



## Immigration Task Force

### ISSUE BRIEF:

# E-Verify Brief History and Overview

---

**APRIL 2013**

E-Verify is a federal Internet-based program that uses a variety of government databases to electronically confirm whether an employee is eligible to work legally in the United States. The program has been an integral part of comprehensive immigration reform proposals since 2006, and several attempts have been made in Congress to mandate all U.S. employers to use it. Any new congressional comprehensive immigration proposals are likely to include an expansion of E-Verify or the establishment of a similar electronic verification process.

While many have embraced E-Verify in the recent past, some opponents still flag its inaccuracy rates, costs, inability to detect some fraudulent documents, the lack of biometrics tying individuals to their own documents and possible discriminatory effects as serious issues with the system. Libertarians also argue that E-Verify turns employers into enforcement agents for the federal government, infringes on individuals' civil liberties, and creates a de facto national ID system. Others warn of the cost and ineffectiveness of policies mandating E-Verify nationally without broader comprehensive immigration reform.

Attempts at verifying employee identity and work eligibility date back to 1986, when the Immigration Reform and Control Act (IRCA) made it unlawful to knowingly hire unauthorized immigrants. Under the IRCA, employers are required to examine new hires' documentation to verify his or her identity and eligibility to work in the United States. The IRCA led to the Form I-9, *Employment Eligibility Verification*, "requiring employees to attest to their work eligibility, and employers to certify that the documents presented reasonably appear (on their face) to be genuine and to relate to the individual."<sup>1</sup> This document-based system quickly proved to be highly unreliable and fell victim to fraud, as many of the documents permitted for meeting I-9 requirements were easy to counterfeit. The *electronic* employment verification system we have today originated as an attempt to strengthen this process during the mid-1990s as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).



The IIRIRA required the former Immigration and Naturalization Service (INS) to conduct three voluntary pilot programs to find the best method of verifying work authorization. The Basic Pilot program, the only one still used today and known as E-Verify, began in November 1997 in California, Florida, Illinois, Nebraska, New York, and Texas—the five states with the largest populations of unauthorized immigrants—and focused on specific industries such as construction, agriculture, food services, and meat packing. The Basic Pilot program allowed participating employers to check their new employees’ I-9 identity documents against what was then INS and Social Security Administration (SSA) records and databases. While originally set to be discontinued after four years, Congress reauthorized the program first in 2001 and then in 2003; in 2003, the program was made available in all 50 states under the authority of U.S. Citizenship and Immigration Services (USCIS) within the newly created Department of Homeland Security (DHS). The program has been entirely Internet-based since 2005 and was renamed E-Verify by the George W. Bush administration in 2007. Most recently, Congress extended the authorization for E-Verify until September 30, 2015.<sup>2</sup> Today, it is still the only federal electronic employment verification program available to employers.

## How E-Verify Works

All E-Verify participating employers are able to electronically verify every newly hired employee. The employer submits their new hires’ I-9 information (Social Security number, name, date of birth, citizenship or alien status, and alien number, otherwise known as an A-number, if applicable) over a secure Internet connection to be matched against SSA records for self-identified citizens and against USCIS data for noncitizens and some naturalized citizens.<sup>3</sup> Verification results vary in the following ways:

1. If the worker attests to being a U.S. *citizen* and the information submitted:
  - a. **matches** SSA database information, the employer is instantly notified that the worker is authorized for employment
  - b. **does not match** the SSA database, E-Verify instantly prompts the employer to check for possible input errors—a recent system enhancement implemented by USCIS. If no changes are made, E-Verify issues an SSA Tentative Nonconfirmation (TNC) finding
2. If the workers attests to being a U.S. *citizen* and SSA records are consistent with the worker information but cannot confirm work authorization status, the information is automatically checked against USCIS naturalization databases. If USCIS databases...
  - a. **confirm** citizenship through naturalization, the employer is instantly notified that the worker is authorized for employment

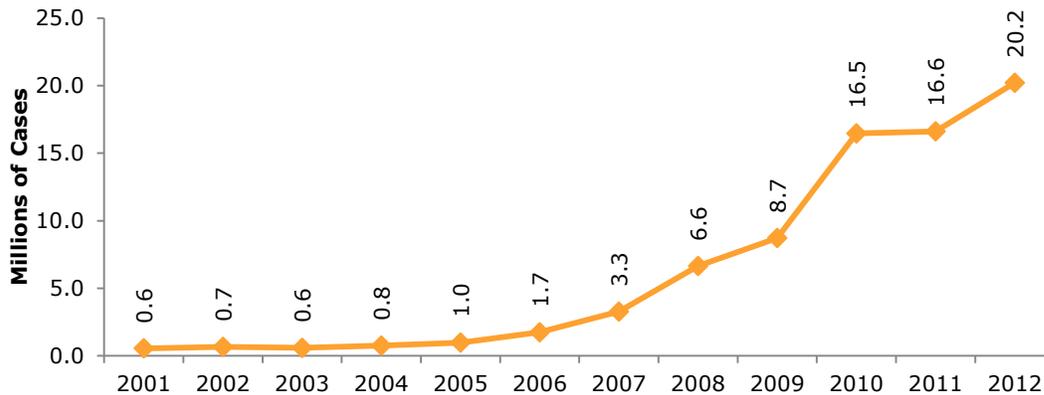
- b. **do not confirm** citizenship through naturalization, E-Verify instantly prompts the employer to check for possible input errors. If no changes are made, E-Verify issues a USCIS TNC finding.
  3. If the worker attests to being a *noncitizen* of the United States and the information submitted matches SSA database information, the worker information is electronically checked against USCIS databases for verification of work authorization. If USCIS databases...
    - a. **confirm** work authorization, and if the worker has used a Legal Permanent Resident (“green”) card or an Employment Authorization Document (EAD) as proof of identity, the employer is immediately notified and provided with the digitally stored photograph used to produce the card—this is known as the Photo Screening Tool, launched in 2007 to combat identity fraud.
    - b. **do not confirm** work authorization, E-Verify instantly prompts the employer to check for possible input errors. If no changes are made, the information is sent to an Immigration Status Verifier (ISV) who checks additional USCIS databases to verify work authorization status. If the ISV cannot confirm work authorization, E-Verify issues a USCIS TNC finding.

When a TNC finding is issued by the SSA or USCIS, employers are required to notify the employee of the finding. An employee then has the right to contest the finding with the appropriate agency within eight federal government work days. If an employee does not contest the finding or the contest is unsuccessful, the E-Verify system issues a Final Non-Confirmation (FNC) finding and the employer can terminate the worker.<sup>4 5</sup>

## Growth and Participation over the Years

Employer enrollment in E-Verify has been consistently increasing in recent years. As of February of this year, USCIS reports 432,256 enrolled employers, representing about 8 percent of U.S. employers.<sup>6</sup> The number of cases handled by E-Verify is also increasing as enrollment continues to grow:

## E-Verify Caseload, 2001–2012



*Source:* USCIS.

The program, while increasing in popularity among U.S. businesses, is still mostly voluntary around the country. There are, however, some exceptions: In 2008, President Bush signed an executive order requiring all federal contractors and subcontractors to use E-Verify; the order went into effect on September 8, 2009. As many as 19 states have also mandated all or some employers to use E-Verify for new hires. Six of these—Arizona, Mississippi, South Carolina, Alabama, Georgia, and North Carolina—have mandated the use of E-Verify for all, or nearly all, businesses.

## E-Verify Mandates By State

STATE	APPLIES TO
<b>Arizona</b>	employers, public and private
<b>Mississippi</b>	employers, public and private
<b>South Carolina</b>	employers, public and private
<b>Alabama</b>	employers, public and private
<b>Georgia</b>	public employers and private employers with more than ten workers
<b>North Carolina</b>	state agencies, private employers with more than 24 workers
<b>Indiana</b>	state agencies, state contractors
<b>Nebraska</b>	public employers, public contractors
<b>Oklahoma</b>	public employers, state contractors and subcontractors
<b>Virginia</b>	state agencies, public contractors and subcontractors with more than 50 employees and contracts more than \$50,000
<b>Missouri</b>	public employers, state contractors and subcontractors
<b>Louisiana</b>	all employers (employers may look at photo IDs instead)
<b>Minnesota</b>	state contractors and subcontractors with contracts more than \$50,000

<b>Pennsylvania</b>	contractors and subcontractors on public works projects (construction)
<b>Idaho</b>	state agencies
<b>Florida</b>	state agencies, state contractors and subcontractors
<b>Tennessee</b>	public employers and private employers with more than six workers (employers may look at driver's licenses instead)
<b>Colorado</b>	state contractors
<b>Utah</b>	public employers, state contractors and subcontractors, private employers with more than 14 workers

**Source:** *Immigration Works USA, "At Glance: State E-Verify Laws," last modified July 2012.*

The experiences of states like Arizona, which have mandated E-Verify for all employers, can be an important source of lessons for future expansion of the program. In Arizona, specifically, while mandating E-Verify seems to have helped in reducing the number of unauthorized immigrants in the state, the effects of the 2008 law are difficult to analyze because of the lack of enforcement and state audits of employers. A 2010 study by the Public Policy Institute of California found that the number of noncitizen Hispanic immigrants—most of whom were unauthorized immigrants—in Arizona fell by 17 percent (92,000 persons) between 2008 and 2009 as a result of the law.<sup>7</sup> However, the study also points out that, at most, only three prosecutions were pursued. Many unauthorized immigrants have also shifted to underground employment in Arizona. The “self-employment” rate by “likely” unauthorized immigrants increased by about 8 percent. Employers in Arizona have also continued to hire hundreds of thousands of workers without electronically verifying their status. DHS reported that Arizona businesses used E-Verify 982,953 times in 2011, even though the Census Bureau said there were 1.5 million new hires that year—a 66 percent compliance rate. Furthermore, only 43 percent of businesses in Arizona have actually enrolled in the system.

## E-Verify Accuracy

Prompts to double-check submitted data and other recent E-Verify system improvements implemented by USCIS, have led to an increase in accuracy. The erroneous TNC rate—the percentage of individuals who are initially rejected but are ultimately approved—is the only E-Verify accuracy measure that is available across time. During the first two years of the Basic Pilot program, the erroneous TNC rate was 4.8 percent.<sup>8</sup> By April–June 2010, it had fallen to 0.3 percent.<sup>9</sup>

The erroneous TNC rate has limitations as a measure of success. Westat pointed out some of these shortcomings during its 2009 program evaluation. First, the TNC error rate variable does not take into account work-authorized individuals who receive tentative non-confirmations but do not contest them. Second, the erroneous TNC rate measures the accuracy of rejections, but not the accuracy of approvals.

Other measures of E-Verify exist, but each is only available for a single time period. Westat's July 2012 program evaluation calculated an FNC accuracy rate, or the percent of final rejections that go to workers who are not work-authorized. E-Verify issued an FNC to 2.3 percent of workers in FY2009. Westat estimated that, in FY2009, 93.7 percent of the workers who received an FNC through E-Verify were, in fact, not authorized to work. The remaining 6.3 percent of FNC recipients were work-authorized.<sup>10</sup>

Like the erroneous TNC rate, the FNC accuracy rate only measures the accuracy of rejections and not the accuracy of approvals. However, it does account for the erroneous TNC rate's other major shortcoming: workers who do not contest their TNC. Westat estimated that if all employers had notified employees of their TNC—thereby giving them an opportunity to appeal before an FNC was issued—the FNC accuracy rate would have been 99 percent in FY2009.<sup>11</sup>

Westat's December 2009 evaluation calculated inaccuracy rates for authorized workers, unauthorized workers, and all workers. The inaccuracy rate for *authorized* workers is defined as "an estimate of the percentage of work-authorized workers not initially found to be authorized to work." USCIS reported that during the third quarter of FY2008, the inaccuracy rate for authorized workers was approximately 0.8 percent (i.e. less than 1 percent of authorized workers were initially found to be unauthorized). The inaccuracy rate for *unauthorized* workers, defined as "an estimate of the percentage of workers without work authorization that is initially and incorrectly found to be employment authorized," was approximately 54 percent. Therefore, the *total* inaccuracy rate—the percentage of all workers who received inaccurate initial authorization findings—was 4.1 percent.<sup>12</sup>

Westat's 2009 and 2012 program evaluations pointed out several key reasons for E-Verify inaccuracies. Inaccurate findings for authorized workers are mainly due to data input errors and inaccurate or out-of-date federal records. Inaccurate findings for unauthorized workers are mainly due to the system's limited ability to detect document or identity fraud.

## Challenges

As previously mentioned, USCIS has implemented several successful E-Verify enhancements in recent years to address program shortcomings, but many challenges still remain:

1. While evaluations consistently show the program's accuracy in identifying legal workers, they also highlight a persistent problem in identifying those who are not authorized to work in the United States. This is principally due to the system's inability to detect document and identity fraud. Westat points out that E-Verify has limited ability to detect fraudulent documents when the "counterfeit documents are of reasonable quality and contain information about actual work-authorized persons who resemble the worker providing the documentation."<sup>13</sup>
2. Although minimal, the system also produces erroneous TNCs, particularly for naturalized citizens, which are sometimes difficult for employees to correct and

costly for employers since neither employee suspension nor termination is permitted while the findings are contested.

3. The program lacks biometric checks to determine if workers are using someone else's documents.
4. The growth of E-Verify could potentially increase the risk of identity theft and abuse of privacy.
5. Evaluations have identified unlawful discriminatory practices by some participating employers.
6. Some employers and employees are incentivized to move their operations "off the books" and work "under the table," also increasing the risk of worker exploitation.
7. Libertarians are concerned that E-Verify turns employers into enforcement agents for the federal government, infringes on individuals' civil liberties, and creates a de facto national I.D. system.

## E-Verify Expansion and Costs

Many proponents of E-Verify expansion in Congress have long called for a mandatory program that would require all U.S. employers to enroll. Proponents argue that the voluntary system is not an effective deterrent to illegal immigration since it allows unauthorized workers to seek employment in firms that do not use E-Verify, which also puts enrolled employers at a disadvantage. A mandatory program for all employers would "level the playing field" and make it more difficult for unauthorized immigrants to find work in the United States.<sup>14</sup> On the other hand, those who oppose expansion point to E-Verify's error rates, inability to prevent underground employment, and costs as signs that the program cannot be efficiently mandated through the country.

Both USCIS and the Congressional Budget Office (CBO) have previously estimated that the direct costs of E-Verify to U.S. taxpayers would significantly increase if the program was made mandatory. Most recently, CBO evaluated the costs associated with a mandatory version of E-verify in the Senate-passed Border Security, Economic Opportunity, and Immigration Modernization Act (S, 744). CBO estimated that, in addition to the \$750 million appropriated directly for the employment verification system, implementation would cost another \$1.4 billion over a ten-year period (2014–2023).<sup>15</sup>

Mandatory E-Verify without workforce legalization could have additional negative economic impacts; it could reduce state and federal payroll tax revenues as employers either dismiss unauthorized workers upon receipt of non-confirmation or move these workers off the books. (Early evaluations of Arizona's mandatory program have provided evidence for this.) In 2008, a letter by CBO Director Peter Orszag on the Secure America Through Verification and Enforcement Act of 2007 (H.R. 4088) estimated a loss of \$17.3 billion in federal tax

revenues over a ten-year period, based on the “judgment that mandatory verification of employment eligibility through the E-Verify system would result in an increase in the number of undocumented workers being paid outside the tax system.”<sup>16</sup>

## E-Verify in the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013

The bill calls for a phased-in mandatory, enhanced E-Verify system for all employers in five years. Employers with more than 5,000 employees will be phased in within two years; more than 500 within three years; all employers, including agricultural employers, phased in within four years. The system will rely heavily on photo-matching: every noncitizen will be required to show their biometric work authorization card and the system will store the photographs. Citizens can use their licenses or passports. Lastly, the system will also allow employees to “lock” their Social Security numbers so that others cannot use it.

### Endnotes

<sup>1</sup> U.S. Citizenship and Immigration Services, *History and Milestones*, accessed April 1, 2013. Available at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD>.

<sup>2</sup> Andorra Bruno, U.S. Congressional Research Service, *Electronic Employment Eligibility Verification*, March 19, 2013.

<sup>3</sup> Westat, *Findings of the E-Verify Program Evaluation*, December 2009. Available at: [http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09\\_2.pdf](http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf).

<sup>4</sup> *Ibid.*, xxvi.

<sup>5</sup> Bruno, *Electronic Employment Eligibility Verification*.

<sup>6</sup> *Ibid.*

<sup>7</sup> Magnus Lofstrom, Sarah Bohm, and Steven Raphael, *Lessons from the 2007 Legal Arizona Workers Act*, Public Policy Institute of California, March 2011.

<sup>8</sup> Bruno, *Electronic Employment Eligibility Verification*; Westat, *Findings of the E-Verify Program Evaluation*.

<sup>9</sup> Westat, *Evaluation of the Accuracy of E-verify Findings*, July 2012. Available at: [http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Bruno, *Electronic Employment Eligibility Verification*.

<sup>13</sup> Westat, *Findings of the E-Verify Program Evaluation*, 131.

<sup>14</sup> Marc R. Rosenblum, Migration Policy Institute, *E-Verify: Strengths, Weaknesses, and Proposals for Reform*, February 2011.

<sup>15</sup> Congressional Budget Office, *Border Security, Economic Opportunity, and Immigration Modernization Act*, June 18, 2013. Available at: <http://cbo.gov/sites/default/files/cbofiles/attachments/s744.pdf>.

<sup>16</sup> Letter from Peter Orszag, director of the Congressional Budget Office, to Representative John Conyers Jr., chairman of the U.S. House Committee on the Judiciary, April 4, 2008. Available at: <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/91xx/doc9100/hr4088ltr.pdf>.