resolve those cases. Another employer recommended that the system alert the employer to which cases have received new resolutions from USCIS and require action (currently the system only alerts the employer to the number of cases with new resolutions from USCIS).

- **Employers did not favor limitations that would prevent them from entering new cases until older ones had been closed.** When asked for their opinion about changing the software to not allow employers to enter new cases until they had input referral dates for all tentative nonconfirmation cases from 2 weeks earlier, 67 percent of the 1,021 employers responding to this question on the employer survey said that they were opposed to such a modification in the software, 16 percent favored the change, and 17 percent had no opinion.

- **Employers also reported difficulty with the process for having their passwords reset; however, this process has been simplified since the interviews were conducted.** Two employers reported that the process of calling the telephone number to get their passwords reset is time consuming, particularly when the office is closed and the employer has to wait until the next day to get a new password. One employer recommended an after-hours phone line or a text email system that could provide users with their user names and passwords if the office is closed.[35]

[35] The system now provides a way of doing this, presumably in response to an interim recommendation from the evaluation team.

Subsequent to the employer interviews, USCIS implemented an automated system for emailing passwords to authorized users.

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 prescreening could be implemented while safeguarding employees against discrimination.

F. SUMMARY

Features of the Web Basic Pilot have corrected a number of problems with the original Basic Pilot program reported in the evaluation of that 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 program and reduces employer set up time and costs. Edit checks now prevent some obvious data entry errors and, unless intentionally circumvented, employer staff members are prohibited from using the system prior to passing a Mastery Test, presumably resulting in more knowledgeable employers. Furthermore, system outcomes indicate that the trend towards increasing accuracy in the SSA and USCIS databases continues. These changes have led to increases in employer satisfaction with the Basic Pilot and appear also to have resulted in greater compliance with Web Basic Pilot procedures.

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

A. INTRODUCTION

The policy goals of the Web-based Basic Pilot (Web Basic Pilot), as articulated in the Illegal Immigration Reform and Immigrant Responsibility Act (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 nonburdensome for employers. This chapter addresses each of these policy goals by providing background information and highlighting relevant findings from the evaluation. This chapter evaluates whether the Web Basic Pilot program achieved its policy goals. Where possible, the results of this evaluation are compared with findings from the original Basic Pilot.

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 employers using the Web Basic Pilot. Since the employer sample constitutes a population of all employers that had been using the Web Basic Pilot for over a year at the time that the sample was selected, sampling error is not an issue for the survey.[36] However, like all surveys, the employer survey is subject to nonsampling errors, such as nonresponse bias and measurement error.

Information from the five case study employers and their 64 employees who received tentative nonconfirmations cannot be considered to be representative of all employers or all tentative nonconfirmation employees.[37] These results are designed to provide more in-depth insights into the Web Basic Pilot than can be obtained from more structured methodologies but should not be generalized to a larger population using statistical methodologies.

Information obtained directly from the transaction database is based on the 1.3 million employee cases on that database. This is a very large number of observations and should, therefore, provide reasonably precise estimates of verification outcomes. A number of analyses are based on subgroups of the transaction database cases, such as the transactions that resulted in tentative nonconfirmations (approximately 104,000 transactions). Fortunately, even these subgroup samples are fairly large. However, the possibility of measurement error exists because the United States Citizenship and Immigration Services (USCIS) and Social Security Administration (SSA) data provided contained some errors due, for example, to employer input errors. Although the data were cleaned, it is not possible to rectify all errors.

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[36] See Chapter II for more information on the exact sample specifications.

[37] See Chapter II for additional information on the methodology of the report.

C. EMPLOYMENT OF UNAUTHORIZED WORKERS

1. BACKGROUND

In discussing the employment of persons without work-authorization, it is important to be aware 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 visas that have elapsed. There are also persons legally in the United States whose visas do not authorize them to work in this country.

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 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, 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.[38] Current employment verification procedures require the employer to certify on the I-9 form that the documents presented by the recent hire "...appear to be genuine."[39] In this situation, the likelihood of employers detecting counterfeit documents depends on the quality of the documents, the employers' familiarity with various immigration and other documents, and employers' expertise in detecting fraudulent documents. USCIS 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. Assuming that these checks work as intended, they will assist employers in detecting counterfeit documents containing

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[38] The magnitude of this business is reflected in a December 2005 article in the *New York Sun* that reported that "A 19-month undercover investigation by Federal and local officials concluded this week with the seizure of more than 5,000 forged documents and the indictment of 21 individuals." (http://www.nysun.com/article/24127/)

[39] A Form I-9 form is included in Appendix A.

information about nonexistent persons. However, if the counterfeit documents are manufactured with reasonable quality and contain information about actual work-authorized persons, the Web Basic Pilot system will incorrectly confirm the individual as work-authorized.

Borrowing or stealing documents. A second way for unauthorized workers to obtain employment is to use valid documents belonging to another person. 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 I-9 form that the documents "...relate to the employee named...." However, the Web Basic Pilot system is not designed to 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.

Finding alternative employment. Another way that unauthorized workers can obtain employment is to take jobs where employment verification is not rigorous, either because the employer is ignorant of the law or because the employer is knowingly violating or neglecting the law. Undocumented immigrants who are self-employed[40] are also able to circumvent the employment verification system since they are not required to complete the I-9 form for themselves. Other possible sources of alternative employment are the underground economy and criminal activities, neither of which will 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 combined with strict monitoring and enforcement.

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 substantially improve employers' ability to detect fraud when borrowed or stolen documents are used to prove work authorization nor when employment is with employers who 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

[40] According to the Bureau of Labor Statistics approximately 7 percent of all workers were self-employed in 2005 (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 11, 2006)

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 preclude 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, making obtaining work harder for these employees. The impact of this 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 that are not authorized to work is a function of the percent of new employees verified using the Web Basic Pilot.

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 work days of hire). In this situation, the impact of the tentative nonconfirmation 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 three work days and then searches for a new job for three 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 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 not work-authorized and have their employment terminated, as required by the program. In this situation, the employee can work during the time the case is being contested (10 Federal work days if the employee takes the maximum time as well as the time the employer is waiting to input employee information for a total of 13 Federal work days). Assuming again 3 days without employment between jobs and the same pattern existing for all employees not authorized to work, employees would be unemployed for 19 percent of the time and unauthorized employment would be reduced by 19 percent at any point of time. The number of employees finding it preferable to return home or not immigrate to this country would be much smaller under this scenario than the preceding.

4. Employees without work authorization may receive a tentative nonconfirmation, tell their employer they plan to contest it, work during the allotted contesting period but never undertake the steps necessary to contest the tentative nonconfirmation. The impact of this scenario on unauthorized employment would be the same as in the preceding example.

The above scenarios do not take into account ways that employees without work authorization and those 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 employees learn more about how the Web Basic Pilot works, it is likely that employees will more frequently obtain counterfeit, borrowed, or stolen documents with information about persons who are work-authorized. Of particular relevance to this discussion is the case study finding that a few unauthorized workers at one employer reported that they incurred large costs associated with buying new social security cards/numbers in order to re-apply for a job with the same employer once they were terminated.

Since the cost of fraudulent or stolen documents for work-authorized persons is presumably higher than counterfeit documents with information about non-existent 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. The increased cost of such documents will depend on the extent to which the difficulty and expense of obtaining fraudulent, stolen, or borrowed documents is increased by advances in incorporating security features into the documentation employees are required to show during the verification process.

This section will discuss what evaluation information exists that sheds 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. In the case study, one case study employer reported receiving fewer applications from people who were not work-authorized because their 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 employees could work for several weeks or even months before being terminated because the employer allowed employees to work during the contesting process. None of the case study employers indicated that that program discouraged any authorized workers from applying.

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. Because of this, to effectively decrease unauthorized employment, it is necessary for the program to enroll employers and verify employees. As seen in Chapter III, usage of the Basic Pilot program has increased over time; however, less than 1 percent of the establishments in the United States are enrolled in the program.

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 their employment being terminated. As discussed in Chapter III, the Web Basic Pilot returned conclusive findings that only 299 employees were determined to be not work-authorized between June 2004 and March 2006.[41] However, more than 100,000 other verifications resulted in tentative nonconfirmations that were not properly contested and became final nonconfirmations.[42] In some cases, employees receiving tentative nonconfirmations were either not notified by their employers of the tentative nonconfirmation or the employees decided not to contest because of reasons other than believing they were not work-authorized. However, it is likely that most of these tentative nonconfirmation cases that became final nonconfirmations were, in fact, associated with employees who were not work-authorized. Indeed, the case studies indicated that this appears to be the case. However, the case study also found that a few work-authorized employees did not contest the tentative nonconfirmation findings because they were given insufficient or incorrect information by the employer—or in some cases the employer took care of the tentative nonconfirmation for the employee.

It also is likely that the estimated number of final nonconfirmations is somewhat biased upward, because some of the cases that appear to be final nonconfirmations may reflect technical errors attributable, for example, to employers' receiving written confirmation of work authorization from SSA but not resubmitting the case to SSA, as required by the Basic Pilot program. Since USCIS procedures require Federal input of case findings, this is not usually an issue with cases that are resolved by USCIS. However, the current database construction does not allow overriding a USCIS finding of final nonconfirmation, if the employee or employer requests further consideration of the case after the 10-day period expires and the employee is then found to be work-authorized, so these cases also appear to be final nonconfirmations on the transaction database. If USCIS is made aware of such cases, staff will notify the employer that a worker is work authorized even if the final outcome shows up as a final nonconfirmation in the system.

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[41] Approximately half of these employers transferred from the original Basic Pilot to the Web Basic Pilot.

[42] These include tentative nonconfirmation cases that were not referred by employers to either SSA or Department of Homeland Security plus cases that the employer referred but the employee did not complete the process of contesting the tentative nonconfirmation.

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 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 the worker, who is presumably not work authorized, would have less time to work during the case resolution process. The advisability of this is heightened by the fact that some employers are actually encouraging workers to say they will contest in order to take advantage of the 10-day period allowed for resolving tentative nonconfirmations so they can work during this period.

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. About 10 percent of the 1.3 million transactions (approximately 134,000 transactions) entered from June 2004 thru March 2006 involved multiple SSN cases. That is, approximately 66,000 SSNs appeared on the database at least twice. While almost all of the multiple SSNs were used only two or three times, which is less indicative of fraud patterns, 59 SSNs were used six or more times.

Exhibit IV-1: Frequency of SSN Duplicates in the Transaction Database, by Citizenship Status on the Form I-9

Number of times SSN was listed	All		Citizen		Noncitizen	
	Number	Percent	Number	Percent	Number	Percent
All duplicated SSNs	63,044	100	48,613	100	14,431	100
2	56,786	90.1	44,096	90.7	12,690	87.9
3	5,251	8.3	3,818	7.9	1,433	9.9
4	792	1.3	552	1.1	240	1.7
5	156	0.2	106	0.2	50	0.3
6	42	0.1	29	0.1	13	0.1
7	8	0.0	7	0.0	1	0.0
8	6	0.0	3	0.0	3	0.0
9	2	0.0	2	0.0	0	0.0
17	1	0.0	0	0.0	1	0.0

SOURCE: Web Basic Pilot transaction database

Exhibit IV-2 indicates the Web Basic Pilot system outcomes for the SSNs that were on the transaction database six or more times between June 2004 and March 2006. A total of 392 transactions were made with the 59 SSNs. Of those, 72 percent were found to be work-authorized instantly by SSA and additional 6 percent were verified instantly as work-

authorized by USCIS, while only 17 percent were found to be final nonconfirmations or unauthorized to work.

Exhibit IV-2: Web Basic Pilot System Outcomes for the 59 SSNs on the Transaction Database Six or More Times

Outcome	Number	Percent
All outcomes, total	392	100.0
Initially work-authorized by SSA	283	72.2
SSA Final nonconfirmation	26	6.6
First stage work-authorized by USCIS	25	6.4
Second stage work-authorized by USCIS	18	4.6
USCIS final nonconfirmation	33	8.4
Work-unauthorized by USCIS	7	1.8

Similarly, about 15 percent or 35,000 transactions (of 227,000) for noncitizen transactions had duplicate A-numbers. Ninety-five percent of them are on the transaction database two or three times. One A-number is used 117 times from June 2004 thru March 2006 (not shown in an exhibit). When the system outcomes were examined among those A-numbers that were on the transaction database 20 or more times, 76 percent were found to be final nonconfirmation or unauthorized to work, while only 24 percent were verified as work-authorized (see Exhibit IV-3).

Exhibit IV-3: Web Basic Pilot System Outcomes for the 23 A-numbers on the Transaction Database 20 or More Times

Outcome	Number	Percent
All outcomes, total	819	100.0
Initially work-authorized by SSA	193	23.6
SSA Final nonconfirmation	523	63.9
First stage work-authorized by USCIS	0	0.0
Second stage work-authorized by USCIS	1	0.1
USCIS final nonconfirmation	101	12.3
Work-unauthorized by USCIS	1	0.1

Most of the transactions with the SSNs or A-numbers that were used only two or three times are probably legitimate transactions. Some are probably employer errors in inputting cases that were not identified by the transaction database cleaning routines. Others may well belong to temporary workers or others with frequent job turnovers or who were hired by more than one pilot employer. The transactions with the SSNs or A-numbers that were used often are more likely to represent use of fraudulent documents. It should be possible to develop algorithms that would identify likely fraud cases, based on multiple SSNs or A-numbers. The effectiveness of this methodology would also increase with the size of the program, since the greater number of cases processed for workers without work-authorization could be expected to yield greater numbers of SSNs and A-numbers that are clearly used in patterns that cannot be easily explained other than through fraudulent use.

D. PROTECTING AGAINST VERIFICATION-RELATED DISCRIMINATION

1. BACKGROUND

One of the important Memorandum of Understanding (MOU) provisions 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 will, therefore, not be 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.[43] 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 between 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 not in one of the protected groups. However, it is likely that there is a strong correlation between being in one of the protected groups of interest and place of birth. 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 indicated characteristics.

Within the foreign-born category, differences between citizens and noncitizens are also examined. 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 disparate impact discrimination.

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[43] Brett, 1998.

Employment discrimination can occur at all stages of employment, including recruitment, hiring, placement, compensation, training, evaluation, disciplinary action, treatment on the job, and dismissal. Conversely, employers can take actions designed to prevent employment discrimination by aggressively recruiting groups historically underrepresented in their industries. 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 large part because employers were unsure of their ability to correctly identify individuals without work authorization.[44] 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 immigrant 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 foreign-born employees may quit their jobs rather than contact USCIS, because they are afraid that contacting USCIS may create 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 work-authorized noncitizens is likely when employers fail to follow the pilot procedures.

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 available over the web 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.

The next section first examines the question of whether the Web Basic Pilot makes employers more willing to recruit and hire foreign-born workers. Next, it examines

[44] General Accounting Office, 1990a.

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 employers' self-reported behavior on the employer web survey. It also incorporates information from the case studies and from analyses of the transaction database. Comparison between the original Basic Pilot and Web-based Basic Pilot analyses will provide information on whether the changes implemented in the Web-based Basic Pilot program and other Federal actions have actually reduced the erroneous tentative nonconfirmation rate that is a major underlying cause of discrimination associated with the original Basic Pilot program.

Since the Web-based Basic Pilot procedures changed after October 2005, the impact of the change on the erroneous tentative nonconfirmation is examined. The major difference implemented at that time is that all noncitizen cases must be referred to USCIS for verification of work authorization status if the information provided by the employer matches the SSA database information. Prior to October 2005, the work-authorization status of many noncitizens who had permanent work authorization was verified by the SSA.

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 conducting a carefully controlled experiment. 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.

This evaluation 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.[45] The first question asked of respondents to 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 [INSERT RESPONSE OPTION FROM C8] to hire immigrants now than it was prior to using automated employment verification?"

[45] 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 them to clarify their response was not asked of employers that said it 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 additional information from the reworded questions 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 to hire immigrants than original Basic Pilot employers.

Most Web Basic Pilot users reported that the Web Basic Pilot made them neither more or less willing to hire immigrants. Approximately 62 percent of employers reported that the Web Basic Pilot neither increases nor decreases their willingness to hire immigrants. Many employers who 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 employers 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 that results in a more efficient process, and it decreases employer liability. Only 4 percent of the users reported decreased willingness. Furthermore, examination of the responses for those employers that reported they are "less willing" shows that most of them did not understand the question. They appeared to be saying that they are not willing to hire people that are not work-authorized.

Since the percentage of employers that are more willing to hire immigrant employees is larger than the percentage indicating that they were less willing, it is reasonable to conclude that the percentage of employers willing to hire immigrants has increased and, therefore, that the net effect of the change is an increase in employers' willingness to hire. This 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 non-existent, 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 Individuals Disproportionately Likely to Receive Tentative Nonconfirmations?

Ideally, the evaluation would compare the tentative nonconfirmation rates for work-authorized foreign-born and U.S.-born persons to answer the question of how much difference there is in the erroneous tentative nonconfirmation rates for these two groups. However, there is no easy way to determine with certainty which employees with final nonconfirmations are work-authorized. Furthermore, for those final nonconfirmation cases without a match between the information employers input about employees and the SSA database, there is no available information about where the person was born or citizenship status. This report, therefore, uses the tentative nonconfirmation rate among those who are

determined to be work authorized at some point in the verification process ("ever been authorized") as a reasonable indicator of the discrepancies in the erroneous tentative nonconfirmation rates between the two groups.[46]

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. Among employees verified, 0.7 percent of all ever-authorized employees were found to be work-authorized after a tentative nonconfirmation. However, as seen in Exhibit IV-4 these rates were quite different for U.S. born and foreign-born employees. For U.S.-born employees, this rate was 0.1 percent; for foreign-born employees, the rate was 3.0 percent.

Exhibit IV-4: Stage in the Web Basic Pilot Process at Which Authorization Occurred for Employees Found to be Work-authorized, by Citizenship and Birth Status

Category	U.S.-born (%)	Foreign-born (%)			Total (%)
		Total	Citizens	Noncitizens	
Total authorized without a tentative nonconfirmation	99.9	97.0	89.1	98.7	99.3
Total authorized automatically	99.9	92.2	88.9	92.7	98.3
Initial authorization by SSA	99.9	54.1	88.3	45.6	90.5
First stage authorization by USCIS	0.0	38.1	0.6	47.1	7.8
Second-stage authorization by USCIS	0.0	4.8	0.3	5.9	1.0
Total authorized after a tentative nonconfirmation	**0.1**	**3.0**	**10.9**	**1.3**	**0.7**
Authorized by SSA after a tentative nonconfirmation	0.1	2.1	10.8	0.2	0.5
Authorized by USCIS after a tentative nonconfirmation	0.0	0.9	0.0	1.2	0.2

SOURCE: Web Basic Pilot Transaction Database

At least some of the difference between U.S.-born and foreign-born ever-authorized employees receiving tentative nonconfirmations is that noncitizens are subject to having their information verified against both the SSA and USCIS databases. Therefore, noncitizens have two opportunities to receive tentative nonconfirmations l – one based on their SSN and the other based on their A-number. This problem is compounded by the fact that the USCIS database is not as up-to-date as the SSA database. Furthermore, some employers may make more mistakes when entering some foreign-sounding names than in entering names with which they may be more familiar, causing a nonmatch during the verification process.

Foreign-born U.S. citizens are considerably more likely to receive erroneous tentative nonconfirmations than are work-authorized foreign-born persons who have not

[46] Foreign-born employees may have inaccurate SSA information because they have not informed SSA about changes in their citizenship status; however, the citizenship status of native -born U.S. citizens does not change over time, so this is not an issue for this population.

become U.S. citizens. Among foreign-born employees verified by the Web Basic Pilot, the percentage of ever-authorized employees found to be work-authorized after a tentative nonconfirmation was 1.3 percent for noncitizens compared to 10.9 percent for naturalized citizens.

Determining the work-authorization status of all persons claiming to be U.S. citizens is currently 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 status.[47] 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 case work authorized, the Web Basic Pilot issues a finding of "Unable to confirm U.S. Citizenship." Because SSA records frequently have citizenship and immigration status information that is not up to date, a relatively high percentage of naturalized citizens receive erroneous tentative nonconfirmations.

If USCIS had accurate electronic information on 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 employees does not permit verifying the employee as work-authorized. However, USCIS does not consistently have accurate information about current citizenship status on its database, and in most cases where accurate information is available, it cannot be accessed by SSN.

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 INS did not believe that it was authorized to maintain electronic records on naturalized citizens until that issue was clarified through legislation in 1996. Therefore, generally USCIS does not have electronic information on persons naturalized before that time. Furthermore, USCIS reflects U.S. citizenship status for persons who derived U.S. citizen status as children when one or both parents naturalized only when an application was filed and approved for certificates of citizenship on their behalf, which occurs in a small minority of cases. 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 this number is lacking for naturalized citizens, their USCIS records can only be accessed by A-number; however, A-numbers are not requested from naturalized U.S. citizens on Form I-9, which is the basis for the information used in

[47] The erroneous tentative nonconfirmation rate would be even worse if a decision were to be made that persons claiming to be U.S. citizens with SSA records showing that they had permanent work-authorization status were not verified by SSA as work-authorized.

electronic verification. A policy decision was made when the Basic Pilot was first designed to treat all citizens equally and not to reveal to employers which citizens are naturalized and which are native-born.

Reducing the erroneous tentative nonconfirmation rate for naturalized citizens to an acceptable level will not be easy or fast. However, inaccurate citizenship data for foreign-born persons presents a significant problem that must be addressed for verification of employment status as well as for verification for other purposes that are becoming more prevalent, such as for receipt of public benefits and licensing. There are several steps that can be taken to address this problem that the evaluation team believes should be started expeditiously.

The *October 2005* procedural change for processing noncitizens appears to have resulted in an increase in the percentage of ever-authorized noncitizens who have erroneously received a tentative nonconfirmation. As discussed in Chapter III, starting on October 21, 2005, a procedural change was implemented to how noncitizen cases were processed. Prior to that date, noncitizens who had SSA records indicating that they had permanent work-authorization were verified by SSA as work-authorized.[48] The changed procedure required *all* noncitizen cases to be forwarded to USCIS to determine work-authorization status. As seen in Exhibit IV-5, the percentage of ever-authorized noncitizens who received tentative nonconfirmations rose from 1.2 percent for the pre-October cases to 1.6 percent for cases initiated after October 20.

Exhibit IV-5: Percentage of Ever-authorized Persons Who Received a Tentative Nonconfirmation, by Birth, Citizenship Status, and When the Transaction was Initially Transmitted

Category	US-born (%)	Foreign-born (%)			Total (%)
		Total	Citizens	Noncitizens	
Through October 20, 2005	0.1	2.9	11.4	1.2	0.8
After October 20, 2005	0.1	3.3	10.0	1.6	0.7

SOURCE: Web Basic Pilot Transaction Database

b. What Is the Impact on Employees of Receiving Tentative Nonconfirmations?

As stated above, the extent of discrimination against foreign-born persons after hiring is a function of the impacts of receiving a tentative nonconfirmation on the employee. The smaller this impact is, the less the resulting discrimination.

There are two primary ways that receiving a tentative nonconfirmation can have a negative effect on an employee. First, there are burdens associated with any adverse actions the employer may take against employees receiving tentative nonconfirmations. Secondly,

[48] Since September 2002, this information has been routinely verified by USCIS. Prior to that, the information was frequently but not consistently verified.

there are burdens associated with contacting SSA and/or USCIS. These two avenues are discussed separately in this section.

i. Employer Behavior

Employers are prohibited from taking any adverse actions against employees who receive a tentative nonconfirmation during the time that the employee is given to resolve his/her case. Both the employer survey 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 was through enhancements to the training materials available to employers and the requirement that employers must pass a test on pilot procedures prior to using the system. When asked how many staff had completed the Web Basic Pilot online tutorial, 84 percent of employers indicated that all staff that currently used the system for verification had completed the tutorial. Only 1 percent of employers 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 from harm. These infractions include using the Web Basic Pilot to verify job applicants or persons hired prior to the start of the Web Basic Pilot. They also include failing to notify employees of a tentative nonconfirmation finding and taking adverse actions, such as reduction in pay or training, during the time period in which the employee is entitled to contest the tentative nonconfirmation finding.

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. Employees are likely to be unaware of costs associated with tentative nonconfirmations if they are not offered jobs because of these findings. In particular, 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 such as having withheld training or being assigned to work fewer hours during the time while they are contesting tentative nonconfirmations.

ii. Burdens on Employees of Resolving Tentative Nonconfirmations

Employees are the most knowledgeable respondents for determining the burdens of contacting the 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 employees have and provide some insight into the financial and nonfinancial costs of resolving tentative nonconfirmations.

Most interviewed employees who received tentative nonconfirmations reported no costs associated with resolving the finding; however, some employees did incur tangible costs, and other employees may have incurred costs that they were not aware of. Among the interviewed employees who had been notified of a tentative nonconfirmation finding, very few reported having any specific costs. Several interviewed employees at one employer were not allowed to start working until they resolved the problem, but these employees did not provide an estimate of the cost of lost work.

Most of the 28 employees that went to an SSA office reported that they did not have to spend much time at the local SSA offices either waiting or speaking with a representative. Three employees reported having to wait for approximately 2 hours, and two employees reported 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.

E. SAFEGUARDING PRIVACY

1. BACKGROUND

One of the IIRIRA requirements for the Web Basic Pilot is that it 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 IIRIRIA pilot evaluations did not find significant evidence of problems with 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 those employees receiving tentative nonconfirmations about the finding and explaining procedures required to resolve the finding 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 to this behavior.

2. FINDINGS

a. FEDERAL SAFEGUARDS AGAINST PRIVACY VIOLATIONS

The following safeguards 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 personnel 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 slightly 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.[49]

One possible weakness of the system is that someone wishing access to the system may pose as an employer and get access to the system by signing an MOU. There are not now safeguards in place to prevent this. Furthermore, the additional automation of the registration process may well make such security breeches more likely.

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 violate employees' privacy by not being sensitive to the need to be discreet in discussing verification problems with their employees. Almost all employers (95 percent) reported that they always inform employees of tentative nonconfirmation findings in private, compared to 90 percent in the original Basic Pilot evaluation. However, the case study revealed that 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. One employer sometimes notified a group of employees who all received tentative nonconfirmation findings and were all participating in the same training session; one employer reported that they requested that the employees' supervisors also be present at "private" notification meetings; however, only a few employees reported 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 names of those who were "not authorized to

[49] As made clear in 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 Federal databases, it is unlikely that the program significantly increases the likelihood of misuse of the system by Federal employees.

work." Another employer sometimes told employees in a public place where other people were around, but where only the employee could hear.

F. AVOIDING UNDUE EMPLOYER BURDEN

1. BACKGROUND

One of the stated goals of the IIRIRA pilot programs is to avoid unnecessary burden on employers. In addition to examining employer cost and burden, it is useful to examine costs incurred by the Federal Government and employees during the verification process. If a larger scale version of the Web Basic Pilot were to be implemented, employers might be asked to absorb a larger share of the costs to offset some or all Federal and employee expenses. Further, it is necessary to consider all costs to determine whether the pilot is cost-effective.

The cost figures in this section must be viewed as estimates. The cost information provided by employers in the web survey is sometimes based on actual records and sometimes on their best estimates. The employee information presented in this section is based on employees in the case study. These cases are illustrative but not representative of all tentative nonconfirmation cases.[50]

The Web-based Basic Pilot incorporates changes designed to make the system significantly easier for employers to use than was true for the original Basic Pilot. An important question is, therefore, whether the web-based version of the Basic Pilot reduced employer burdens and costs compared to the original Basic Pilot program.

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 for operating the system. Eighty-four percent of employers that used the Web Basic Pilot reported spending $100 or less for start-up costs, and 75 percent reported spending $100 or less annually for operating the system while only 4 percent of employers reported that they spent $500 or more for start-up costs, and 11 percent reported spending $500 or more annually for operating costs.

The most frequently mentioned specific start-up costs were for training (40 percent), telephone fees for Internet 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 start-up, such as reassignment of employees, additional

[50] See Chapter II for a discussion of this issue.

recruitment, and delayed production.[51] Approximately 97 percent of the establishments reported that the indirect start-up costs were either not a burden or were only a slight burden, and a similar percentage of the employers reported that indirect costs associated with maintaining the system were either not a burden or were only a slight burden (97 percent).

Although the Web Basic Pilot was not burden free for employers that used it, most employers reported that the benefits of using the Web Basic Pilot outweighed its disadvantages. As stated previously, 88 percent of the employers who had participated in both the original Basic Pilot and Web Basic Pilot reported that the benefits of the Web Basic Pilot are stronger than its disadvantages. Another 12 percent believed that the benefits and disadvantages were of approximately equal value. For these employers, any increased employment verification burden is presumably more than offset by the benefits obtained from the program, and it is reasonable to conclude that these employers believed that any extra burden of the Web Basic Pilot was justified by its benefits.

G. SUMMARY

This chapter has presented the following conclusions:

- 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 borrowed or stolen documents are used or when counterfeit documents with information about work-authorized persons are used.
- 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 would threaten the effectiveness of a larger scale electronic employment verification program.
- The Web Basic Pilot apparently decreased discrimination in recruiting and hiring 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. However, the Web Basic Pilot increased discrimination against work-authorized foreign-born employees after employment, 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 that entails.

[51] 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.

- SSA and USCIS took reasonable precautions to protect the security of the Web Basic Pilot Federal databases. However, some employers did not consistently inform employees of tentative nonconfirmation findings in private.
- It appears that most employers that used the Web Basic Pilot did not find it unduly burdensome. It also appears that Web Basic Pilot employers found the process less burdensome than was true for original Basic Pilot employers.

CHAPTER V. RECOMMENDATIONS FOR IMPROVING THE WEB BASIC PILOT PROGRAM

This chapter lists recommended changes to the Web Basic Pilot program based on the evaluation to date. Since the evaluation is not yet complete, it is possible that the additional data analyses planned for the final report will lead the evaluation team to revise some of the following recommendations, as well as add new recommendations. Because of the ongoing nature of the evaluation, some of the recommendations listed here flow out of work that has not yet been fully incorporated into earlier chapters.

A. ADDRESS HIGH ERRONEOUS TENTATIVE NONCONFIRMATION RATE FOR NATURALIZED CITIZENS

The Social Security Administration (SSA) and the U.S. Citizenship and Immigration Service (USCIS) need to address the unacceptably high erroneous tentative nonconfirmation rate for foreign-born U.S. citizens. Reducing the unacceptably high tentative nonconfirmation rate for naturalized citizens will not be easy or fast, since neither SSA nor USCIS consistently has the information needed to verify their work-authorized status. Furthermore, not all information can be extracted from the USCIS database 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 Digitization Project may, over time, assist in filling in some of the gaps in USCIS electronic records.

- USCIS and SSA should arrange for a one-time electronic transmittal of USCIS 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 their database from other information (i.e., name, date of birth, and country of birth).

- USCIS adjudicators should ensure that applicants for U.S. citizenship include their SSN on the application form. USCIS should electronically send the SSN, name, date of birth, and new citizenship status to SSA at the time that the 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 they 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 on persons who are first documenting their derived U.S. citizenship status through requesting and being issued a U.S. passport. The information captured should be sufficient to positively match individuals to USCIS records and used to update them. 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 for future cases.

- USCIS should update its electronic records to reflect U.S. citizenship status by manually inputting pre-1996 naturalization and citizenship information as well as SSNs available in retired paper A-files. This information should be shared with SSA.

- USCIS and SSA should consider giving employees who claim to be U.S. citizens on the Form I-9 and who receive a tentative nonconfirmation finding of "Unable to confirm U.S. Citizenship" an option to provide their former A-numbers to expedite verification of their work authorization status. The Notice of Tentative Nonconfirmation could be used for this purpose, so that employees would have three choices (to not contest, contest immediately, or ask USCIS to check its database based on an indicated A-number and then contest with SSA if USCIS cannot confirm work authorization status). If the last option is selected, the employer would either be told that the employee is work-authorized or be told to issue a referral letter for the employee to visit an SSA field office.[52]

- SSA should conduct outreach activities to encourage naturalized citizens, especially those with derived citizenship, to update their SSA records accordingly.[53]

B. Explore Ways of Using Database for Monitoring Employers

In preparation for the likely passage of legislation requiring mandatory employment verification, USCIS should continue exploring options for ways to use the transaction database to identify employers that are not properly following Basic Pilot procedures. Examples of such indicators are as follows:

- A high rate of duplicate SSNs and A-numbers submitted by an employer, given its size, industry, and location, may indicate an employer knowingly hiring unauthorized workers;

- An unusually low number of queries, given employer location, industry, and size, may point to selective verification of employees;

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[52] This assumes that the recommendation discussed elsewhere on inputting information on the employee's decision about contesting is also adopted.

[53] In addition to publicity campaigns, other outreach efforts may be warranted. For example, in some areas SSA attends 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 cannot attend naturalization ceremonies, SSA could provide a handout for USCIS to distribute instructing new citizens on how to correct their SSA record.

- An unusually high or low percentage of employees (either total or foreign born) receiving tentative nonconfirmations, given employer location, industry, and size, may point to an employer 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 constitute an indicator of prescreening;
- Initiated dates well after hire dates may indicate that the employer is verifying persons other than new hires;
- 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 persons other than new hires;
- An unusually small percentage of SSA/USCIS tentative nonconfirmations that are referred to SSA/USCIS, given the size, industry, and location of the employer or an unusually high percentage of referred cases becoming "No Shows" may indicate an employer 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; and
- 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.

C. REQUEST LEGISLATIVE CHANGES

Consideration should be given to requesting legislative changes to the following Basic Pilot procedures, requested by employers:

- Extension of the time to enter information for new employees to 5 days after hire to accommodate the needs of large employers and employers where verifications for several sites is centralized; and
- Allowing prescreening of job applicants within carefully prescribed parameters.

D. ESTABLISH NOTIFICATION GUIDELINES

USCIS should establish guidelines that provide specific time frames for notifying employees of tentative nonconfirmations and for terminating employees subsequent to receiving final nonconfirmation or unauthorized findings. Without specific timeframes for notifying employees of tentative nonconfirmation findings and terminating employees with final nonconfirmations, employers can allow the verification process to become protracted and unauthorized workers to work for extended periods, thereby reducing the effectiveness of the program.

E. AUTOMATE SSA'S PROCESS FOR HANDLING TENTATIVE NONCONFIRMATIONS

SSA should institute a process through which tentative nonconfirmations for SSA mismatches are controlled through an automated system similar to that which USCIS uses. Automating the SSA secondary verification process would tighten SSA procedures and make SSA more accountable for providing results for cases they resolve. It would also decrease SSA and employer burden and make the transaction database more accurate. Until this is done, monitoring of the transaction database should check whether employers are incorrectly resubmitting tentative nonconfirmation cases resolved by SSA as new cases.

F. MAKE ADDITIONAL CHANGES TO TUTORIAL

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 need be, 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 test.
- Training modules for staff other than system users and administrators should be developed to provide training and help prevent violations of procedures that are the responsibility of staff other than system users. For example, management and supervisors need to be aware that they may not take adverse actions against employees while they are resolving a tentative nonconfirmation. Additionally, Human Resources staff 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 (MOU) and the statute. The training material developed should also include suggestions on how to monitor other staff members involved in the process.
- Further clarification of employer responsibilities needs to be incorporated in the tutorial, including the importance of the following:
  - Reviewing the screen to double-check the data they input into the Web Basic Pilot before sending the information to SSA and USCIS;
  - Notifying employees of tentative nonconfirmation findings and giving them a copy of the Notice of Employee of Tentative Nonconfirmation and, when appropriate, the appropriate notification letter; and
  - Informing employees of tentative nonconfirmation findings in private.

G. MODIFY THE SYSTEMS TO ENHANCE USER-FRIENDLINESS

The Web Basic Pilot System should be modified to further enhance its user-friendliness.

- Modify the training materials and tutorial 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. 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.
- Modify language used in the system to make it less confusing.[54] For example, the following terms appear to confuse employers:
  - 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 is sometimes misconstrued as meaning that the employee is in the process of obtaining work authorization.
  - Self-terminated – One pretest employee thought that "self-terminated" referred to the employer terminating the query and used this code rather than the Invalid Query code.

  As part of this process, case closure codes should be revised to improve their clarity as well as to provide additional information for future evaluations and monitoring efforts. For example, there is no specific code for employees whose employment was terminated because they told the employer they would not contest the tentative nonconfirmation. There is also no code to indicate that employees quit working or stopped coming to work immediately after being notified that they received a tentative nonconfirmation. Most importantly, these language changes should also be subject to employer usability testing prior to finalization to ensure that employers understand what they mean and use them appropriately.

- Supplement the administrator and user account types 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 establishment uses to manage tentative nonconfirmation cases, it is possible for any Human Resources

[54] 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.

staff member to work on any case, regardless of who initiated it. To accomplish this, the company set every staff member's ID to "Administrator." However, this results in all staff members having access to other administrator functions, such as changing passwords that should be restricted to staff actually serving as system administrators. It, therefore, appears that, as a minimum, there should be a type of access account that is less restrictive than the current user account and more restrictive than the current administrator account.

- Further streamline the process of how employers resolve cases. 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 clicked again. It should be feasible to offer the employer a choice on the verification result screen of "resolve case as work-authorized" or "institute additional checking procedures" and automatically enter the closure code for the employer, if the first alternative is selected.

- Continue efforts to integrate employers' Human Resources (HR) systems and the Web Basic Pilot system to minimize duplicate data entry by employers. Greater integration of the Web Basic Pilot with HR systems would provide the means for employers to "personalize" the system to match directly back to their records and to provide customized system reports. For instance, the Basic Pilot could be modified to permit employee ID numbers to be included and returned with the case findings.

- Make use of usability testing whenever future training materials are developed to ensure that changes are clear to those who will be taking the training.

H. Modify 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 the resolution of cases after issuance of a final nonconfirmation. Although there is currently no formal process to reopen cases that have become final nonconfirmations due to the passage of time, an informal process has developed where an USCIS employee calls the employer to tell them that the discrepancy has been resolved and that the employee is work authorized. However, there is currently no way to update the final case information in the database to indicate that the outcome has been changed, resulting in discrepancies that could create problems for work-authorized employees if subsequent monitoring or enforcement actions indicate that employment should have been terminated.

- 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 nonconfirmation cases, which is what currently occurs, thereby overstating significantly the number of final nonconfirmation cases occurring.

"ALTERNATIVE STRATEGIES FOR PREVENTING FALSE NEGATIVES AND IDENTITY THEFT PROBLEMS IIN AN ELECTRONIC ELIGIBILITY VERIFICATION SYSTEM" BY MARC ROSENBLUM, PH.D., DEPARTMENT OF POLITICAL SCIENCE, UNIVERSITY OF NEW ORLEANS

Date: April 30, 2007

From: Marc R. Rosenblum
Associate Professor of Political Science, University of New Orleans

Re: Alternative strategies for preventing false negatives and identity theft problems in an electronic eligibility verification system

As Congress considers expanding the Basic Pilot employment eligibility verification system (EEVS) to eventually require participation from all U.S. employers, analysts have identified two core challenges.[1] First, the Basic Pilot has an unacceptably high database error rate, resulting in initial tentative non-confirmations (TNC's) for eight percent of all queries. While the exact proportion of these TNC's which are inaccurate is unknown (since most workers who receive TNC's never appeal the finding), it is likely that the overall error rate in the Basic Pilot databases is roughly four percent,[2] a number which would translate into 2,400,000 false non-confirmations per year in the first several years of a universal system.[3]

Second, even after these database problems are resolved, an EEVS will remain highly vulnerable to identity fraud, or the fraudulent use of borrowed or stolen identity data. The EEVS can confirm whether or not the data submitted to it pertains to a work-authorized individual, but the system, as conceived in legislation under consideration, cannot confirm whether the data relates to the individual actually accepting employment.

Designing an EEVS and worksite enforcement system which addresses these two problems will be enormously costly on a number of different levels. But it bears emphasis that four very different strategies exist for confronting these problems, each of which requires different kinds of investment and imposes costs on different actors and at different points in the process.

Strategy #1: Simple Expansion of Basic Pilot with Data Sharing

- How it works: This is the system envisioned by the STRIVE Act. Over time (and pending the system's ability to meet certain performance criteria), all newly hired employees will be required to submit their identity data to the EEVS. Individuals with faulty records in the EEVS database will typically learn of the errors only when they receive TNC responses, and will have 15 days to visit a SSA field office or contact an Independent Status Verifier (ISV) at DHS to correct the error. In order to combat ID theft, ICE investigators analyze EEVS usage patterns to look for cases in which the same number appears "too often." Initially, this

[1] This memo focuses on the two biggest challenges that will make or break a successful EVS; it does not intend to divert attention from numerous additional challenges, including likely increases in discrimination and worker exploitation, privacy concerns, etc. See statements of April 24, 2007 by Stephen Yale-Loehr and Marc R. Rosenblum before the House Immigration Subcommittee for a complete discussion of these issues (http://judiciary.house.gov/oversight.aspx?ID=302).

[2] Social Security Administration, Office of the Inspector General, Congressional Response Report: Monitoring the Use of Employee Verification Programs A-03-06-36122, 9/26/06; http://www.ssa.gov/oig/ADOBEPDF/A-03-06-36122.pdf

[3] The U.S. Bureau of Labor Statistics reports 59,400,000 new hires in nonfarm employment during calendar year 2006, Job Openings and Labor Turnover Survey (JOLTS), http://www.bls.gov/jlt/home.htm

will require limited data sharing between DHS, SSA, and IRS, but eventually the EEVS will accumulate a large enough usage pattern of its own that such data sharing may no longer be necessary.[4]

- Advantages of this system: This system imposes the fewest up-front costs on most employers and employees. The vast majority of US citizens, in particular, will be immediately confirmed by the EEVS. The false negative problem will dissipate over time as existing database errors are corrected (i.e., very few individuals should be victims of erroneous TNC's more than once).

- Disadvantages of this system: This system is especially vulnerable to identity fraud. Given the difficulty of developing fraud-proof identity cards, this system essentially will only address identity fraud through post-employment data analysis. As a result, many employers who comply with the law will continue to unwittingly hire undocumented immigrants, and unscrupulous employers will continue to do so intentionally and then plead ignorance. Moreover, while egregious cases of identity theft will be relatively easy to identify through data analysis, with thirty percent of employed Americans working more than one job -- either concurrently or consecutively during the year -- many cases of shared identity will slip through. Identity fraud investigations will require ICE agents to visit the different worksites where a particular SSN is being used to see which firm(s) actually employ the worker who owns the number. As the Swift case demonstrates, the post-employment strategy of countering identity fraud is enormously costly to employers who comply with the law but still find themselves without a reliable workforce.

Strategy #2: Expansion of Basic Pilot with Integrated Photo ID Database

- How it works: This system would require all U.S. citizens and other legal workers eventually to obtain a photo ID card.[5] There are many variations on this theme (it could rely on existing driver's licenses and passports, or require new "biometric social security cards," "work authorization cards," or "REAL IDs,") Despite everyone's insistence to the contrary, they all come down to developing a national ID system. Once the database is populated, the verification process will exist as under the current system with one additional step: in addition to an authorization code, employers will receive from the EEVS a digital image of the worker obtained from the respective federal or state photo ID database, allowing the employer to confirm that the work-authorized data belongs to a person who looks like the employee in question.[6]

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[4] It could take several decades to develop a comprehensive database of newly hired workers since thirty percent of workers over the age of 25 have been with their current employer for 10 years or more (http://stats.bls.gov/news.release/tenure.t02.htm). Even assuming universal coverage of new hires and current workers, information sharing may still be necessary to identify employers who file W-2s, but fail to participate in an EVS.

[5] According to the U.S. Department of Transportation, 87 percent of the U.S. population age 16 and over are licensed drivers, although the rate varies by state. http://www.fhwa.dot.gov/policy/ohim/hs05/driver_licensing.htm.

[6] USCIS is already testing a small pilot version of this program; see April 24, 2007 testimony of Jonathan R. Scharfen before the House Immigration Subcommittee for a complete discussion of these issues (http://judiciary.house.gov/oversight.aspx?ID=302).

- Advantages of this system: This system would give conscientious employers a new tool to prevent most cases of identity fraud: undocumented workers could no longer simply track down a name and social security number on the internet to beat the system, because the picture associated with that name and number would not match the individual job applicant. To the extent this system relied on a new photo ID card, rather than existing photo IDs, the enrollment period would also represent an opportunity to "fact check" the EEVS database: at the same time that individuals enroll, they would also correct any errors in their record and immunize themselves against future false non-confirmations. By correcting database errors at the point of enrollment, false negatives would not create additional adverse employment consequences.

- Disadvantages of this system: This system would require virtually every employer to change their hiring processes, as every new hire would have to be screened by a real time interface with the EEVS so that the hiring agent is able to make the visual comparison.[7] For example, many large firms bundle I-9 forms and send them to USCIS in batches at the end of the week; this would no longer be an option. This system also would not permit telephone verification, though it would be possible to develop a protocol for sending the digital photo to an employer's cell phone. Even with the digital image, this system would still be vulnerable to identity fraud (false positives) in the case of employees who bear a passing resemblance to a legal worker (and are able to obtain that worker's identity data). And employers would still be required to make a judgment call about whether or not the image on their screen matches the identity document and the employee, also making this system vulnerable to false negatives and resulting adverse employment consequences (discrimination, etc.).

  To the extent this system relied on a new photo ID card, rather than existing photo IDs, the enrollment process would be burdensome: every U.S. citizen and legal worker would be required to wait in line at a post office, DMV (or wherever) to be enrolled in the database.[8] The photo would also need to be updated on a regular basis, perhaps every five to ten years. Many Americans will raise legitimate privacy concerns about a national ID, especially in light of the federal government's spotty record when it comes to protecting private data.

  In order to accommodate current hiring processes, the system could be modified to allow employers to copy the photo ID. This would allow employers to compare the copy to the digital image in the database without the employee being present. But, this would require

[7] Alternatively, this system could be combined with a "federal hiring hall" model, in which employees would go to a post office or SSA field office to be verified, and receive a one-day photo receipt which could be taken to their employer as proof of verification.

[8] Alternatively, it's possible the database could incorporate existing identity and biometric data from REAL ID-compliant states, though this would require Congress to address the problems in REAL ID which have caused five states to reject the legislation. At a minimum, these fixes would require that Congress providing states with funding for the existing program and, in order to strengthen REAL ID licenses, require that states digitize their birth and death records and add them to REAL ID databases. There are significant efficiency gains to be had by bundling the different national ID requirements (work authorization, boarding an airplane or federal building, etc.) into a single document; but the more purposes such a document serves, the greater are the privacy concerns and the impact felt by average Americans in their day to day lives. Also note that an effective work authorization system does not require issuance of an actual identity card, which will still remain vulnerable to document fraud. The advantage in work authorization comes from being able to link an individual with his record in the database, which would be accomplished through the biometric data returned through the EVS (i.e., the "identity card" could be on-line only).

employers to obtain high resolution copiers. It would also increase the potential for fraud by breaking the real time verification of the worker and the photo ID.

Strategy #3: Full Biometric EVS

- How it works: As in the previous system, all U.S. citizens and legal workers would eventually be required to enroll in a national biometric database. At the point of hire, rather than presenting an ID card or identity information through an I-9 process, employees would be required to provide real-time biometric data, probably through a fingerprint scan. Data captured by the biometric scan at the worksite would be checked directly against the existing national biometric database.

- Advantages of this system: In principle, this system would provide a definitive confirmation or disconfirmation with no employer judgment. Faulty identity documents would be replaced by the individual's actual biometric data (i.e., their face or their fingerprints). In addition, the period of enrollment in the biometric database would also represent an opportunity to "fact check" the EEVS database: at the same time that individuals enroll, they would also correct any errors in their record and immunize themselves against future false non-confirmations. By correcting database errors at the point of enrollment, false negatives would not create additional adverse employment consequences.

- Disadvantages of this system: This system would require an exponentially larger investment in infrastructure at American worksites as every employer would be required to purchase (or be given) biometric capture technology at a cost of at least several hundred dollars per worksite. Even with this investment, technology experts warn that a system like this would still be somewhat error prone, and vulnerable to different types of fraud. For example, the market in fake ID's might be replaced by a market in fake fingerprints (though combining this system with the digital photo verification system discussed above would largely guard against such fraud, at least in the case of conscientious employers).

Strategy #4: Personal Data Blocking

- How it works: Prior to accepting a new job, employees would be required to "unblock," or activate, their own social security number by contacting (via phone, internet, or in person) the EEVS. Security measures would be developed to insure that only the individual associated with the record has the ability to activate it. This can be accomplished through document-based verification at a post office, DHS, or SSA field office for individuals activating their numbers in person, or by requiring the individual to provide additional private data for the purpose of verification by phone or internet (e.g., data from the individual's previous year's tax return, information maintained by a credit bureau, or perhaps a PIN number issued during a prior enrollment period). Employers then check a new employee's data as under the Basic Pilot; a non-confirmation will be returned if the employee is unauthorized or if the employee has failed to un-block the number. Once the number has been checked by the employer, it would automatically re-block. The employee must un-block the number each time she or he accepts a new job.

- Advantages of this system: This system would largely eliminate opportunities for identity theft since an individual in possession of a stolen name and social security number would be unable to use that information in the EEVS (unless they also possessed the additional private personal information associated with the stolen name and social security number -- perhaps because they obtained copies of tax returns as well, or because the legal worker has conspired with the unauthorized worker, or sold his or her personal data). This system would not require the construction of a new biometric database. Individuals would also have the opportunity to verify their own records when they activate their number, eliminating the false positive problem at the point of hire (i.e., correcting database errors in advance, rather than after employment change). This system would not require investment in any new infrastructure.

- Disadvantages of this system: All U.S. citizens and other legal workers would be required to contact the federal agency managing the EEVS prior to each employment change (though most of these contacts should occur by phone or internet).

Discussion

These four strategies differ on two main dimensions: 1) whether and how legal workers will be enrolled in the system in advance; 2) who is responsible for detecting and preventing identity fraud.

Under the first strategy discussed above (simple expansion of Basic Pilot with data sharing), there is no enrollment in advance, so that false negatives will not be detected until after a change in employment, creating additional adverse employment effects. In addition, because this system relies entirely on documents to prevent identity fraud at the point of hire, substantial post-employment policing will be necessary to detect and prevent such fraud. This system has very low up-front costs — employees are not asked to do anything other than present their identity documents as under the I-9 system — but (to be effective) very high-cost at the point of enforcement. Many employers will comply with system requirements but still hire undocumented immigrants, undermining confidence in the system, and leading to substantial market inefficiencies when their undocumented employees are detected and removed.

The other three strategies discussed improve substantially on the basic EEVS by requiring some form of employee enrollment. Enrollment greatly reduces the costs of false negatives by preventing adverse employment consequences.[9] All three of these alternatives will also do a better job of preventing identity fraud, reducing post-employment enforcement costs and giving conscientious employers greater certainty in their hiring decisions. US citizens and other legal workers pay for these improvements by bearing the costs of enrollment. The second and third strategies (the integrated photo ID database and the biometric system) impose additional costs on all US citizens and legal workers: the loss of privacy associated with the construction and maintenance of a national biometric database. These two strategies also impose additional costs

[9] Enrollment does not reduce the number of false negatives, or the time required to correct them—these corrections are an unavoidable investment in a functional EVS; the advantage to enrollment is that it allows workers to correct these errors prior to receiving a TNC.

on employers in the form of mandated changes to the hiring process (real-time review of return images or use of biometric capture technology at the point of hire).

On balance, the data blocking alternative seems, by far, to be the most cost-effective strategy for combating the identity fraud problem. The cost savings here involve the decision to rely on data-based identity confirmation — requiring the employee to provide EVS managers with personal information — rather than on biometric-based identity management. These cost savings come in the form of reduced enrollment and database management costs, reduced infrastructure requirements, and substantial savings in privacy protection.

The question arises whether the data blocking system would be as effective as a biometric system at preventing identity fraud. Clearly, the full biometric system (strategy number three) would be more effective, but it seems likely that data blocking would be at least as effective as — and probably far more effective than — the visual confirmation system, which still relies on employer judgment, creating opportunities for intentional and unintentional mistakes at the point of confirmation. In effect, the data blocking system shifts the costs of preventing identity fraud away from the government (strategy number one) and the employer (strategies two and three) and on to the employee. Placing the burden on the employee makes a good deal of sense in light of the adverse employment effects of false negatives as well as the costs to individuals of identity theft.

This system could be further strengthened by requiring the employee to unblock his or her data only with respect to a particular employer. In this case, the system would work as follows: upon hiring an individual, the employer would be required to tell the employee the employer's employer identification number (EIN), or some other unique identifier for employers who prefer not to share this data.[10] Then, when the employee calls in or goes on-line (or in person) to activate his or her record for an employment change, the employee submits his or her personal data along with the EIN of the employer for which employment is being authorized. The EEVS would verify the worker's status, notify the worker of this verification, and then contact the employer directly to give the employer an authorization code. If employees do not unblock their numbers until after they receive a job offer, the unblocking process does not take the form of a pre-hire enrollment, so this system would still produce adverse employment consequences in the case of false negatives. This modified system could be combined with a pre-employment self-verification for the purpose of correcting database errors to avoid these problems.

[10] Many small employers use their own SSN's in place of an EIN.