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Statement for the Record: E-Verify

Introduction

The E-Verify program (formerly known as Basic Pilot) is a Web-based system that electronically verifies the employment eligibility of newly hired employees. This initiative is a partnership between the Department of Homeland Security (DHS) and the Social Security Administration (SSA). U.S. Citizenship and Immigration Services (USCIS), the agency in DHS responsible for immigration services, administers the program.

E-Verify is an essential tool for employers committed to maintaining a legal workforce. Any participating company in the United States can access E-Verify through a user-friendly government Web site that compares employee information taken from the Form I-9 with more than 444 million records in the SSA database, and more than 60 million records in DHS immigration databases. Currently, 99.5 percent of all work-authorized employees queried through E-Verify were verified without receiving a Tentative Non-confirmation (TNC) or having to take any type of corrective action. Those employees whose work authorization cannot be instantly verified are given the opportunity to work with SSA or USCIS, as appropriate, to confirm their work authorization. USCIS estimates one percent of all queried employees choose to contest an initial, tentative result from E-Verify showing that their work authorization could not be verified, and only half of those who contest that result are ultimately found to be authorized. The most recent statistics appear to show that the share of legal workers who are not instantly confirmed by E-Verify as work authorized is decreasing further, but those numbers need more study. Furthermore, on May 5, 2008, E-Verify implemented a series of important enhancements which will continue to improve the accuracy of the system's automatic confirmation processes.

Over 66,000 employers, representing close to 259,000 worksites, currently are signed up to use the E-Verify program, and the number of registered employers is growing by over 1,000 per week. E-Verify is the best available tool for employers to gain quick and easy verification information for their new hires, and we are committed to working with your Committee and other members of Congress to achieve our shared goal of effective employment eligibility verification.

History of the E-Verify Program

Congress established the Basic Pilot, now E-Verify, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to verify the employment eligibility of both U.S. citizens and noncitizens at no charge to the employer. The program was first made available on a voluntary basis in 1997 to employers in the five states with the largest immigrant populations: California, Florida, Illinois, New York and Texas. Originally set to expire in 2001, E-Verify has been extended twice, and is due for reauthorization by Congress by November 2008. Since 2004, it has been available free of charge to employers in all 50 states and in the U.S. territories where U.S. immigration laws apply.

Since 2006, the number of employers registered has doubled in size each year; the number of employers has already more than doubled since the beginning of the current fiscal year. There has also been a substantial increase in the number of states that have passed legislation requiring usage of the E-Verify program for some or all employers within the state. Arizona and Mississippi have laws requiring all employers in the state to use E-Verify; and Georgia, Minnesota, Oklahoma, North Carolina, Rhode Island and Utah require some employers to use E-Verify. A recent directive from the U.S. Office of Management and Budget (OMB) required all Federal government agencies to sign up to use E-Verify by October 1, 2007. The Administration has also pledged to commence a rulemaking process to require all Federal contractors and vendors to use E-Verify. In addition, DHS recently published a regulation enabling F-1 Optional Practical Training students to apply for a 17-month extension to their work authorization status if they are employed by an E-Verify registered employer. Participation and usage of E-Verify is expected to grow significantly over the next few years.

Collaboration with SSA

USCIS has enjoyed a close working relationship with SSA over the course of the development, implementation and continuing improvement of the electronic employment eligibility system. USCIS and SSA hold monthly meetings to discuss the program and future initiatives and are committed to working together to continue to improve E-Verify. In October 2007, SSA implemented EV-STAR, a system through which SSA automatically returns the response to a contested mismatch through the E-Verify system once it has been manually checked and resolved at an SSA field office. This is a process improvement developed in partnership with USCIS and SSA. Previously, the onus was on the employees to show a stamped letter to their employers after they visited an SSA office to resolve the discrepancy in the SSA record and for the employer to resubmit the case through the system for final resolution. This former business process could sometimes result in erroneous final non-confirmations when employers queried the system before the government resolved the contested TNC.

Meanwhile, a new case resolution process was implemented on May 5, 2008 to reduce the burden on employees resulting from naturalization-related TNCs based on SSA's records. Such TNCs can occur when an individual has become a naturalized US citizen, but he/she has not yet notified SSA of this change in citizenship status. E-Verify now does an automatic check of DHS naturalization records and, if no DHS record is found, allows employees who receive this type of SSA TNC to call a USCIS toll-free number to correct their record if they prefer not to visit an SSA field office. Preventing employees from having to travel to an SSA field office also lessens the work for SSA field offices.

In addition, USCIS and SSA are exploring enhancements, including a direct data share initiative that would update SSA's database with naturalized citizen information.

How E-Verify Works

SSA Verification

Within three days of hiring an employee, the participating employer is required to enter information from the Form I-9 (Employment Eligibility Verification form), including the employee's name, date of birth, Social Security number (SSN) and citizenship status, into E-Verify and submits a query. Within seconds, the employer receives a response.

The system transmits, in a secure manner, the new hire's SSN, name, and date of birth to SSA to verify that data against the information recorded in its NUMIDENT database. For those employees whose work authorization status can be verified immediately (i.e. whose SSA record matched and confirms U.S. citizenship), the process ends here with a confirmation response returned to the employer through the system within seconds. In the remaining small minority of cases, the system issues a SSA TNC form to the employer. The form is available in English or Spanish.

When a TNC is issued, the employer must notify the employee of the TNC and give the employee the opportunity to contest that finding. If the employee chooses to contest the SSA TNC, he or she has eight business days to visit an SSA office with the required documents to initiate the process to prove identity and support the correction of the SSA record. Until the TNC is resolved, even if it takes longer than eight days, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against him or her because of the TNC. If the employee fails to contact SSA within the eight day contest period, the employee is considered a no show and a final nonconfirmation is issued by E-Verify. At this point, the employer should terminate employment. A recent electronic business process enhancement, EV-STAR, allows SSA to use the E-Verify system to inform the employer of the case resolution once the employee visits SSA and resolves the issue.

For employees who successfully resolve a TNC, correcting SSA records is a useful result of the E-Verify process, helping individuals identify and resolve problems with their Social Security records. The work done to update records to resolve an E-Verify mismatch would need to be done at the time the individual applies for Social Security benefits..

DHS Verification

If the query involves a noncitizen worker, the employee's name, date of birth, and SSN are matched with SSA records as with U.S. citizen cases. If the information matches SSA records, then the DHS identification number and work authorization information are also matched against DHS databases. If the information cannot be verified electronically, the case is forwarded to a USCIS Immigration Status Verifier (ISV), who researches the case and provides an electronic response within one business day, either verifying work authorization or issuing a DHS TNC.

As with the SSA process described above, if the employer receives a TNC, the employer must notify the employee and provide him or her with an opportunity to contest that finding. An employee has eight business days to call a toll-free number (which provides support in ten different languages) to initiate the process to contest the finding. Until the TNC is resolved, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against them because of the TNC. Once the necessary information from the employee has been received by phone or fax, the USCIS Immigration Status Verifier resolves the case, typically within three business days, by issuing either a verification of the employee's work authorization status or a DHS final nonconfirmation.

The Current E-Verify System

Under USCIS management and in partnership with SSA, the program is continuously improving its processes to decrease mismatch rates and ensure that E-Verify is fast, is easy to use, and protects employees' rights. Over the past year, E-Verify has automated its registration process, instituted a system change to reduce the incidence of typographical errors, incorporated a photo screening tool to combat more sophisticated forms of document and identity fraud, added Monitoring and Compliance staff to maintain system integrity, added new databases that are automatically checked by the system, and established a new process for employees to call USCIS' toll-free number to address citizenship mismatches as an alternative to visiting SSA, all in an effort to establish efficient and effective verification. If the program becomes mandatory, USCIS is prepared to hire additional staff to handle the increased number of TNCs that would be challenged. SSA would also experience a dramatic increase in field office traffic from employees who are challenging SSA TNCs.

The E-Verify program infrastructure is capable of handling the volume of queries that would be necessary for a nationwide mandatory employment verification system.

DHS and SSA conducted cooperative end-to-end load testing of the Verification Information System (VIS), which is the database that supports E-Verify, in September of 2007. The results of the testing showed that E-Verify has the capacity to handle up to 60 million queries per year. This capacity is in line with the projected 60 million new hire queries per year that would result from mandatory E-Verify legislation applicable to all U.S. employers. DHS will continue to work with SSA to update the current pilot architecture to ensure that DHS and SSA can provide the most stable environment possible to the employer community and to create an independent environment for E-Verify queries, separate from SSA's other processing needs.

E-Verify is the most accurate and efficient way to verify employment authorization.

E-Verify generates "mismatches" (or TNCs) when the information supplied by the employee or employer does not match the information that either SSA or DHS has on file. In almost every case, a mismatch will occur either because the employee is actually not authorized to work (five percent of all queries based on the September 2007 Westat Evaluation); because the employee has not yet updated his or her records with SSA (for example, to reflect name or citizenship status changes); or because the employer made an error inputting information into the system. Where there is a TNC, E-Verify gives the employee the opportunity to take further action and correct his/her record with the appropriate agency if they believe the mismatch is an error. Once a record is corrected, it remains corrected; that employee will likely not face another TNC if he or she takes a different job with another

employer unless the employee has a subsequent change in the information in his or her record. As noted above, correcting these records is important for individuals to receive credit for their full work history when they file for Social Security benefits. Moreover, correcting these records dramatically reduces the chances that they or their employers will receive no-match letters from the SSA in the future pointing out a discrepancy between the employees' personal information and the social security number reported for them.

The opportunity to contest an E-Verify finding is an important step that seeks to ensure that no employee who is in fact work authorized is prevented from working. All employers are required to ensure that employees who receive a TNC are given the opportunity to contest that finding and correct their records. Legal workers who contest will be found employment authorized after resolution of the initial mismatch and suffer no permanent adverse consequences.

Recent studies show that E-Verify is an accurate and effective tool for verifying the work authorization status of employees. For the past few years, E-Verify has been independently evaluated by Westat, a social science research firm, which has monitored the effect of various changes made to the E-Verify system. Currently, 99.5 percent of all work-authorized employees queried through E-Verify were verified without receiving a TNC or having to take any type of corrective action. Though the 0.5 percent of all work-authorized employees who receive TNC is very small, our goal is to reduce it even further. Overall, the Westat evaluation found that over 94 percent of all cases are instantly found to be employment authorized.

A large portion of the small number of employees who successfully contests an SSA TNC are employees who have recently naturalized. Previously, the fact that new citizens had not updated their SSA records would result in a mismatch between the information they submitted on the Form I-9 and the outdated information in SSA's records. As of May 5, 2008, many of these mismatches will no longer occur, as the system now automatically checks USCIS naturalization records before issuing a citizenship status mismatch.

E-Verify also added the Integrated Border Inspection System (IBIS) real time arrival information for non-citizens to its databases as of May 5, 2008, which will eliminate current E-Verify mismatches that have resulted from noncitizen arrival information not yet entered into the databases E-Verify had previously verified against. The addition of this data to the E-Verify system is expected to reduce the number of mismatches that occur for newly arriving workers who have entered the country legally and sought work immediately after they had entered the country.

Lastly, E-Verify plans to incorporate U.S. passport information into the employment verification process as early as this fall. The use of U.S. passport information will help instantly verify those employees born abroad to U.S. citizen parents and U.S. citizens who derived citizenship as children when their parents naturalized, both populations which currently receive a disproportionate numbers of TNC. We are grateful for the hard work of the Department of State in working towards this important data sharing initiative.

These improvements all seek to ensure that the data relied upon by E-Verify is as up-to-date as humanly possible. In some cases, however, the only way for a person's records to be kept accurate is for that person to report name changes and the like to SSA. Because not everyone in the U.S. workforce is unfailingly diligent in this area, there will likely always be a small number of legal workers who will have to go through the TNC process. As a result, no automatic verification system will be perfect. But we continue to work on the system to ensure that every error that can be prevented through government data processes will be avoided.

USCIS's partnership with SSA is essential to the success of E-Verify.

USCIS and SSA have worked closely over the years to improve the E-Verify process, and discussions continue as additional improvements are implemented. USCIS reimburses SSA for all costs incurred for verifications through E-Verify, and has worked hard to decrease E-Verify related work undertaken by SSA field offices. Each year since inception, except for fiscal year (FY) 2006, SSA and USCIS (and legacy INS before then) have signed agreements to reimburse SSA for E-Verify costs. The agencies are still negotiating the reimbursable agreement for FY 2008. Improvements include automating parts of the secondary verification process, and as described above, including the new EV-STAR process for SSA to communicate results to the system) and instituting an enhancement that allows employees to contact USCIS directly to resolve naturalization-related mismatches, thus decreasing the workload in SSA field offices. Lastly, USCIS and SSA are exploring future enhancements to include a data sharing initiative that would update SSA records with naturalized citizenship information.

E-Verify is an efficient and easy system for employers to use.

Participating employers are largely satisfied with the E-Verify program. Last year, the Westat evaluation reported that "[m]ost employers found the Web Basic Pilot (E-Verify) to be an effective and reliable tool for employment verification" and 96 percent did not believe that it overburdened their staffs.

The E-Verify program has substantially increased its customer service and program staff over the past two years in an effort to work with employers and ensure that every question or difficulty that arises is addressed. The E-Verify program outreach staff has conducted numerous training programs and workshops across the country to inform employers about the system and the benefits of using E-Verify to verify the work-authorization of their employees.

E-Verify program staff is working to maintain the integrity of the system and effectively prevent discrimination and misuse.

An effective electronic work authorization verification program is critical to reducing the jobs magnet that encourages illegal immigration, but the program also must include robust tools to detect and deter employer and employee fraud and misuse. The E-Verify program has created a Monitoring and Compliance unit that can detect and deter improper use of the system. The Monitoring and Compliance unit also works to safeguard personal privacy information; prevent the fraudulent use of counterfeit documents; and refer instances of fraud, discrimination, and illegal or unauthorized use of the system to enforcement authorities. Once fully staffed, the E-Verify's Monitoring and Compliance unit will carry out its mission by educating employers on compliance procedures and guidelines and providing assistance through compliance assistance calls. The unit will also conduct follow-up with desk audits and/or site visits to unresponsive employers if necessary, and refer cases of fraud, discrimination and illegal use to the Department of Justice Office of Special Counsel (OSC) or U.S. Immigration and Customs Enforcement (ICE), as appropriate.

E-Verify prevents certain types of identity and document fraud.

We are aware that some aliens without work-authorization use identity fraud to obtain employment in this country. To help prevent this problem, the E-Verify program introduced a photo screening capability, which is still under development, into the verification process last September. The photo tool allows employers to identify instances where an employee has tried to use a photo-substituted document, and it has already identified cases of suspected document and identity fraud, thereby preventing

unauthorized workers from illegally obtaining employment. The tool allows a participating employer to check the photos on Employment Authorization Documents (EAD) or Permanent Resident Cards (green card) against images stored in USCIS databases. The goal of the photo tool is to help employers determine whether the document presented reasonably relates to the individual and contains a valid photo. All employers registered to use E-Verify, with the exception of those who use designated agents or a web services application, are now using the photo screening process when the worker presents one of the documents currently available in the photo tool database. USCIS is currently working to change the business processes for designated agents and web services users of E-Verify to enable them to use this photo screening capability, and we anticipate that this project will be completed in the next six months.

We are also working to expand the types of documents for which the E-Verify system will allow photo confirmation. The strength of this tool is directly dependent on the range of documents for which it can be used, and our long-term goal is for the E-Verify photo screening process be able to verify the photos on all identity documents that an employee may present as acceptable Form I-9 documentation.

USCIS is aware of the prevalence of identity fraud in this country, and is especially concerned with how this practice affects E-Verify. While we do not currently have any way to identify, upon initial verification, identity fraud by an employee who has stolen a valid SSN and identity information or has been supplied the information by their employer, we are examining ways to do so. What we are able to do with our Monitoring & Compliance unit is to identify indications that SSN fraud has taken place, and work with ICE, in cooperation with SSA, to deal with these cases. USCIS and ICE are currently finalizing a memorandum of understanding to identify instances where data sharing would be appropriate and we are currently identifying ways to assist each others' work.

Conclusion – The Future of E-Verify

DHS will continue to work with SSA to operate and enhance the E-Verify program. Thank you for the opportunity to submit this statement for the record and we appreciate this subcommittee's continued support of the E-Verify program as it goes through the reauthorization process in the fall.

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