



**Written Testimony of
Carolyn F. Shettle, Ph.D.
Senior Study Director, Westat**

**House Subcommittee on Immigration,
Citizenship, Refugees, Border Security, and
International Law**

**Hearing on Electronic Employment
Verification Systems: Needed Safeguards
to Protect Privacy and Prevent Misuse**

**Findings of the Westat September 2007 Report
Evaluating E-Verify**

June 10, 2008

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Chairwoman Lofgren and Members of the Subcommittee:

Thank you for this opportunity to discuss some of the findings of Westat's September 2007 evaluation of the Web Basic Pilot program (now referred to as E-Verify) that we performed under contract to the U.S. Citizenship and Immigration Services (USCIS). My remarks today will focus on those report findings of relevance to this hearing, i.e., what did the evaluation find were the impacts of E-Verify on workers and what are the potential implications of these findings for a mandatory electronic verification program?

Research Methods

The results reported here are based on the following:

- Web surveys of 1,030 employers that had signed Memoranda of Understanding (MOUs) at least 1 year earlier and had used the system in specified months prior to the survey.
- Analysis of E-Verify system transaction data entered by employers and the Federal Government, supplemented by additional information from SSA records, for over 3.5 million verifications conducted between the start of E-Verify in June 2004 through March 2007.
- Case studies, including on-site in-person interviews with five employers, record reviews for 376 of their employees that the transaction database indicated had received tentative nonconfirmation findings and in-person interviews with 79 of these employees.

- Unstructured interviews with 18 employers that had either formally terminated use of E-Verify or had signed an MOU but never used the system.
- Meetings with Federal program officials knowledgeable about and experienced with E-Verify.
- Data analyses ranging from simple descriptive statistics to multivariate model-based estimates.

As is true for any social science study, the data are limited by a number of factors:

- The survey data are subject to inaccuracies due to factors such as respondent inability to understand questions or reluctance to provide accurate answers and to nonresponse that may have been especially high among noncompliant employers.
- The case study component of the evaluation and the interviews with nonusers were designed to give a more in-depth understanding of the program than can be obtained from structured interviews alone rather than to be statistically representative of all employers and employees. Information from small employers completing the Web survey and information from interviews with nonusers also cannot be considered statistically representative.
- The transaction database is subject to nonsampling errors resulting, for example, from data input errors.
- In some situations, it was not possible to obtain direct measures of key variables of interest. Where possible, the evaluation uses model-based estimates of these variables or indicators that can be considered indirect measures of the variables. For example, the erroneous tentative nonconfirmation rate for *all* work-authorized workers verified cannot be measured directly, since the evaluation team has no way to determine accurately which employees are work-authorized. Instead, the erroneous tentative nonconfirmation rate for employees found to be work-authorized at any stage of the verification process is used as an indicator of the rate for all work-authorized workers, even though the rate for ever-authorized workers underestimates the rate for all work-authorized workers.

Where possible, the evaluation uses multiple data sources to examine issues of interest. Since these data sources have different strengths and weaknesses, the evaluation is able to obtain more accurate findings than would be true if only one data source were available.

Employer Noncompliance

The rate of employer noncompliance with E-Verify procedures is substantial, diminishing the effectiveness of safeguards designed to protect the rights of work-authorized employees who obtain erroneous tentative nonconfirmations as well as diluting its effectiveness in meeting the program goal of deterring unauthorized employment.

The types of employer noncompliance range from fairly trivial “offenses” such as not meeting the three-day deadline for case entry during peak hiring periods to noncompliance that can result in citizens and work-authorized noncitizens not obtaining employment or being fired from jobs without due process. The more serious types of employer noncompliance include the following:

- Some employers used E-Verify to screen job applicants (reported by 16 percent of long-term users) and then, presumably, either denied applicants an opportunity to work or postponed their starting work until they resolved their tentative nonconfirmations. Although it is likely that most of the workers receiving tentative nonconfirmations are not work-authorized, some of these workers are citizens or work-authorized noncitizens.
- Some employers (9 percent of long-term Web Basic Pilot users) did not notify employees (or job applicants) of tentative nonconfirmation findings at all or did not notify them in writing, thereby making it difficult or impossible for them to contest the finding and denying them their right to due process. The case studies also indicated that most, but not all, interviewed employees who had received a tentative nonconfirmation had been notified of a problem with their paperwork, either in writing or orally.
- Other employers took prohibited adverse actions against employees while they were contesting tentative nonconfirmation findings. These actions included restricting work assignments (reported by 22 percent of long-term users), delaying training until the employment authorization was obtained (reported by 16 percent of long-term users), reducing pay, or requiring them to work longer hours or in poor conditions. For example, one of the work-authorized case study employees reported that he received harsher treatment because his supervisor assumed he was an illegal worker. Similar reports of mistreatment were reported by employees without work-authorization who worked for this employer, making it unlikely that this was just a misperception by the employee.
- A small number (7 percent of long-term users) of E-Verify employers reported discouraging employees with tentative nonconfirmations from contesting, which may have resulted in work-authorized employees unfairly losing their jobs. Employers did not consistently post the notice of their participation in E-Verify in an area where it is likely to be noticed by job applicants.

- Not all employers followed E-Verify procedures with respect to training their staff on the proper use of the E-Verify system, increasing the likelihood of more serious forms of noncompliance with pilot procedures.

Although substantial employer noncompliance exists, the evaluation also indicated that employer compliance with the rules has improved over time. For example, 9 percent of long-term employers interviewed for this evaluation did not always notify employees of tentative nonconfirmations compared to 18 percent in the evaluation of the original basic pilot report (2002). On the employer survey, only 7 percent of long-term users indicated that they did not encourage employees to contest tentative nonconfirmations because the process required too much time and/or because work authorization rarely results. This is significantly lower than the 14 percent of original basic pilot employers.

It is reasonable to believe that at least some of this progress is attributable to program modifications of E-Verify, such as improvements to the employer tutorial and information resources available over the Web that are designed to ensure that employers understand their responsibilities.

The evaluation also pointed out that USCIS has established a monitoring and compliance unit designed to reduce noncompliance; however, this unit was not fully operational at the time of the evaluation, so its effectiveness is could not be assessed.

One concern about the possible future trend in compliance is that compliance levels were lower among recently enrolled users than among long-term users. It appears that at least part of this difference can be attributed to the changing characteristics of these employers. As the program expands and E-Verify employers become increasingly like the national population of employers, it appears likely that this downward trend in compliance will continue unless counteracted by program changes.

What is not known at this point is whether employers mandated to use E-Verify will be more or less likely to be compliant than employers that use it voluntarily. As the report indicated, however, it is reasonable to believe that employers forced to join the program are more likely to look for ways around its requirements than are those who volunteer to use it.

Discrimination

Discrimination is a complex issue, and one that has been debated since the initial proposals for an electronic verification system. The evaluation has found evidence both favoring the hypothesis that the program decreases discrimination and favoring the hypothesis that the program increases discrimination.

Apparently, E-Verify leads to some employers being more willing to hire foreign-born workers. Although most (62 percent) long-term users reported that E-Verify neither increased nor decreased their willingness to hire immigrants, the percentage of employers (19 percent) saying that the program makes them more willing to hire immigrants is greater than the percentage saying it made them less willing (4 percent), presumably leading to a net decrease in hiring discrimination. As a recent quote from an employer believing that it made him more willing explains, “I feel more secure hiring immigrant workers now. I can lose my franchise by hiring illegal workers, so if documents looked strange I would not hire that person. Now I do not miss out on hiring great qualified workers, just because they were not born here.”

However, the evaluation also demonstrated that foreign-born citizens and work-authorized noncitizens are more likely to receive tentative nonconfirmations than are U.S.-born workers, thereby subjecting a greater percentage of work-authorized foreign-born workers to potential harm arising from the E-Verify process. For U.S.-born employees authorized at some point during the verification process, 0.1 percent received tentative nonconfirmations prior to being found work-authorized. The rate was 1.4 percent for noncitizens and 9.8 percent for naturalized citizens.

Since employer noncompliance with E-Verify procedures can negatively impact workers, the high tentative nonconfirmation rates for naturalized citizens and work-authorized noncitizens compared to the rate for U.S. born-workers results in discrimination even in the absence of employer intent to discriminate.

Even in the absence of employer noncompliance, E-Verify may result in discrimination against work-authorized foreign-born workers, because there are burdens such as lost pay and transportation expenses associated with visiting an SSA office to resolve a tentative nonconfirmation; to a lesser extent, there also may be burdens when contacting USCIS to resolve tentative nonconfirmations. For example, one of the employers in our evaluation said, “The closest SSA office was 50 miles away, making the process a ‘hassle’ for both the employer and employees.”

Over time, USCIS has taken a number of actions to reduce the erroneous tentative nonconfirmation rate for ever-authorized workers. At least partly for this reason, the erroneous tentative nonconfirmation rate for ever-authorized workers declined from 0.8 in the first half of FY2005 to 0.5 in the first half of FY2007. This reduction has presumably led to a decrease in discrimination due to erroneous tentative nonconfirmations. However, a substantial part of this change in accuracy appears to be attributable to changes in the characteristics of workers being verified. Examination of differences between the workers verified in the E-Verify program and the characteristics of new hires nationally indicates that employees currently being verified have become considerably more like new hires nationally. This suggests that future changes in the characteristics of workers verified will not result in the same substantial improvements in the erroneous tentative nonconfirmation rate without continuing programmatic improvements.

Privacy

The major evaluation findings about the impact of the E-Verify on privacy are as follows:

- There is little increased risk of misuse of E-Verify information by Federal employees.
- One possible weakness of the system is that under current procedures, anyone wanting access to E-Verify could pose as an employer and get access to the system by signing an MOU. Although the evaluation found no evidence that this has happened, SSA experience with the Social Security Number Verification Service program, which permits employers to verify the validity of their employees' Social Security numbers, suggests that it is a very real possibility, particularly as more employers join the program.
- Employers did not consistently convey information about E-Verify tentative nonconfirmations to employees in a private setting. Six percent of employers reported that at least sometimes they do not notify employees in private—down from 12 percent in the employer survey of the Original Basic Pilot. However, the case study showed that it is highly likely that employers underreport failing to notify employees in private. Among the four employers that reported employees were always notified in private, at least some of their employees reported that they were not informed in private. For example, a few employees of one of the employers reported that the employer posted a list of employees who were “not authorized to work.”

Recommendations for Improving the E-Verify Program

The primary recommendations of relevance to this hearing are as follows:

- Address the high tentative nonconfirmation rate for foreign-born U.S. citizens by:
 - Improving the interface between USCIS and SSA databases to more easily share information on naturalized citizens already on the USCIS databases, as well as information about new citizens in the future.
 - Collecting Social Security numbers for all persons at the time they apply for naturalization, including children who derive citizenship from their parents' naturalization.
 - Obtaining citizenship information from the U.S. Department of State's Passport Agency when it first documents that a foreign-born person has derived U.S. citizenship.
 - Updating USCIS electronic records to reflect U.S. citizenship status by inputting pre-1996 naturalization and citizenship information, as well as Social Security numbers available in retired paper Alien files, and then sharing the information with SSA.

- Modifying the tentative nonconfirmation procedures to allow employees receiving initial SSA tentative nonconfirmations because their citizenship status could not be verified to provide their prior Alien numbers so that USCIS records can be checked.
 - Determining how photographs, fingerprints, or other biometric checks can be incorporated into the E-Verify system for *all* employees rather than only for noncitizens.
 - Modifying the algorithm USCIS uses in matching its records to records input by the employer so that those records are consistent with SSA’s criteria and move toward a USCIS database that can be indexed by Social Security number as well as by Alien number.
- To reduce employee burden, consider revising SSA’s procedures that require in-person visits to resolve tentative nonconfirmations.
 - Continue implementing plans for a strong monitoring and compliance program to identify employers that are not adhering to E-Verify procedures.
 - Undertake an outreach program to inform employees of their rights.
 - Make employee documents available in multiple languages and as accessible as possible to employees with limited reading skills. In addition to having experts examine the documents and suggest ways to modify them, focus groups or other forms of usability testing should be conducted to ensure the readability of these documents.
 - Make additional changes to the tutorial to further improve its effectiveness, thereby reducing employer noncompliance. For example, periodic retesting and, if needed, refresher training should be used to ensure that the material has not been forgotten and to discourage the observed practice of assuming another user’s name and password to avoid the tutorial and Mastery Test.
 - Revise the training materials and tutorial to clarify issues, such as the definition of a “new hire,” that confused some of the case study employers.
 - Develop training modules for staff other than system users and administrators to help prevent violations of program procedures that are the responsibility of staff that do not directly use the system.
 - Make usability testing with employers a standard practice before implementing system changes to those aspects of the E-Verify system used by employers to ensure that materials are clear to those who will be completing the training and using the system.
 - Carefully review and ensure independent evaluation of major procedural changes prior to implementation, based on existing data or a pilot program.

- Continue general E-Verify evaluation activities, as the program continues to evolve rapidly, since not all consequences of modifying the program can be anticipated.

Madam Chairwoman, I would like to conclude by thanking you and this Subcommittee for this opportunity to present the results of Westat's evaluation. If you want additional information about the evaluation, it can be found at:

<http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>