

FINDINGS OF THE E-VERIFY® PROGRAM EVALUATION

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EXECUTIVE SUMMARY

FINDINGS OF THE E-VERIFY PROGRAM EVALUATION

1. BACKGROUND

This document summarizes the major findings and recommendations from the *Findings of the E-Verify Program Evaluation* report.¹ Section 1 of the summary provides the following background information about E-Verify to help the reader understand the evaluation findings: evaluation goals, description of the E-Verify Program, legislative and programmatic changes to the Program, research methods, and contextual information (employer and worker characteristics, system outcomes, and consistency between E-Verify findings and true work-authorization status). Section 2 examines the major E-Verify Program strengths and the ongoing challenges facing the Program in light of E-Verify goals. Section 3 focuses on how useful recent changes have been in improving the Program's ability to meet its goals. The final section, Section 4, provides the evaluation's recommendations.

1.1. Evaluation Goals

This evaluation's primary goals are as follows:

- Determine the extent to which E-Verify is successfully meeting its stated goals of
 - Reducing the employment of unauthorized workers,
 - Protecting privacy and workers' civil liberties,
 - Reducing (or at least not increasing) discrimination, and
 - Preventing undue burden on employers;
- Determine the extent to which the Program is operating efficiently;
- Determine the impact of recent legislative and program changes; and
- Provide the U.S. Citizenship and Immigration Services (USCIS) and the Social Security Administration (SSA) with recommendations for future program changes.

1.2. Description of the E-Verify Program

The Basic Pilot Program, now referred to as E-Verify, was originally authorized under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to electronically verify the work-authorization status of new hires of participating employers. Its authorization has been extended several times since then, and the Program has been expanded in scope and modified considerably based, in part, on earlier evaluation reports available on the USCIS Web site.² The E-Verify evaluation report

¹ To make the Executive Summary more easily understood as a stand-alone document, its organization is different from that of the full report.

² See Westat, *Findings of the Web Basic Pilot Evaluation*, September 2007 (<http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>) for the most recent report.

summarized here presents the findings of the 2008 evaluation of E-Verify, which covered the time period between September 2007 and June 2008.

E-Verify is the only Federal electronic employment verification program available to employers to validate the lawful employment status of new hires. The Federal government has made changes to this system since its inception in 1997 and continues to make and plan for additional enhancements.

The following description reflects the program design at the end of the evaluation data collection period in June 2008. It should be noted that the USCIS Form I-9, which must be completed for all new hires nationally, is the starting point for submitting cases to E-Verify.

After registering for E-Verify, signing a Memorandum of Understanding (MOU) with USCIS, and completing required online training, participating employers are supposed to perform electronic verification of every newly hired employee. To verify a newly hired employee, the employer submits information (Social Security number (SSN), name, date of birth, citizenship or alien status, and, if relevant, alien number (A-number) or I-94 number), from the Form I-9 over a secure Internet connection to be matched against government data. The information is first matched against SSA data and then, for noncitizens and some naturalized citizens, against Department of Homeland Security (DHS) data.

If the worker attests to being a U.S. citizen and the information submitted matches SSA information, the employer is instantly notified by the system that the worker is employment authorized. If information from the SSA database does not match the worker information entered, E-Verify instantly requests the employer to check for possible input errors and, if no changes are made, E-Verify issues a Tentative Nonconfirmation (TNC) finding. If the worker attests to being a citizen and SSA records are consistent with the worker information except that SSA cannot confirm work-authorization status, USCIS naturalization databases are automatically checked to determine whether those records confirm citizenship through naturalization.³ If they do, the employer is instantly notified by the system that the worker is employment authorized; otherwise, the employer is asked to check for possible input errors and, if no changes are made, a TNC is issued.

If the worker attests to being a noncitizen and the SSA database information matches the worker information, the worker information is electronically checked against DHS databases. If the information matches DHS information and indicates that the worker is authorized to work in the United States and the worker has used a Permanent Resident (“green”) card or an Employment Authorization Document (EAD) as proof of identity, the automated response includes the digitally stored photograph (if available) that was used to produce the card that the worker presented in the verification process. The employer then determines whether the photo provided in the E-Verify response matches the photo on the document presented. If the employer confirms that the photo returned in the E-Verify response matches the photo on the document (or if no photo is available on E-Verify), the worker is instantly verified as work authorized. If the DHS database information does not match the worker information, E-Verify instantly requests the employer to check for possible input errors and, if no changes are made, the information is sent to an Immigration Status Verifier (ISV)⁴ who checks additional information available in DHS records to verify work-authorization status and provides an electronic response to the employer, usually within 24 hours. If the ISV cannot confirm work authorization or the employer indicates that the document photograph does not match the electronic photograph displayed by the E-Verify system, a TNC finding is issued.

³ As of 2009, E-Verify also checks Department of State (DOS) U.S. passport data to confirm the individual’s citizenship status if the individual submits a U.S. passport and SSA information does not confirm citizenship.

⁴ Immigration Status Verifiers are now referred to as Management Program Assistants.

EXECUTIVE SUMMARY

When a TNC is issued, employers are required to inform affected workers in writing of the E-Verify finding and their right to contest the finding. If any discrepancies with SSA or DHS records are resolved by the worker during the contesting process, E-Verify issues an employment-authorized finding. When workers say that they do not want to contest TNCs or fail to contact SSA or USCIS within 10 Federal workdays, the E-Verify system issues a Final Nonconfirmation (FNC) finding and employers are expected to promptly terminate the workers' employment.

1.3. Legislative and Programmatic Changes

This section describes the legislative and major program changes made since March 2007, when data collection for the previous evaluation report was completed.

There have been numerous cases in which state legislatures have proposed or enacted legislation to require E-Verify usage by some or all of its employers. To simplify analyses, the following State Legislation Groups were used based on the situation as of March 31, 2008: (1) implemented legislation requiring all employers to participate in E-Verify (Arizona was the only state in this category);⁵ (2) implemented legislation requiring some employers such as state agencies and their contractors to participate in E-Verify;⁶ and (3) had not implemented legislation requiring participation in E-Verify. Although there were additional changes in proposed state legislation after this date, the trend data presented in this report end with the April through June 2008 quarter. Using the March cutoff permits examination of quarterly trends, including those for the April through June 2008 period.

Major program changes examined in this report are as follows:

- **Photo Screening Tool** (September 2007). The Photo Screening Tool permits employers to compare photographs on worker documents with digital photographs stored in government systems. As of the time that the report was being written, the only documents available on the Photo Screening Tool were those issued to work-authorized noncitizens: green cards and EADs.
- **SSA and USCIS pre-TNC checks** (September 2007). The SSA pre-TNC check instantly prompts employers to review the information they had input about their workers and correct any detected errors when the information would otherwise generate an SSA TNC finding. For USCIS, the pre-TNC check prompts employers to review their input prior to the case being sent to secondary verification in which ISVs manually check additional DHS databases.
- **EV-STAR and the pre-FNC check** (October 2007). EV-STAR automates the tracking process for referring and contesting TNCs at SSA to make it more similar to the tracking system used by USCIS. As part of this process, all SSA TNCs, except those shown by EV-STAR to have been successfully contested, are automatically resubmitted to E-Verify prior to the issuance of an FNC in what is referred to in this report as the pre-FNC check.
- **Naturalization Phase I** (May 2008). This change adds an automated DHS naturalization database checking process for workers who attest to being U.S. citizens when SSA records are consistent with the information submitted on SSN, name, and date of birth but cannot confirm U.S. citizenship status.

⁵ National Conference of State Legislatures (<http://www.ncsl.org>).

⁶ Colorado, Georgia, Idaho, Minnesota, Mississippi, North Carolina, Oklahoma, Rhode Island, Tennessee, and Utah are in this category.

- **Naturalization Phase II** (May 2008). This change provides a special referral letter for workers attesting to being U.S. citizens when their SSA records are consistent with the information submitted on SSN, name, and date of birth but neither SSA nor DHS records can confirm U.S. citizenship status. The letter provides workers with an opportunity to voluntarily contact USCIS by phone or fax to confirm their U.S. citizenship rather than going in person to an SSA field office.

In addition to the changes listed above, USCIS reported having made a variety of other program changes between March 2007 and June 2008. Examples of these changes include establishing a Monitoring and Compliance unit, a Privacy Branch, and a new Customer Call Center; revising the E-Verify Web site to make it easier for employers to locate online resources; updating the online user's manual; updating the Designated Agent tutorial; adding announcement banners to the E-Verify screen to notify employers of upcoming changes; providing forgotten passwords through an automated system to employer users; and expanding employer and worker outreach efforts. USCIS continues to work on system and programmatic enhancements to the E-Verify system.

1.4. Research Methods

1.4.1. Introduction

This section provides an overview of the research methods used in this evaluation for data collection and analysis. It also points to some of the data limitations.

1.4.2. Data Collection

The evaluation team for E-Verify adopted a multimodal approach to data collection, including the following:

- Discussions with a broad array of stakeholders at a meeting in November 2007;
- Five focus groups of employers;
- Web surveys of 2,320 employers that had enrolled in the E-Verify Program;
- Onsite in-person interviews and observations of 109 participating employers, record reviews for 1,246 of their workers that the Transaction Database indicated had received TNC findings, and in-person interviews with 424 of these workers;
- Meetings with Federal program officials and contractors knowledgeable about and experienced with E-Verify;
- Analysis of E-Verify transaction and registration data entered by employers and the Federal government;
- Analyses of other Federal data sources, such as the Bureau of Labor Statistics' Job Openings and Labor Turnover Survey and the Census Bureau's Current Population Survey and County Business Patterns of 2006; and
- Testing of the E-Verify computer system by the evaluation staff.

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Standard research and quality control procedures were used in this study to assure the quality of the data. These procedures included training of data collection and data processing staff and data cleaning based on consistency and range checks. Key findings from the multiple approaches were cross-checked to determine their consistency and, where possible, the reasons for any differences.

1.4.3. Data Analysis

The report relies primarily on descriptive statistics and tests of significance of the data analyzed. Comparisons based on quantitative data are statistically significant unless stated otherwise.

In some situations, it is not possible to obtain direct measures of key variables of interest. In these situations, where possible, the evaluation uses model-based estimates of those variables or indicators that can be considered indirect measures of the variables.

Arguably, the most important of the model-based estimates are the estimates of what are referred to in the report as *inaccuracy rates*;⁷ these rates provide information about whether E-Verify findings are consistent with the true employment-authorization status of cases submitted to the system. The inaccuracy rate itself does not provide information on the sources of inaccuracies (e.g., identity fraud, out-of-date or inaccurate Federal records, or employers' inputting information incorrectly).

The need for using model-based estimates of inaccuracy rates arises because it is usually not possible to accurately determine the true employment-authorization status of workers at the time that their cases were submitted to E-Verify. Like any model-based estimates, these estimates are dependent upon the reasonableness of the assumptions underlying the model as well as the accuracy of the data used in constructing the model. As is typical of model-based estimates, the assumptions used in developing these estimates are based on the best data available from the evaluation and other reliable sources such as the Census Bureau, the Department of Labor, and recognized immigration experts. Additionally, this empirical information is used to develop alternate plausible assumptions to provide a range of estimates. These inaccuracy rates can be estimated for either the initial or the final E-Verify findings; this report bases the rates on the initial findings unless otherwise noted. Additional information on the model is contained in the Addendum to the Executive Summary as well as in the full report.

Since inaccuracy rates are only approximate, they are not precise enough to be used in analyzing trends and in comparing subgroups of the population.⁸ However, since the erroneous TNC rate, i.e., the percentage of workers found to be employment authorized after receiving a TNC, is estimated from transaction data, it can be used for trend analysis. The erroneous TNC rate is also a reasonable measure of the inaccuracy rate for authorized workers. However, the erroneous TNC rate underestimates the inaccuracy rate for authorized workers since it excludes authorized workers with TNCs who do not correct their records because their employers do not tell them about the TNCs or for other reasons.

1.4.4. Data Limitations

Like other surveys, the accuracy of the E-Verify Web survey of employers is limited by factors such as a respondent's (in this case, an employer's) inability to understand questions or provide accurate answers. The onsite study provides more in-depth information about employer behavior than the Web survey since it is based on a more detailed interview and also obtains information from observation, record reviews, and interviews of workers. However, the information from the onsite study cannot be considered

⁷ The inaccuracy rate is equivalent to the term "error rate" encountered in research literature.

⁸ The ranges of the model-based estimates are often larger than any differences between time periods or subgroups are likely to be.

statistically representative because of the low response rate; many employers refused to participate in the lengthy site visits.⁹ Of particular concern is the possibility that employers that cooperated with the study are more likely to comply with E-Verify procedures than are employers that did not participate in the study.

Information obtained directly from the E-Verify Transaction Database is based on all 9.4 million cases¹⁰ for the period July 2004 through June 2008 or on specific subgroups of these cases such as all foreign-born U.S. citizens. Although errors that result from sampling are not an issue for these estimates, other errors may exist in the data. For example, there may be data input errors or errors made in the process of cleaning the Transaction Database.

1.5. Contextual Information

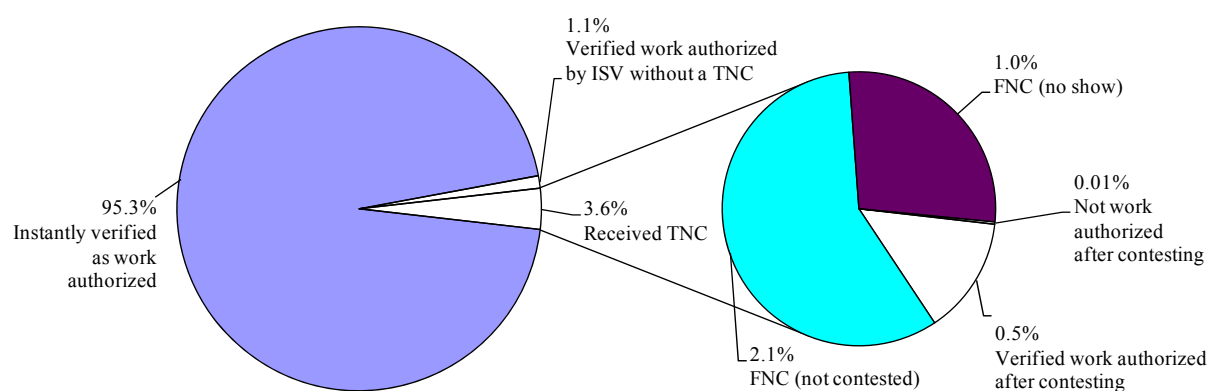
1.5.1. Employer and Worker Characteristics

Employers enrolled in E-Verify and the cases they submit to E-Verify are not representative of all employers in the United States and their newly hired employees. For example, large employers are much more likely to be enrolled in E-Verify than are small employers. There have also been notable trends in the characteristics of employers participating in E-Verify and the workers for whom they submit cases since the start of the Program. These trends include an increase in the representation of E-Verify employers with fewer than 10 employees and a decrease in the percentage of workers attesting to being noncitizens.

1.5.2. System Outcomes

To answer the evaluation questions presented in the Background section, it is necessary to have an understanding of system outcomes. Exhibit 1 shows the case outcomes from April through June 2008. During that time, employers submitted approximately 1.7 million cases to E-Verify.

Exhibit 1. Outcomes From the E-Verify Program: April–June 2008



NOTES: “Not contested” Final Nonconfirmations (FNCs) are ones issued when employers do not report through E-Verify that they have referred workers to SSA or USCIS to resolve Tentative Nonconfirmations (TNCs). Not contested TNCs occur when workers tell their employers that they do not wish to contest; however, they also occur when workers are not told about their TNCs. “No show” FNCs are those in which employers report that they have referred workers to SSA or USCIS but workers do not contact the agency.

SOURCE: E-Verify Transaction Database.

⁹ See the full report for additional information about the limitations of the onsite data.

¹⁰ A case is defined as a single hiring of a specific individual by a specific employer.

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Most workers are instantly verified as work authorized. In April through June 2008, 95.3 percent of cases were instantly found to be employment authorized (88.0 percent by SSA and 7.3 percent by USCIS). An additional 1.1 percent of cases were verified after initial review by an ISV without a TNC being issued. Another 0.5 percent of the cases were found to be employment authorized after receiving a TNC (0.3 percent by SSA and 0.1 percent by USCIS).¹¹ Less than 0.1 percent (.01 percent) of cases were not found to be work authorized after being contested. The remaining 3.1 percent of cases received FNCs because workers had not contested their TNCs (2.1 percent had not been referred to SSA or USCIS, because the workers had not told their employers they planned to contest (in some cases because the employer did not give the worker the opportunity to contest), and 1.0 percent had presumably told their employers that they wished to contest but failed to do so).

The percentage of cases found to be employment authorized instantly and the percentage found employment authorized without a TNC have increased considerably since the inception of E-Verify. In April through June 2008, 95.3 percent of the cases were instantly found to be employment authorized compared to 91.6 percent in July through September 2004. During the same time period, the percentage of cases found employment authorized without a TNC (i.e., the cases were found employment authorized either instantly or after an ISV review) increased from 92.3 to 96.4 percent.

1.5.3. Consistency of E-Verify Findings With True Work-Authorization Status

In addition to understanding E-Verify outcomes, answering the evaluation questions requires an understanding of what are referred to in this report as *inaccuracy rates* (i.e., rates measuring the inconsistency of E-Verify findings with workers' true work-authorization status). As discussed in the research methods section, these rates are model-based estimates and must be viewed as approximate.

The total inaccuracy rate is approximately 4.1 percent. As seen in Exhibit 2, it is estimated that in approximately 96.0 percent of E-Verify cases submitted from April through June 2008, the E-Verify finding was consistent with the worker's true employment-authorization status (an estimated 93.1 percent of all cases were cases in which an authorized worker was found to be employment authorized and 2.9 percent were unauthorized workers who were not found to be employment authorized). The remaining cases (4.1 percent of all cases submitted to E-Verify) received a finding that was inconsistent with the worker's true employment-authorized status (3.3 percent were unauthorized workers who were found to be work authorized and 0.7 percent were authorized workers not initially found to be employment authorized).¹² This means the *total inaccuracy rate* (resulting primarily from identity fraud, out-of-date or inaccurate Federal records, and data input errors) is estimated to be approximately 4.1 percent. The corresponding plausible range is estimated as 2.3 percent to 5.7 percent.¹³

The inaccuracy rate for authorized workers is less than 1 percent. The overwhelming percentage of authorized workers are found to be employment authorized ($93.1 / (93.1 + 0.7) = 99.2$ percent), and only 0.8 percent of authorized workers are not initially found to be employment authorized. In other words, the *inaccuracy rate for authorized workers* is approximately 0.8 percent with a plausible range of 0.6 percent to 1.0 percent.

Due primarily to identity fraud, the inaccuracy rate for unauthorized workers is approximately 54 percent. As seen in Exhibit 2, approximately 3.3 percent of all E-Verify findings are for unauthorized

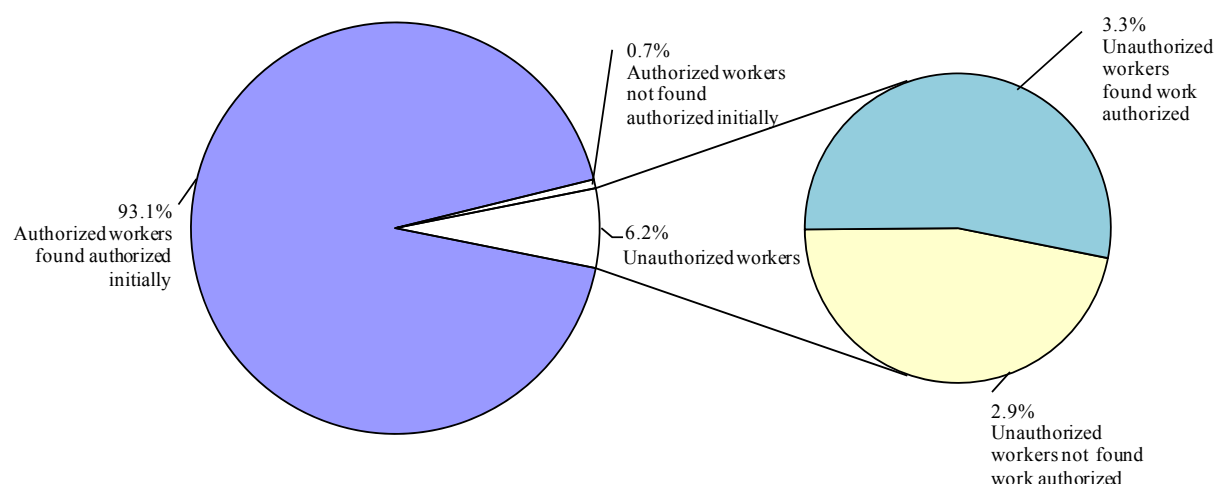
¹¹ The sum of these percents is not equal to the total because of rounding.

¹² The sum of these percents is not equal to the total because of rounding.

¹³ See the Addendum to the Executive Summary for additional information and Chapters II and VI and Appendix B in the full report for an explanation of total inaccuracy rate estimation procedures.

workers incorrectly found employment authorized and 2.9 percent of all findings are for unauthorized workers correctly not found employment authorized. Thus, almost half of all unauthorized workers are correctly not found to be employment authorized (2.9/6.2) and just over half are found to be employment authorized (3.3/6.2). Consequently, the *inaccuracy rate for unauthorized workers* is estimated to be approximately 54 percent with a plausible range of 37 percent to 64 percent. This finding is not surprising, given that since the inception of E-Verify it has been clear that many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify.¹⁴

Exhibit 2. Estimated Consistency Between Initial E-Verify Finding and True Work-Authorization Status



SOURCE: Model-based estimates using data from the E-Verify Transaction Database.

2. E-VERIFY STRENGTHS AND ONGOING CHALLENGES

2.1. Unauthorized Employment

2.1.1. Introduction

One of the primary goals of E-Verify is to reduce unauthorized employment. This section addresses the question of how well E-Verify is meeting this goal. Underlying the analyses in Section 2 is the assumption that the effectiveness of E-Verify in reducing unauthorized employment depends upon its ability to identify workers without employment authorization, the length of time unauthorized workers identified by E-Verify are permitted to work, and the time lag between the employee's termination and any re-employment, which, in turn, is strongly influenced by how widespread use of E-Verify is. Each of these factors is addressed in this section.

2.1.2. Identification of Unauthorized Workers

2.1.2.1. Strengths

E-Verify has been proven to be effective in identifying many workers who are not work authorized. The evaluation estimates that approximately half (an estimated 46 percent with a plausible range of 36 to

¹⁴ For additional information, see the Addendum to the Executive Summary and Chapters II and VI and Appendix B in the full report.

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63) of the cases submitted in April through June 2008 for unauthorized workers correctly received either FNCs or unauthorized findings, i.e., they were not found work authorized.

2.1.2.2. Challenges

E-Verify, as currently formulated, does not detect most identity fraud cases for workers who use information about real employment-authorized persons. If a worker presents documents that contain information about a real work-authorized person and if the documents appear to be valid, E-Verify is unlikely to detect the identity fraud.¹⁵ As a result, it is estimated that approximately half (54 percent with a plausible range of 37 to 64 percent) of unauthorized workers with cases submitted to E-Verify receive an inaccurate finding of being work authorized.

2.1.3. Time Unauthorized Workers Are Permitted to Work

2.1.3.1. Strengths

The time to process cases submitted to E-Verify has decreased. The mean number of days from case initiation to final resolution has decreased from 0.9 days in October through December 2004 to 0.4 days in April through June 2008. One major reason for the decrease in time from case initiation to final resolution is that the percentage of all cases instantly verified as work authorized increased steadily between the start of the Program and June 2008. A second likely reason is that changes in the secondary review process were instituted to speed up that process.

Most workers receiving TNCs received their TNC notices promptly. Among the 352 record review cases that included a signed TNC notice, 320 were signed by the worker within a week of the issuance of the TNC. Among the 191 record review cases with a referral date and a signed TNC notice indicating that the worker wanted to contest the TNC, 183 were referred to SSA or USCIS within a week of the date the worker signed the TNC notice.

2.1.3.2. Challenges

Employers do not always follow the requirement to terminate employment when E-Verify is not able to confirm that an employee is work authorized. Approximately 8 percent of Web survey employers reported that they had never terminated the employment of employees who had received FNCs or unauthorized findings.

2.1.4. E-Verify Usage

2.1.4.1. Strengths

E-Verify has been growing rapidly since its inception. In April through June 2005, 217,000 cases were submitted to E-Verify. By April through June 2008, this number had grown to 1.7 million—an eightfold increase in three years.

2.1.4.2. Challenges

Most U.S. workers are not processed through E-Verify. The evaluation team estimated that it is likely that information was submitted to E-Verify for no more than 12 percent of all new hires in the nation in

¹⁵ The designers of E-Verify were aware of this limitation of the program and recognized there was no immediate workable solution.

April through June 2008. This limited usage means that most jobs are offered by employers that do not use E-Verify, thus providing potential job opportunities for workers whose employment was terminated by E-Verify employers.

2.2. Protection of Privacy and Worker Civil Liberties

2.2.1. Introduction

This section first discusses how well worker privacy was protected by employers and the Federal government. It then discusses how well employers complied with E-Verify procedures designed to protect worker rights and the civil liberties of employment-authorized workers.

2.2.2. Privacy and Security

2.2.2.1. Strengths

SSA and USCIS have taken care to protect the privacy of the workers with information submitted to E-Verify. SSA and USCIS have a number of policies in place to ensure the security of all of their databases, including E-Verify. In addition, the Federal government processes queries only for employers that have signed an MOU. These employers are identified through establishment access and user identification codes. Each person using the system is also expected to have an individual user identification number and password that must be changed regularly. Additionally, employers have access only to the cases they submit.

2.2.2.2. Challenges

Concern has been raised about the potential for a non-employer to gain access to E-Verify or for an authorized user to use E-Verify for purposes other than employment-eligibility verification. There are currently no safeguards in place to ensure that entities enrolling in E-Verify are legitimate employers that will only use the system for employment verification; however, there are no reported cases of either non-legitimate employers enrolling in the Program or employers using it for purposes other than employment authorization. USCIS and SSA are exploring ways to implement safeguards against this type of abuse as the system expands.

Employers did not consistently inform employees of TNC findings in private. Although almost all employers (94 percent of 2006 Web survey employers and 91 percent of 2008 Web survey employers) reported that they always inform employees of TNC findings in private, 33 of 140 workers in the 2008 onsite study reported being notified in an area that was not private.

2.2.3. Employer Compliance with E-Verify Procedures Designed to Protect Worker Rights

2.2.3.1. Strengths

The transaction data were consistent with the claim that employers generally do not single out either citizens or noncitizens for verification. Of the approximately 8,600 employers that had submitted cases to E-Verify for at least 100 workers between July 2004 and June 2008, 0.1 percent did not submit cases for any workers attesting to being citizens and 4.2 percent did not submit any noncitizen cases. These numbers are small enough that it is reasonable to believe that few, if any, of these employers are selectively submitting cases for either citizens or noncitizens among their new hires.

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Employers were more likely to report that all staff actively using the E-Verify system had completed the tutorial in 2008 than in 2006. In 2008, 90 percent of Web survey respondents reported that all of their staff that use E-Verify had completed the tutorial compared to 84 percent in 2006, presumably decreasing employer noncompliance attributable to employers' misunderstanding the Program's procedures.

2.2.3.2. Challenges

As was noted in prior evaluations, not all employers consistently comply with E-Verify procedures. Some employers did not comply with E-Verify requirements, such as entering Form I-9 information within three workdays, only submitting cases for recent hires, not delaying training for workers with TNCs, or promptly terminating the employment of workers receiving FNCs. For example:

- According to the record review information, at least 27 of the 108 onsite study employers had submitted at least one case for a job applicant. Based on information from worker interviews, it appears that the incidence of prescreening may be significantly underreported by employers. Of the 42 onsite study employers that said they did not screen job applicants as a general practice, 35 had one or more employees who reported that their work-authorization status was determined through E-Verify when they were job applicants. Although some of the worker reports of prescreening may be inaccurate because of confusion or poor memory, it seems reasonable to believe that many of these were cases in which the employer did, in fact, prescreen at least some workers but did not report such behavior in an interview.
- Some employers fail to inform employees or job applicants of their TNCs or take adverse actions against them such as curtailing their training during the time they contest TNCs, thereby denying them their rights to due process under E-Verify. Among the 161 workers who discussed whether adverse actions had been taken against them by employers as a result of their TNCs, 59 workers reported that adverse actions (such as hiring delays, training delays, and not being paid for work completed while contesting) had been taken against them.

One reason for employer noncompliance was that employers were not always aware of their responsibilities under E-Verify. For example, of the 12 onsite study employers that reported prescreening some or all of their job applicants, eight did not appear to understand that prescreening is not allowed by E-Verify.

2.3. Verification-Related Discrimination

2.3.1. Introduction

Discrimination can be either intentional or unintentional, but in both types of discrimination, members of a protected group are treated less favorably than others. Intentional discrimination occurs if the employer knowingly treats members of a protected group less favorably than members of other groups (e.g., by refusing to hire anyone who is foreign born). Unintentional employment discrimination occurs if unfavorable treatment of protected groups occurs without the employers' realizing that their actions may harm one or more member(s) of a protected group. In the case of E-Verify, unintentional discrimination occurs when members of a protected group have a higher probability of receiving TNCs than other groups do *and* there are negative consequences for workers receiving TNCs. These factors, in turn, are functions of the accuracy of E-Verify findings, employer compliance with procedures designed to protect worker rights, and the degree of burden and/or cost imposed on authorized workers who receive TNCs.

2.3.2. Strengths

E-Verify apparently reduces discrimination against foreign-born workers in the hiring process.

Although 81 percent of users reported that E-Verify made them neither more nor less willing to hire immigrants, when change was reported, it was almost always in favor of making employers more willing to hire immigrants (17 percent) compared to those who were less willing (2 percent).

The accuracy of the USCIS database, as measured by the erroneous TNC rate for workers ever found authorized, has improved considerably. The overall erroneous TNC rate declined from 0.9 percent to 0.5 percent between April through June 2005 and April through June 2008.

Employers believe that E-Verify is accurate. A large majority of employers (92 percent) using E-Verify report that it is a highly accurate system for verifying work authorization.

The gap between the erroneous TNC rates for U.S.-born and foreign-born workers has decreased substantially. The gap in erroneous TNC rates between foreign-born and U.S.-born workers decreased from 4.0 percent in April through June 2006 to 2.4 percent in April through June 2008 due to the institution of Naturalization Phase I, which checks USCIS databases about naturalized citizens when workers attest to being citizens but have information on the SSA database indicating they are noncitizens.

Almost half of interviewed workers who discussed their costs for resolving TNCs reported that they had no costs. Of the 115 workers who reported information about costs, 47 reported that there were no costs for contesting the TNC. This finding would tend to reduce any discriminatory impact of TNC since work-authorized foreign-born persons more frequently receive erroneous TNCs than do U.S.-born persons.¹⁶

2.3.3. Challenges

Foreign-born workers with employment authorization are more likely to incorrectly receive TNCs than are U.S.-born workers. The percentage of foreign-born workers found to be work authorized at any stage of the E-Verify process and who received a TNC prior to having their work authorization verified in April through June 2008 was 2.6 percent, compared to 0.1 percent of workers who are U.S. born. This means that foreign-born workers with employment authorization were more than 20 times more likely than U.S.-born workers to incur any burden associated with resolving TNCs. Although the process for resolving TNCs is usually neither costly nor burdensome, some workers with employment authorization are dismissed or not hired because of TNCs without an opportunity to avail themselves of their right to resolve their TNCs with SSA or USCIS.

Workers attesting to being work-authorized noncitizens on the Form I-9, especially those who are not lawful permanent residents, are more likely than those attesting to being U.S. citizens to receive erroneous TNCs. Between April and June 2008, the erroneous TNC rate was 0.3 percent for workers attesting to being U.S. citizens, compared to 1.0 percent for lawful permanent residents and 5.3 percent for other noncitizens with authorization to work.

Although much improved since the last evaluation, the erroneous TNC rate for naturalized citizens remains well above the rate for U.S.-born workers. Largely due to out-of-date SSA and USCIS database information on the citizenship status of many foreign-born citizens, the erroneous TNC rate for

¹⁶ As explained in Section 2.3.1, discrimination does not require that an action is intended to harm a group of protected individuals; it can also occur unintentionally.

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naturalized citizens in April through June 2008 (3.2 percent) remained well above the rate for U.S.-born workers (0.1 percent).

Some workers reported costs of more than \$50 to resolve TNCs. Among the 53 workers reporting costs greater than zero for resolving TNCs, 25 workers spent more than \$50 because they had to take time off from work or had expenses such as for baby sitting or transportation. This finding suggests there are negative consequences for at least some workers receiving TNCs, thus potentially contributing to a discriminatory impact since foreign-born workers are considerably more likely to receive TNCs.

2.4. Employer Burden and Satisfaction

2.4.1. Strengths

Employers were generally satisfied with E-Verify and indicated that it was not burdensome. Most Web survey employers (95 percent) reported that E-Verify is an effective tool, and a large majority of them (80 percent) disagreed or strongly disagreed that it is impossible to fulfill all the employer obligations required by the E-Verify process. In addition, of the 104 onsite study employers discussing their overall satisfaction with E-Verify, 99 reported being generally satisfied.

2.4.2. Challenges

Perceived employer burden does prevent some employers from using E-Verify. Approximately one-quarter of those employers that had signed up for E-Verify and had either never used the Program or stopped using it cited real or perceived employer burden as a reason for their nonuse.

Some employers were dissatisfied with aspects of E-Verify and/or made recommendations about possible improvements to E-Verify. One frequently mentioned employer recommendation for improvement was to allow employers to screen job applicants. Another improvement recommended by some employers was to change the current requirement of submitting cases to E-Verify within three Federal workdays of hire to a longer time frame.

Employer satisfaction appeared to be somewhat lower in 2008 than in 2006. In 2008, 80 percent of Web survey respondents disagreed or strongly disagreed that it is impossible to fulfill all the employer obligations required by the E-Verify process, significantly lower than in 2006 when 95 percent disagreed or strongly disagreed with this statement. This may relate in part to the fact that some states have made E-Verify mandatory for some or all of their employers, changing it from the totally voluntary program it was in 2006.

2.5. Program Efficiency

2.5.1. Strengths

USCIS staff report that they have undertaken a number of efforts to improve E-Verify. In response to earlier evaluations and other factors, USCIS had made ongoing changes to the Program to address identified shortcomings and to improve program performance. Reported efforts to improve E-Verify include adding data sources that can be checked automatically, making the system and forms more user-friendly through clearer guidance and improvements to the tutorials, exploring ways to make E-Verify more secure, and working toward full implementation of a monitoring and compliance capability. These efforts have also included enhancing outreach efforts to employers and, to a lesser extent, workers,

including presentations by USCIS, Webinars for employers, advertising campaigns, and establishment of a phone center to provide program information to the public.

2.5.2. Challenges

One of the most frequent employer complaints was that communication between E-Verify users and SSA and USCIS was not optimal. Of the 74 onsite study employers that commented on their communication with SSA, 17 employers were dissatisfied. Some of these employers reported that SSA offices did not understand or even know about E-Verify, while a few others were frustrated that SSA could not provide an explanation as to why some cases took longer than 10 days to resolve. Of the 103 onsite study employers commenting on their communication with USCIS, 27 said they were dissatisfied with the communication. Of the 27 dissatisfied employers, 15 were dissatisfied with the way changes were communicated, eight were dissatisfied with their communication with the helpline, and four were generally dissatisfied with their communication with USCIS.

3. IMPACTS OF RECENT LEGISLATIVE AND PROGRAM CHANGES

3.1. Legislative Changes

Arizona is the only state that had implemented legislation that required the use of E-Verify by all employers in the state during the time period examined in this report. However, several other states had enacted legislation requiring some employers (primarily public agencies and their contractors) to register for the Program. Because of the small number of states involved, it is difficult to differentiate the effects of legislative changes from other differences among these states. However, based on the limited analysis of available data, it appears that the effects of legislative changes were as follows:

- **Increased use of E-Verify.** In Arizona, the number of employers transmitting cases to E-Verify had a 50-fold increase between January through March 2007, a year before their mandatory participation law first took effect, and April through June 2008, the first quarter after it was implemented. During the same time period, the remaining states increased their usage by two- or threefold. A difference this large is unlikely to be attributable to factors other than the legislation.
- **Arizona employers had an average compliance score below that of employers in other states.**¹⁷ Comparing Arizona employers responding to the Web survey with other survey respondents based on a general measure of compliance with E-Verify procedures with a mean of 500 and a standard deviation of 100¹⁸ indicated that Arizona employers were slightly less compliant than other employers (474 compared to 510 for other employers). It is possible that this is because employers required to use E-Verify are less compliant than other employers. However, it may be due to factors other than the State Legislation Group differences, such as differences in the characteristics of employers in Arizona compared to the rest of the country or the disproportionately high number of employers newly enrolled in E-Verify in Arizona.
- **Employers in Arizona were more timely than other states in case submission and referring workers to SSA or USCIS.** The average time from hire date to case initiation was 4.8 calendar days for employers in Arizona in April through June 2008 compared to 8.2 days for states requiring some employers to use E-Verify and 9.8 days for other employers. The

¹⁷ This difference is statistically significant at the .05 level using a one-tail test.

¹⁸ See Chapter II of the full report for additional information on the Compliance Scale.

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average time from TNC issuance to referral in April through June 2008 for Arizona was also lower than average (3.6 days for Arizona compared to 4.0 days for employers requiring some but not all employers to register and 4.3 days for employers in other states).

- **No detectable effects on overall employer satisfaction were noted between Arizona and other employers.**

3.2. Photo Screening Tool

Most employers expressed considerable satisfaction with how the Photo Screening Tool was implemented and reported no significant problems in using it. Among employers that had used the Photo Screening Tool, 97 percent agreed or strongly agreed that “The Photo Tool is easy to use.” However, there was widespread confusion among employers about how to use it. For example, 59 percent of employers reported in the Web survey that they compared the picture from the Photo Screening Tool with the worker (instead of or in addition to comparing it with the document), which is not consistent with E-Verify Photo Screening Tool procedures.

Despite employer satisfaction with the Photo Screening Tool, its effects on the E-Verify Program were mixed:

- Since the current Photo Screening Tool can only be used for those workers submitting certain immigration documents, it clearly increases at least the appearance of unintentional discrimination against noncitizens.
- The effectiveness of the Photo Screening Tool is significantly limited by the fact that it is not available for most workers with cases submitted to E-Verify—it was only available for 4 percent of workers in the period May 5 through June 30, 2008. Furthermore, at the time the report was written it appeared unlikely to be expanded to a significantly larger group of cases in the foreseeable future.
- The Photo Screening Tool slightly increased the ability of E-Verify to identify workers without employment authorization. The estimated percentage detected in April through June 2008 would have been 45.8 percent without the Photo Screening Tool compared to the 46.0 percent estimated effectiveness rate with the Photo Screening Tool. On the other hand, the Photo Screening Tool led to an extremely minor increase in the inaccuracy rate for workers with employment authorization, since employers may incorrectly determine that the document photo does not correctly match the photo displayed by the Photo Screening Tool.
- The Photo Screening Tool has very slightly decreased the percentage of cases that are verified instantly, thereby slightly reducing timeliness.
- The Photo Screening Tool has contributed to employer noncompliance in the sense that it creates additional procedures that the employer must follow. Compliance with these procedures has been relatively poor, presumably because the procedures are new, relate only to certain workers, and are not fully understood.

3.3. Pre-TNC Checks

The pre-TNC checks appear to have been successful in reducing the erroneous TNC rate. This change, implemented in mid-September 2007, instructs employers to recheck their data input when an initial check indicates that the worker is about to receive an SSA TNC or the case is about to be sent for a

secondary verification review and a possible TNC for cases sent to USCIS. The erroneous TNC rate for all workers ever found work authorized declined from 0.72 to 0.58 (a decline of 0.14 percent) between July through September 2007 and October through December 2007. The observed erroneous TNC rate decline was larger than the declines observed between these same two periods in the two preceding years. It also seems plausible that the pre-TNC check explains the decline in data input errors leading to TNCs that were reported by employers reporting having had such errors in the Web survey (from 52 percent in 2006 to 42 percent in 2008).

The pre-TNC checks may have led to a slight increase in the percentage of E-Verify cases instantly verified. The percentage of cases instantly verified increased 0.2 percentage points (from 94.3 to 94.5) between July through September 2007 (the quarter before the TNC check was implemented¹⁹) and October through December 2007 (the first quarter after the change was made).

3.4. EV-STAR

In the long run, EV-STAR should make a positive contribution to E-Verify. EV-STAR automates tracking SSA tasks and should reduce employer burden by eliminating the need to resubmit cases after workers have resolved SSA TNCs. It has also increased SSA's ability to track E-Verify cases and has decreased the percentage of cases receiving erroneous SSA FNCs when SSA is not able to promptly verify the work authorization of individuals who must provide SSA with documents that may take a long time to obtain, such as some birth certificates. The pre-FNC check instituted in conjunction with EV-STAR that compares the E-Verify data for SSA TNC cases not reported to be successfully resolved in EV-STAR also detects some cases that might have previously defaulted to FNCs. However, the implementation of EV-STAR created considerable initial confusion on the part of some employers that did not understand the changed procedures.

Employers had mixed views on the impact of EV-STAR on SSA response time. Some employers commented that the change in SSA procedures that occurred when EV-STAR was implemented has had a positive impact on SSA response time. However, other employers reported dissatisfaction with changed procedures because they believe that the change has made the process more time consuming. It is possible that this dissatisfaction was at least partially attributable to initial employer confusion about the changed procedures.

3.5. Naturalization Phase I

The institution of Naturalization Phase I led to a dramatic reduction in the erroneous TNC rate for foreign-born citizens. Naturalization Phase I was designed to reduce erroneous TNC findings for naturalized citizens by checking USCIS data files with information about naturalized citizens when SSA can confirm the identity but not the employment-authorization status of workers attesting to be U.S. citizens. The erroneous TNC rate for foreign-born citizens dropped from 7.0 percent to 3.2 percent between January through March 2008 and April through June 2008, even though Naturalization Phase I did not take effect until May 5, 2008, while the rate stayed constant for U.S.-born workers.

Naturalization Phase I also led to a small reduction in the effectiveness of E-Verify in identifying workers without employment authorization. An unintended consequence of Naturalization Phase I was an increase in the percentage of workers without employment authorization who were found work authorized. Based on the model developed for the evaluation, it is estimated that approximately 1,400 of the 6,100 cases found work authorized by the Naturalization Phase I check were cases for workers

¹⁹ The pre-TNC checks were introduced in mid-September 2007 near the end of the quarter.

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without employment authorization who had committed identity fraud using information about naturalized citizens. These cases represent approximately 2.3 percent of the cases for workers without employment authorization submitted to E-Verify between the start of Naturalization Phase I on May 5, 2008, and June 30, 2008, with a plausible range of 0.4 percent to 4.0 percent. Thus, the implementation of Naturalization Phase I decreased the effectiveness of E-Verify in identifying workers without employment authorization by approximately 2 percentage points. If Naturalization Phase I had not been in effect, the estimated effectiveness rate for workers without employment authorization would have been approximately 48 percent instead of the estimated 46 percent.

3.6. Naturalization Phase II

Approximately half of eligible workers took advantage of the opportunity established by Naturalization Phase II to contact USCIS instead of SSA to resolve erroneous TNCs. Since USCIS is much less likely than SSA to require an in-person visit, this should reduce the time workers need to spend to resolve TNCs in the short run and should slightly decrease the Federal costs of resolving TNCs, since USCIS per-case costs are lower than those of SSA. However, it may not be a time-saver in the long run, since contesting a TNC with USCIS does not currently allow SSA records to be updated unless the worker directly contacts SSA, thus potentially resulting in recurring TNCs in the future as these workers change jobs and work for other employers participating in E-Verify unless SSA and USCIS can develop automated procedures to address this problem.

4. RECOMMENDATIONS FOR FURTHER IMPROVING E-VERIFY

4.1. Introduction

This section discusses the primary recommendations of the evaluation. They are grouped into the following four categories:

- Increasing the effectiveness of E-Verify in reducing unauthorized employment;
- Decreasing violations of worker rights and discrimination against foreign-born workers with employment authorization;
- Improving operating efficiency and user friendliness; and
- Conducting additional research.

4.2. Increasing the Effectiveness of E-Verify in Reducing Unauthorized Employment

- USCIS should test a pilot program requiring employers to submit cases prior to allowing workers to start work. There are significant potential advantages and problems that may accrue under such a policy change; therefore, it is essential that the test be monitored and evaluated prior to deciding whether to modify E-Verify.
- The Photo Screening Tool should be discontinued until it can be expanded to contain both significantly more identification documents and documents that are not already highly tamper-proof and counterfeit resistant.

- There should be exploration of the use of biometrics to prevent identity fraud, and serious consideration should be given to testing and evaluating a pilot program using fingerprints or other biometric checks.
- Use of sophisticated algorithms to identify cases where fraud is likely to be involved (such as where an SSN has been used a large number of times in a pattern suggesting fraud) and using an expedited TNC-contesting process with these cases should be developed and tested. A pilot program should be conducted to determine the implications of requiring workers identified as likely to be perpetrating fraud to undergo an expedited TNC-contesting process, preferably at the same time as the pilot to test verification prior to work.
- Implementation of a strong monitoring and compliance program and enforcement procedures to prevent flagrant violations of E-Verify procedures is vital, given the amount of employer noncompliance.
- Outreach to make nonparticipating employers aware of the Program, its benefits, and its requirements should be continued as an essential part of E-Verify expansion; however, care should be taken to not expand the Program so rapidly as to create problems with USCIS and SSA implementation and monitoring of the Program.

4.3. Decreasing Violations of Worker Rights and Discrimination Against Foreign-Born Workers With Employment Authorization

- There should be additional outreach activities to encourage naturalized citizens, workers with derivative citizenship, and lawful permanent residents to update their SSA records.
- Continuing efforts are needed to ensure that the E-Verify Program has access to all DHS electronic databases that provide information needed to determine the work-authorization status of noncitizens, naturalized citizens, and workers with derivative citizenship status and to ensure that these databases are up to date.
- USCIS should ensure that SSNs are collected and entered into its electronic systems during future contacts with noncitizens, including those naturalizing and their children obtaining derivative citizenship.
- USCIS should ensure that information about the current work-authorization status of noncitizens with temporary humanitarian statuses²⁰ is up to date and included in USCIS databases.
- SSA and USCIS should use algorithms that are as similar as possible in matching Form I-9 information with their databases.

4.4. Improving Operating Efficiency and User-Friendliness

- USCIS should consider making a number of additional changes to the tutorial and/or online resources to further improve their effectiveness. These include steps to make the system more user-friendly and providing supplemental examples of complicated cases.

²⁰Humanitarian statuses permit certain individuals to reside and work in the United States temporarily. Blanket extensions of Temporary Protected Status based on specific country of origin, for instance, are frequently announced through a Federal Register notice. In many cases, individual employment authorization documents and system records are not updated to reflect the extension of legal stay and employment in these cases.

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- The tutorial should be changed to consist of specific modules to permit staff responsible for implementing aspects of E-Verify other than data entry (e.g., informing workers of TNCs) to have the training they need and to permit data input staff with strong computer skills to skip basic computer-user training.
- Employer staff that use E-Verify should be retested periodically and, if needed, complete refresher training.
- Employer staff that use E-Verify should be made more aware of options to obtain help from the technical help desk and USCIS's customer service representatives and to ensure that information providers are well trained.
- A mechanism allowing workers to confirm that their SSA and/or USCIS records are correct and up to date should be established.
- Any expansion of mandatory requirements for using E-Verify should be phased in over time.
- Caution should be exercised in considering, creating, or requiring an alternative electronic verification program to the current E-Verify Program. If an alternative system is seriously considered for implementation, it should be tested and evaluated as thoroughly as the current E-Verify system has been before considering widespread use.
- The current system and any major revisions should be subject to additional formal usability testing. Redesigns should take into account the needs of external users for accurate and complete database documentation, including explicit information about new changes since the last version of the user's manual.
- Recent efforts to implement automated cleaning of the Transaction Database by the contractor responsible for operating E-Verify should be continued to produce reports that are consistent with evaluation reports and that are more accurate for certain types of analysis.
- Consideration should be given to reducing the worker burden associated with the requirement for in-person contact with SSA to resolve TNCs.
- Small employers, especially if their number continues to grow, are likely to need help in identifying reputable Designated Agents that can act on their behalf. USCIS should, therefore, decide whether Designated Agents should be certified and, if so, how to ensure that they and the entities for which they conduct verifications properly follow E-Verify procedures.
- SSA and USCIS should complete ongoing efforts to review and revise all worker materials to make them more suitable for use with workers having limited English skills.
- Several employers recommended that the requirement to enter employees' information into the E-Verify system within three workdays be lengthened to accommodate periods of heavy hiring and business processes such as mailing Form I-9s to a headquarters office that cannot easily be completed within three days.

4.5. Conducting Additional Research

- Major procedural changes should be subject to independent evaluation based on existing data and/or a pilot program prior to full implementation.

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- Periodic general evaluations of E-Verify activities should be continued as long as the Program continues to be significantly modified and expanded.
- Additional analyses of transaction data should be conducted to determine whether employer characteristics explain or are confounding the conclusions in this evaluation and to examine the extent to which seasonal trends affect results. For example, it is possible that differences in the percentage of small employers between Arizona and other states explains why Arizona employers are more timely in submitting cases to E-Verify.

ADDENDUM TO EXECUTIVE SUMMARY MODEL-BASED ESTIMATES OF INACCURACY RATES

1. Introduction

A model is a simplified representation of a process (e.g., models used to forecast weather) or an object (e.g., model airplanes). Models based on reasonable assumptions are regularly used in research and statistical analysis to estimate values that are otherwise unknowable.

Within this report, model-based estimates are used in answering two of the most basic questions addressed in the evaluation: (1) how accurate is E-Verify and (2) how effective is E-Verify in identifying workers without employment authorization. Ideally, answers to these questions would be based on the true employment-authorization status of the workers for whom cases are submitted to E-Verify, so that their true status could be compared with the E-Verify finding. If this information were available, calculating inaccuracy rates would be straightforward; however, since the true work-authorization status of workers is not available, a work-authorization model was developed and used to obtain approximate answers to these key questions. Like all model-based estimates, these estimates are dependent upon the reasonableness of the assumptions underlying the model as well as the accuracy of the data used in constructing the model. In this case, assumptions are generally based on information collected from employers and workers as part of the evaluation and on the best available estimates of various aspects of the unauthorized work force as developed by other recognized researchers.

Additional information about the model is contained in the Methodology chapter and Appendix B of the full report, *Findings of the E-Verify Program Evaluation*.

2. Types of Inaccuracy Rates

The following inaccuracy rates are estimated using the work-authorization model developed for this report:

- The **inaccuracy rate for authorized workers** is the percentage of workers with employment authorization who **are not** found by E-Verify to be employment authorized. The initial inaccuracy rate for authorized workers is the percentage of authorized workers who receive TNCs. The final inaccuracy rate is the percentage of employment-authorized workers who receive either FNCs or unauthorized findings. This can occur for a variety of reasons, including typographical errors by employers and Federal records that are not up to date or are inaccurate.
- The **inaccuracy rate for unauthorized workers** is the percentage of workers without employment authorization who **are** found to be employment authorized through E-Verify. Worker identity fraud is believed to be the major source of these inaccuracies.
- The **total inaccuracy rate** is the percentage of workers with cases submitted to E-Verify who receive a finding that is not consistent with their true employment-authorization status. Note that this inaccuracy rate is not equal to the sum of the two inaccuracy rates above because the disproportionately much larger number of authorized workers in the labor force results in the total inaccuracy rate being much closer to the inaccuracy rate for authorized workers.

Two other rates that are closely related to or calculated from the above inaccuracy rates are also used in the report:

- **The effectiveness rate** is the percentage of workers without employment authorization who are correctly **not** found to be employment authorized. This rate is equal to 1.00 minus the E-Verify inaccuracy rate for unauthorized workers.
- **The erroneous Tentative Nonconfirmation rate** is the percentage of workers who are ever found to be work authorized by E-Verify who first receive a TNC. This rate can be directly calculated from available data, but it is an underestimate of the inaccuracy rate for authorized workers since it does not include an estimate of the number of employment-authorized workers who receive a TNC but do not contest it either because they were not informed of the TNC or were informed but chose not to contest.

3. Assumptions Used in the Model

3.1. Assumptions Affecting All Estimated Inaccuracy Rates

The following assumptions are relevant for estimating the inaccuracy rates for authorized workers, unauthorized workers, and the total inaccuracy rate:

- When a TNC finding is issued, employer and worker behaviors may differ depending upon the worker's true employment-authorization status, but those behaviors do not depend on the reason for the TNC. For example, it is assumed that employers are no more or less likely to have informed workers of TNCs caused by invalid SSNs than they are to inform them of TNCs based on a name not matching the SSA database.
- The final work authorization findings for workers who contest TNCs are correct.

3.2. Additional Assumptions Used to Estimate the Number of Authorized Workers Who Initially Received TNCs

The following assumptions are relevant for estimating the inaccuracy rate for authorized workers:

- Sixty to 80 percent of authorized workers are informed by their employer of a TNC. (In other words, 20 to 40 percent are **not** informed of the TNC and receive FNCs.)

The range selected is based on information gathered during the evaluation:

- On the employer Web survey, 98 percent of employers reported that they always informed their employees of TNCs.
- Among the 100 onsite study employers that discussed their employee notification processes, 96 said that they always notify employees of TNCs.
- However, there is good reason to believe that employers underreport noncompliance with E-Verify notification procedures. Among the 82 employers with two or more workers receiving TNCs, 37 had one or more employees who reported that they did not receive an

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explanation. This may be an overestimate of noncompliance because workers may not recall having the notice explained.

- Among the 108 onsite study employers for which the evaluation team reviewed employment verification files of workers receiving TNCs, over half were missing copies of TNC notices for a majority of the workers for whom cases had been submitted to E-Verify. In some of these cases, it is likely that the employer provided the worker with the notice but did not correctly file it, as specified in E-Verify procedures.

Based on the totality of the above information, the evaluation assumes that the actual percentage is between 60 percent and 80 percent, with 70 percent being a reasonable point estimate.

- Eighty-eight to 95 percent of work-authorized employees who were told about their TNCs chose to contest them and 5 to 12 percent did not contest them (e.g., employment-authorized workers might not contest because they have decided to leave the job for reasons either related or unrelated to the TNC finding) and became FNCs. These estimates were based on information from onsite worker interviews that found that the ratio of employment-authorized workers who received FNCs because they did not contest after being informed of their TNCs to the number of employment-authorized workers who received FNCs because they were not informed of their TNCs was approximately 0.18.

3.3. Additional Assumption Used to Estimate the Number of Unauthorized Workers Who Were Found to be Employment Authorized

The following assumption is relevant for estimating the inaccuracy rate for unauthorized workers:

- The model estimates that the total percentage of cases for unauthorized workers that are submitted to E-Verify is between 4.7 and 7.5 percent.

This range was based on the following information:

- The Pew Hispanic Center estimate of workers in the national labor force who were not work authorized in 2008 is 5.4 percent.
- Standardizing E-Verify transaction data to compensate for the state and industry differences between the national labor force and the Transaction Database cases provides an estimate that 6.7 percent of E-Verify cases are for unauthorized workers.
- The 6.7 percent rate is further adjusted to take into account the fact that unauthorized workers tend to be more mobile than other workers due to a number of factors, including their lower educational attainment and disproportional employment in occupations with high turnover rates and in seasonal employment. According to Pew, the geographic mobility rate for immigrants between 2007 and 2008 was 18 percent for unauthorized immigrants compared to 11 percent for U.S.-born residents, meaning that unauthorized immigrants are 60 percent more mobile than U.S.-born workers. Assuming a correlation of geographic and job mobility, the estimated percentage of unauthorized workers among new hires would be 10.7 percent.
- The 10.7 percent rate is adjusted to account for employment in the informal labor market (in which employees are paid “off the books”) since employers in the informal labor market would be unlikely to use E-Verify. The Immigration Policy Center estimates that between 25 percent and 50 percent of unauthorized workers are in the informal labor market. With this adjustment,

it is estimated that between 5.4 and 8.0 percent of workers with cases submitted to E-Verify were unauthorized.

- The Pew estimate of unauthorized workers in the labor force is most likely an underestimate, according to the Director of the Office of Immigration Statistics, U.S. Department of Homeland Security.
- Based on the above information, a point estimate of 6.2 percent and a range of 4.7 to 7.5 percent were used as the plausible range.

PART 1. INTRODUCTION

The goal of Part 1 is to provide information that the reader needs to fully understand the findings of the report. It includes three chapters.

- Chapter I provides **background** information on how E-Verify operates and explains the report organization.
- Chapter II describes the research **methodology** used in collecting and analyzing the data for the evaluation.
- Chapter III provides **contextual information** that facilitates understanding the evaluation findings, including system outcomes, recent programmatic and legislative changes that are likely to have had an impact on the the Program, and the characteristics of employers using the the Program and the workers for whom they submit cases.

CHAPTER I. BACKGROUND

1. INTRODUCTION

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted in September 1996, authorized the creation of three small-scale pilot programs to test the feasibility and desirability of electronically verifying the work-authorization status of newly hired employees. Two of these pilot programs have been terminated; however, the third pilot program, referred to originally as the Basic Pilot, was expanded in scope and extended until November 2008 by the Basic Pilot Extension Act of 2001 (Pub. Law 107-128) and the Basic Pilot Program Extension and Expansion Act of 2003 (Pub. 108-156) and further extended until September 2009 based on fiscal year (FY) 2009 appropriations language. In June 2004, a Web version of the Basic Pilot Program (initially called the Web Basic Pilot and later, the E-Verify Program) was implemented, incorporating many improvements growing out of experiences with the original Basic Pilot Program and evaluations of all the pilot programs.²¹

This report presents the results of data analyses conducted for the evaluation of the E-Verify Program. It presents information on how well the Program has been implemented and its success in meeting the program goals, focusing on the time period between September 2007 and June 2008. It also analyzes the impact of legislative and programmatic changes since the implementation of the E-Verify Program and makes recommendations for future program enhancements. The report's primary goals are to:

- Determine whether E-Verify has been implemented as intended;
- Determine whether E-Verify is successfully meeting its goals of
 - Reducing the employment of unauthorized workers,
 - Reducing (or at least not increasing) discrimination,
 - Protecting worker civil liberties and privacy, and
 - Preventing undue burden on employers;
- Determine the extent to which the Program is operating efficiently;
- Determine the impact of recent legislative and program changes; and
- Provide the U.S. Citizenship and Immigration Services (USCIS) and the Social Security Administration (SSA) with recommendations for future program changes.

This report includes information collected through Web and onsite surveys of employers that have signed up for E-Verify, in-person surveys of workers with cases submitted to E-Verify, a stakeholder conference,

²¹ For additional information about the history of electronic verification, see *Findings of the Web Basic Pilot Evaluation* (September 2007) at <http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>.

and interviews of Federal employees and contractors. It is also based on record reviews of worker verification files, transaction data collected in conjunction with operating the Program, and Federal data about the nation's employers and workforce.

Section 2 of this chapter describes the primary features of E-Verify at the time this report was prepared, and Section 3 describes the organization of the remainder of the report.

2. THE DESIGN OF E-VERIFY

2.1. Introduction

This section discusses the E-Verify Program that existed as of June 30, 2008. This end point reflects the last date for which data were available in time for analysis for this evaluation. For the sake of simplicity, the process described is for “regular employers” that constitute approximately 90 percent of E-Verify users. Modifications of the program procedures for special types of employers, such as Designated Agents, are discussed in Chapter IX.

2.2. Registering for E-Verify

The first step toward using the E-Verify system is to register online to use the Program. During this registration process, the employer prints out a copy of a Memorandum of Understanding (MOU) (see Appendix D) agreeing to adhere to E-Verify program requirements.

As of June 2008, the registrant needed to choose one or more of the following access methods:

- **Employer.** This is the basic access method, used by companies to electronically verify the employment eligibility of their newly hired employees and perhaps employees of other branches of the same firm.
- **Corporate Administrator.** This access method permits users to view reports and administer new and existing E-Verify accounts within the registering company. It is designed for use by someone in a headquarters office to monitor the E-Verify activity of company users when multiple establishments are inputting information into E-Verify.
- **Designated Agent.** This method allows a service provider to act on behalf of client companies to verify the employment eligibility of their newly hired employees using E-Verify. It allows the service provider to individually track its clients' reporting, billing, and compliance needs as well as to verify its own new hires' employment eligibility using E-Verify.
- **Web Services.** This method allows a company to extract information from its existing Human Resources or payroll system or an electronic Form I-9 and transmit that data to SSA and USCIS to verify employment authorization using E-Verify. This access method requires the company to develop or purchase software to interface between its system and E-Verify. The compatibility of the software the Web Services user wishes to use must be reviewed by the USCIS contractor responsible for system operations prior to use to ensure it is compatible with the E-Verify Program interface.

Once the employer has signed and submitted the MOU electronically, the program administrator²² 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. Other E-Verify users must also complete the tutorial and pass the Mastery Test before their user names and passwords will be issued to grant them access to the system. The tutorial covers both how to use the online verification system and the employer's responsibilities under the Program, including the proper ways of handling the various verification outcomes and the need to post a notice of the employer's participation in E-Verify where job applicants can see it.

The Mastery Test consists of 31 multiple-choice and true/false questions about the requirements and correct procedures for using E-Verify. Users must answer 22 questions correctly (71 percent) to pass the test. Once the Mastery Test has been successfully completed, the employer is granted access to the verification system.

2.3. The Form I-9 Verification Process

The starting point for verifying cases under E-Verify is the existing Form I-9 process used by all employers, including those *not* enrolled in E-Verify. When workers are hired, they are required to complete Part 1 of the Form I-9 and provide the employer with documentation of their identity and work-authorization status. Depending on the worker's citizenship or immigration status, a wide variety of documents are acceptable for these purposes (see Appendix E).²³ In Section 1 of the Form I-9, the worker 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, the document number(s), and any expiration dates on immigration documents. After reviewing the documents presented by the worker, the employer records the date of hire. The employer also signs the Form I-9 to certify having examined the documents presented by the worker 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 skills in the detection of fraudulent identity and employment eligibility documents, a worker without employment authorization may or may not be denied employment under this system; similarly, an employer unfamiliar with a particular document may erroneously assume that the worker presenting the unfamiliar document is not employment authorized.²⁴

2.4. The E-Verify Verification Process

The automated verification process in E-Verify begins with employers inputting the Form I-9 information into the E-Verify computer system within three days of hire.²⁵ The Form I-9 data entered include the worker's name, date of birth, and Social Security number (SSN); attested citizenship status; Alien or

²²The program administrator is the person who has responsibility for handling passwords and other administrative tasks related to E-Verify for the employer. This may or may not be the "corporate administrator" listed above.

²³ This is the version in use at the time of data collection. At that time, USCIS was planning on publishing regulations and a revised Form I-9, allowing a smaller number of documents.

²⁴ The employer is prohibited from asking the worker for additional documentation than provided, assuming that the worker has provided documentation consistent with the Form I-9 process and the documentation appears to be valid and belong to the worker.

²⁵ The description here assumes manual data input, which is, by far, the most common input process; however, there are also options available for electronic abstractions from electronic Form I-9s or employer databases. It also assumes that employers follow E-Verify procedures, which, as discussed in Chapter V, is not always the case.

Nonimmigrant Admission Number (for noncitizens); the type of document(s) presented with the Form I-9 and certain document numbers; and any document expiration dates for immigration documents. If an immigration document with a photograph is used by the worker for verification purposes, the employer is also required to photocopy it.

Employers participating in the Program submit the Form I-9 information electronically through the E-Verify system over the Internet. Immediately after the employer submits the information, the SSA database is checked automatically against the employer-input information. If the person attests to being a U.S. citizen on the Form I-9 and his/her SSN, name, and date of birth match SSA's records and the SSA database indicates that the person is a U.S. citizen or is a noncitizen with permanent work authorization, the employer is immediately notified electronically through the E-Verify system that the worker is authorized to work. In this situation, no further effort on the part of workers, employers, or Federal staff is required other than the requirement that employers close these cases and retain the required verification information with their Form I-9 files.

If the SSA database does not match the worker information other than work-authorization status input by the employer, the system immediately asks the employer to recheck the data input. If the employer does not submit changed information or if the changed information still is not consistent with the SSA database, an SSA Tentative Nonconfirmation (TNC) is issued and the worker must visit an SSA field office to straighten out the discrepancy.

If the SSA database information matches the information submitted by the employer except that a worker identified as a citizen on the Form I-9 is shown on the SSA database as a noncitizen without permanent authorization to work, the submitted information is checked against USCIS databases of naturalized citizens.²⁶ If neither SSA nor USCIS database checks can confirm U.S. citizenship, E-Verify issues a TNC finding and the worker must go to an SSA field office to provide documentary proof of his or her citizenship status or call an Immigration Status Verifier (ISV)²⁷ at USCIS to try to resolve the case.

If the SSA database information matches the worker information and the worker attested to being a noncitizen on the Form I-9, the information is electronically checked against the USCIS Verification Information System (VIS) database that contains information from several Department of Homeland Security (DHS) databases. If the USCIS information indicates that a noncitizen is work authorized and the worker has used a Permanent Resident ("green") card or an Employment Authorization Document (EAD) as proof of identity, the automated response includes the digitally stored photograph (if available) that was used to produce the card the worker presented in the verification process. The employer then determines whether the photo provided in the E-Verify response matches the photo on the document presented. If the employer confirms that the photo returned in the E-Verify response matches the photo on the document (or if no photo is available on E-Verify), the system provides an instantaneous response that the worker is "employment authorized." Employers are then required to record the verification number and result on the Form I-9 or print a copy of the transaction record and retain it with the Form I-9 and the photocopy of the document used, if required.

If the DHS database records do not match the information that the employer input, the E-Verify system instantly requests the employer to confirm that the case was properly input. If the employer does not

²⁶ As of 2009, E-Verify also checks Department of State (DOS) U.S. passport data to confirm the individual's citizenship if the individual submits a U.S. passport and SSA cannot confirm citizenship.

²⁷ Immigration Status Verifiers are now referred to as Management Program Assistants.

submit changed information or if the changed information still does not allow USCIS to confirm work authorization, E-Verify indicates to the employer that the “Verification is in process” and the case is automatically sent for review by an ISV. The ISV searches other DHS information to determine whether work-authorization status can be confirmed using this additional information—a process that typically takes a day or less from receipt of the electronic information to a decision on whether USCIS can confirm work-authorization status without requiring worker action. If the ISV does not have sufficient information to confirm work-authorization status, a TNC is issued and the worker must contact USCIS to provide additional information.

When the SSA or USCIS records either do not match the data input by the employer or are not sufficient to verify that the worker is employment authorized, the E-Verify system issues a TNC finding. In cases where the employer finds that the photo on the immigration document presented by the new employee does not match the photo provided in the E-Verify response, the E-Verify system issues a TNC finding and the employer express mails a copy of the worker’s document and case information to USCIS for further review. When a TNC is issued, employers are required to provide the affected worker with a system-generated written notification of the finding and give the worker the opportunity to contest it. Workers are required to indicate on the written notification whether or not they wish to contest TNC findings and sign the notification letter. Employers are supposed to retain a copy of the signed notice in the file.

When workers say they wish to contest TNCs, employers are instructed to (1) provide them with a written referral with case-specific information to SSA or USCIS, as appropriate, to correct the discrepancy; (2) record the referral date in E-Verify by selecting the “referral button”; and (3) if the reason for the TNC was a Photo Mismatch, send a copy of the worker’s immigration document to DHS. The E-Verify system provides a referral form that explains the worker’s rights and responsibilities during the contesting period. Workers then have eight Federal working days to contact SSA or USCIS to attempt to resolve the discrepancy. If an SSA TNC is issued, workers other than certain naturalized citizens must go to an SSA field office. If a USCIS TNC is issued, the worker may contact USCIS by telephone or in person and, if requested to do so, fax copies of documents to USCIS.²⁸ As of May 2008, naturalized citizens who have received an SSA TNC because SSA did not confirm their citizenship status may follow the procedures to either visit an SSA field office or call USCIS to resolve the TNC.

While the TNC is being contested, employers may not take adverse actions against workers based on the issuance of the TNC. Prohibited adverse actions include not hiring the worker, firing the worker, not allowing the worker to work until the TNC is resolved, delaying training, assigning different work, or reducing pay while contesting.

If workers indicate they do not wish to contest TNC findings, their cases are classified as Final Nonconfirmations (FNCs). If they indicate they want to contest but do not follow through by contacting SSA or USCIS to correct the discrepancy in their records, their cases are considered “no shows” after 10 Federal working days and FNCs are issued.

If the worker contacts SSA or USCIS within eight Federal working days but the Federal government cannot resolve the case within 10 Federal working days, SSA or USCIS places the case “in continuance”

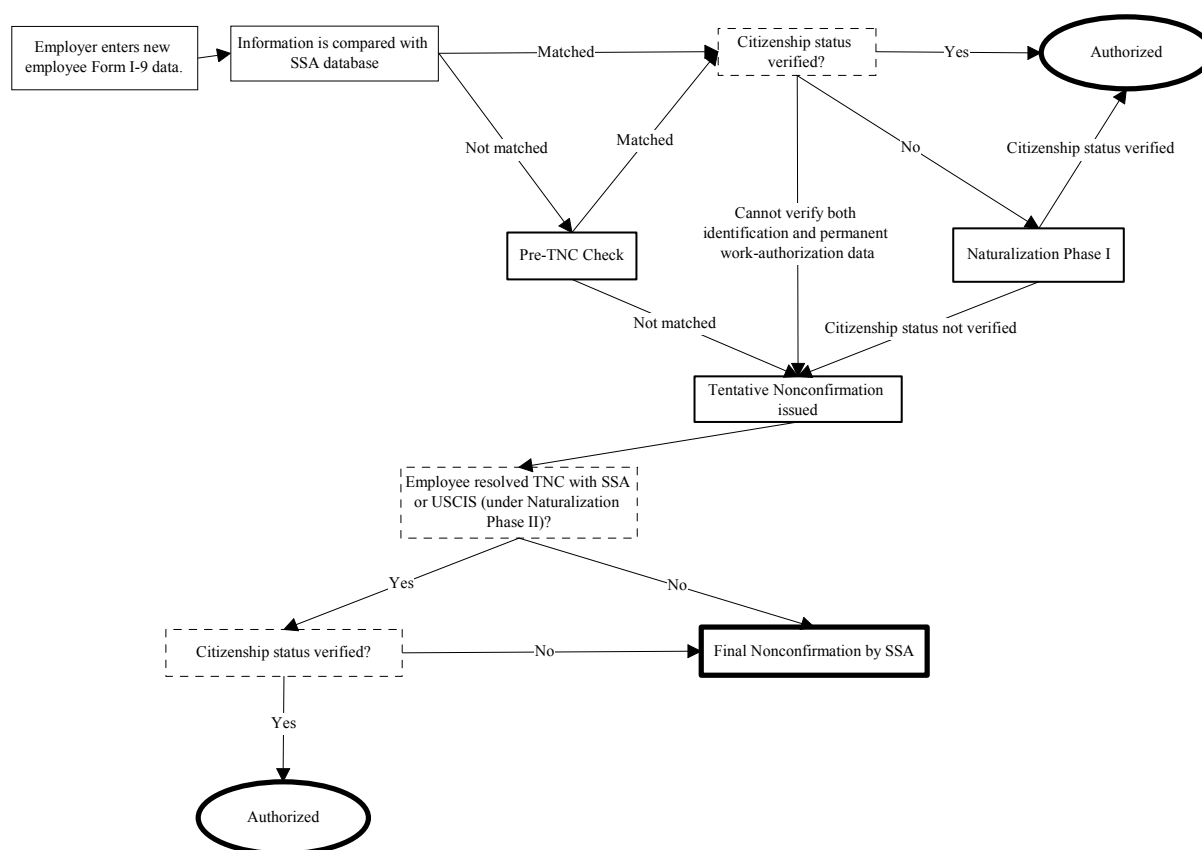
²⁸ Although workers are given eight Federal working days to resolve TNCs, in accordance with the IIRIRA legislation, workers who contact USCIS on the ninth or 10th day after referral may be able to resolve their cases.

until it can be resolved. This may happen, for example, when SSA needs to see an original birth certificate to confirm citizenship but the worker needs to request a copy by mail from the issuing source.

When the system issues FNCs, employers then must terminate these workers' employment to comply with the law. If employers do not terminate employment of workers who cannot be verified as work authorized, they are required by law to notify USCIS that they are continuing to employ the worker.

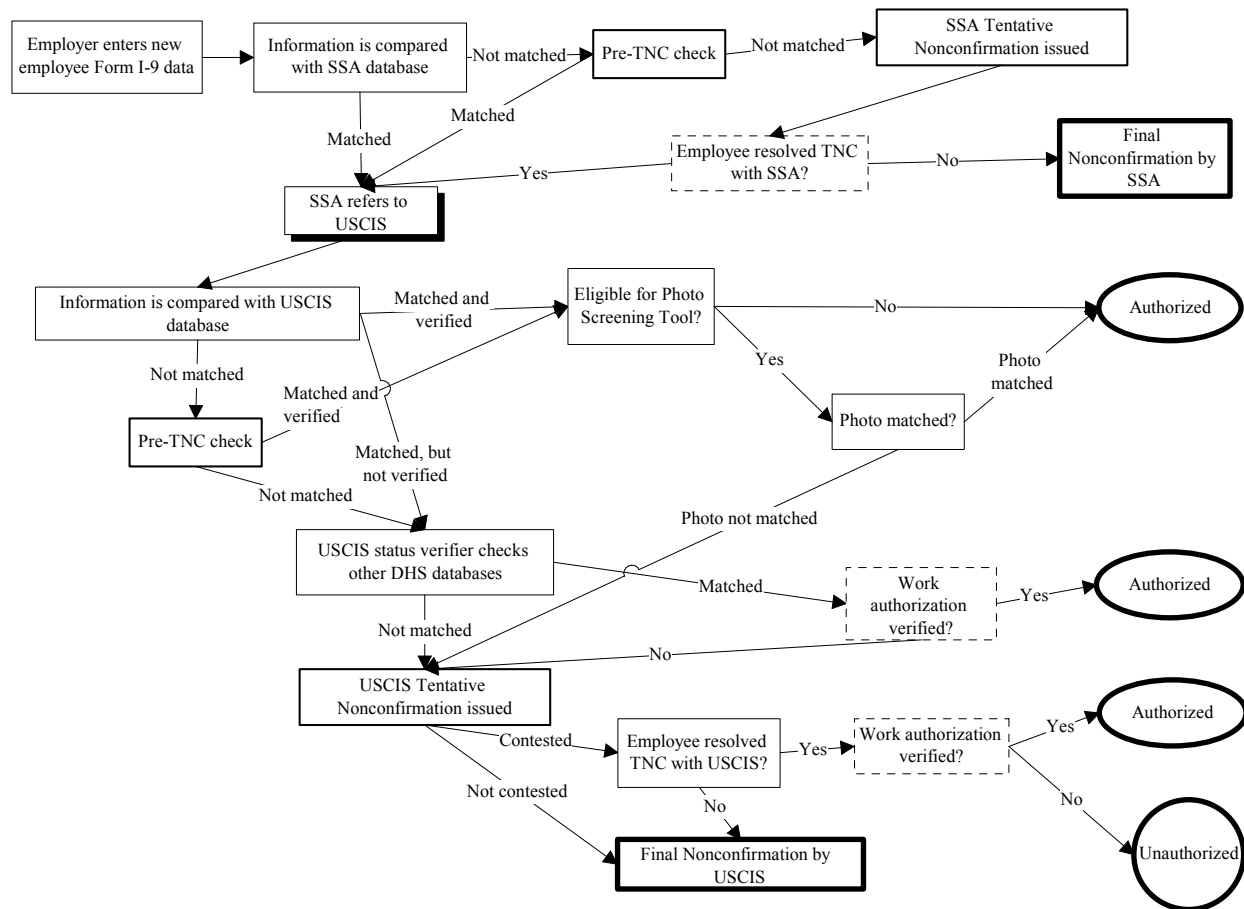
The major steps of the E-Verify verification process are illustrated in Exhibits I-1 and I-2.²⁹

Exhibit I-1. Verification Process for Persons Attesting to Being U.S. Citizens on Form I-9



NOTE: This is the process that was in effect on June 30, 2008.

²⁹ The process described assumes that employers follow the E-Verify procedures.

Exhibit I-2. Verification Process for Persons Attesting to Being Noncitizens on Form I-9

NOTE: This is the process that was in effect on June 30, 2008.

3. REPORT ORGANIZATION

This report is divided into four major parts:

Part 1, which provides introductory information about E-Verify and the evaluation, consists of the following chapters:

- I. **Background** describes the E-Verify program and the report organization.
- II. **Research methods** describes the quantitative and qualitative research methods used in this report and discusses some of the limitations of the available data used.
- III. **Putting changes in context** provides information about system outcomes, characteristics of E-Verify participants, and E-Verify program and legislative changes to provide a context for interpreting the evaluation findings in the remaining chapters.

Part 2, which discusses measurements of the extent of E-Verify's success, including examinations of the trends when appropriate, consists of the following chapters:

- IV. **Usage** focuses on questions related to employer usage of the Program.
- V. **Timeliness** discusses the extent to which E-Verify provides timely results to employers, the extent to which employers act in a timely manner when performing E-Verify-related tasks, and how quickly workers contesting their cases contact USCIS or SSA.
- VI. **Accuracy** examines the accuracy of E-Verify findings for work-authorized and unauthorized persons.
- VII. **Effectiveness in reducing unauthorized employment** examines the extent to which E-Verify has been meeting its primary goal of reducing unauthorized employment.
- VIII. **Employer compliance** examines how well employers have generally complied with E-Verify program requirements and the related question of the extent to which any lack of compliance can be explained by employers' not understanding the Program's requirements.

Part 3, which provides E-Verify information from the perspective of major stakeholders, consists of three chapters:

- IX. E-Verify from the perspective of **employers**.
- X. E-Verify from the perspective of **workers**.
- XI. E-Verify from the perspective of the **Federal government**.

Part 4 contains two concluding chapters:

- XII. **Conclusions** presents the primary conclusions of the evaluation.
- XIII. **Recommendations** makes suggestions for future program modifications.

The organization of the chapters in Parts 2 and 3 has been standardized to the extent feasible as follows:

- **Background** information related to the topic; and
- **Findings**, broken down further by:
 - **General findings**, which provide information about the topic, including observed trends on relevant variables.

- **Impact of legislative and program changes on findings**, which examines whether legislative and programmatic changes appear to have contributed to the observed findings.

A glossary and two appendices are included at the end of this report. These appendices present technical information on some of the methodology used in the report. Supplemental tables, data collection instruments used in the evaluation, and copies of the primary E-Verify notices and forms are included in separate documents.

CHAPTER II. RESEARCH METHODS

1. BACKGROUND

The evaluation team for E-Verify adopted a multimodal approach to data collection. Sources included the following:

- Discussions with a broad array of stakeholders at a meeting in November 2007;
- Five focus groups of employers;
- Web surveys of employers that had enrolled in the E-Verify Program;
- Onsite interviews and observation of employers;
- Interviews of workers who received E-Verify Tentative Nonconfirmations (TNCs);
- Reviews of worker verification records;
- E-Verify transaction and employer databases;
- Other Federal data sources;
- Meetings with Federal officials and their contractors; and
- System testing.

Standard research and quality control procedures were used in this study to assure the quality of the data. These procedures included training of data collection and data processing staff and data cleaning based on consistency and range checks.

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. Section 2 describes the different approaches used for the E-Verify evaluation and Section 3 discusses the analytic techniques.

2. SURVEY DESIGN AND DATA COLLECTION

2.1. Stakeholders Meeting

The evaluation team conducted a stakeholders meeting on November 27, 2007, which was attended by more than 130 people representing the Federal government, employers, and workers. Attendees were solicited through a Federal Register notice as well as through invitations sent to persons and groups

known to have an interest in the E-Verify Program. The primary goal of the meeting was to obtain input from diverse stakeholders to help shape the data collection instruments and this report.

2.2. Web Surveys of Employers

As part of the evaluation, Web surveys of employers were conducted with both “active” employers, i.e., employers that were using E-Verify according to recent records, and “inactive” employers that had enrolled to use E-Verify but, based on Transaction Database data, were not currently using it. This section describes the methodology related to these surveys.

2.2.1. Sample Selection and Recruitment

The Web survey was stratified by three main types of employers: active employers, inactive employers, and terminated employers. Active employers are those that had at least one query in the three months ending in November 2007 transmitted by the employer or by its Designated Agent on behalf of the employer and the employer had not formally terminated use of the system as of November 2007. These criteria were used to ensure that employers had sufficient experience with the system to provide well-informed opinions about it. Employers registered only as Web Services providers were not included among the employers on the sample frame and were therefore not selected.³⁰

The active employers were further divided into three subcategories: Designated Agents, Users of Designated Agents, and other active employers. Consequently, five strata were defined as follows:

- **Designated Agents**—active Designated Agents;
- **Users of Designated Agents**—active Users of Designated Agents that are not Designated Agents themselves;
- **Other active employers**—active employers other than Designated Agents and Users of Designated Agents;
- **Terminated employers**—employers that had formally terminated use of the system between September and November 2007; and
- **Other inactive employers**—employers that had not formally terminated use of the system, had signed a Memorandum of Understanding (MOU) between June and August 2007, and had not had any transactions in the three months ending in November 2007.

Employers in the primary sampling units (PSUs) selected for the onsite survey were excluded from the Web survey. Since the PSUs for the onsite survey sample were selected using a probability sampling method that resulted in a random sample, the remaining PSUs also constitute a random sample. Therefore, this exclusion does not interfere with the representativeness of the Web survey and was designed to prevent employers from having to participate in both data collection efforts.

³⁰ This was an unintentional omission on the part of the evaluation team. A total of 189 Web Services providers were excluded from the sample frame provided to the evaluation. These employers constituted 1.5 percent of the active employers for the three months ending in November 2007.

Strata with few employers (active Designated Agents, active Users of Designated Agents, and terminated employers) were sampled 100 percent so that relatively efficient statistical inferences could be made about these types of employers.

Within the other two strata (other active and other inactive), probability proportional to size (PPS) sampling was used, where the square root of the number of transactions was the measure of size for active employers and the cube root of the number of workers was the measure of size for inactive employers. This sampling methodology was designed as a compromise between the need for efficiency in estimates of the percentage of employers with specified characteristics and the percentage of *workers* of employers having specified characteristics, since both of these types of estimates are used frequently in the evaluation.

A total 3,203 employers were selected.³¹ Of these selected employers, 351 were found to be out of scope because they were no longer in business or because they were duplicate listings of an establishment. An additional 532 employers did not complete the survey, while 2,320 completed it. Thus, the overall unweighted survey response rate was 81 percent. The weighted response rate was 84 percent. Exhibit II-1 shows the number of eligible employers on the sample frame, the sample size, the number of respondents, and response rate for each stratum.

Exhibit II-1. Web Survey Sample Size and Response Rate, by Stratum

Stratum	Number of eligible employers on the sample frame	Number of employers selected ¹	Number of completed surveys	Unweighted response rate ²	Weighted response rate
Designated Agents	269	269	195	75%	75%
Users of Designated Agents	301	301	104	68	68
Other active employers	9,117	2,100	1,681	84	86
Terminated employers	130	130	41	84	84
Other inactive employers	2,668	403	299	79	78
Total	12,485	3,203	2,320	81	84

¹ The number of selected employers includes employers who were found to be ineligible during data collection.

² The response rates were calculated after excluding ineligible, so the unweighted response rate does not match the values of (number of completed surveys/number of employers selected).

2.2.2. Instrument Design and Development

2.2.2.1. Selection of Questions for the Survey

Many of the questions asked in the Web survey were adapted directly from the Web survey conducted for the 2006–07 evaluation. The following modifications were made to the previous survey instrument:

- Questions found not to be useful in the previous evaluation were deleted or modified.

³¹ This includes 21 duplicate employers that were removed from the sample after initial selection.

- Questions arising from the 2007 stakeholders meeting and early discussions with Federal staff were added.
- Questions about recent changes made to E-Verify, such as the Photo Screening Tool, were added.
- Questions designed to obtain additional insights into the special needs of inactive employers, Designated Agents, Users of Designated Agents, and staffing and temporary help agencies were added. These questions reflected information obtained during a series of employer focus groups.

2.2.2.2. Pretesting of the Draft Survey

The initial drafts of the different versions of the Web survey were pretested with small groups of employers to verify that the questions were clear and that the survey did not take an excessive amount of time to complete. The research team conducted online focus groups using WebEx, a Web hosting service for integrated teleconferencing. The survey was then modified based on input from the focus groups.

2.2.2.3. Creation and Testing of the Web Survey

Programming staff created an online version of the Web survey that contained different modules for the populations of interest. The process used to develop the Web application was an iterative one. Research staff provided specifications for the survey. After programmers had created and tested the draft instrument, research staff tested the survey and requested changes to its appearance and functionality. Programmers made and tested the requested changes, which were tested again by research staff. This process continued until both programming and research staff approved the survey for use.

The following is a list of the features of the online survey:

- It made use of logins, passwords, and a Secure Sockets Layer (SSL) to ensure limited access and data security.
- Programmable conditional and skip logics were built in. Respondents were automatically navigated to the correct location in the survey based on information about them on the Transaction Database and on their responses to prior questions so that employers were not asked irrelevant questions.
- Validations and edits were designed to alert respondents to missed questions or inconsistent responses.
- Respondents were able to save and close the survey and then return to the next unanswered question at any time before the survey was completed.
- Different response formats such as “select one” and “select all” were allowed. Questions were formatted with all the standard input controls (i.e., drop-down boxes, text areas, text boxes, radio buttons, and check boxes).

- Respondents were able to navigate back through the survey and change prior responses without data loss.
- When respondents completed the survey, they were offered the opportunity to print a copy of their responses. This printed copy also informed them which questions were part of a skip pattern, as well as which ones had not been answered.
- A receipt control module was built into the system to provide the evaluation team with information on response rates and other survey statuses.

A copy of the final version of the Web survey is contained in Appendix F.

2.2.3. Staff Training

The evaluation team provided thorough training to the telephone and data entry staff that worked on the employer survey. For the telephone staff (that obtained correct e-mail addresses, reminded respondents that their questionnaires had not been completed, answered respondent questions, and conducted refusal conversion), this training included an explanation of the purpose of the survey, review and explanation of calling duties, and role-playing scenarios. For data entry staff (that used the data management system), training consisted of an explanation of the purpose of the survey, review of result codes and edits, and practice inputting data into the management system.

2.2.4. Data Collection

The initial contact with employers was through an e-mail from Westat containing the information that the employer needed to access and complete the survey; it also requested the recipient to provide information on who should be contacted if the recipient was not the correct contact person. The e-mail included an attached letter from the U.S. Citizenship and Immigration Services (USCIS) Director of Research and Evaluation on agency letterhead; the letter explained the survey, reminded participants of their responsibility to cooperate with the evaluation as stated in the MOU they had signed, informed them that Westat would be conducting the survey, and stressed that provided information would be kept confidential.

When e-mails bounced back as undeliverable, an e-mail was sent to the alternative contact person if one was listed on the employer file provided by the USCIS contractor responsible for operating the E-Verify system. If there was no alternative contact person, or if the e-mail to the alternative contact person also proved to be undeliverable, the employer was called to ascertain the correct contact person and the initial e-mail was then sent to the appropriate person.

If the survey had not been completed within approximately one week of the initial e-mail contact, Westat sent a reminder e-mail to the employer. Sample members who still had not responded approximately one week later were reminded by telephone. Approximately two weeks later, a FedEx letter was sent to the remaining nonrespondents. Toward the end of the data collection period, USCIS placed a notice on the E-Verify Web site stating that data collection was nearing completion and urging those employers that had been asked to participate to respond, if they had not already done so. A final e-mail reminder to complete the survey was sent approximately two weeks prior to the database closing. Attached to this e-mail was a second letter from USCIS, stressing the importance of cooperation.

Data collection took place during a four-month period starting in March 2008.

2.2.5. Weighting Procedures

Weighting was used to permit drawing valid inferences from responses from persons included in the respondent sample to the populations from which they were drawn. Sample weighting was used to adjust for both differential sampling probabilities and for unit nonresponse. First, to adjust for differential sampling probabilities, base weights were computed as the reciprocal of a respondent's probability of selection. These base weights accounted for the PPS selection described earlier. Next, because some nonresponse occurs even with the best data collection strategies in sample surveys, nonresponse weighting adjustments are almost always necessary to reduce the potential for nonresponse bias. The Web survey was not an exception, so nonresponse weighting adjustment was done using nonresponse weighting classes created within the original sampling strata. The Chi-squared Automatic Interaction Detector (CHAID) was used to identify variables most highly related to response propensity within the sampling strata. The variables from the sampling frame such as industry based on the first digit North American Industry Classification System (NAICS) code, indicator for being an employment service, indicator for being a User of a Designated Agent, census region, and size group based on number of workers were used for creating these cells.

To see whether this nonresponse adjustment was done well or not, distributions of employer characteristics calculated using the weighted data of the respondent and ineligible employers were compared with the corresponding population distributions obtained from the sample frame.³² Chi-square tests were performed to see if the differences between the weighted distributions and the frame distributions are statistically significant at the 5 percent significance level. Exhibit II-2 presents these comparisons.

As shown in the exhibit, the weighted distributions by geographic location, industry, categorized group of the number of workers, and urbanicity are not significantly different from the corresponding frame distributions. Only the state legislative characteristic has a slightly significant difference, with a P-value less than 0.05. Thus, the nonresponse adjustment has effectively reduced the potential bias due to nonresponse. However, it should be noted that it is not possible to adjust or test for nonresponse bias on variables not on the sample frame; there may be nonresponse bias attributable to these variables. In particular, it is reasonable to believe that noncompliant employers are more likely to be nonrespondents than are compliant employers.

2.2.6. Database Construction

The initial database file from the employer Web survey was generated directly from the Web application. These data were cleaned and weighted prior to conducting the analyses. Employer-level variables from the Transaction Database, such as the number of verification queries and the number of TNCs, were then added to the file created by the Web application. Programmers also created an extract from this file containing only employers and variables for which comparable data existed on both the 2006 and 2008 E-Verify surveys. A comparable extract was created from the 2006 Web survey database and the two files were merged to facilitate comparisons of the 2006 and 2008 E-Verify results.

³² To make a fair comparison, ineligible units were included in the analysis because the frame also includes an unknown number of them.

Exhibit II-2. Comparison of the Weighted 2008 Web Survey Sample and Frame Distributions

Variable	Weighted Web survey sample (percent)	Web survey sampling frame (percent)
Geographic location		
California	8.7	9.7
Texas	5.6	6.7
Florida	3.9	5.2
Arizona	6.5	6.5
Northeast	14.8	14.5
Northern/Western	14.0	13.7
Midwest	17.9	16.2
Southern	28.2	27.1
U.S. territories	0.3	0.3
Industry		
Agriculture, forestry, fishing, hunting	1.7	1.8
Mining, utilities, construction	11.9	11.4
Manufacturing	14.2	14.6
Wholesale/retail trade	8.3	6.8
Technical/education/arts/entertainment	20.6	20.2
Employment services	14.6	16.0
Public administration/social services	5.1	5.8
Accommodation/food services	11.8	12.0
Other industries	11.8	11.4
State legislative characteristic*		
Enacted legislation requiring all employers participate in E-Verify	6.8	7.1
Enacted legislation requiring state offices and agencies and certain private employers to participate in E-Verify	30.2	27.6
Pending legislation requiring every employer to register with and participate in E-Verify	7.8	7.3
Pending legislation requiring state offices and agencies and certain private employers to register for and use E-Verify	16.6	19.2
Pending legislation preventing businesses not registered with E-Verify from receiving state economic incentives	0.4	0.8
No significant legislation enacted or required	30.1	30.2
Not available	8.1	7.6
Number of workers		
< 10	15.4	15.2
10-19	7.1	7.8
20-99	28.6	27.6
100-499	32.4	31.4
500-999	7.2	8.0
> 1,000	9.3	10.1
Urbanicity		
Metro area with 1 million or more population	56.6	58.7
Other metro area	30.2	28.9
Non-metro area	13.1	12.4

*Difference in distributions is statistically significant at the .05 level.

SOURCE: E-Verify Web Survey: 2008.

2.2.7. Data Limitations

Like all surveys, the employer survey is subject to both sampling errors and nonsampling errors. As discussed above, nonresponse bias may exist because employers that know they are not following procedures may be more likely than other employers to be nonrespondents. It is also subject to response bias, since it is relying upon employer representatives to provide information about their employers. Not only may these employers try to put themselves in a good light by providing information based on what they think they should be doing, but they may also not be aware of practices by others in their organization.

2.3. Onsite Studies

2.3.1. Overview

The site visit component of the evaluation consisted of the following elements:

- Interviews with establishment employees responsible for the E-Verify process;
- Observation of the establishment's verification process;
- Examination of worker records related to the verification process; and
- Interviews with workers, which were usually conducted at the worker's home.

2.3.2. Sample Selection and Recruitment

2.3.2.1. Employer Sample

A sample of employers was selected for the onsite study using a two-stage sample design in which the first stage was a sample of 50 PSUs formed on the basis of geographical location and the second stage was a sample of employers that use E-Verify within the selected PSUs.

To be eligible for the survey, employers needed to meet the following criteria:

- The total number of TNCs for the employer, based on the Transaction Database for the period September to November 2007, was greater than or equal to 1.
- Employers were located in one of the 48 contiguous states or the District of Columbia (i.e., excluding Hawaii, Alaska, and outlying territories).

PSUs were formed by clustering eligible employers in adjacent geographic areas and included at least 15 but no more than 35 employers, with a few exceptions, to support selection of a random sample of four employers and their substitutes within each PSU, resulting in an initial sample size of 200.

Both stages used PPS for selection. The measure of size for PSU selection is the total number of eligible employers in a PSU; the measure of size for employer selection is the square root of the total number of TNCs for an employer.

Employers in the initial sample that had fewer than four employees who had received TNCs in the period November 2007 to January 2008 were deleted from the initial sample. Collecting information from these employers was not considered to be cost-effective, because a high number of them were likely not to have workers who would participate in the worker interviews.³³ The final sample size was 162 employers.

The employers selected for participation in the onsite study were sent an initial e-mail requesting their participation, with an attached letter from USCIS endorsing the study and asking for their cooperation. Because of the complex nature of the onsite study, all follow-up recruitment was conducted by telephone, or occasionally, in person toward the end of data collection.

For each of the 162 sample employers, two³⁴ additional employers similar to the selected employer in terms of the number of TNCs within the same PSU were selected to constitute substitute sample employers. When a sample employer selected for the study refused to cooperate or did not participate because it was no longer an E-Verify employer, the first substitute sample employer was replaced for the originally selected employer. If the first substitute employer also did not agree to participate in the study, a second substitute sample employer was used, when available. Occasionally, even the second substitute did not participate in the study, and a third substitute employer was selected and used when available.

Of the 162 employers constituting the original sample, three were excluded because they were found to be out of scope, resulting in a sample of 159 employers. A total of 57 employers from the original sample and an additional 52 of the substitute sample employers participated in the study. Thus, the total number of employers that participated in the onsite study was 109 for an unweighted response rate of 69 percent, assuming participating substitutes were perfect substitutes for the original sample employers. Reasons proffered by sample members for not participating include the following:

- No time;
- Didn't want to be involved;
- Thought it was an audit;³⁵ and
- Couldn't/didn't want to spare the personnel to cover the needs of the site visit.

The response rate would have been much lower if all contacted employers, either original or substitute, had been included in the calculation.

³³ The Transaction Database used for this initial selection had to be constructed sufficiently in advance of fielding the employer site visits to allow time for recruiting the requisite supervisors and interviewers. At that time, the transaction data for November 2007 to January 2008 were not yet available, resulting in the use of an earlier time period for selection of PSUs and employers. Since it was desired to use as short a time as feasible between the initiated date and the fielding date to minimize nonresponse, the worker sample was selected based on the November 2007 to January 2008 data that were available when worker data were selected.

³⁴ In some cases, it was not possible to identify two similar employers not already in the sample.

³⁵ Even when interviewers explained to the respondent that this was not an audit, some employers appeared to continue thinking of it as an audit.

2.3.2.2. Worker Sample

A sample of workers was selected for each employer participating in the site visits. For onsite study employer participants that had more than 21 TNCs, a random sample of 21 workers with TNCs in the period November 2007 through January 2008 was selected. For employers with 21 or fewer TNC workers during this time, all workers receiving a TNC within this period were selected. The worker samples for each employer were selected after the employer agreed to participate in the study; therefore, if a substitute employer was used for the study, the workers of the substitute employer were used instead of the workers of the original employer.

Selected workers constituted the sample for both the record review and the worker interview. Of the 1,407 selected workers in the final employer sample, record reviews were conducted for 1,246 workers and 424 workers were interviewed.³⁶

The unweighted response rate for the record reviews selected was 89 percent. The primary reasons for unavailability of records include the following:

- Some employers reported that they maintained worker records for only short periods of time.
- Some workers were never officially hired by the company.
- Some employers could not locate worker records.
- Some TNC records were duplicates (the Transaction Database contained duplicates due to data entry errors that were not detected during the cleaning process).

The unweighted response rate for the worker interviews was 37 percent. The inability to locate the sample workers was the key reason for worker interview nonresponse. Worker contact information either was missing or incorrect on the Form I-9 or other documentation, and accurate updated information was unavailable from the employer, the tracing service, or neighbors. In a few cases, interviewers were fairly certain that the person they were trying to interview was the sampled worker, but the person denied being the sample member. Finally, a few workers refused to participate because they were afraid of employer retribution (i.e., they would be fired if their employer discovered they had participated in the interview).

2.3.3. Instrument Design and Development

Three data collection instruments were prepared for use in the onsite study portion of the evaluation: an employer interview protocol (one version for general employers and another one for temporary/employment agencies), a worker interview protocol, and a record review form (see Appendices G, H, I, and J). Interviewers were given some leeway in what questions they asked workers and employers within the frameworks established by the written materials, but they were encouraged to ask all relevant questions.

Development of the instruments for the onsite interviews started with a review of the onsite protocols used in the last evaluation. Modifications were made in light of the research goals of this study, input

³⁶ Workers were considered eligible for an onsite interview whether or not it had proven feasible to do a record review for the worker, except when the record review or discussions with the employer indicated that the worker was out of scope.

from stakeholders, and experiences with the previous onsite interviews. Since the research team did not plan to make comparisons between the workers interviewed in the current onsite interviews and previously interviewed workers, there was no attempt to maintain consistency between the new instruments and those used in earlier evaluations. The team developed two versions of the employer protocols—one for general employers and one for temporary/employment agencies—that were similar on almost all of the questions.

The record review form was designed to obtain as much information as possible about the experiences of each worker during the TNC process and was also used to capture any information available in the record that could assist in locating the worker. These forms were individualized for each worker on the list and contained the information necessary to verify that the correct worker's record had been provided by the employer; they also included information about the case from the Transaction Database. The form permitted interviewers to indicate whether the information in the worker's record was consistent with the information on the Transaction Database and, if not, provided space for them to describe any discrepancies, including missing documents.

2.3.4. Interviewer Selection, Training, and Monitoring

Semi-structured observations and interviews must be conducted by highly educated and experienced interviewers who have been intensively trained. Accordingly, the evaluation team selected experienced interviewers known to the interviewer supervisor. Twelve of the 70 selected interviewers were bilingual in English and Spanish.

The selected interviewers had an intensive five-day training session. The supervisors received separate training for 1.5 days prior to the interviewer training in addition to participating in the interviewer training. The interviewer 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 E-Verify Program and a demonstration of the E-Verify online tutorial and Mastery Test.³⁷ The interview guides and observational protocols were carefully reviewed with the interviewers, and role-playing exercises gave them an opportunity to practice the interviewing techniques they would use and to prepare written sample summaries, which the research team reviewed and for which they provided written feedback. The interviewers also had opportunities to practice using the record review form.

During the data collection period, interviewers were monitored in several ways. First, they had weekly conference calls with their supervisors to discuss productivity, problems finding workers, and contact strategies for maximizing response rates. The home office also had weekly calls with the supervisors, who provided status reports to update the team on potential problems and possible solutions to data collection and logistical issues. Supervisors reviewed all employer and worker case summaries as they were completed by each interviewer and provided general feedback to ensure that all the questions were answered. Supervisors also provided additional feedback and discussed problems and strategies through e-mail with interviewers.

Research staff at Westat's home office reviewed the first employer case summary for each interviewer and the first two worker summaries to ensure that the interviewers and supervisors understood what was

³⁷ Due to technical problems, most but not all interviewers and supervisors were able to complete the tutorial and Mastery Test prior to attending the training.

expected and that the summaries were complete. Any problems noted were shared with the interviewer and his/her supervisor, and the interviewer then revised the summary. If serious problems were encountered in the initial summaries, the next summaries for an interviewer were also reviewed to confirm that the interviewer understood what was needed. After the initial reviews of summaries, Westat home office staff reviewed approximately 95 and 80 percent of randomly selected employer and worker summaries, respectively, to determine if refresher training was required.

2.3.5. Data Collection

The site visits were conducted from March through July 2008. The first step in the site visit consisted of an interview with the primary contact person for E-Verify. The interviewee(s) also identified and invited other establishment staff members involved in the E-Verify process to participate in the interview as appropriate. 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 was feasible. They also determined whether the E-Verify notice was displayed in a prominent place that was clearly visible to prospective employees, as required by the E-Verify Program. The majority of the 109 interviews of establishment staff were conducted by both lead and co-interviewers. The lead interviewer conducted the interview and took notes while the co-interviewer also took notes and checked to ensure all questions were asked and clearly answered. Additionally, the interviewers shared responsibilities for conducting the record review and other aspects of the establishment portion of the site visit. This process ensured that the establishment data were collected as effectively and efficiently as possible. The lead interviewers also were responsible for writing the employer summaries while the co-interviewers reviewed and checked the summaries against their notes.

During the initial establishment site visit, the interviewers reviewed the employment verification-related records³⁸ of the workers identified for the record review stage of the onsite study. Of the 1,407 records identified for review, 1,246 (89 percent) were reviewed.

Subsequent visits to the establishment were made, as needed, to complete the record review, clarify information obtained during the record review or employer interviews, and/or interview employees still working for the establishment if the employer was willing and able to provide a suitable interviewing environment.³⁹

Initial locating of workers was done by a locating service on the basis of name, date of birth, and Social Security number (SSN). This service provided contact information for approximately half of the workers selected for record review and interview. During the record review, interviewers recorded available information from the Form I-9 and any other address sources, such as copies of driver's licenses presented as proof of identity included in the workers' Form I-9 files. Finally, while interviewers were in the field, they attempted to trace workers by talking to neighbors or landlords when feasible.⁴⁰

³⁸ Records consisted of the Employment Eligibility Verification form (Form I-9) for the worker, as well as any attached photocopies of documents presented, E-Verify transaction records, copies of any notices of the worker's intent to contest a TNC finding, and any referral letters in the file.

³⁹ Interviewers only asked about interviewing onsite at the close of the interview when employers seemed generally cooperative.

⁴⁰ The topic of the interview was not discussed with persons other than the respondent because of the confidential nature of the study.

Once interviewers located workers, they contacted them either by telephone or stopped by in person to schedule an appointment. In the telephone introduction, interviewers identified themselves, described the purpose of the interview, established the interview's legitimacy, and guaranteed confidentiality. 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 were offered a \$25 incentive to complete the interview.

Most interviews were conducted in the sampled workers' homes, at the onsite study establishment, or in person at another agreed-upon site. Approximately 55 interviews were conducted in Spanish. A small number of interviews were conducted over the telephone, e.g., the worker lived in an area that the interviewer was not comfortable visiting and an alternative location could not be identified for the interview or the worker had moved. Telephone interviews also were conducted when a bilingual interviewer was not available to go to the worker's home or when the worker refused an in-person visit but agreed to do a telephone interview. In some cases, when a worker had moved from the area and was living in an area in close proximity to another interviewer, the interview was transferred.

An in-person interview was chosen as the primary data collection strategy for workers 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 workers, and the limited English proficiency of some in the sample. Bilingual interviewers conducted the interviews with Spanish-speaking respondents whenever possible. During the in-person interview, a trained interviewer asked workers about their experience in applying for the job with the E-Verify employer, how their paperwork was processed, and how any problems encountered during employment verification were resolved. The workers' demographic characteristics were also collected. The data collection followed procedures and management structures designed to ensure the highest quality data.

2.3.6. Weighting

The high nonresponse rates and small sample size for the employer sample did not permit development of weights that would permit reliable estimates of the population from which they were drawn. Since the record review and worker onsite samples were selected from the employer samples, these estimates must also be considered unreliable for population estimates. Therefore, unweighted counts are presented in the report. These results cannot be generalized to the entire population of E-Verify employers and workers and thus should be viewed as the results of qualitative case studies.

2.3.7. Database Construction

2.3.7.1. Interviews

Interviewers summarized the interviews they conducted using the key evaluation questions to guide and organize their summaries. The research staff developed a codebook containing over 900 codes divided into six major categories. These summaries were coded using NVivo, a software package for use in coding qualitative data to allow quantitative as well as qualitative analyses. Data were cleaned prior to estimation.

2.3.7.2. Record Reviews

During the record review process, interviewers entered review information for each case into a database on an encrypted laptop computer. The information obtained was then electronically communicated to the Westat home office over a secure Internet connection. The individual records were merged to create the record review file. These data were cleaned prior to conducting the analyses.

2.3.8. Data Limitations

As discussed above, the site visit information obtained in this study does not permit reliable estimation of population statistics due to the high nonresponse rates and small sample sizes. However, the onsite study provides more in-depth insights into employer behavior than the Web survey because it is based on a more intensive interviewing process and because additional input on employer behavior is obtained from record reviews and workers. The onsite studies are the only source of information about workers screened by E-Verify other than the information on the Form I-9, which is maintained by the employer and typically not reviewed externally unless reviewed as part of a Federal work-site audit or enforcement action.

2.4. Data from the E-Verify System

2.4.1. E-Verify Transaction Data

The most important secondary data source for this report was the Transaction Database, which provides information on employer use of the E-Verify Program and verification outcomes derived from the actions of employers and the Federal government that are input into E-Verify during the verification process. Westat constructed two distinct databases from the data files provided by the E-Verify systems contractor. Both of these files are discussed here.

2.4.1.1. Main Analytic Database

Westat constructed a Transaction Database of all cases submitted to E-Verify from the start of the Program in June 2004 through June 2008.⁴¹ Since the source database was designed to address Department of Homeland Security (DHS) and Social Security Administration (SSA) administrative needs and program goals rather than for analytic purposes, the original Transaction Database required complex file manipulation and cleaning before it could be used for analysis.⁴²

The transaction data were subjected to extensive cleaning routines to delete cases that were transmitted in error (e.g., when the employer realized that a typographical error had been made or when the same case was mistakenly transmitted more than once) and to correct situations in which it appeared that the employer had improperly resubmitted cases to SSA as if they were new cases. Although not all errors can be detected by such cleaning programs, the resulting database is a truer reflection of actual case processing for analysis purposes than the original database was.⁴³

⁴¹ Since many analyses examine trends by quarter, these analyses are based on trends from July 2004 through June 2008 in order that data can be presented by quarters of the fiscal year.

⁴² See Appendix A for a description of this process.

⁴³ The uncleaned Transaction Database is useful in that it captures overall query volume for workflow calculations, it reflects how employers used the system, and it will be helpful in monitoring and compliance activities.

For the current evaluation, cleaning routines used in prior evaluations were revised to include additional routines based on increased understanding of transaction data obtained during analyses for the last evaluation, and discussions with USCIS Verification staff and the contractor responsible for the E-Verify database system. Data from employer files provided by the E-Verify systems contractor were also merged with information from the Transaction Database and the EV-STAR database provided by the same contractor to create the analytical transaction record files.

The full E-Verify Transaction Database for July 2004 through June 2008 is based on approximately 9.4 million cases. This extremely large sample constitutes the total population of cases submitted during this time. Although sampling error is not a concern, the possibility of measurement error exists because the USCIS and SSA data provided from employer verification transactions contained some errors due, for example, to employer input errors. Although the data were cleaned, it is not possible to rectify all errors.⁴⁴ To examine trends, cases on this file are broken into three-month intervals based on the quarter in which they were initially submitted. The number of cases available within each three-month period ranges from approximately 55,000 to 1.7 million.

One limitation to the Transaction Database data for evaluation purposes is that E-Verify does not currently allow a USCIS Final Nonconfirmation (FNC) to be overridden if a worker or the employer requests further consideration of a case after the 10 Federal workday period has expired. If the worker was found to be work authorized after the 10 days, these cases would have already been changed to FNCs on the Transaction Database and could not be changed by the Immigration Status Verifier (ISV).⁴⁵ Although this would lead to an upward bias in the estimates of FNCs, there is no reason to believe that it would have more than a slight impact on the results.

One of the primary uses of the transaction data in this report is for trend analyses. To ensure that the cleaning process did not introduce unwarranted changes into the data series, the entire database beginning with the June 2004 start of E-Verify was subject to the same revised cleaning process.⁴⁶ However, cleaning the historical data using updated cleaning routines does not avoid changes attributable to the introduction of EV-STAR. This process, introduced on October 1, 2007, allows SSA to enter processing information about cases referred to SSA into a new database (EV-STAR), which also serves as a communications conduit between SSA and the employer. This database indicates whether workers referred to SSA actually contacted SSA and records subsequent actions by SSA and the workers who had received TNCs. These new procedures, advocated in prior evaluations, increased the amount of information available to determine the outcome of the contesting process.⁴⁷ However, since the more complete information from the new system is not directly comparable with available information for the period of June 2004 through September 2007, the estimates for October 2007 through June 2008 are not strictly comparable to earlier estimates.

⁴⁴ See Appendix A for additional information on the methodology used for cleaning the Transaction Database.

⁴⁵ If USCIS is made aware of such cases, staff will notify the employer that a worker is employment authorized; however, the final outcome shows up and is retained as an FNC in the system.

⁴⁶ Because of this process, estimates based on data presented in prior reports may be different than the estimated historical information in this report.

⁴⁷ See Chapter III for a discussion of the programmatic reasons for this change.

A second recent change with a possible impact on data comparability is the implementation of a pre-TNC employer check. Starting in September 2007, employers were asked to check and, if necessary, change their input information for cases prior to an SSA TNC finding being issued or a USCIS “Case in Process” response that is issued at the time a case goes to an ISV for possible resolution without the issuance of a TNC.

2.4.1.2. Longitudinal Database

In addition to developing the main database, the evaluation team constructed a longitudinal Transaction Database consisting of employers that had transmitted cases in every six-month period from October 2004 through June 2008. This database was extracted from the main database. Limiting the database to employers with transactions throughout this period was done so that trends attributable to types of employers using the system were not confused with trends in the system itself. Examining these trends in addition to the trends in cross-sectional statistics provides two different perspectives on changes in the indicators of program success examined in this report. A total of 1,419,082 records for 523 employers were included in the final longitudinal Transaction Database.

Since the characteristics of the employers in this longitudinal sample can be assumed to vary much less dramatically over time than the characteristics of all employers, examination of these trends permits making inferences about what the trends would have been without changes in employer characteristics.

Even though the employers in the longitudinal Transaction Database are the same throughout the period examined, it is possible for the characteristics of the workers for whom cases are submitted to E-Verify to change over time. This could occur, for example, because of changes in the characteristics of workers hired or if the employers are not consistent over time on which type of cases they submit to E-Verify. To determine whether this is the case, the characteristics of the workers with cases submitted to E-Verify were examined to determine how stable these characteristics are.

As seen in Exhibit II-3, there were some noticeable changes in the characteristics of workers in the longitudinal database over time. In particular, the percentage of workers who attested to being U.S. citizens or nationals increased between October 2004 through March 2005 and April through June 2008, from 81 percent of cases submitted to 84 percent, while the percentage of workers attesting to being lawful permanent residents declined from 15 percent to 12 percent and the percentage who attested to being aliens authorized to work declined from 4.1 percent to 3.6 percent. Thus, although using the longitudinal database controls for employer characteristics, including characteristics that are not measured in this study, using the longitudinal database does not constitute a rigid control for worker characteristics over time.

Exhibit II-3. Changes in Types of Workers With Cases Submitted to E-Verify by Employers in the Longitudinal Database: October 2004–June 2008

Worker characteristic	FY 2005		FY 2006		FY 2007		FY 2008	
	Oct-Mar	Apr-Sept	Oct-Mar	Apr-Sept	Oct-Mar	Apr-Sept	Oct-Mar	Apr-June
All Worker Cases	142,821	213,109	178,329	208,045	182,799	207,511	184,535	101,933
Industry employed in								
Agriculture, forestry, fishing, hunting	1.0%	1.0%	0.8%	1.1%	0.9%	1.2%	1.1%	1.2%
Mining	3.7	3.9	4.0	4.7	3.6	4.4	3.7	4.6
Food manufacturing	12.7	10.6	12.0	11.9	14.8	15.4	15.8	16.5
Apparel manufacturing	0.0	0.1	0.0	0.0	0.1	0.0	0.0	0.0
Wood, paper manufacturing	0.0	0.0	0.0	0.1	0.1	0.1	0.0	0.0
Petroleum, coal, chemical, mineral manufacturing	1.1	1.2	1.1	1.2	0.8	1.0	0.8	0.9
Metal, machinery manufacturing	0.6	0.5	0.6	0.7	0.7	0.6	0.7	0.8
Other manufacturing	2.1	1.9	2.2	2.3	2.0	2.1	1.8	1.7
Wholesale/retail trade	4.3	3.9	2.4	3.1	3.8	3.6	3.4	3.0
Transportation	0.9	0.9	1.1	1.0	1.2	1.3	1.4	1.2
Information	0.2	0.2	0.3	0.2	0.3	0.4	0.3	0.2
Financial, real estate	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Postal, couriers, warehousing	0.2	0.4	0.5	0.4	0.4	0.3	0.3	0.3
Employment services	39.8	45.7	41.6	39.6	38.0	35.2	37.9	36.2
Professional, education, health, arts services	12.8	9.5	10.3	10.3	9.8	10.3	10.2	10.8
Accommodation/food services	14.2	12.4	14.2	14.1	13.9	14.5	12.8	13.1
Other services	2.6	3.6	4.6	4.8	5.3	4.8	5.2	5.2
Public administration	3.6	3.8	3.8	4.2	4.1	4.6	4.4	4.0
Region employed in								
California	12.4	21.8	10.4	7.9	7.4	7.2	6.4	6.9
Arizona or Texas	27.4	27.0	34.1	35.0	34.2	35.2	32.6	31.8
Northeast	11.6	7.0	8.8	8.6	9.4	9.1	11.4	10.5
Northern/Western	15.9	14.0	14.5	14.7	15.0	14.3	14.7	13.9
Midwest	14.6	12.6	14.2	16.0	17.6	16.3	17.8	19.9
Southern	10.5	9.8	10.3	10.0	9.3	10.5	9.9	10.3
Florida	7.7	7.7	7.7	7.8	7.1	7.3	7.2	6.7
U.S. territories	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Size of employer								
1-4	2.6	2.0	2.2	2.9	3.1	1.8	2.0	1.8
5-9	3.6	4.5	5.2	5.0	5.1	4.3	4.5	4.4
10-19	7.3	6.5	7.3	6.3	6.3	5.7	5.8	4.9
20-99	5.8	5.3	5.3	5.7	4.9	4.9	4.7	4.2
100-499	22.0	20.8	24.7	25.5	25.3	26.1	26.1	27.4
500-999	11.9	11.2	11.7	12.2	11.3	10.6	9.8	10.1
1,000-2,499	18.0	16.2	17.0	17.8	18.3	18.4	18.6	18.7
2,500-4,999	14.5	9.0	11.5	11.8	13.9	15.0	17.7	16.4
5,000-9,999	4.4	4.3	3.8	4.4	3.8	4.4	2.8	3.6
10,000 and over	6.5	17.4	7.2	4.5	4.2	5.0	4.5	4.8
Employer size not available	3.4	3.0	4.2	3.7	3.6	3.7	3.6	3.7

Exhibit II-3. Changes in Types of Workers With Cases Submitted to E-Verify by Employers in the Longitudinal Database: October 2004–June 2008—continued

Worker characteristic	FY 2005		FY 2006		FY 2007		FY 2008	
	Oct-Mar	Apr-Sept	Oct-Mar	Apr-Sept	Oct-Mar	Apr-Sept	Oct-Mar	Apr-June
Form I-9 Status								
U.S. citizen or national	80.9%	82.7%	83.1%	84.3%	83.4%	84.5%	84.4%	84.3%
Lawful permanent resident	15.0	14.1	13.6	12.8	13.5	12.5	12.2	12.1
Alien authorized to work	4.1	3.2	3.3	3.0	3.1	2.9	3.4	3.6

SOURCE: E-Verify Transaction Database.

2.4.2. Employer Registration Data

At the time that employers register for E-Verify, they provide basic information about their characteristics, including industry, number of employees, location, and number of sites. The evaluation team cleaned the database of obvious errors such as employers that were identified as test employers and duplicates. Although the database consists of information about all the employers that have signed up for E-Verify and thus is not subject to sampling error, it is subject to measurement error.

One concern about the employer registration data is that the definition of an employer is not the same as that used in national data sets. The Bureau of Labor Statistics (BLS) differentiates between establishments and firms, where an establishment refers to a particular site of a company and a firm refers to the entire company. Thus, if a company conducts business at 10 different sites, it consists of 10 establishments but only one firm. Of course, many companies have only one work site in which the establishment and firm are one and the same.⁴⁸ The unit of analysis used in many of the analyses in this report is the “employer” defined as the entity that signed the MOU with USCIS and SSA. However, in some multisite companies only one MOU was signed for the entire company, and in other multisite companies separate MOUs are signed by each participating establishment. In still other companies, one establishment may be responsible for screening a subset of the company’s establishments.⁴⁹

A second concern about the use of employer registration data for analysis is that there have been shifts over time in USCIS guidance about whether the company or its establishments should sign the MOU. Because of this, it is likely that observed trends in the number of registered employers may not accurately reflect the actual growth rate of the Program. Thus, program growth is probably better measured by the growth in the number of cases submitted to E-Verify than by the number of MOUs signed or by the number of employers submitting transactions.

Another problem with the accuracy of information on the registration database is that there appears to be considerable confusion among employers about the access method they should sign up for when they register. This, in turn, affects the characterizations of employers by method of access. In the Web survey,

⁴⁸ It is likely that the number of company sites and the number of establishments are fairly comparable. However, when an employer signs an MOU for multiple sites, the only information about the sites that is collected is the states in which they are located. To use sites as the unit of analysis would, therefore, significantly limit the analyses that could be done based on employer characteristics.

⁴⁹ The E-Verify registration screen also asks for the number and location of sites from employers registering multiple sites; there is not adequate information to conclude that these sites are consistent with the BLS definition of establishment.

employers were asked to confirm or modify the information about what access method they were using. As seen in Exhibit II-4, there appears to have been some confusion in this process, especially for Designated Agents. Among employers that had registered as Designated Agents, 41 percent should have registered as regular employers according to information provided in the Web survey. USCIS is aware of this problem and is taking steps to alleviate it.

Exhibit II-4. Employer Access Method on the Registration Database Compared to Access Method Reported by Employers on the Web Survey

Access method on registration database	Access method reported in the Web survey									
	Employer (regular)		Designated Agent		User of a Designated Agent		Web Services		All methods	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Employer (regular)	1,724	99.7	1	0.1	4	0.2	0	0.0	1,729	100.0
Designated Agent	80	41.0	88	45.1	3	1.5	24	12.3	195	100.0
User of a Designated Agent	11	9.4	1	0.9	105	89.7	0	0.0	117	100.0
Web Services	24	100.0	0	0.0	0	0.0	0	0.0	24	100.0
All	1,839	89.1	90	4.4	112	5.4	24	1.2	2,065	100.0

SOURCES: Registration database and E-Verify Web Survey: 2008.

2.4.3. SSA E-Verify Data

SSA maintains a database created at the time it checks the employment-authorization status of workers with cases submitted to E-Verify. This SSA database contains information not included in the main E-Verify Transaction Database about the country of birth and citizenship status of workers at the time of the most recent E-Verify case submission. This information about birth/citizenship status is more detailed than the Form I-9 information about citizenship status; in particular, it permits differentiating foreign-born citizens from those who were born in the United States.

Since individual-level SSA information was not available to the evaluation team, the evaluation team requested and received aggregated information.⁵⁰ The first step in this process was providing SSA with a set of files; each file contained SSNs for all individuals obtaining a given final outcome (e.g., immediate verification by SSA, found work authorized by SSA after a TNC, etc.) in a specified quarter.

SSA then provided frequency distributions of birth/citizenship status for each of the files. This information was adequate to create the cross-tabulations of outcome by birth/citizenship status needed for calculating the erroneous TNC rate for each SSA birth/citizenship category of interest (Exhibit II-5). These erroneous TNC rates were then calculated as usual (i.e., the number of workers found to be work authorized after a TNC divided by the total number of workers ever found to be work authorized) for each SSA birth/citizenship category for each quarter.

⁵⁰ SSA and USCIS are exploring options for SSA to provide individual-level data in the future.

Exhibit II-5. SSA Birth/Citizenship Status, by Final Case Outcome for Workers Found to Be Employment Authorized: April–June 2008

Case outcome	U.S.-born	Foreign-born			Total
		Citizen	Lawful permanent resident	Other noncitizen	
Total number of ever-authorized	1,417,953	97,226	141,141	3,751	1,660,071
Authorized without an SSA or USCIS					
TNC	1,416,434	94,437	138,143	3,647	1,652,661
Instantly authorized by SSA	1,416,434	94,437	0	0	1,510,871
Instantly authorized by USCIS	–	–	119,856	3,175	123,031
Authorized after an initial "in process" finding by USCIS	–	–	18,287	472	18,759
Total authorized after a TNC	1,519	2,789	2,998	104	7,410
Authorized after a TNC by SSA	1,519	2,789	548	23	4,879
Authorized after a USCIS TNC without an SSA TNC	–	–	2,450	81	2,531
Erroneous TNC rate for category	0.1%	2.9%	2.1%	2.8%	0.4%

SOURCES: E-Verify Transaction Database and SSA database.

In the process of estimating erroneous TNC rates based on SSA birth/citizenship data for various outcomes, the evaluation team found that there were a considerable number of noncitizen cases that had been found to be work authorized by SSA. This seemingly anomalous situation was in large part because the E-Verify process was set up to allow SSA to verify as work authorized all persons attesting to be U.S. citizens on the Form I-9 who have permanent work-authorization status according to their SSA records.⁵¹ These established procedures allow SSA to find as work authorized those workers who are lawful permanent residents (LPRs) according to prior information verified with USCIS.⁵² The evaluation team, therefore, decided that it was reasonable to assume that all cases decided by SSA to be work authorized were, in fact, U.S. citizens even if the SSA data indicated that they were LPRs.

In addition to the easily explicable situation in which SSA finds workers attesting to be U.S. citizens who appear in their records as LPRs to be work authorized, there were a few cases in which SSA found workers to be work authorized when their records showed them to be noncitizens without permanent work authorization or, conversely, USCIS determined the employment-authorization status of workers with SSA records indicating that they were U.S. citizens.⁵³ Without individual record data, it was not feasible for the evaluation team to obtain a complete understanding of why there were such discrepancies.

⁵¹ SSA confirms the accuracy of individuals' attestations of having permanent work-authorization status with USCIS at the time that their work-authorization status is entered into the SSA database. When individuals previously verified as having permanent work-authorization status say on the Form I-9 that they are citizens, the discrepancy is assumed to be attributable to their SSA records not having been updated to reflect their becoming naturalized citizens.

⁵² SSA has identified LPRs as a separate group in Numident since 1992 and verified all noncitizens it enumerates through the USCIS SAVE System since July 2002. Prior to that time SSA verified all noncitizens through the SAVE system or, if they had arrived too recently to be in Immigration and Naturalization Service/USCIS databases, SSA field staff used black lights, other tools, and field office staff expertise to verify the authenticity of documentation. The current practice of SSA verifying workers attesting to be citizens as work authorized if SSA records show that the person is an LPR was started in October 2005. Prior to October 2005, SSA TNCs were issued to these workers.

⁵³ When USCIS files were checked to determine whether workers attesting to being U.S. citizens were naturalized citizens, the cases were considered to have an SSA finding, so that the Naturalization Phase I process is not the reason for this discrepancy.

However, it seemed reasonable to believe that the most likely reason for such discrepancies is that the matching process used by SSA for this study provides the birth/citizenship status information associated with a given SSN as of the most recent query to E-Verify. However, this method is not precise because an SSN may have been used in the E-Verify process by more than one worker. The evaluation team, therefore, decided that when there was a discrepancy between the SSA record and Form I-9 information on citizenship status, the assumption would be that the Form I-9 information was correct and the SSA-provided information was based on a different case than the one being examined.⁵⁴

In addition to readjusting the original SSA information based on Form I-9 status, data were adjusted for cases with missing birth/citizenship status. This adjustment was made using normal nonresponse adjustment techniques within outcome status categories. These adjustments resulted in estimates of the erroneous TNC rates that were, for the most part, similar to the original estimates (Exhibit II-6). The adjustments had the greatest impact on the erroneous TNC rate for foreign-born citizens, which increased from 2.9 percent to 3.2 percent.

Exhibit II-6. Adjusted Birth/Citizenship Status, by Final Case Outcome for Workers Found to Be Employment Authorized: April–June 2008

Case outcome	Foreign-born				Total
	U.S.-born	Citizen	LPRs	Other noncitizen	
Total number of ever-authorized	1,430,345	98,392	144,544	3,842	1,677,123
Authorized without an SSA or USCIS					
TNC	1,428,634	95,250	141,474	3,735	1,669,093
Instantly authorized by SSA	1,428,634	95,250	0	0	1,523,884
Instantly authorized by USCIS	–	–	122,722	3,251	125,973
Authorized after an initial "in process" finding by USCIS	–	–	18,752	484	19,236
Total authorized after a TNC	1,711	3,142	3,070	107	8,030
Authorized after a TNC by SSA	1,711	3,142	576	25	5,454
Authorized after a USCIS TNC without an SSA TNC	–	–	2,494	82	2,576
Erroneous TNC rate for category	0.1%	3.2%	2.1%	2.8%	0.5%

NOTE: These calculations assume that when there is a discrepancy between SSA birth/citizenship status and Form I-9 status, the Form I-9 status is more reliable. Case outcomes have also been adjusted for nonresponse.

SOURCES: E-Verify Transaction Database and SSA database.

2.5. Other Federal Data Sources

To determine how E-Verify employers and the workers for whom they submit cases differ from national employers and workers, several Federal databases were used in the evaluation. Data sources used include the Bureau of Labor Statistics' Job Openings and Labor Turnover Survey,⁵⁵ the Census Bureau's Current

⁵⁴ Although the evaluation team believes that this alternate definition is more accurate than the original definition, this will not always be the case. In the worker interviews, it was clear that some workers did not know how to classify themselves when completing the Form I-9.

⁵⁵ <http://www.bls.gov/jlt/home.htm#data>.

Population Survey,⁵⁶ and the U.S. Census County Business Patterns 2006.⁵⁷ Although these data are believed to provide valid indicators of the nation's employers and labor force characteristics, these sources do not always collect data that are directly comparable with the data available for the E-Verify Program. For example, as discussed earlier, the definition of "employer" used in E-Verify differs from both the definitions of "establishment" and "firm" used by the Department of Labor. Because of these differences, it is necessary to use the comparative data cautiously.

2.6. Interviews of Federal Officials and Contractors

The evaluation team conducted a series of semi-structured interviews with Federal staff and contractors in May through November 2008. One of the primary goals of these interviews was for interviewees to update the evaluation team on what programmatic changes had been made since the last evaluation and to discuss future changes. A second goal was to assist in identifying the topics to be discussed in this report. These discussions also clarified some of the advantages and disadvantages of potential changes to the Program. Information was also obtained about any problems that may have arisen during the process of implementing the Program or other information of relevance to the evaluation. A total of 16 interviews with 36 persons were conducted during this time with representatives of the following: SSA offices including Income Security Programs, Public Services and Operations Support, Automated Support, Telephone Services, Systems, and Budget and Finance; the USCIS Verification Division including the Office of Monitoring and Compliance, Verification Operations, Immigration Status Verification staff, and Customer Services; the USCIS Office of Chief Counsel; the DHS Office for Civil Rights and Civil Liberties; the DHS Policy Directorate; the Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices; and the USCIS contractor responsible for the E-Verify database system. Evaluation staff also attended a number of meetings of Federal staff and contractors on issues related to this report during the evaluation period.

Although the interviews with Federal officials and contractors proved valuable in shaping this analysis, confidentiality concerns have generally precluded attribution of information to individuals or the organizations they represent. An exception was made in a small number of situations in which the evaluation team believed that knowing the source of a particular point of view was essential to understanding its credibility; in this situation, only the organization of the respondent is identified.

2.7. System Testing

The evaluation team tested the E-Verify system by registering for E-Verify 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 E-Verify resources. They tested the functionality and usability of each feature of the online program. No attempt was made to hack into the system database.

⁵⁶ <http://www.census.gov/cps/>.

⁵⁷ <http://www2.census.gov/csd/susb/2006/usst06.xls>.

3. MEASUREMENT AND DATA ANALYSIS

3.1. Measurement

3.1.1. Introduction

Many of the quantitative variables used in analyzing the data in this report were measured in a straightforward fashion. These include continuous variables, such as the number of cases the employer transmitted in a three-month time period, 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 responses in some of the categories of a categorical variable to permit meaningful analysis, adjacent-ordered responses were combined (e.g., “agree” and “strongly agree”). Additional cell combinations were made during the writing process to simplify the presentation of study results. This section explains the measures and indicators used in the evaluation that were less straightforward.

3.1.2. Indicators and Measures

This section discusses those indicators and measures used in this report that are more complicated. Many of these measures were developed to use in trend analyses as indicators of program success in implementing the Program and in meeting the program goals.

3.1.2.1. Scales

For this report, employer satisfaction and employer compliance are the only variables measured with a scale derived using advanced statistical techniques. To systematically assess the employers’ overall satisfaction and compliance levels with E-Verify, confirmatory factor analysis technique was used to construct scales of employer satisfaction and employer compliance. The evaluation team revised the satisfaction and compliance scales from the scales used in the Web Basic Pilot evaluation report to be able to understand various aspects of employer satisfaction that were available from new survey questions in the Web survey. To construct the scales, a mixed-method approach was applied using both theory-driven and data-driven analysis to explore the item-scale relationship. The theory-driven model grouped the items relevant to each underlying construct and used these groupings to guide the analysis. The items⁵⁸ used in the scales are as follows:

3.1.2.1.1. Satisfaction Scale

For the system registration and start-up process:

- The online registration process was easy to complete.
- The online registration process was too time-consuming.
- The content of the online tutorial was easy to understand.

⁵⁸ See Appendix F for the E-Verify survey with complete question wording.



- The tutorial adequately prepared us to use the online verification system.
- The tutorial answers all of our questions about using the online verification system.
- The tutorial takes too long to complete.
- It is a burden to have to pass the Mastery Test before being allowed to use the online verification system.
- The available E-Verify system reports cover all of our reporting needs.

For financial burden:

- Indirect costs for setting up the system; and
- Indirect costs for maintaining the system.⁵⁹

For attitudes toward E-Verify procedures:

- It is impossible to fulfill all the employer obligations required by the E-Verify verification process.
- Overall, E-Verify is an effective tool for employment verification.
- E-Verify reduces the chances of getting a mismatched SSA earnings letter.

3.1.2.1.2. Compliance Scale

For notifying TNC findings to employees:

- Employees who fail initial verification are informed privately.
- Written notification of a Tentative Nonconfirmation is given to employees.
- In-person notification of Tentative Nonconfirmation is given to employees.
- We don't tell employees about the Tentative Nonconfirmations but let them continue to work for us.
- We decide not to hire employees receiving Tentative Nonconfirmations without telling them about the finding.

⁵⁹ Direct costs were not included in the scale because the questions were not framed in a suitable way for incorporation. The employer was asked how burdensome indirect costs were, but more specifically, to provide estimates of the expenditures of the direct costs.

- We decide to fire employees receiving Tentative Nonconfirmations without telling them about the finding.

For practices related to contesting the TNC:

- Contesting a Tentative Nonconfirmation is not encouraged because the process required too much time.
- Providing assistance to employees who contest a Tentative Nonconfirmation is an excessive burden on staff.
- Contesting a Tentative Nonconfirmation is not encouraged because employment authorization rarely results.
- Establishing employment authorization has become a burden because there are so many Tentative Nonconfirmations.
- Work assignments must be restricted until employment authorization is confirmed.
- Pay is reduced until employment authorization is confirmed.
- Training is delayed until after employment authorization is confirmed.

3.1.2.2. Other Indicators

Exhibit II-7 lists a set of indicators of key concepts other than the scales discussed above that were developed for measuring program success. The exhibit indicates the dimension being measured by each of the indicators or set of indicators. Each of these indicators or indicator sets is also described below.

The indicators, other than the satisfaction score and the compliance score presented in Exhibit II-7, are as described here.

- **Dissimilarity Index.** This index is defined as the mean of the absolute differences between E-Verify and the nation on a particular characteristic. This index is used to indicate how dissimilar E-Verify employers and the workers for whom they submit cases are to the entire U.S. population of employers and workers. The index, which theoretically ranges from 0 to 100, should be considered as a rough indicator, especially when comparing differences between various characteristics, because they are sensitive to the often arbitrary categories used for comparisons.
- **Ratio of E-Verify cases to newly hired employees nationally.** This indicator of E-Verify usage is calculated by dividing the number of cases entered into the E-Verify Program by the number of newly hired employees in the country (estimated from the Job Openings and Labor Turnover Survey (JOLTS)) for the same time period. This indicator does not suffer from changing definitions of employer; however, the workers with cases submitted to E-Verify are not strictly comparable to “new hires” according to the

Exhibit II-7. Selected Indicators Used in Examining Program Success

Indicator	Aspect of program success indicator reflects
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RESEARCH METHOD:

	Similarity of characteristics of E-Verify and national participants	Usage	Timeliness	Accuracy	Reduction of unauthorized employment	Employer compliance	Employer satisfaction	Employee burden and discrimination
Dissimilarity Index	x							
Ratio of E-Verify cases to newly hired employees nationally		x						
Number of employers transmitting cases to E-Verify		x						
Percent of employers using E-Verify within 3 months of signing the MOU		x						
Mean number of days between case initiation and case resolution			x					
Mean number of days between [action 1] and [action 2]			x					
Estimated inaccuracy rate for authorized workers				x				
Estimated inaccuracy rate for unauthorized workers				x				
Estimated total inaccuracy rate				x				
Erroneous TNC rate for ever-authorized workers				x				
Satisfaction score							x	
Compliance score						x		
Effectiveness rate					x			
Worker costs for resolving TNCs								x
Gap between [group1] and [group 2]								x

definition used in national studies. Since there is evidence that some employers are screening job applicants and others are using a definition of “new hire” that is more inclusive than the definition used in the Federal survey,⁶⁰ this indicator presumably overestimates the percentage of new employees entered into the E-Verify Program. Differences between the two groups of employers may also arise from differences in the in-scope definitions used by E-Verify versus JOLTS. Most importantly, “...JOLTS does not cover private households (NAICS 814110) or agriculture, forestry, fishing and hunting (NAICS 11). However, logging (NAICS 1133) is included.”⁶¹ E-Verify is not restricted to employers in any NAICS code; however, private households do not tend to enroll in E-Verify. To the extent that discrepancies between the two measures change over time, they could also impact the size of observed changes.

- **Number of employers transmitting cases to E-Verify.** This measure is based on transaction data; however, the identification of employers is based on the employer IDs assigned at registration. As discussed above, the definition of “employer” may not be constant over time.
- **Percent of employers using E-Verify within three months of signing the MOU.** This indicator reflects usage among those employers actually registering for the system. Rates are calculated for this indicator based on when the MOU was signed. Since this rate cannot be calculated until three months after the end of the period of interest, the latest quarter that can be presented based on data from June 2004 through June 2008 is for employers signing the MOU in January through March 2008. Other time intervals could have been used for this indicator, e.g., the percentage transmitting cases within one year; however, these would have resulted in fewer time points for examination. This indicator is limited by changes in the definition of “employer,” resulting in values that may not be strictly comparable over time.
- **Mean number of days between case initiation and case resolution** is the mean number of calendar days between when the employer transmits a case to the E-Verify database and its final resolution. For most cases, final resolution is calculated on the basis of the last date in which the Transaction Database has an entry for a Federal action, e.g., for issuing a work-authorization finding. However, for FNC cases, there is not always a date of the final finding captured in the Transaction Database. In this situation, the earlier of the case closure code and a default value of 14 days subsequent to issuance of the TNC is used as the resolution date. This overstates the amount of time from the employer’s perspective when the employer does not enter a closure code for workers who say they do not wish to contest the TNC or those quitting when they are told about the TNC finding. On the other hand, it understates the time for cases without closure codes when the employer refers a case to SSA or USCIS and the worker never contacts those agencies, since this does not include any time that may have elapsed between the initiated date and the referral date.
- **Mean number of days between [action 1] and [action 2]** are the mean number of days between two events, such as hiring and entry of information into the E-Verify database. If not otherwise noted, these are calendar days.
- **Estimated inaccuracy rate for authorized workers** is defined as the percentage of cases for workers with employment authorization who are not found to be work authorized either

⁶⁰See Chapter VIII for a discussion of this issue.

⁶¹ Downloaded from <http://www.bls.gov/jlt/jltsampl.htm> (March 23, 2009).

initially or at the end of the resolution period in the verification process. This inaccuracy rate, which is sometimes referred to as false negatives,⁶² is subject to significant measurement error since there is not an easy way to determine those who are work authorized beyond the fact that they were so confirmed by the system. The inaccuracy rate itself does not provide information on the sources of inaccuracies (e.g., out-of-date or inaccurate Federal records, or employers' inputting information incorrectly).

- **Estimated inaccuracy rate for unauthorized workers** is defined as the percentage of workers without employment authorization **who were incorrectly found to be work authorized. Worker identify fraud** is believed to be the major source of these inaccuracies. This inaccuracy rate is subject to even greater measurement error than the estimated inaccuracy rate for authorized workers, since there is no information about unauthorized workers comparable to that obtained in the contesting process for those receiving TNCs.⁶³
- **Estimated total inaccuracy rate** is defined as the percentage of cases with an incorrect finding. Like the two preceding inaccuracy rates, it is subject to significant measurement error. This inaccuracy rate is not the sum of the two preceding rates but the sum of the number of the inaccuracies for authorized workers and the number of inaccuracies for unauthorized workers divided by the total number of cases submitted to E-Verify. Since there are assumed to be a much larger number of workers with employment authorization than workers without employment authorization, the total inaccuracy rate, which can be viewed as a weighted average of the two types of inaccuracy rates, is much closer to the inaccuracy rate for workers with employment authorization.
- **Erroneous TNC rate for ever-authorized workers** (or erroneous TNC rate for workers ever found work authorized) is defined as the percentage of workers found to be work authorized at any point in the verification process who received a TNC prior to receiving a work-authorized finding. This measure is estimated directly from data on the Transaction Database and, thus, is likely to be more precise than the preceding inaccuracy rates, permitting comparisons between worker groups and over-time trends. However, it is lower than the inaccuracy rate for authorized workers because it does not include inaccuracies for employment-authorized workers who do not contest TNCs, including workers who are never properly informed of the TNC and workers who quit for reasons unrelated to the TNC.
- **Effectiveness rate** is defined as the percentage of workers without employment authorization who were correctly not found to be employment authorized. This rate is equal to 100 percent minus the estimated inaccuracy rate for unauthorized workers and is thus subject to the same measurement problems as the inaccuracy rate for unauthorized workers. The primary reason to use this rate in addition to the inaccuracy rate is that the terminology emphasizes how well E-Verify is doing in meeting the considerable challenge of identifying workers without employment authorization.
- **Worker costs for resolving TNCs** are estimated from the worker interviews. They are based on the responses of the 144 interviewed workers who contested TNCs. Of course, they may not

⁶²The evaluation team decided not to use the terms “false negatives” and “false positives” because not everyone uses them in the same way when discussing work-authorization status.

⁶³See also the effectiveness rate discussed below.

recall the costs accurately. It is also likely that workers are unaware of all of their costs, because they do not necessarily know why employers take certain actions (such as not hiring the worker, restricting training, etc.). It is possible, too, that some of the estimated costs were incorrectly attributed to the TNC.

- **Gap between [group 1] and [group 2].** This set of indicators is used to describe whether intentional discrimination exists between a protected group (in this context, usually noncitizens or foreign-born workers) compared to the “dominant” group in the population (in this context, usually citizens or U.S.-born workers) and, if so, what trends, if any, are there in the gap of interest. The gap variables are simply the differences between group 1 and group 2 on the variable. For example, if workers attesting to being citizens have an erroneous TNC rate of 0.3 percent compared to 2.1 percent for noncitizens, the gap is 1.8 percent. This gap can be compared to gaps for other time periods to get a sense of whether discrimination is increasing or decreasing.

3.1.3. Time Periods for Analyzing Transaction Database

Many of the analyses in this report focus on trends using data from the Transaction Database. There are numerous time intervals that could be used in examining these trends (e.g., annual, semiannual, quarterly, monthly). Earlier evaluation reports primarily focused on annual and semiannual data, since the number of transactions in the earliest time periods were unlikely to give highly stable estimates for some of the measures due to the limited numbers of employers and transactions. For the current report, the evaluation team selected quarters of the Federal fiscal year as the standard time period for use in examining the data.⁶⁴ This decision was based on the fact that the program growth has resulted in much more stable estimates of measures based on quarterly data and a desire to have additional data points for examining trend data.

When the transaction data are used to examine the relationship between variables at a particular point of time, analyses are done for April through June 2008, the most recent quarter of data available, unless the analytic objectives require using a different time period. Not only are data from this quarter fairly recent, but limiting the time period examined results in the data being subject to less variability due to program changes that may affect data comparability over time.

Since some of the trends examined in this report evidence considerable seasonality,⁶⁵ trend comparisons are typically made between the same two quarters in two or more years (e.g., April through June 2008 versus April through June 2007 and April through June 2006). Although analyses of the reasons for the underlying trends and smoothing techniques are reasonable and would be interesting, time constraints prevented more sophisticated analyses of the seasonal fluctuations.

3.1.4. Model-Based Estimates of Inaccuracy Rates

This section provides an overview of how the model-based inaccuracy rate estimates used in this report were made. Readers wishing a more detailed technical explanation should read Appendix B in addition to this chapter.

⁶⁴Exceptions to this rule were made when there was a compelling reason to doing so, such as when examining the effects of programmatic changes that took place in the middle of a quarter.

⁶⁵See Chapter IV for an illustration of the seasonality in the number of transmissions.

Two of the most basic questions addressed in this report are (1) how accurate is E-Verify,⁶⁶ and (2) how effective is E-Verify in identifying workers without employment authorization (also referred to as work authorization in this report)?⁶⁷ Ideally, calculations of inaccuracy rates would be based on the true employment-authorization status of the workers with cases submitted to E-Verify, so that their true status can be compared with the E-Verify finding. If this information were available, estimating inaccuracy rates would be straightforward as illustrated in Exhibit II-8 and the following text. Since it is not available, it is necessary to use estimates of some of these numbers.

Exhibit II-8. Information Needed to Calculate Inaccuracy Rates Used in This Report

E-Verify finding	True employment-authorization status		Total
	Employment authorized	Not employment authorized	
Employment authorized	<i>Correct finding for authorized workers</i> (N ^a ...A)	<i>Unauthorized case found to be employment authorized</i> (N ^u ...A)	<i>Total found by E-Verify to be employment authorized</i> (N ^t ...A)
Not employment authorized	<i>Authorized case not found employment authorized</i> (N ^a ...X)	<i>Correct finding for unauthorized workers</i> (N ^u ...X)	<i>Total not found by E-Verify to be employment authorized</i> (N ^t ...X)
Total	<i>Total truly employment authorized</i> (N ^a)	<i>Total truly unauthorized</i> (N ^u)	<i>All cases</i> (N ^t)

NOTES: Cases in which the true employment-authorization status and the E-Verify finding are inconsistent are highlighted in this exhibit. Explanation of the naming conventions used for variables in the report are available in Exhibit B-1.

The following inaccuracy rates are used in this report:

The **inaccuracy rate for authorized workers** (E^a) is the percentage of workers with employment authorization who are not found by E-Verify to be employment authorized⁶⁸ (in other words, they either received FNCs or unauthorized findings), i.e.:

$$E^a = (N^a \dots X) / N^a$$

The **inaccuracy rate for unauthorized workers** (E^u) is the percentage of workers without employment authorization who are found to be employment authorized, i.e.:

$$E^u = (N^u \dots A) / N^u$$

⁶⁶Discussed in Chapter VI.

⁶⁷Discussed in Chapter VII.

⁶⁸Explanation of the naming conventions used for variables in the report are available in Exhibit B-1.

The **total inaccuracy rate** (E^t) is the percentage of workers who received a finding that is not consistent with their true employment-authorization status, i.e.:

$$E^t = [(N^u \dots A) + (N^a \dots X)] / N^t$$

Note that E^t is not equal to the sum of the two inaccuracy rates above because the disproportionately large number of workers with employment authorization in the labor force results in the total inaccuracy rate being much closer to the inaccuracy rate for employment-authorized workers.

In examining the effectiveness of E-Verify in identifying workers without employment authorization, an **effectiveness rate** (F) is estimated. This rate is defined as 1.00 minus the E-Verify inaccuracy rate for unauthorized workers, i.e.:

$$F = 1.00 - E^u$$

Unfortunately, the true employment-authorization status of workers with cases submitted to E-Verify cannot be directly measured or easily determined. The major challenges in estimating the inaccuracy rates are as follows:

- FNC cases from E-Verify include both persons without employment authorization who are unlikely to contest TNCs and employment-authorized workers who do not contest for a variety of reasons. For example, employment-authorized workers might not contest because they were not clearly informed of the TNC or because they decided to leave the job for reasons either related or unrelated to the TNC finding.
- Some workers without employment authorization are found to be employment authorized by committing identity fraud that cannot be detected by E-Verify.

Because the inaccuracy rates cannot be directly determined from the information available, the evaluation team uses model-based estimates of these rates.⁶⁹ Like any model-based estimates, these estimates are dependent upon the reasonableness of the assumptions underlying the model as well as the accuracy of the data used in constructing the model. As is typical of model-based estimates, the assumptions used in developing these estimates are based on the best data available from the evaluation and other reliable sources such as the Census Bureau, the Department of Labor, and recognized immigration experts.

The following assumptions underlying the model are “built into” it:

- The final work-authorization findings for workers who contest TNCs are correct, i.e.:

$$N^a \dots U = 0$$

$$N^u \text{RICA} = 0$$

Where $N^a \dots U$ refers to authorized workers who are found to be unauthorized after contesting a TNC and $N^u \text{RICA}$ are unauthorized workers who contest a TNC and are found to be work authorized.

⁶⁹See Appendix B for more detailed information on the model.

- When a TNC finding is issued, employer and worker behaviors may differ depending upon the person's true work-authorization status, but those behaviors are not dependent upon the reason for the TNC. For example, workers not matched because of invalid SSNs were not more or less likely to have been informed of a TNC than were workers whose names did not match the SSA database.
- The ratio (k) of employment-authorized workers who receive FNCs because they did not contest after being informed of their TNCs ($N^{a}RID$) to the number of employment-authorized workers who received FNCs because they were not informed of their TNCs ($N^{a}RN$) is approximately .183. This ratio is based on information from onsite worker interviews, i.e.:

$$k = N^{a}RID/N^{a}RN = .183$$

The model also requires the model user to estimate two key parameters:

- **The percentage of all employment-authorized workers who were informed of their TNCs ($P^{a}RI$).** This value is assumed to be 70 percent with a plausible range from 60 to 80 percent. This range is based on information gathered during the evaluation:
 - On the employer Web survey, 98 percent of employers reported that they always informed their employees of TNCs.
 - Among the 100 onsite study employers that discussed their employee notification processes, 96 said that they always notify employees of TNCs.
 - However, there is good reason to believe that employers underreport noncompliance with E-Verify notification procedures. Among the 82 employers with two or more workers receiving TNCs, 37 had one or more employees who reported that they did not receive an explanation. This may be an overestimate of noncompliance because workers may not recall having the notice explained.
 - Among the 108 onsite study employers for which the evaluation team reviewed employment verification files of workers receiving TNCs, over half were missing copies of TNC notices for a majority of the workers for whom cases had been submitted to E-Verify. In some of these cases, it is likely that the employer provided the worker with the notice but did not correctly file it, as specified in E-Verify procedures.

Based on the totality of the above information, the evaluation assumes that the actual percentage is between 60 percent and 80 percent, with 70 percent being a reasonable point estimate.

- **The estimated percentage of all cases submitted to E-Verify for workers who are not employment authorized (P^{u}).** For the purpose of this report, the percentage of unauthorized workers with cases submitted to E-Verify is estimated to be 6.2 percent with a plausible range from 4.7 to 7.5 percent. This range was based on the following information: The Pew Hispanic



Center estimate of workers in the national labor force who were not work authorized in 2008 is 5.4 percent.⁷⁰

- Standardizing the E-Verify transaction data to compensate for the state and industry differences between the national labor force and the Transaction Database cases provides an estimate that 6.7 percent of E-Verify cases are for unauthorized workers.
- The 6.7 percent rate is further adjusted to take into account the fact that unauthorized workers tend to be more mobile than other workers due to a number of factors, including their lower educational attainment and disproportional employment in occupations with high turnover rates and in seasonal employment. According to Pew, the geographic mobility rate for immigrants between 2007 and 2008 was 18 percent for unauthorized immigrants compared to 11 percent for U.S.-born residents, meaning that unauthorized immigrants are 60 percent more mobile than U.S.-born workers. Assuming a correlation of geographic and job mobility, the estimated percentage of unauthorized workers among new hires would be 10.7 percent.
- The 10.7 percent rate is adjusted to account for employment in the informal labor market (in which employees are paid “off the books”) since employers in the informal labor market would be unlikely to use E-Verify. The Immigration Policy Center estimates that between 25 percent and 50 percent of unauthorized workers are in the informal labor market. With this adjustment, it is estimated that between 5.4 and 8.0 percent of workers with cases submitted to E-Verify were unauthorized.
- The Pew estimate of unauthorized workers in the labor force is most likely an underestimate according to the Director of the Office of Immigration Statistics, U.S. Department of Homeland Security.
- Based on the above information, a point estimate of 6.2 percent and a range of 4.7 to 7.5 percent were used as the plausible range.

Most inaccuracy rates in this report are based on the initial case findings (i.e., a TNC or an employment-authorized finding without a TNC), because estimating final inaccuracy rates is generally more difficult than estimating the initial inaccuracy rates. If a final inaccuracy rate is estimated, it will be noted; otherwise, it can be assumed that the report is referring to initial inaccuracy rates.⁷¹

⁷⁰Jeffrey S. Passel, Senior Demographer, Pew Hispanic Center, and D'Vera Cohn, Senior Writer, Pew Research Center, *A Portrait of Unauthorized Immigrants in the United States*, 4.14.2009 (<http://pewhispanic.org/reports/report.php?ReportID=107>).

⁷¹The final inaccuracy rate for employment-authorized workers would be lower than that based on the initial finding and the final inaccuracy rate for non-employment-authorized workers would be approximately the same as the initial inaccuracy rate, since the contesting process permits some TNCs to be corrected, resulting in a final finding of work authorized. Although employers can ask for a reconsideration of a work-authorization finding, as discussed in Chapter VII, it is rare for an initial finding of work authorized to be changed, so that the initial and final inaccuracy rate for workers without employment authorization should be virtually the same.

3.2. Data Analysis

3.2.1. Quantitative Analyses

Quantitative data were collected from Web surveys of employers, reviews of worker verification records, coded information from onsite interviews, and secondary data (the Transaction Database, employer registration data, and Federal data sources). Most of the quantitative analyses of these data in this report consist of simple descriptive statistics (e.g., means and frequencies). WesVar was used for tests of significance when weighted data from the Web survey were examined. When comparing 2006 and 2008 Web survey responses, *t*-tests for means were performed after adjusting for the unweighted 2006 survey responses and the weighted 2008 survey responses. For analyses using 2008 Web survey responses only, ANOVA with Bonferroni adjustment for multiple comparisons was used. For the satisfaction and compliance scales, WesVar was used followed by *t*-tests with Bonferroni adjustment in Excel.

When differences between the 2006 and 2008 Web surveys are not statistically significant, the lack of statistical significance is noted either by a direct statement to that effect or by describing the results of the two surveys as “similar” or approximately the same. Tests of statistical significance were not performed when analyzing Transaction Database data, because the large number of transactions ensured statistical significance even when differences are very small.

3.2.2. Qualitative Analyses

Most of the information collected from the onsite interviews was descriptive in nature. The information from these interviews was captured in summaries. These summaries highlighted information relevant to understanding discrimination against workers, especially information about the impacts of TNCs on workers and evidence of whether employers were following E-Verify procedures designed to minimize the negative impacts of TNCs.

Qualitative information was also obtained from open-ended questions in the employer Web survey. These were used primarily to provide descriptive information and specific employer suggestions.

As noted above, analysis of the qualitative data was facilitated through the use of NVivo, a software package for use in coding qualitative data. Interview summaries were coded in the program, and analysts reviewed the data for employers, workers, and subgroups of these populations. Some of the results of the NVivo coding were used in quantitative analyses, primarily as descriptive statistics.

For questions on the onsite protocols, counts of employers and workers providing specified responses are presented along with the number of persons responding to the question. In some cases, employers or workers volunteered information of interest that was recorded; since there is no way of knowing how other employers would have responded if asked for the same information, the report can only provide the number of cases in which employers or workers made a specific statement or recommendation.

CHAPTER III. PUTTING CHANGES IN CONTEXT

1. INTRODUCTION

This chapter examines several questions that help to place the remainder of the report into context:

- What are the recent system outcomes?
- What changes have there been in the characteristics of E-Verify employers and the workers for whom they submit cases since the start of the Program?
- How do E-Verify employers and the workers with cases submitted to E-Verify differ from all employers and all new hires in the nation?
- What legislative changes might have affected program outcomes?
- What recent programmatic changes might have had an impact on program outcomes?

Parts 2 and 3 of the report will use the answers to these questions to help in understanding past trends and likely future trends.

The policy goals of E-Verify, as stated in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which originally authorized the E-Verify 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. One of the basic conundrums facing the E-Verify Program is that implementing procedures designed to move the Program closer to one goal may impede its ability to meet another goal. For example, procedures aimed at reducing unauthorized employment by making it harder for noncitizens without work authorization to avoid detection may increase the likelihood that work-authorized noncitizens will erroneously receive Tentative Nonconfirmations (TNCs), which may lead to discrimination against them. Although the evaluation team can provide information about the effects of E-Verify on multiple goals in this situation, deciding whether to keep or implement a new procedure must reflect the relative priority of the goals as well as the magnitude of the effects on the goals. Such judgments cannot appropriately be made by the evaluators.

2. SYSTEM OUTCOMES

2.1. Background

To answer the evaluation questions discussed in Parts 2 and 3, it is necessary to have an understanding of recent system outcomes. This chapter first presents summary outcome information for April through June 2008, the most recent period available for analysis at the time this report was written. It then discusses outcomes separately for persons attesting to be citizens on the Form I-9 and those stating they are noncitizens, because the verification processes differ for these two groups. Finally, trends in E-Verify



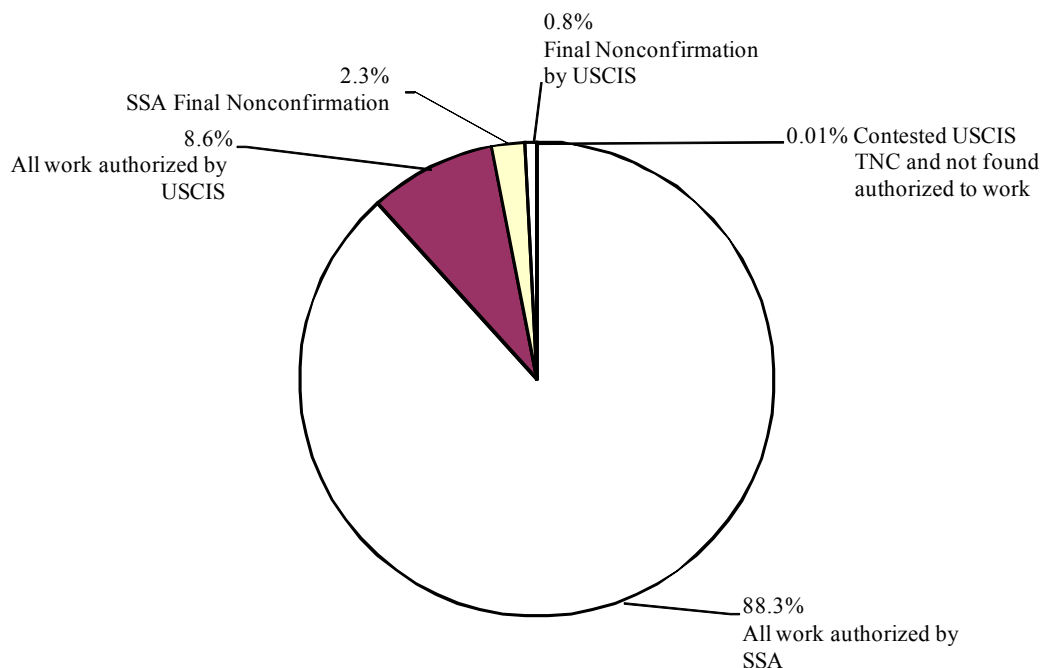
outcomes are presented and briefly discussed. More information on these trends is contained in the later chapters.

2.2. Findings

2.2.1. Overview of Outcomes During April Through June 2008

Most cases submitted to E-Verify are found to be work authorized. Between April and June 2008, employers submitted over 1.7 million cases to E-Verify. As shown in Exhibit III-1, 88 percent of cases were confirmed by the Social Security Administration (SSA) to be work authorized, and 9 percent were verified by the U.S. Citizenship and Immigration Services (USCIS) as being individuals authorized to work. Only 0.01 percent (181 cases) were found to be unauthorized by USCIS. The remaining 3 percent of all cases were never resolved by the worker (2 percent received “Final Nonconfirmation by SSA” and 1 percent received “Final Nonconfirmation by USCIS”). In these cases, workers did not contest TNC responses from SSA or USCIS because they were not work authorized, did not understand what they needed to do to contest, or their employers did not follow the proper notification procedures.⁷²

Exhibit III-1. Final E-Verify Outcome Findings: April–June 2008



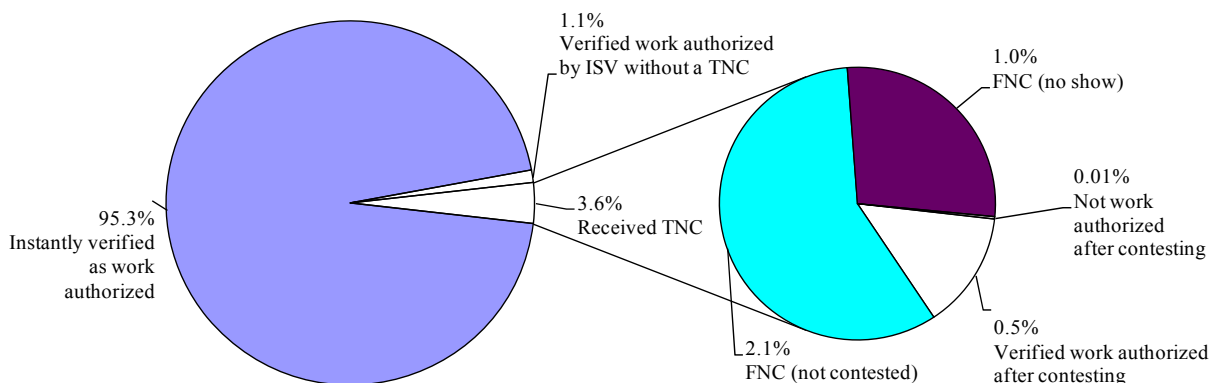
SOURCE: E-Verify Transaction Database.

Most workers are instantly found to be employment authorized. Exhibit III-2 reflects some of the intermediate steps in the verification process. In April through June 2008, 95 percent of workers were instantly found to be work authorized (88 percent by SSA and 7 percent by USCIS) and an additional 1 percent (19,300 cases) were verified as work authorized after an initial “in process” finding and review

⁷² See Appendix C for a more detailed table displaying case outcomes.

by an Immigration Status Verifier (ISV) without a TNC being issued.⁷³ TNCs were issued for approximately 4 percent of all cases. Among all the cases receiving TNCs, 2 percent became Final Nonconfirmations (FNCs) because, according to information in the Transaction Database, they did not contest the initial finding. Another 1 percent of all cases submitted to the Transaction Database in April through June 2008 became FNCs because the workers failed to complete the TNC resolution process. Less than 1 percent of all cases were found to be work authorized after contesting a TNC (0.3 percent by SSA and 0.1 percent by USCIS).⁷⁴

Exhibit III-2. E-Verify Findings, Reflecting Intermediate Steps: April–June 2008



NOTES: “Not contested” Final Nonconfirmations (FNCs) are ones issued when employers do not report through E-Verify that they have referred workers to SSA or USCIS to resolve Tentative Nonconfirmations (TNCs). Not contested TNCs occur when workers tell their employers that they do not wish to contest; however, they also occur when workers are not told about their TNCs. “No show” FNCs are those in which the employers report that they have referred workers to SSA or USCIS but workers do not contact the agency.

SOURCE: E-Verify Transaction Database.

Only a small percentage of TNC cases are contested, and most of them are found to be work authorized. In April through June 2008, 62,000 cases received a TNC from SSA or USCIS. Among these TNC cases, approximately 8,200 (13 percent) were contested and 8,000 of the contested cases (98 percent) were found to be work authorized.

2.2.2. Case Outcomes for Workers Attesting to Being U.S. Citizens

From April through June 2008, employers submitted over 1.5 million cases to E-Verify for persons attesting to being U.S. citizens. As illustrated in Exhibit III-3, 98 percent of these cases were instantly confirmed as work authorized by SSA at the first verification attempt; the remaining 25,000 (2 percent) of the cases received TNCs.

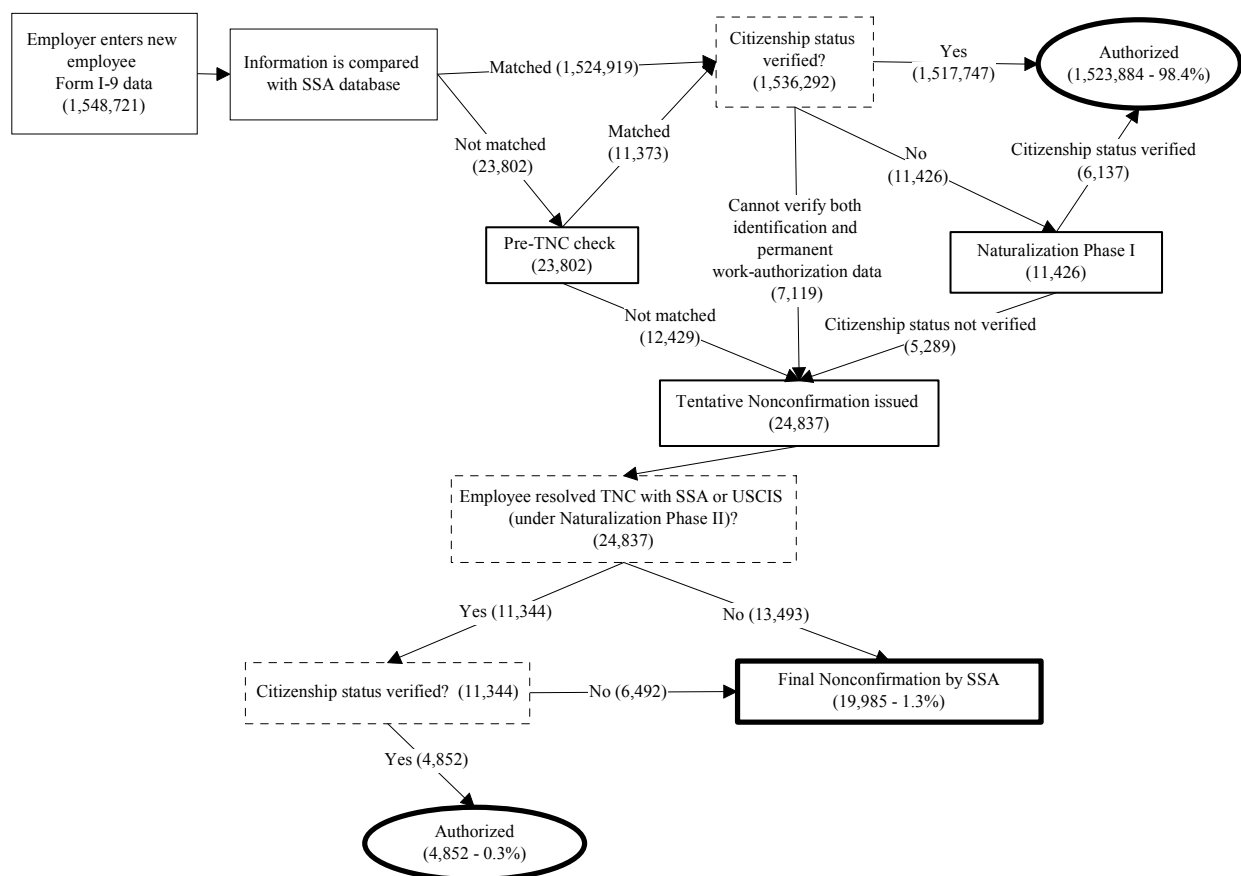
Among U.S. citizen cases receiving TNCs, approximately 20 percent (5,000) were contested and found to be work authorized. U.S. citizen cases found to be work authorized after a TNC constituted approximately 0.3 percent of all transactions for persons attesting to being U.S. citizens.

⁷³ The title of the ISVs has recently been changed to Management and Program Assistants; however, the older title is retained here because it is more descriptive of the work they do.

⁷⁴ The sum of these percents is not equal to the total because of rounding.

For persons attesting to being U.S. citizens, 1 percent (20,000 cases) of all transactions represented FNC outcomes from SSA queries. In those cases, SSA was unable to confirm the individual's authorization to work during its automated matching processes. For a variety of reasons, the original TNC findings were not contested and followed to completion. For instance, the Transaction Database records indicate that 68 percent (14,000) of all SSA FNC cases related to workers who were not referred to SSA. In some of these cases, the workers were informed of problems but decided not to contest their TNCs, possibly because they were not work authorized and were fraudulently attesting to being U.S. citizens or for other reasons. In other cases, it is likely that the employer did not inform the worker or did not provide all the information needed to contest in a way that the worker could understand.

Exhibit III-3. Verification Process for Persons Attesting to Being U.S. Citizens on Form I-9: April–June 2008



SOURCE: E-Verify Transaction Database.

The remaining 6,000 SSA FNC cases for workers attesting to being U.S. citizens include workers who told their employers that they would contest but did not do so either because they had falsely attested U.S. citizenship and were not work authorized or for other reasons. For example, seven onsite study employers volunteered the information that they had had experiences with employees who stated they were going to

contest but never actually did.⁷⁵ Only one employer said that after indicating they would contest, employees worked until their contesting period was up (or the first pay day, whichever came first) and then did not return to work. The other six of these employers said that their employees had received TNC notices and indicated they were going to contest, but never returned to work after receiving the TNC.

When a worker attesting to being a U.S. citizen decides to contest, the employer should refer the case in the system to SSA or, for cases that SSA data matches but citizenship cannot be confirmed, to SSA or USCIS. If a case was not instantly confirmed as employment authorized, the system captured the reason for the TNC. This SSA response code indicated that among these TNC cases for persons attesting to being U.S. citizens in April through June 2008:

- 39 percent (approximately 7,700) were cases with Form I-9 data matched to SSA data for which SSA could not confirm citizenship status (Exhibit III-4);
- 29 percent (5,800) occurred because either the date of birth (DOB) or the name disagreed with SSA database (15 percent and 14 percent, respectively);
- 26 percent (5,200) were cases in which both name and DOB disagreed with the SSA database;
- 5 percent (approximately 1,000 cases) had an invalid Social Security number (SSN) when compared to SSA data.
- 2 percent (approximately 300 cases) had a matching SSN, but the number apparently belonged to a deceased person.

Exhibit III-4. Citizen FNC Cases, by SSA Response Code: April–June 2008

RESPONSE CODE	NUMBER	PERCENT
Total	19,985	100.0
Matched, but not work authorized	7,723	38.6
DOB and name not matched	5,160	25.8
DOB not matched	3,062	15.3
Name not matched	2,704	13.5
Invalid SSN	987	4.9
Matched, but death indicator present	342	1.7
SSN does not verify, other reason	7	0.0

NOTE: Sum does not add to 100 percent because of rounding.

SOURCE: E-Verify Transaction Database.

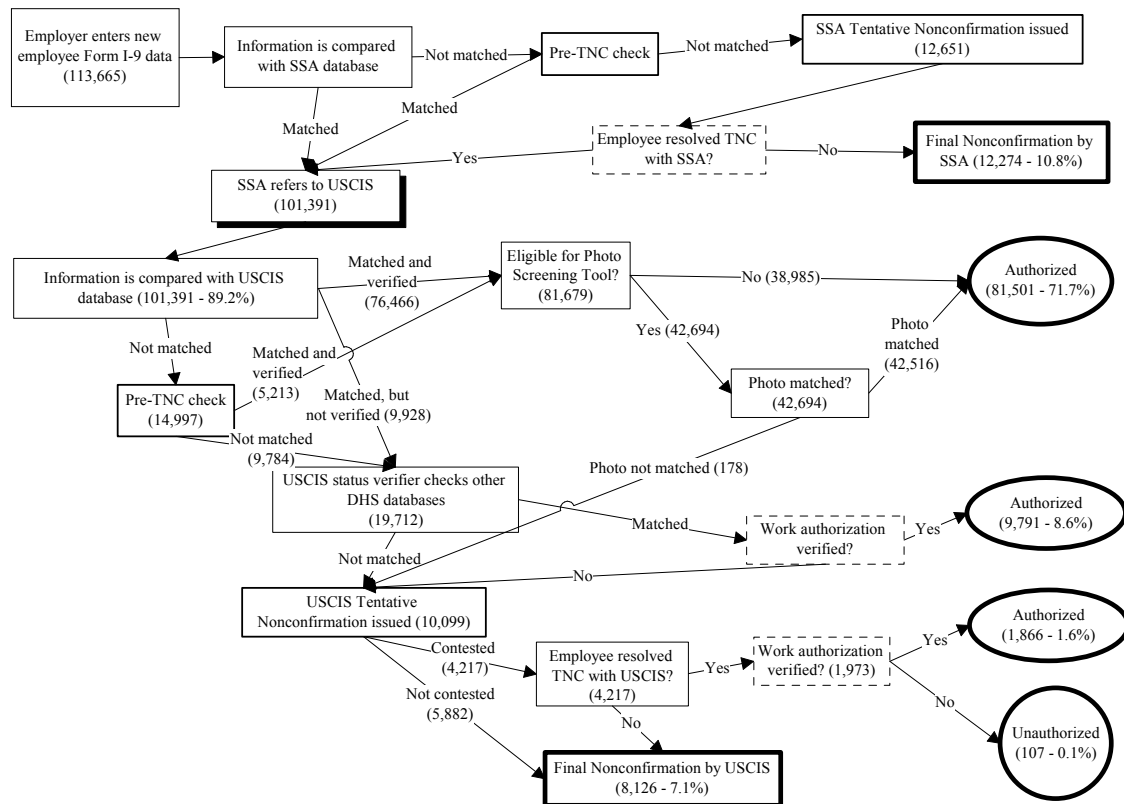
2.2.3. Case Outcomes for Workers Attesting to Being Noncitizens

From May 5 through June 2008, employers submitted cases for approximately 114,000 persons attesting to being work-authorized noncitizens on their Form I-9s. The outcomes of these cases are displayed in Exhibit III-5.

⁷⁵ This question was not in the interview protocol; however, interviewers were instructed to record relevant comments related to E-Verify even if the volunteered information did not relate to any of the questions.



Exhibit III-5. Verification Process for Persons Attesting to Being Noncitizens on Form I-9: May 5–June 2008



SOURCE: E-Verify Transaction Database.

In 11 percent (approximately 12,000) of the noncitizen 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 TNC that later became an SSA FNC (Exhibit III-6). The initial SSA findings for these SSA FNCs are:

- 66 percent (8,100 cases) used both a name and DOB that differed from the SSA database;
- 18 percent (2,200) had an invalid DOB or name;
- 16 percent (1,900) had invalid SSNs; and
- Less than 1 percent (40 cases) used an SSN that matched but belonged to a person who was deceased.

Exhibit III-6. Noncitizen SSA FNC Cases, by SSA Response Code: May 5–June 2008

RESPONSE CODE	NUMBER	PERCENT
Total	12,274	100.0
DOB and name not matched	8,143	66.3
Invalid SSN	1,912	15.6
DOB not matched	1,349	11.0
Name not matched	828	6.7
Matched, but death indicator present	41	0.3
Other reason	1	0.0

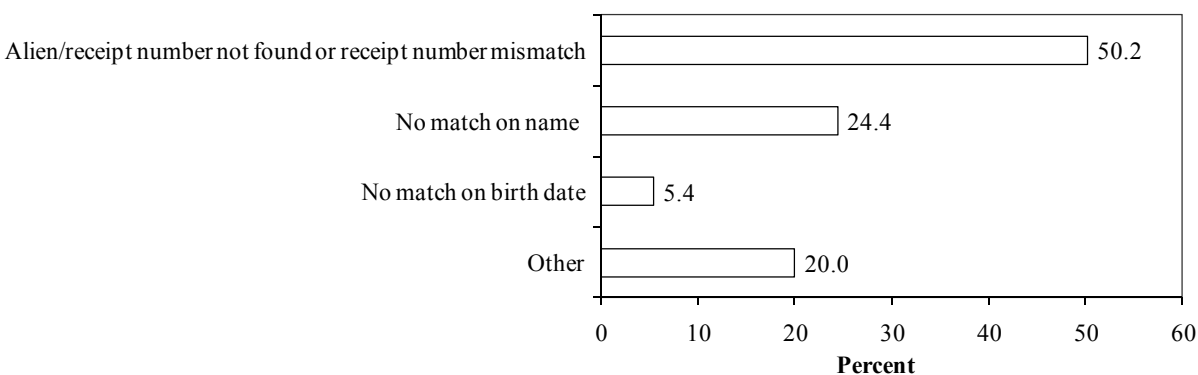
SOURCE: E-Verify Transaction Database.

Approximately 101,000 cases (89 percent of all noncitizen cases) in which the worker attested to being a noncitizen were forwarded to USCIS after SSA confirmed that the Form I-9 identifying information matched SSA's database information. Although the SSA finding usually was made instantaneously, a few of these cases were forwarded to USCIS after a resolved SSA TNC.

When noncitizens are able to resolve SSA TNCs, the resolved case information is forwarded to USCIS for verification of the work authorization. It is thus possible for noncitizens to resolve a TNC with SSA and then receive a TNC from USCIS. From May 5 through June 2008, there were 377 cases in which a noncitizen resolved a case with SSA after a TNC. All were authorized without a USCIS TNC.

The employer-submitted information for noncitizen cases forwarded to USCIS is electronically matched against the USCIS database. Of those 101,000 USCIS-referred cases, 72 percent were instantly confirmed as work authorized by USCIS at the first attempt; an additional 9 percent of the cases were confirmed as work authorized after an ISV review or after the worker successfully contested a TNC.

Similar to the SSA portion of the system, the USCIS portion captured the reason for the TNC when a case was not confirmed to be employment authorized. Among the 8,000 cases that received a USCIS FNC, the most frequent problem was an alien or receipt number that either was not found or there was a mismatch, the reason given in 4,100 (50 percent) of the cases (Exhibit III-7). In 1,900 cases (24 percent), there was no match on name and in 400 cases (5 percent) there was no match on the DOB. In the remaining 20 percent of the cases, there was another reason for the TNC.

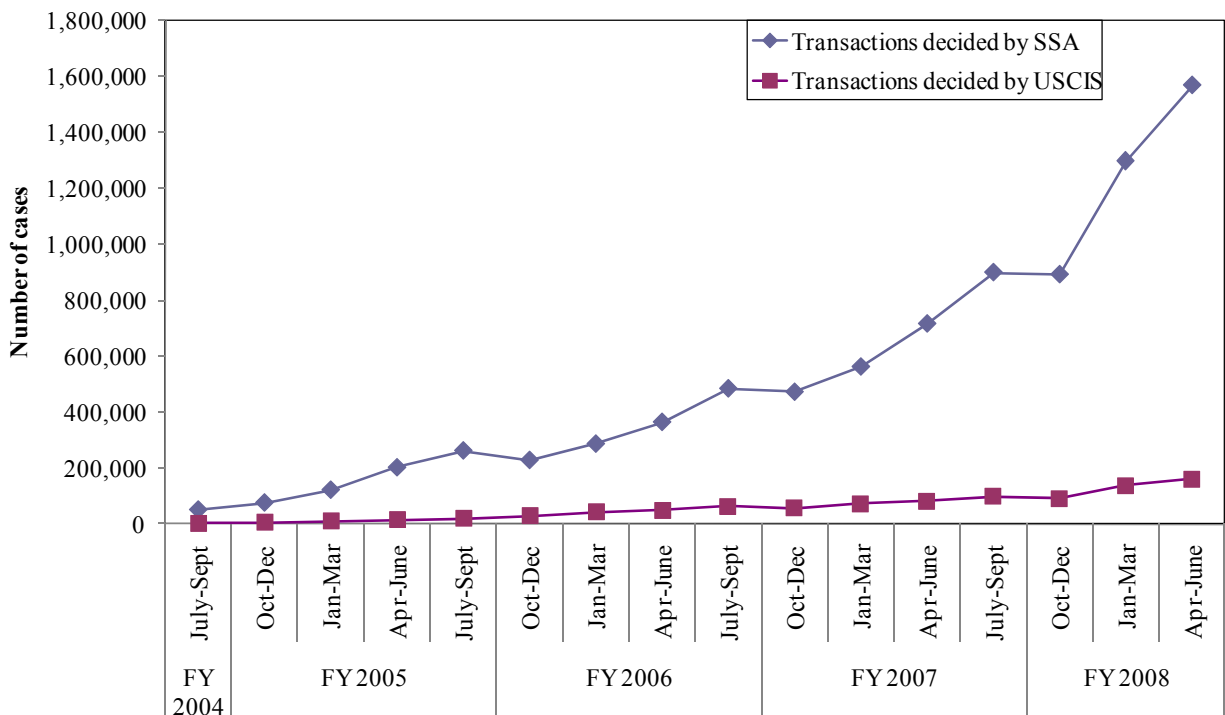
Exhibit III-7. Reasons That USCIS FNC Cases Received TNCs: May 5–June 2008


SOURCE: E-Verify Transaction Database.

2.2.4. Trends in Outcomes

There have been significant increases in the number of cases processed by both SSA and USCIS since the start of the Program. In July through September 2004, when the Web-based version of E-Verify was first made operational, final outcomes were provided by SSA for approximately 51,000 cases and by USCIS for 4,000 cases (Exhibit III-8). By April through June 2008, the number of SSA final outcomes had grown to approximately 1.6 million (a 30-fold increase) while the number for USCIS had grown to 162,000 (a 40-fold increase). The difference in growth rates for SSA and USCIS are attributable, at least in part, to a change in procedures in October 2005 that required all noncitizen cases to go to USCIS for determination of work-authorization status even if SSA records showed the noncitizens to have permanent work authorization. The increase in growth rate since October 2005 has been a seven-fold increase for SSA and a six-fold increase for USCIS.

Exhibit III-8. Total Number of E-Verify Cases, by Agency Issuing the Final Outcome: July 2004–June 2008

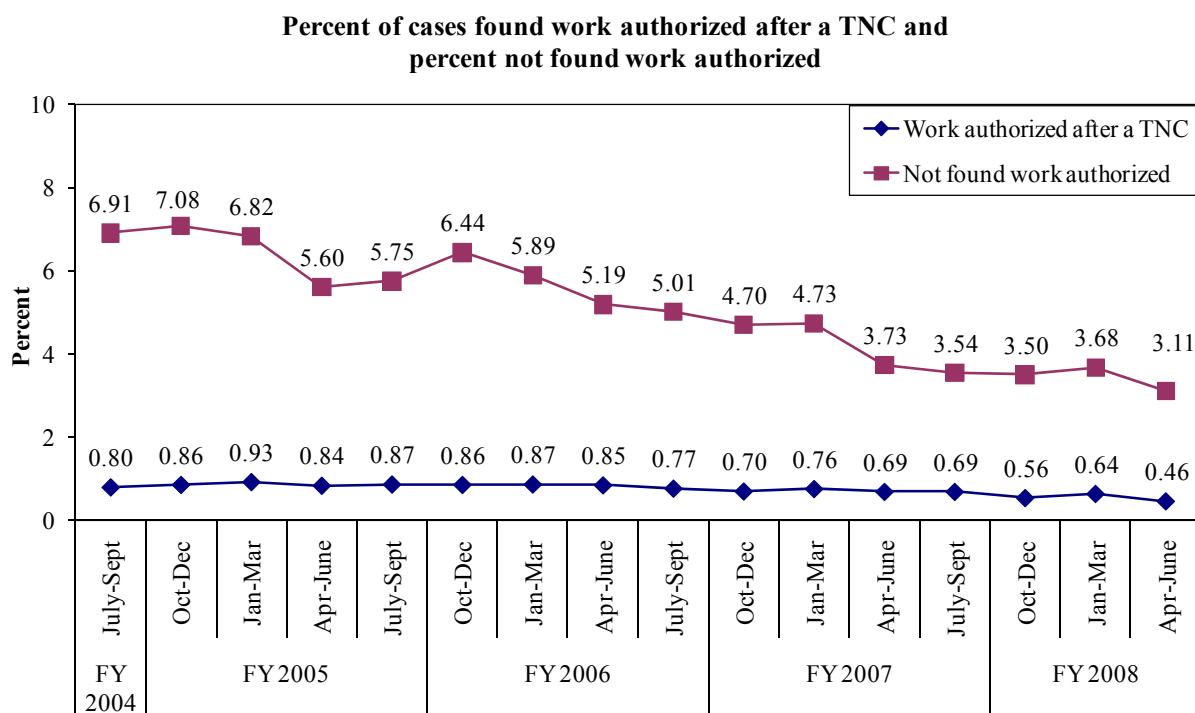
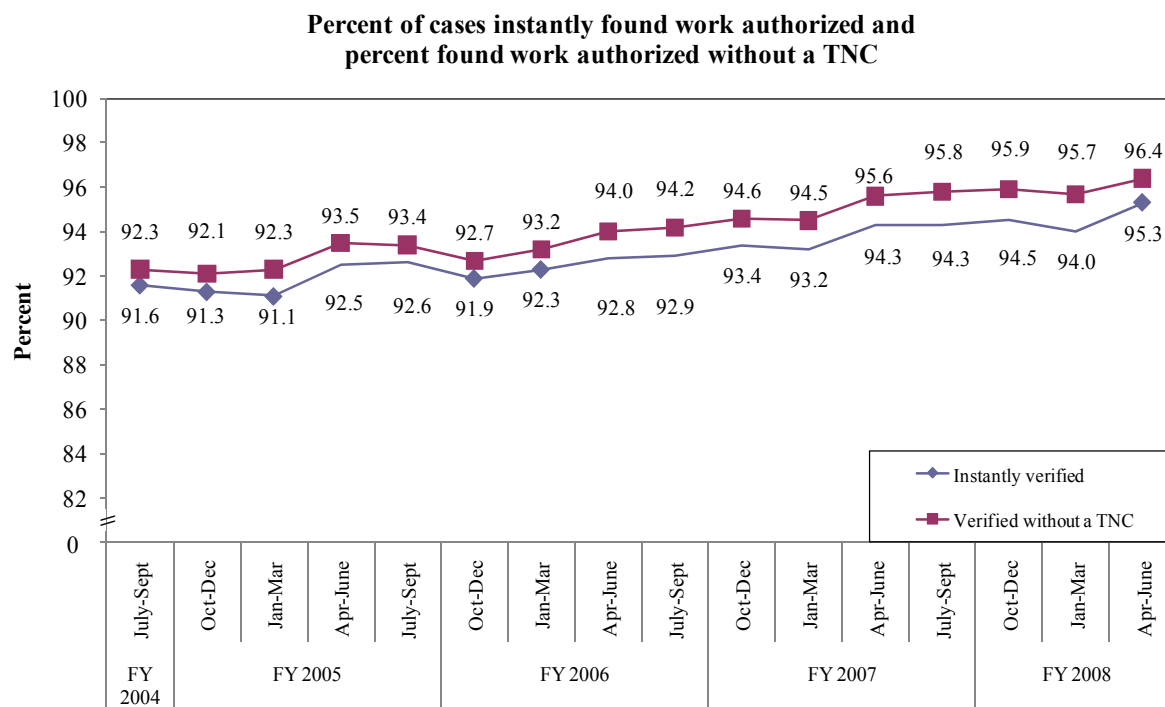


SOURCE: E-Verify Transaction Database.

The percentage of cases found to be work authorized instantly and the percentage found work authorized without a TNC have increased considerably since the start of the Program. In July through September 2004, 91.6 percent of the cases were instantly found to be work authorized compared to 95.3 percent in April through June 2008 (Exhibit III-9). During the same time period, the percentage of cases found work authorized without a TNC also increased substantially—from 92.3 percent to 96.4 percent.



Exhibit III-9. Trends in E-Verify Outcomes: July 2004–June 2008



SOURCE: E-Verify Transaction Database.

Both the percentage of cases found work authorized after a TNC and the percentage not found work authorized have declined over time. In July through September 2004, 0.8 percent of cases were found to be work authorized after a TNC; by April through June 2008, this figure had declined to 0.5 percent (Exhibit III-9). During the same time period, the percentage of cases not found work authorized (i.e., received an FNC or a not authorized finding) declined from 6.9 percent to 3.1 percent.

3. PROGRAMMATIC CHANGES

Many of the research questions in this report ask about the impacts of program changes on indicators of program success such as usage, timeliness, and accuracy. It is, therefore, important to understand the program changes that have been made to E-Verify and when they were made. This report primarily discusses the impacts of changes in E-Verify that occurred after March 2007, because earlier changes were discussed in the previous evaluation report.⁷⁶ The major changes to E-Verify discussed in this report include the following:

- **Photo Screening Tool** (September 2007).⁷⁷ The Photo Screening Tool permits employers to compare photographs on worker documents with digital photographs stored in government systems. The purpose of this comparison is to detect existing valid documents that have a new photograph substituted for the original document photograph or that are counterfeit documents created with valid information but a new photograph. As of the time that the report was being written, the only documents available on the Photo Screening Tool were Permanent Resident (“green”) cards and Employment Authorization Documents (EADs).⁷⁸
- **SSA pre-TNC check and USCIS pre-TNC checks** (September 2007).⁷⁹ The SSA pre-TNC check immediately prompts employers to review their input and correct any detected inaccuracies prior to the issuance of a TNC. For USCIS, the pre-TNC check prompts employers to review their input prior to the case being sent to secondary verification in which ISVs manually check additional DHS databases.⁸⁰
- **EV-STAR (E-Verify SSA Tentative Nonconfirmation Automated Response System)** (October 2007). This change automates the tracking process for SSA referrals and actions to resolve contested SSA TNCs. The goals of this change are to improve tracking of SSA TNC cases and the communication between employers and SSA on the status and final outcome of SSA TNC cases. The SSA TNC tracking process instituted with EV-STAR more closely mirrors the USCIS TNC tracking process than was the case prior to EV-STAR.
- **Naturalization Phase I** (May 2008). This change added an automated DHS database-checking process for workers attesting to be U.S. citizens when SSA records are consistent with the information submitted on SSN, name, and DOB, but cannot confirm work-authorization status. The new automated check compares the employer-submitted information with USCIS

⁷⁶Westat, *Findings of the Web Basic Pilot Evaluation*, September 2007 (<http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>).

⁷⁷ This is the date that the Photo Screening Tool was implemented on a large-scale basis. Prior to that, it was piloted with a small number of employers that volunteered to test it.

⁷⁸ See Chapter VI for a flow diagram of this process.

⁷⁹ This is the date that the USCIS pre-TNC check was implemented on a large-scale basis. Prior to that, it was available to employers that were piloting the Photo Screening Tool.

⁸⁰ Prior to the pre-TNC changes, employers were asked to verify the information for all cases (potential TNC and non-TNC cases alike).



naturalization databases to determine whether the information submitted belongs to a naturalized citizen. The goal of this change is to avoid erroneously issuing TNCs to naturalized citizens who did not update their SSA records after naturalization to reflect their new citizenship status. It is a response to prior evaluations that indicated that the erroneous TNC rate for naturalized citizens was considerably higher than both the rate for U.S.-born workers and the rate for noncitizens.

- **Naturalization Phase II** (May 2008). This change provides a special referral letter for workers attesting to being U.S. citizens when their SSA records are consistent with the information submitted on SSN, name, and DOB but neither SSA nor USCIS records can confirm that they are U.S. citizens. The letter provides them with an opportunity to voluntarily contact USCIS by phone or fax to resolve the problem by providing their former alien or “A” number rather than going in person to an SSA field office. While all U.S. citizen cases are handled by SSA, this process, which allows foreign-born U.S. citizens to choose to contact USCIS to resolve a TNC, was developed to help reduce TNCs among U.S. citizens who had naturalized or derived U.S. citizenship and therefore had USCIS records that might resolve the citizenship issue without a trip to an SSA office.

In addition to these major changes, USCIS reported additional changes implemented between March 2007 and June 2008:

- Establishment of a **Monitoring and Compliance** unit; however, as of June 2008, its focus had primarily been on developing operating procedures and other preparatory tasks, so that little impact on the Program could have been expected at the time of the evaluation.
- Establishment of a **Privacy Branch** to respect and uphold the privacy of individuals subject to the immigration verification process.
- Establishment of a new **Customer Call Center**.
- Revision of the E-Verify **Web site** to make it easier for employers to locate online resources and updating of the online User Manual.
- Inclusion of material on EV-STAR and the Photo Screening Tool in the **tutorial**.
- Updating of the **Designated Agent tutorial**.
- Addition of **announcement banners** to the E-Verify screen to notify employers of upcoming program changes or other matters of interest.
- Provision of forgotten **passwords through an automated system** instead of requiring users to call the Help Desk.
- Institution of a new link to a Web page for **State Workforce Agencies**. This Web page includes the Memorandum of Understanding (MOU), a quick reference guide, a poster, and a tutorial; however, there was no specialized user manual prepared as of June 2008.

- Institution of a link to automated nonimmigrant arrival information to obtain **real-time arrival information** for newly arrived nonimmigrants. The link was added on May 5, 2008.
- Expansion of **outreach efforts**, by both the Outreach and the Monitoring and Compliance Divisions aimed at recruiting new employers and educating existing employers about their responsibilities and, to a lesser extent, educating workers of their rights. These efforts consisted of:
 - Advertising;
 - Conducting over 100 information sessions with business associations and state groups;
 - Conducting monthly Webinars;
 - Meeting with state and Federal legislators;
 - Changing and updating the USCIS Web site, including adding a page with an overview of E-Verify statistics;
 - Developing means of reaching out to small businesses, including partnering with the Small Business Administration; and
 - Attending relevant conferences (e.g., the American Payroll Association) and staffing resource tables, booths, and handing out brochures at these conferences.

USCIS also continues to work on system and programmatic enhancements to the E-Verify system. Changes scheduled for implementation include:

- Combining the general and the Photo Screening Tool TNC notices and referral letters;
- Revising EV-STAR system procedures to make it possible for SSA field staff to create EV-STAR records for workers receiving TNCs from SSA when the employer does not indicate on the E-Verify database that the worker wishes to contest the TNC;
- Improving the case alert system to provide employers with more information about their E-Verify cases that need action;
- Modifying the employer registration process to make it easier for employers to understand which user type is appropriate for their needs;
- Rewording the TNC and referral letters to make them easier to understand;
- Instituting a regulatory requirement that employers hiring certain F-1 Students for Optional Practical Training (OPT) must participate in E-Verify; and



- Preparing a special MOU for State Workforce Agencies (SWAs) to explicitly permit them to start the E-Verify verification process prior to referring workers for employment, even though the state is not expected to be the employer.

Other future changes expected are:

- An update of the system to accommodate anticipated regulatory changes to the lists of documents acceptable for use with the Form I-9;
- Modification of E-Verify to handle cases for Federal contractors who will be required to participate in E-Verify by regulation in mid-2009;
- Implementation of institutionalized monitoring and compliance activities;
- Implementation of additional modifications to the system to make it more user-friendly, including changes to case notification and navigation usability;
- Implementation of recommendations based on an ongoing plain language initiative to make written material (e.g., tutorial, manual, notices, Web sites) clearer;
- Preparation of new or revised tutorials on worker privacy issues, monitoring and compliance, and other employer functions (e.g., legal or head of Human Resources);
- Improvements in the registration process to make it more secure and also to clarify information needed from the employer; and
- Additional outreach efforts, including
 - More advertising,
 - A Web site designed for workers,
 - Translating workers' rights document into nine languages,
 - Speaking at events for groups concerned with workers' rights,
 - Distributing posters and brochures to workers and their representatives, and
 - Outreach to small businesses.

Other possible future changes include the following:

- Increasing use of an electronic Form I-9. However, there are security and privacy issues that must be resolved for this to be accomplished, and ways to help those with no access to a computer also must be found.



- Developing ways to help employers with no access to a computer who would like or are required to participate in E-Verify.
- Making the Photo Screening Tool available to Designated Agents and Web Services providers. There are privacy and security concerns about doing this because they would need to store digital photographs provided by the government in order to provide them to their clients.⁸¹
- Providing USCIS information to SSA automatically when noncitizens become naturalized, so that SSA can update its records.
- Verifying cases based on visa number; however, this could lead to increased numbers of TNCs because of data entry errors and could create more burden for users because the visa number would need to be written on the Form I-9, if used in the verification process.
- Possibly putting the tutorial on the Web site along with the MOU and manual that are currently available, so that employers can have a clearer idea of E-Verify procedures prior to registering.

4. LEGISLATIVE CHANGES

In numerous cases, state legislatures have proposed or enacted legislation to require or prohibit E-Verify usage by some or all of its employers. Exhibit III-10 summarizes the situation as of March 31, 2008. Although there were additional changes in proposed legislation after this date, the last date for which trend data are presented in this report were for April through June 2008. Using the March cut-off permits examination of quarterly trends, including those for the April through June 2008 period.

States were grouped into categories for analysis purposes based on the information in Exhibit III-10.

Exhibit III-10. State Legislation Related to E-Verify

Legislative status as of 3/31/08	State(s)
State that had implemented a mandate requiring all employers to use E-Verify	Arizona
States that had implemented a mandate requiring some but not all employers to use E-Verify	Colorado, Georgia, Idaho, Minnesota, Mississippi, North Carolina, Oklahoma, Rhode Island, Tennessee, and Utah
Other	Remaining states

SOURCE: National Conference of State Legislatures (<http://www.ncsl.org/?tabid=13127#table>), downloaded 6/30/09.

⁸¹ In the current system, the photograph appears on the user's screen; however, Designated Agents would need to have an ability to transmit photographs to their clients unless clients were required to provide their Designated Agents with copies of certain documents used for I-9 verification.

5. CHARACTERISTICS OF EMPLOYERS USING THE PROGRAM AND THE WORKERS FOR WHOM THEY SUBMIT CASES

5.1. Background

This section examines trends in the representation of different types of employers in E-Verify and the workers for whom they submit cases. This information provides a context for understanding what factors underlie the observed changes in the measures of program success discussed in Part 2 of the report and employers' satisfaction and burdens discussed in Part 3. Employer characteristics discussed include size, industry, the E-Verify access method⁸² that the employer uses, and the reported percentage of the employer's workers who are immigrants. Three primary sources of data are available to measure the characteristics of employers participating in E-Verify: the Transaction Database, the Web survey, and onsite employer interviews. These sources may not provide identical information about an employer because of differences in the information available, the questions asked, or measurement errors, or with the Web survey, sampling variability. Information about national distributions on the same variables is obtained from Federal data sources when available and may not be strictly comparable.

There are two sources of information about the citizenship status and place of birth of persons with information submitted to E-Verify, both of which have advantages and disadvantages. First, there is information provided by the person on the Form I-9. This information distinguishes persons attesting to being U.S. citizens, lawful permanent residents, or other work-authorized noncitizens. The strength of this data source is that it is available for all cases submitted to E-Verify. Its weaknesses are that it does not distinguish between foreign-born and U.S.-born citizens and, of course, does not indicate the correct citizenship and place of birth category of persons without work authorization. Additionally, this information is self-reported, and the interviewers conducting the onsite interviews of workers noted that some workers do not understand the categories and are, therefore, misclassified.⁸³ Although the interviewers did not precisely track what percentage of workers had trouble identifying their status, anecdotal information indicates that this problem was not rare. Furthermore, a few employers reported that some employees indicated that they were citizens or nationals so that they would not have to provide a document that would trigger the Photo Screening Tool.

The second source of information about citizenship status and place of birth of workers is data maintained by SSA. This data source does differentiate between foreign-born and U.S.-born citizens. However, no information is available if SSA data cannot be matched with employer-provided data, which is the case for most SSA FNC cases. Furthermore, SSA records about the citizenship status of foreign-born workers are often not up to date.⁸⁴

Since some types of employers transmit a disproportionately high or low number of cases, the distributions of workers with cases submitted to E-Verify will not completely parallel the employer distributions, even when a variable such as industry that refers to the characteristics of the worker's employer is examined. This section, therefore, examines trends in the characteristics of workers with cases submitted to E-Verify, by their employers' size, industry, and access method between July 2004 and

⁸²Employer, Designated Agent, User of Designated Agent, or Web Services provider.

⁸³This was not an item that interviewers were asked to record formally; however, interviewers estimated that as many as one-quarter of the interviewees have trouble understanding these categories.

⁸⁴See Chapter II for information about how the evaluation compensated for the latter problem.



June 2008. It also examines changes in the distribution of workers characterized by their reported citizenship status on the Form I-9. The trend in the Form I-9 citizenship status and place of birth of workers found to be work authorized is also examined.⁸⁵

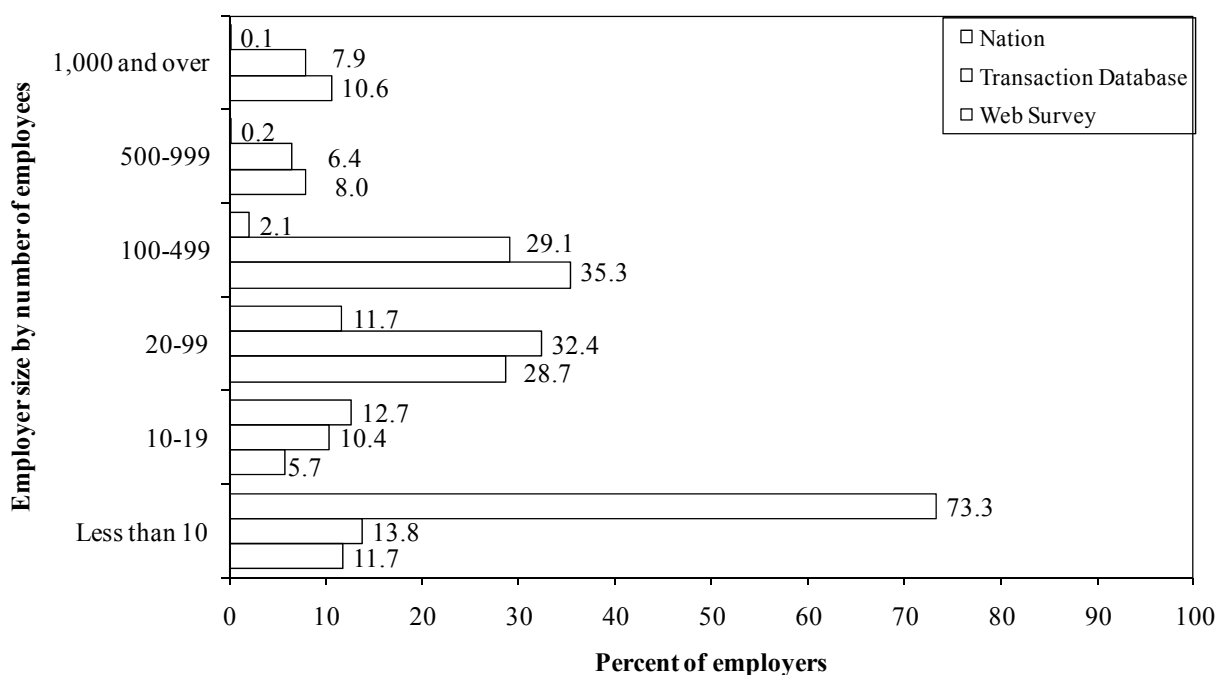
5.2. Findings

5.2.1. Employer Size

Large employers are much more likely to be enrolled in E-Verify than are small employers.

Exhibit III-11 shows that 12 percent of employers responding to the Web survey and 14 percent of employers transmitting cases in April through June 2008 had fewer than 10 employees compared to approximately 73 percent of the employers in the nation.⁸⁶

Exhibit III-11. Distribution of E-Verify and National Employers, by Employer Size



NOTE: National employer size is based on establishment size and E-Verify transaction data are for all employers transmitting cases or having cases transmitted for them.

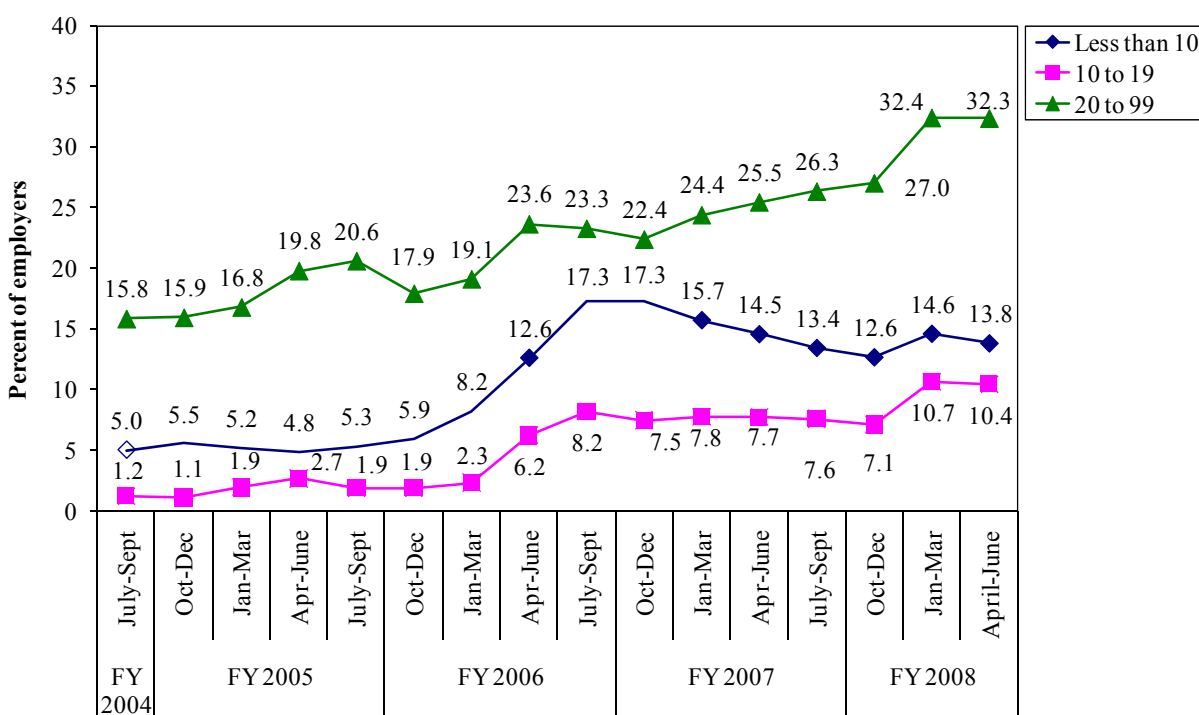
SOURCES: E-Verify Web Survey: 2008, E-Verify Transaction Database: April–June 2008, and U.S. Census County Business Patterns: 2006.

⁸⁵ As discussed in Chapter II and above, information on place of birth is only available when SSA is able to match the employer-submitted information on SSN, name, and DOB to the information available in SSA records. Since most workers not found to be work authorized at some point in the verification process could not be matched with SSN records, the place of birth of these workers cannot be determined.

⁸⁶ As discussed in Chapter II, the definition of employer in E-Verify results in the number of employers being between the number of establishments and firms as defined by the U.S. Census Bureau.

Small employers are more likely to be enrolled in E-Verify than was true at the start of the Program. According to the Transaction Database information, at the start of the Web-based program in July through September 2004, 5 percent of employers transmitting cases had fewer than 10 employees, 1 percent had 10 to 19 employees, and 16 percent had 20 to 99 employees (Exhibit III-12). By April through June 2008, these percentages had grown to 14, 10, and 32 percent, respectively, but the numbers were still well below the nation, in which 73 percent of establishments have less than 10 employees. This growth in representation of small employers was also reflected in the Web survey. The percentage of employers reporting in the 2006 survey that they had fewer than 10 employees was 4 percent compared to 12 percent in the 2008 survey. For employers with 10 to 99 employees, the corresponding increase was from 14 percent to 34 percent. The Dissimilarity Index comparing E-Verify employers transmitting cases to the Transaction Database to national employers based on employer size decreased from 26.6 to 20.6 between July 2004 and June 2008⁸⁷ (Exhibit III-13).

Exhibit III-12. Trend in Percent of All Small E-Verify Employers Transmitting Cases, by Employer Size: July 2004–June 2008

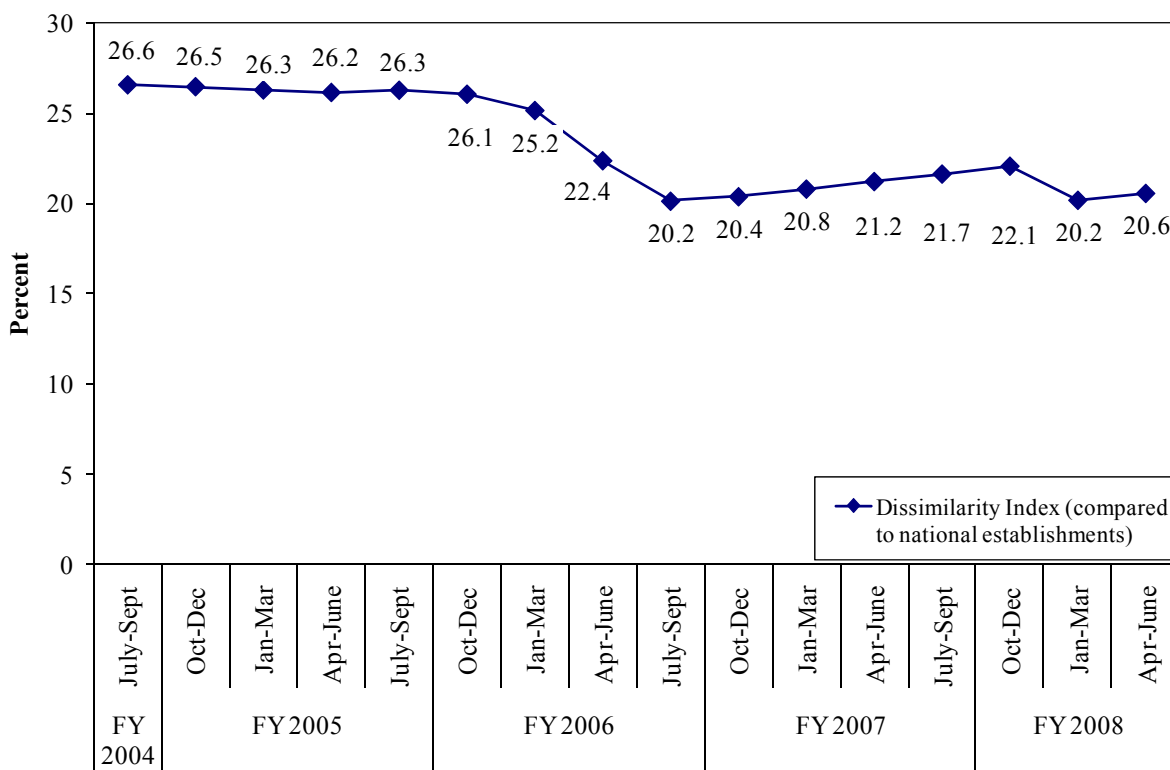


SOURCE: E-Verify Transaction Database.

⁸⁷ The Dissimilarity Index, which ranges from 0, indicating the two distributions are exactly the same, to 100, indicating complete disagreement, is discussed in Chapter II.



Exhibit III-13. Trend in Dissimilarity Index for Size for Employers Transmitting at Least One Case to the E-Verify Transaction Database: July 2004–June 2008

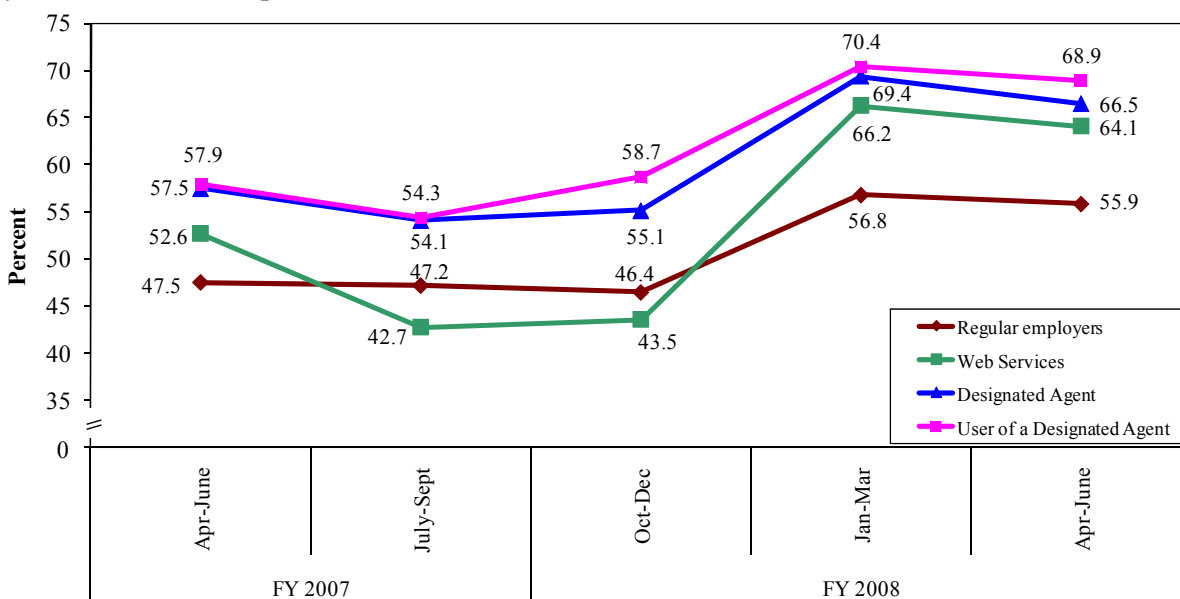


SOURCES: E-Verify Transaction Database and U.S. Census County Business Patterns: 2006.

The growth in the representation of small employers in E-Verify is not simply explained by the existence of new access methods that may make it easier for small employers to participate. Based on employer information provided at registration, the representation of employers with fewer than 100 employees has increased among employers in the long-standing employer access category as well as the newer categories of Designated Agents, Users of Designated Agents,⁸⁸ and Web Services providers between April through June 2007 and April through June 2008 (Exhibit III-14).

⁸⁸ Access type is based on employer registration type. Users of Designated Agents are employers that have cases transmitted by Designated Agents. Designated Agents are only included if they have transmitted cases for themselves.

Exhibit III-14. Trend in Percent of Active E-Verify Employers Having Fewer Than 100 Employees, by Access Method: April 2007–June 2008

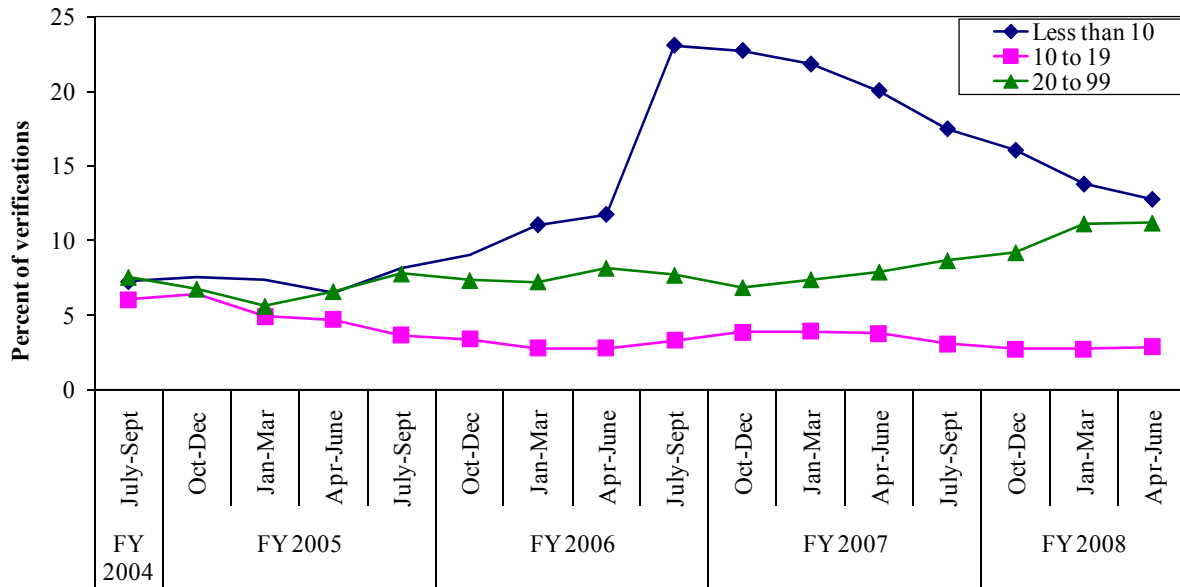


NOTE: Access type is based on employer registration type. Users of Designated Agents are employers that have cases transmitted by Designated Agents. Designated Agents are only included if they have transmitted cases for themselves.

SOURCE: E-Verify Transaction Database.

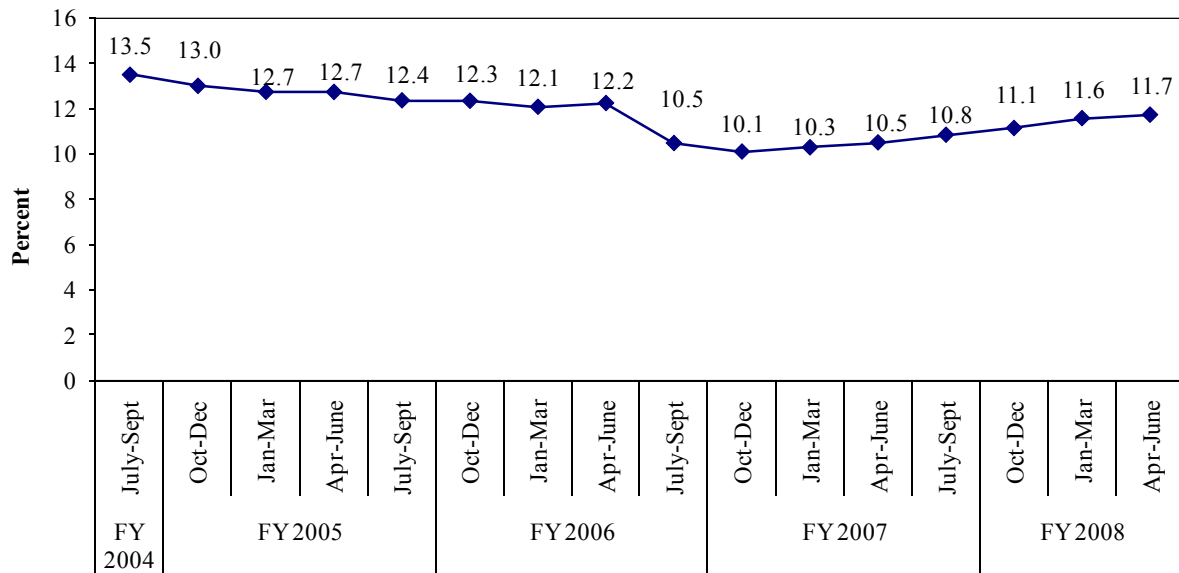
The percentage of cases submitted to E-Verify by employers with fewer than 10 employees and employers with 20 to 99 employees has increased since the start of the Program; however, the percentage of those transmitted by employers with 10 to 19 employees has not. The percentage of cases transmitted to E-Verify by employers with fewer than 10 employees increased by approximately 80 percent between July through September 2004 and April through June 2008 (from 7 percent to 13 percent) (Exhibit III-15); however, this increase was not steady over this time period. The rate increased from the start of the Program until July through September 2006, when the rate rose to approximately 23 percent before declining to the 13 percent rate in April through June 2008. During this time, the number of cases for employers with 10 to 19 employees decreased from 6 to 3 percent and the representation of employers with 20 to 99 employees increased from 8 to 11 percent. Overall, the Dissimilarity Index for cases by employer size between July through September 2004 and April through June 2008 based on national data for establishments has decreased slightly from 14 to 12 percent (Exhibit III-16).

Exhibit III-15. Trend in Percent of All Cases Transmitted to E-Verify, by Size of Employer Transmitting Cases (Small Employers Only): July 2004–June 2008



SOURCE: E-Verify Transaction Database.

Exhibit III-16. Trend in Dissimilarity Index for Employer Size for Workers: July 2004–June 2008



NOTE: National data are based on establishments.

SOURCES: E-Verify Transaction Database and U.S. Census County Business Patterns: 2006.

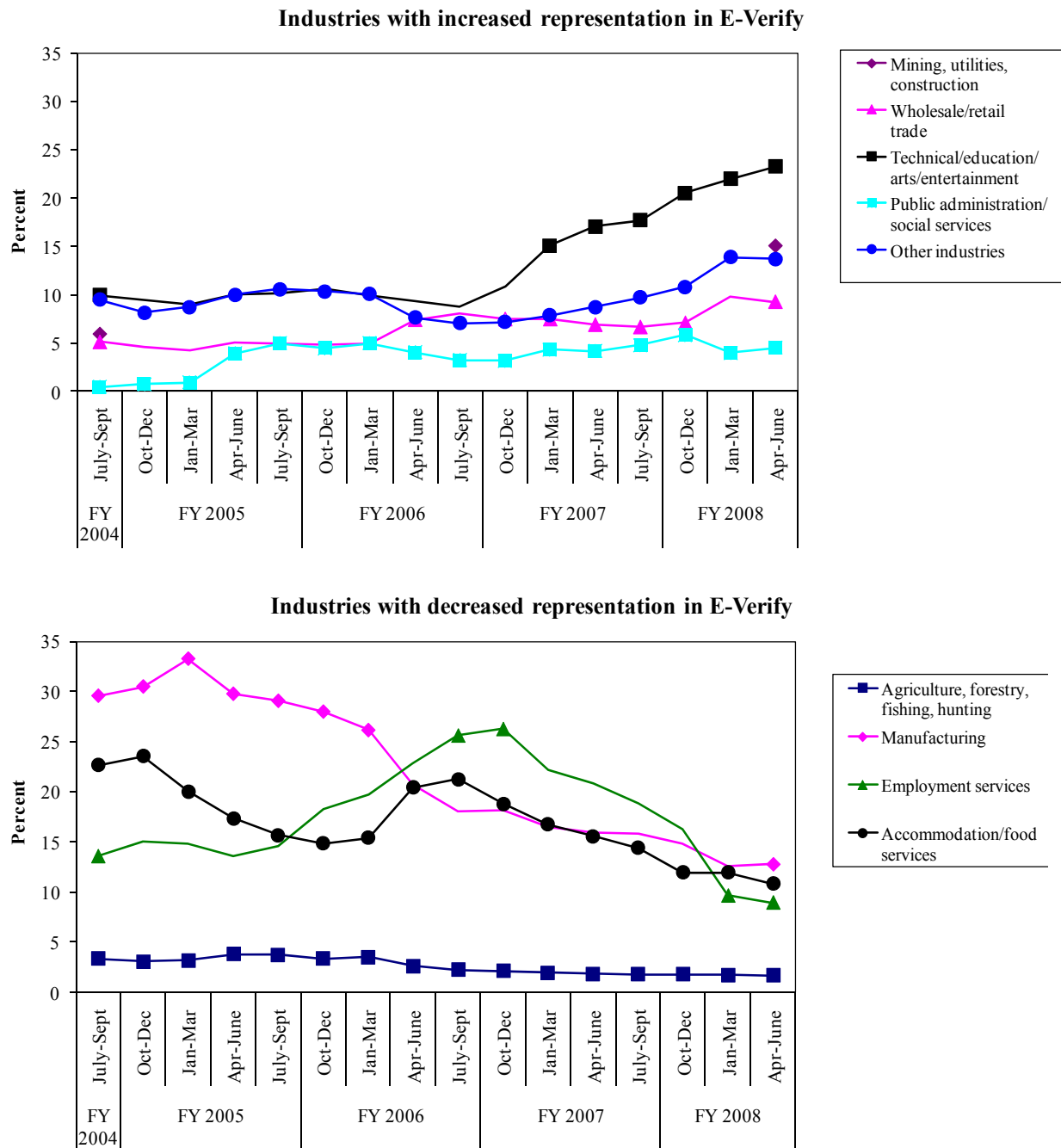


5.2.2. Industry

There have been marked shifts in the distribution of establishments by industry over time. As seen in Exhibit III-17, establishments in technical/education/arts/entertainment have increased their representation among employers transmitting cases to E-Verify from 10 percent in July through September 2004 to 23 percent in April through June 2008. Other industries with increasing representation in E-Verify include mining/utilities/construction (from 6 to 15 percent), wholesale/retail trade (5 to 9 percent), and public administration/social services (less than 1 percent to 5 percent), and other industries (10 to 14 percent). During this same time period, manufacturing has decreased its representation from 30 percent to 13 percent. Other industries with declining representation are accommodation/food services (23 to 11 percent), employment services (14 to 9 percent), and agriculture/forestry/fishing/hunting (3 to 2 percent). It is interesting to note that some industries that tend to have a high concentration of foreign-born workers like mining/utilities/construction have increased in representation and others like accommodation/food services have decreased.⁸⁹ These changes over time in the industry mix of employers may explain some of the changes in other E-Verify statistics.

⁸⁹ It is, of course, possible that analysis at a more detailed classification of industries would help clarify what is happening.

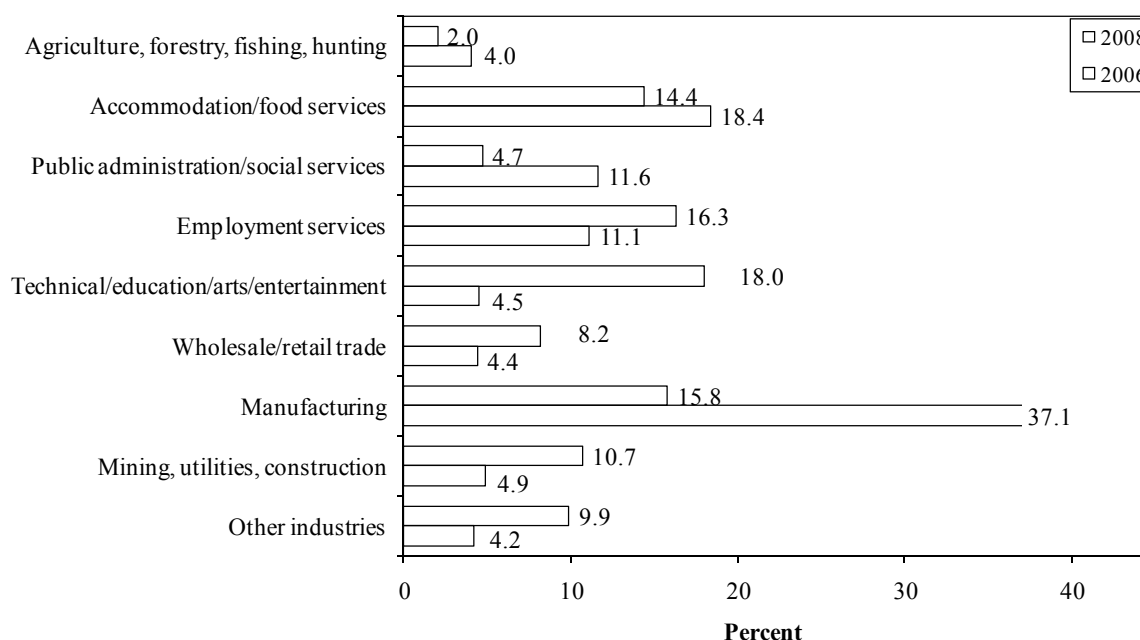
**Exhibit III-17. Percent of All Employers Transmitting Cases to E-Verify, by Industry:
July 2004–June 2008**



SOURCE: E-Verify Transaction Database.

Information on the change in distribution by industry between the 2006 and 2008 Web surveys is generally consistent with the information from the Transaction Database. The percentage of employers engaged in manufacturing declined from 37 percent of employers that responded to the 2006 survey to 16 percent in 2008, as shown in Exhibit III-18. This change is the largest among the industries between the 2006 and 2008 Web surveys. The second largest change is in the technical/education/arts/entertainment industry, where 5 percent of 2006 Web survey employers were from this group compared to 18 percent in 2008. There were a few other smaller industry changes, including a 5 to 6 percentage point increase in employers from the three categories mining, utilities, construction; employment services; and other industries.

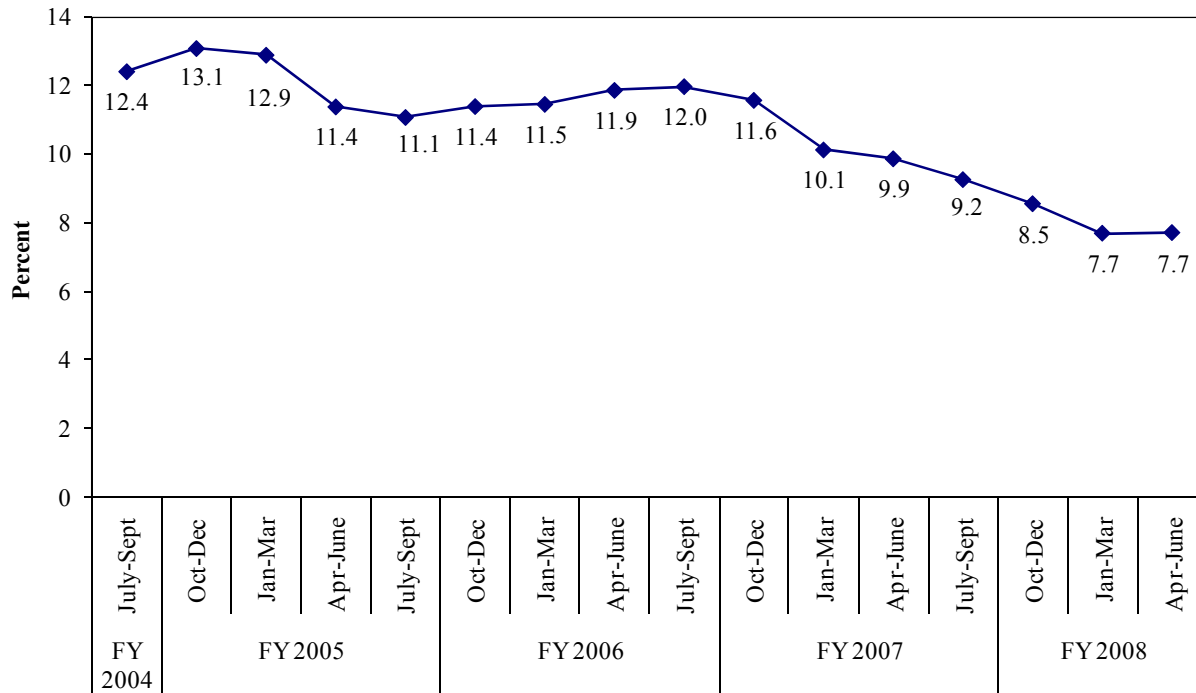
Exhibit III-18. Industry of All Active E-Verify Employers Responding to the 2006 and 2008 Web Surveys



SOURCE: E-Verify Web Surveys.

Employers transmitting cases to E-Verify have become increasingly similar to the nation's employers in terms of industry. As seen in Exhibit III-19, the Dissimilarity Index was 7.7 in April through June 2008 compared to 9.9 in April through June 2007, 11.9 in April through June 2006, and 11.4 in April through June 2005.

Exhibit III-19. Trend in Dissimilarity Index for Industry for Employers Transmitting Cases to the E-Verify Transaction Database: July 2004–June 2008



SOURCES: E-Verify Transaction Database and County Business Patterns of 2006.

5.2.3. Access Method

Since the start of the Program, the most frequently used E-Verify access method has been the regular employer access method; however, use of alternate access methods is increasing. Prior to April 2007, less than 1 percent of employers used any access method other than the employer access method. However, use of these other methods has been increasing, and approximately 7 percent of employers submitting cases to E-Verify in April through June 2008 used one of the alternate methods (Exhibit III-20). Approximately half of the employers using an alternate method were Designated Agents, representing 3.8 percent of employers transmitting cases in April through June 2008.

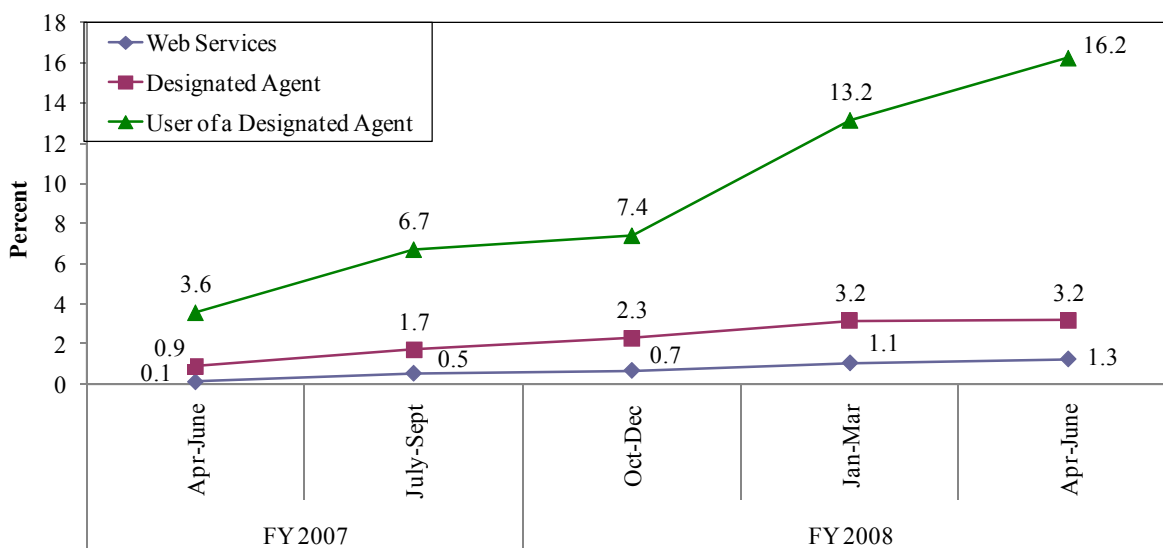
Exhibit III-20. Trend in Percent of Employers Transmitting Cases to the E-Verify Transaction Database, by Alternate Access Methods: April 2007–June 2008



SOURCE: E-Verify Transaction Database.

The increase in cases submitted to E-Verify by employers using alternate access methods has increased at an even faster pace than has the number of employers using these alternate methods. Between April 2007 and June 2008, the percentage of cases submitted by employers using alternate access methods increased from 5 percent to 21 percent (Exhibit III-21). Most of the increase in cases by alternate access method providers has been for Users of Designated Agents, which accounted for approximately 16 percent of all cases submitted in April through June 2008.

Exhibit III-21. Trend in Percent of Cases Submitted to E-Verify, by Access Method: April 2007–June 2008



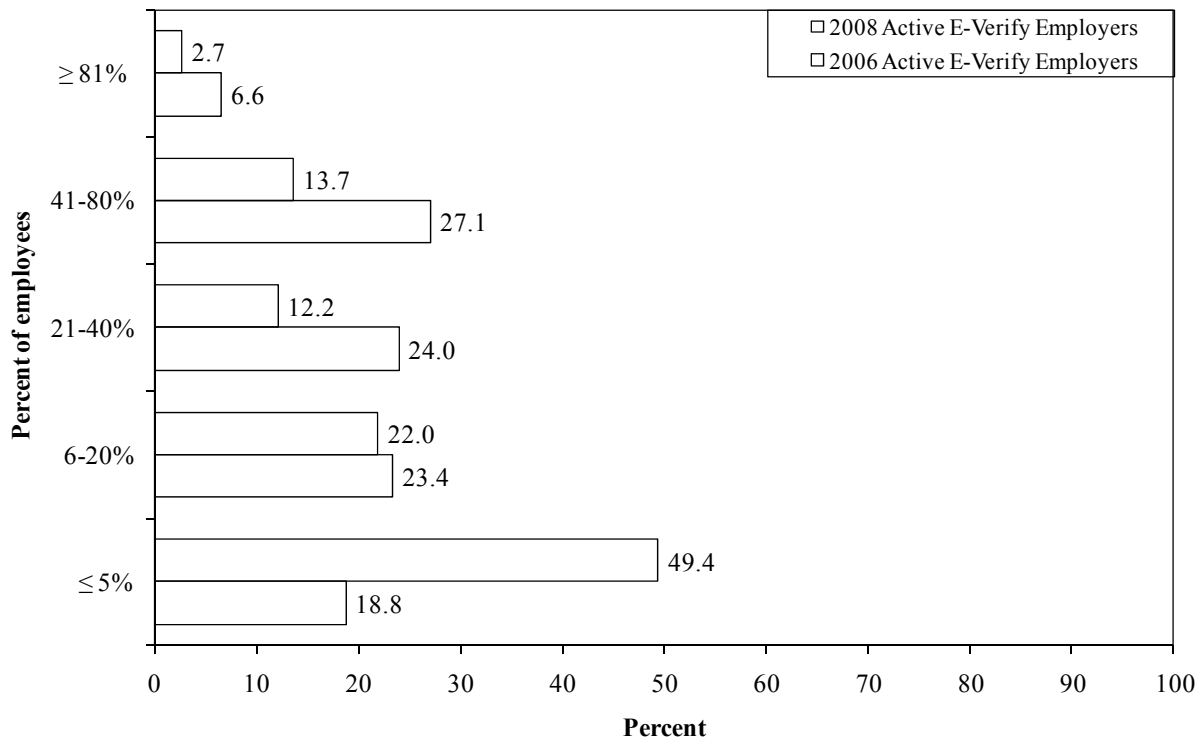
SOURCE: E-Verify Transaction Database.



5.2.4. Citizenship Status

E-Verify survey respondents in 2008 were much more likely than comparable respondents in 2006 to report having a small percentage of immigrant employees. The percentage of employers that reported that 5 percent or fewer of their employees are immigrants was 49 percent for the 2008 survey compared to 19 percent for the 2006 survey respondents (Exhibit III-22).⁹⁰

Exhibit III-22. Reported Percent of Employees Who Are Immigrants: 2006 and 2008



SOURCE: E-Verify Web Surveys.

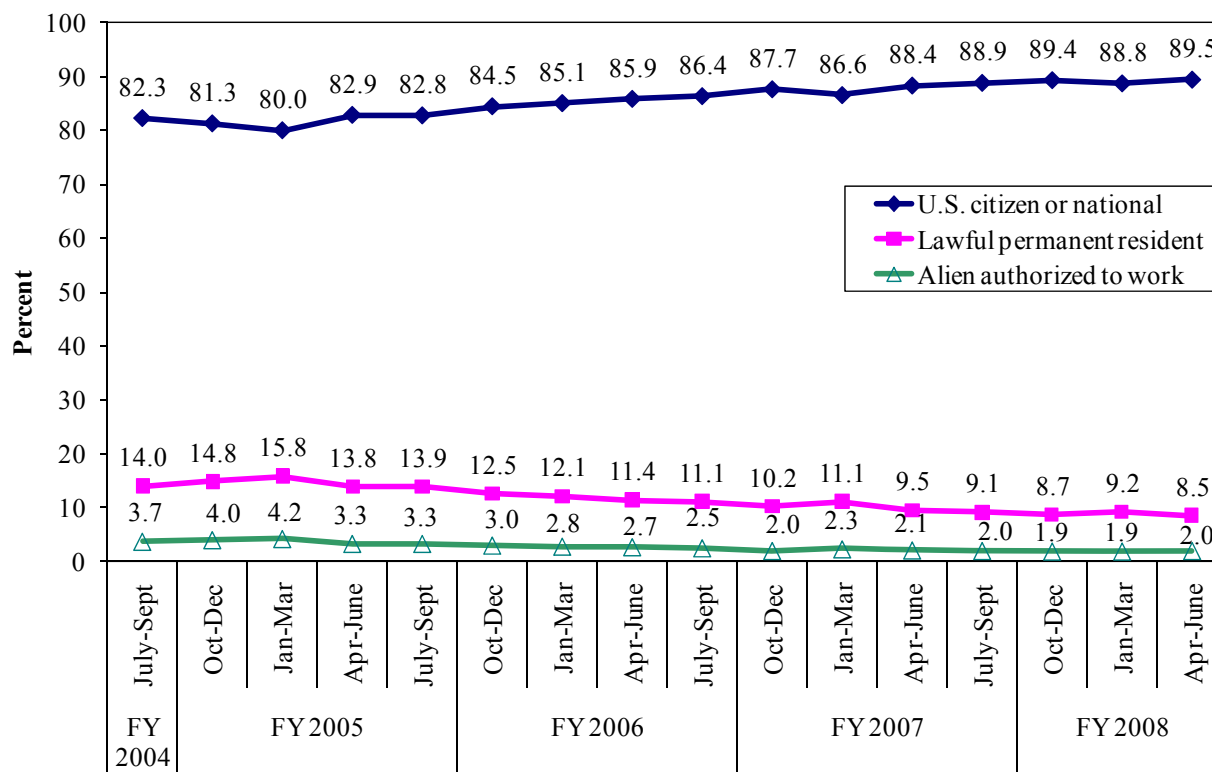
There has been an increase in the percentage of workers attesting to being U.S. citizens on the Form I-9 and a decrease in the percentage of persons saying that they are “lawful permanent residents” or “aliens authorized to work.” The percentage of workers attesting to being citizens increased from 82.3 percent to 89.5 percent between July through September 2004 and April through June 2008 (Exhibit III-23). At the same time, the percentage of lawful permanent residents decreased from 14.0 percent to 8.5 percent and the percentage of other “aliens authorized to work” decreased from 3.7 percent to 2.0 percent.

The increase in the percentage of workers attesting to being citizens is not unexpected, given that the original Basic Pilot Program targeted states with high immigrant populations and was originally seen as most advantageous by employers with sizable noncitizen workforces. However, since the Program has subsequently expanded on a voluntary basis to the entire nation, has been made mandatory for some employers, and been publicized more widely, it is not surprising that the citizenship status of workers

⁹⁰ The evaluation team is unaware of a national estimate that can be used for comparison purposes for newly hired employees.

with cases submitted to E-Verify has changed. This trend does require caution to be taken in examining other trends likely to be associated with citizenship status.

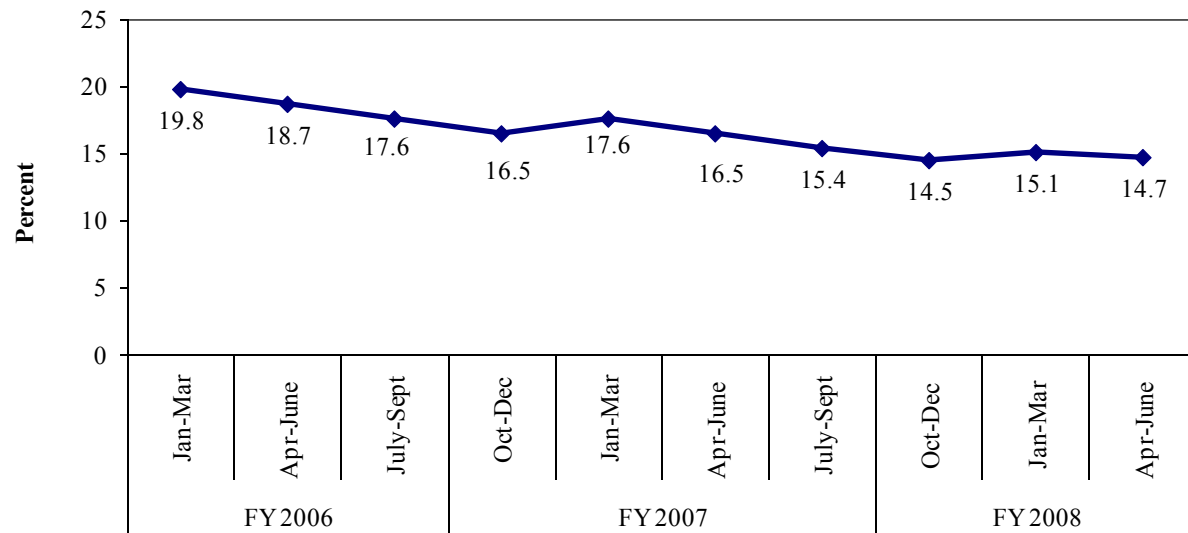
Exhibit III-23. Trend in Distribution of Form I-9 Citizenship Status: July 2004–June 2008



SOURCE: E-Verify Transaction Database.

Among workers ever found to be work authorized, the percentage of E-Verify cases for foreign-born workers has decreased over time. The estimated percentage of foreign-born persons among workers found to be employment authorized by E-Verify was 15 percent in April through June 2008 compared to 20 percent in January through March 2006 (Exhibit III-24).

Exhibit III-24. Trend in Percent of Foreign-Born Workers Among Workers Found to Be Work Authorized: January 2006–June 2008



SOURCES: E-Verify Transaction Database and data provided by SSA.

PART 2. MEASURES OF PROGRAM SUCCESS

The goal of Part 2 is to provide findings that relate to how successfully the Program has been implemented and how well it is meeting its goals. It includes five chapters.

- Chapter IV provides information on the extent to which employers use E-Verify, since **usage** is a basic factor in assessing how well the Program has been implemented and also directly affects the ability of the Program to meet its primary goal of reducing unauthorized employment.
- Chapter V discusses the **timeliness** of the Federal government in processing cases submitted to E-Verify and the timeliness of employers in implementing their responsibilities for submitting cases, notifying employees of Tentative Nonconfirmations, referring employees to the Social Security Administration or the U.S. Citizenship and Immigration Services to resolve Tentative Nonconfirmations, and terminating employees who received Final Nonconfirmation findings or were not found work authorized. Like usage, timeliness is an indicator of how well the Program has been implemented and is also a factor affecting its effectiveness in reducing unauthorized employment.
- Chapter VI presents basic information about program **accuracy**. Both inaccuracies in which Tentative Nonconfirmations are issued to workers with work authorization and inaccuracies in which persons without work authorization do not receive Tentative Nonconfirmations are discussed.
- Chapter VII examines the effectiveness of E-Verify in meeting its primary goal of **reducing unauthorized employment**. It builds on information about the inaccuracy rate for unauthorized workers discussed in Chapter VI.
- Chapter VIII discusses the extent of employer **compliance** with E-Verify requirements. Noncompliance is a potential source of program ineffectiveness in meeting the goal of reducing unauthorized employment and may lead to discrimination against foreign-born persons.

CHAPTER IV. E-VERIFY USAGE

1. BACKGROUND

This chapter focuses on E-Verify usage by employers. U.S. Citizenship and Immigration Services (USCIS) has long viewed increasing the use of E-Verify to be an important measure of program success, both because it is an indicator of how well the Program has been implemented and because extensive use of E-Verify is required if the Program is to achieve its primary goal of reducing unauthorized employment. If the use of E-Verify is limited to a small group of employers and the workers for whom they submit cases, unauthorized workers who have their employment terminated by one employer will have a large number of alternate employment options.⁹¹

This chapter includes information not only on whether employers are enrolling in E-Verify, but also on the extent to which those employers that have enrolled in the Program are actually using it. It also presents information on the reasons employers do or do not use the system. Three primary indicators⁹² of usage are examined in this chapter:

- Number of cases transmitted to E-Verify;
- Number of employers transmitting cases to E-Verify; and
- Percent of employers using E-Verify within three months of signing the Memorandum of Understanding (MOU).

Although none of these indicators are free of measurement error, they constitute the best information about employer usage that is currently available to the evaluation team. Information from these indicators is supplemented by information from national data, the E-Verify Web survey, and onsite employer interviews.⁹³

When feasible, results from the current evaluation are contrasted with results from earlier time period(s). The results of the 2008 Web survey are compared to the 2006 Web survey results,⁹⁴ and findings from the Transaction Database reflect quarterly information for the period from July 2004 through June 2008.

This chapter also discusses changes attributable to legislative changes since the last evaluation report. The focus of this discussion is on state legislation changes, since new state laws mandating that all or some employers in the state use E-Verify are expected to have a major impact on E-Verify usage. Other factors that are likely to impact usage include the expansion of outreach efforts aimed at recruiting new employers such as radio and print advertisements, informational seminars, and Webinars; revision of the

⁹¹See Chapter VII for a more complete discussion of E-Verify's impact on unauthorized employment.

⁹²See Chapter II for information on how these indicators were calculated and what their strengths and weaknesses are.

⁹³See Chapter II for additional information on the methodology of the study.

⁹⁴Because the 2006 Web survey was only administered to active E-Verify employers, the comparisons between the two surveys are based on the subset of 2008 respondents that meet the criteria for participation in the 2006 survey. Comparisons are only done when comparable questions were asked in the two surveys. Relevant findings based on the 2008 Web survey are presented when comparable 2006 and 2008 data are not available.

E-Verify Web site to make it easier for employers to locate online resources and the online User Manual; and changes designed to make the E-Verify system more user-friendly. Since there have been so many potentially relevant changes in the E-Verify Program over time, it is not possible to estimate how much of the observed changes in E-Verify usage can be attributed to any one programmatic change.

2. FINDINGS

2.1. General Findings

There has been a strong upward trend in the number of cases submitted to E-Verify since its inception in June 2004. As seen in Exhibit IV-1, the 1.7 million cases submitted to E-Verify in April through June 2008 represents an increase of over 200 percent since April through June 2007, when there were approximately 800,000 cases, a four-fold increase since April through June 2006 (416,000 cases) and an 800 percent increase since April through June 2005, when there were 217,000 cases. In other words, the number of cases transmitted has approximately doubled every year. Since there has not been a similar upturn in the number of new hires nationally, there is an increase in the ratio of E-Verify cases to the number of newly hired employees nationally.⁹⁵ In April through June 2008, this ratio was 0.117 to 1 compared to 0.013 to 1 in April through June 2005—a 10-fold increase.⁹⁶

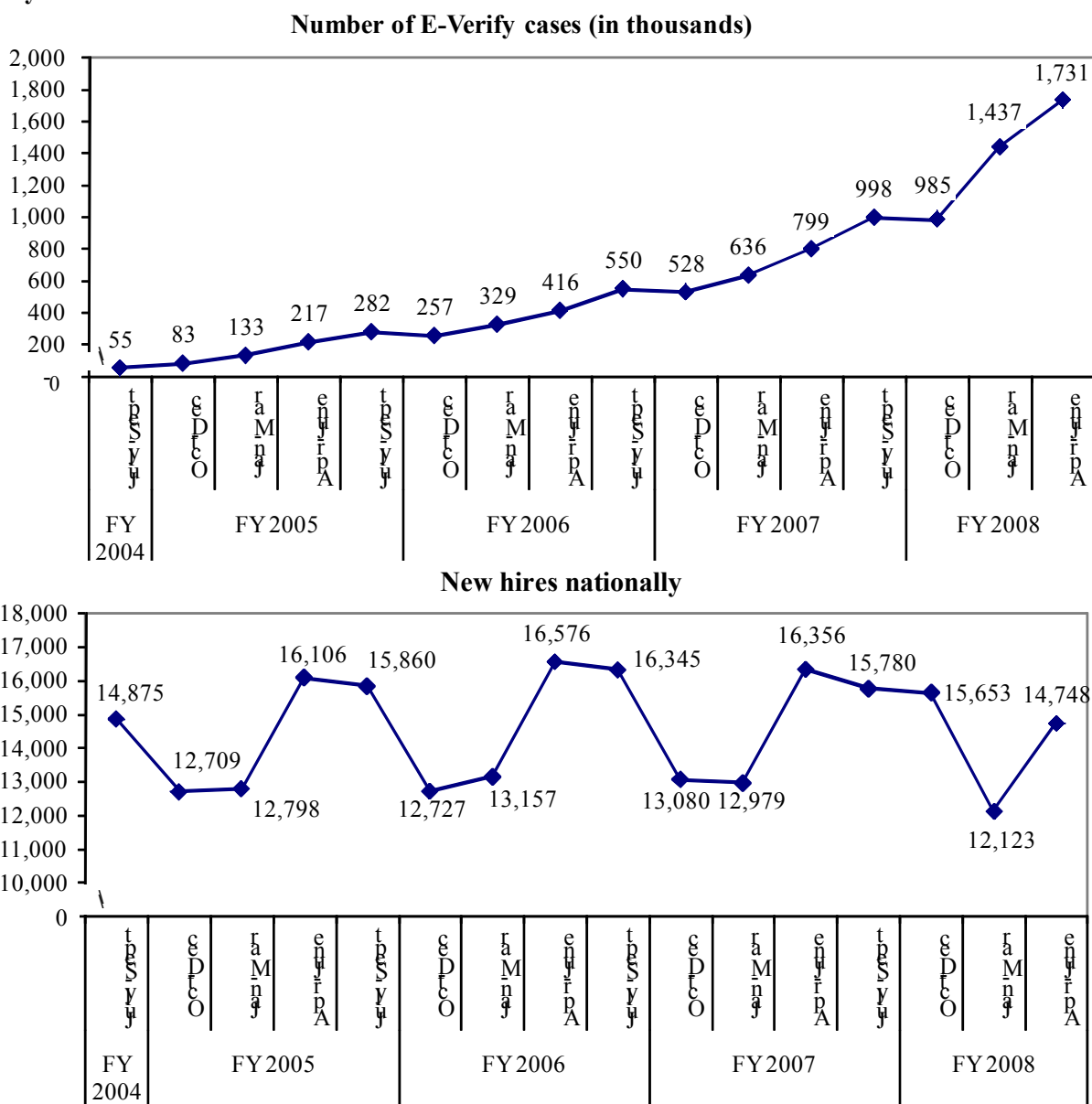
The observed seasonality in the number of cases submitted to E-Verify is similar to the seasonality in the number of new hires nationally. Although the trend in the number of E-Verify cases is clearly increasing over time, there is some seasonality in the data that, as seen in Exhibit IV-1, reflects seasonality in the national data for new hires. For example, the number of cases transmitted from October through December of the preceding calendar year tends to be lower than the last quarter of the preceding fiscal year,⁹⁷ such as the decrease from 998,000 in July through September 2007 to 985,000 in October through December 2007. The number of national new hires also decreases between July through September and October through December every year. This seasonality needs to be taken into account in interpreting trends in the number of cases transmitted. For this reason, information from one quarter is compared with the same quarter in preceding years.

⁹⁵ Estimated from U.S. Department of Labor, Bureau of Labor Statistics data in Job Openings and Labor Turnover Survey (JOLTS) (<http://www.bls.gov/jlt/home.htm#data>) and Business Patterns 2006.

⁹⁶ Ideally, the evaluation team would estimate the percentage of all newly hired employees screened by E-Verify. The reported ratio is presumably higher than the percentage of all new hires screened by E-Verify to all new hires in the nation, because the national data reported by the Bureau of Labor Statistics for JOLTS do not include some newly hired employees (<http://www.bls.gov/news.release/jolts.tn.htm>, June 30, 2007) and because, as discussed in Chapter VIII, some cases submitted are for job applicants rather than newly hired employees. Thus, it is reasonable to assume that the percentage of newly hired workers is no more than 12 percent.

⁹⁷ This does not hold for the difference between July through September 2004 and October through December 2004; however, this may be attributable to issues related to start up of the national program.

Exhibit IV-1. Number of Cases Transmitted to E-Verify and Number of New Hires Nationally: July 2004–June 2008

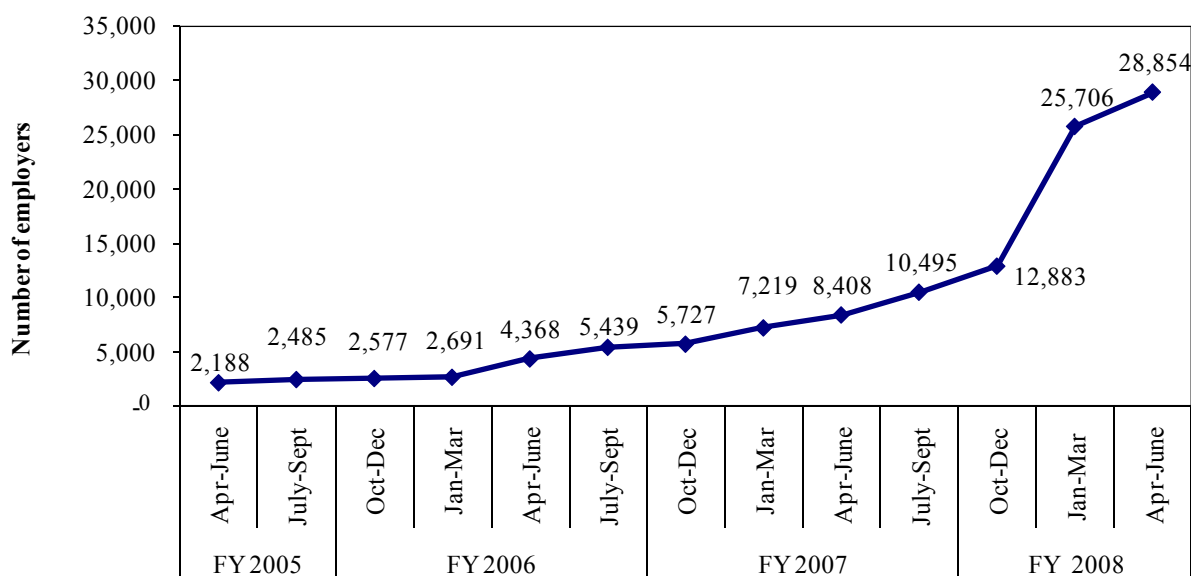


NOTE: April–June 2008 national data were estimated by the evaluation team.

SOURCES: E-Verify Transaction Database and Bureau of Labor Statistics, Job Openings and Labor Turnover Survey (JOLTS) (<http://www.bls.gov/jlt/home.htm#data>).

The number of employers using E-Verify has also increased markedly over time. In April through June 2008, 28,854 employers transmitted cases using E-Verify (Exhibit IV-2), an increase of 343 percent from April through June 2007 when 8,408 employers transmitted cases and a 1,318 percent increase since April through June 2005 when 2,188 employers transmitted cases using E-Verify.

Exhibit IV-2. Trend in the Number of Employers Transmitting Cases to the E-Verify Program: April 2005–June 2008



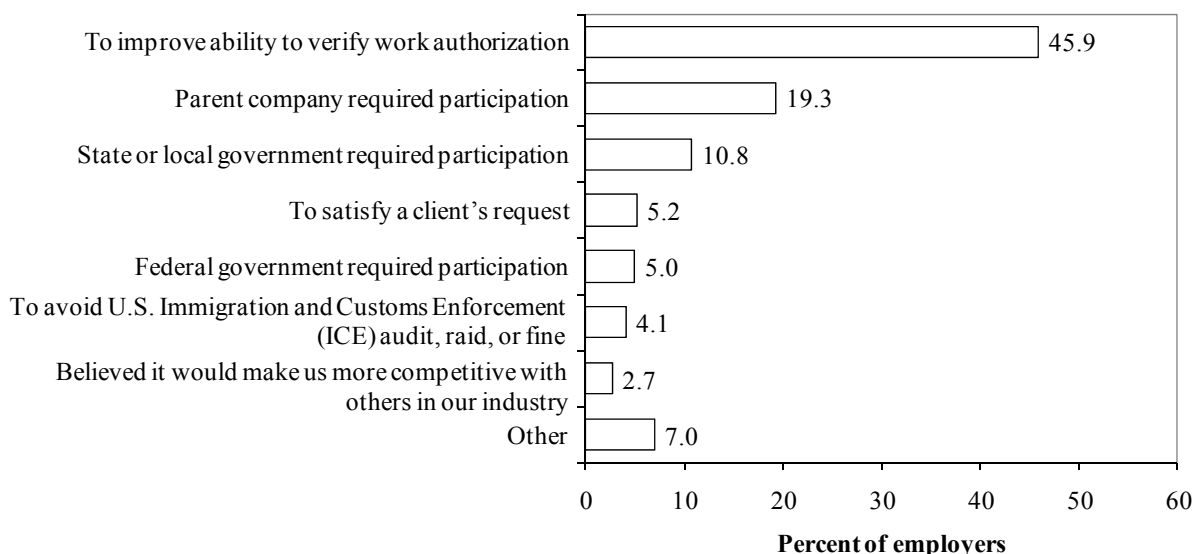
SOURCE: E-Verify Transaction Database.

Most U.S. employers are still not using E-Verify. In the month of June 2008, 22,643 employers transmitted cases to E-Verify compared to an estimated 1.3 million employers that hired new workers in the month.⁹⁸ Thus, fewer than 2 percent of all employers hiring new workers transmitted cases to E-Verify.

Almost half of employers that signed up for E-Verify reported that they did so to improve their ability to verify work authorization. As seen in Exhibit IV-3, 46 percent of E-Verify employers reported in the Web survey that they signed up for E-Verify to improve their ability to verify work authorization. Over a third of employers reported they signed up for E-Verify to satisfy corporate or government requirements. They said their participation was required by their parent company (19 percent), by their state or local government (11 percent), or by the Federal government (5 percent). The latter was presumably a misunderstanding, given the absence of Federal legislation requiring mandatory use of E-Verify.⁹⁹

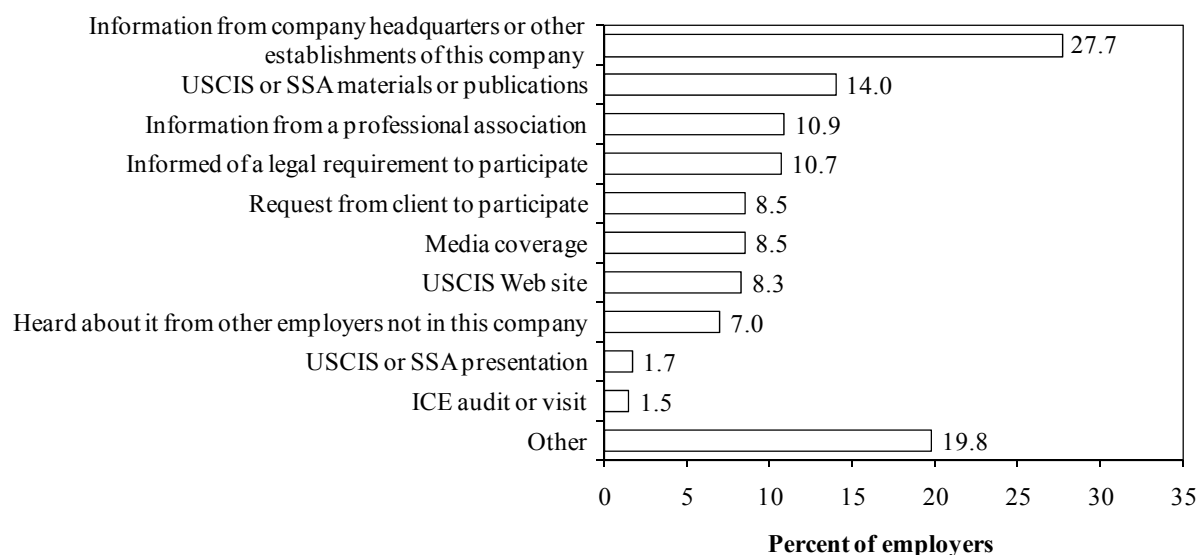
⁹⁸ This estimate is based on the estimate of 7.5 million establishments in the United States from 2005 County Business Patterns (see <http://www.census.gov/epcd/susb/introusb.htm> and <http://www.census.gov/csd/susb/defterm.html>) and an estimate from Steven J. Davis, University of Chicago and NBER; R. Jason Faberman, Bureau of Labor Statistics; and John C. Haltiwanger, University of Maryland and NBER, *The Establishment-Level Behavior of Vacancies and Hiring*: November 2006 downloaded from http://www.aeaWeb.org/annual_mtg_papers/2007/0105_0800_0101.pdf on October 1, 2008, that 18 percent of establishments have new hires in a month. To compare E-Verify with the available national data, the number of employers that transmitted in June 2008 (22,643) was calculated. This number of employers is smaller than the number that transmitted cases in April through June 2008 (28,854), since the latter number includes the employers that transmitted cases in June plus employers that transmitted cases in April or May but not June.

⁹⁹ One possible reason for this confusion was that, at this time, Federal contractors were being encouraged strongly to participate.

Exhibit IV-3. Reasons Employers Reported for Enrolling in the E-Verify Program: 2008

SOURCE: E-Verify Web Survey.

The most common way employers found out about the E-Verify Program was through their companies. As Exhibit IV-4 indicates, the most frequently mentioned way of learning about E-Verify was through company-disseminated information (28 percent). Some employers (14 percent) learned about E-Verify from USCIS or Social Security Administration (SSA) materials or publications or through a professional association (11 percent). Another 20 percent found out about the Program through other means, including that the system had already been established at their organization, the employer previously used the Basic Pilot Program, it was mandated by their corporate office or some other entity, or upon being asked to complete the E-Verify Web survey of employers.

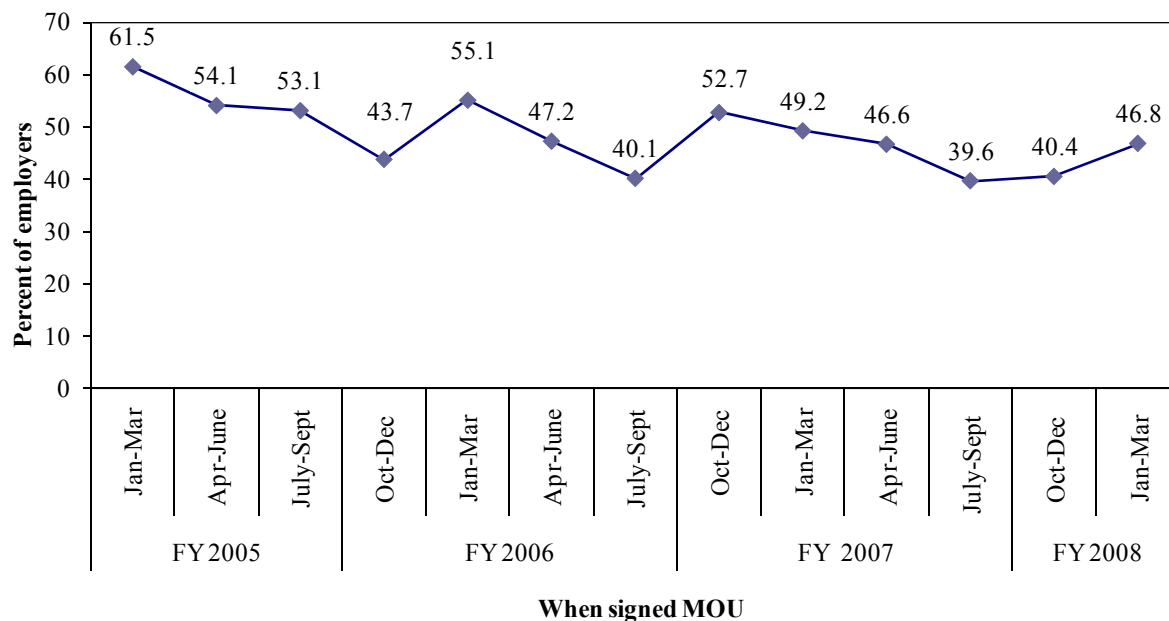
Exhibit IV-4. Ways Employers Learned About E-Verify: 2008

NOTE: Sum does not add to 100 percent because respondents could choose more than one response.

SOURCE: E-Verify Web Survey.

There is a slight decrease in the percentage of employers first using the Program to verify cases within three months after enrolling in the Program. Among employers signing an MOU between January and March 2008, 47 percent started using E-Verify within three months of signing the MOU compared to 49 percent between January and March 2007, 55 percent between January and March 2006, and 61 percent between January and March 2005 (Exhibit IV-5). This change may be attributable to changes in employer characteristics, especially by the increase in the number of small employers, since small employers presumably hire fewer new employees in any period and, therefore, may not have had as many opportunities to use the system as larger employers.

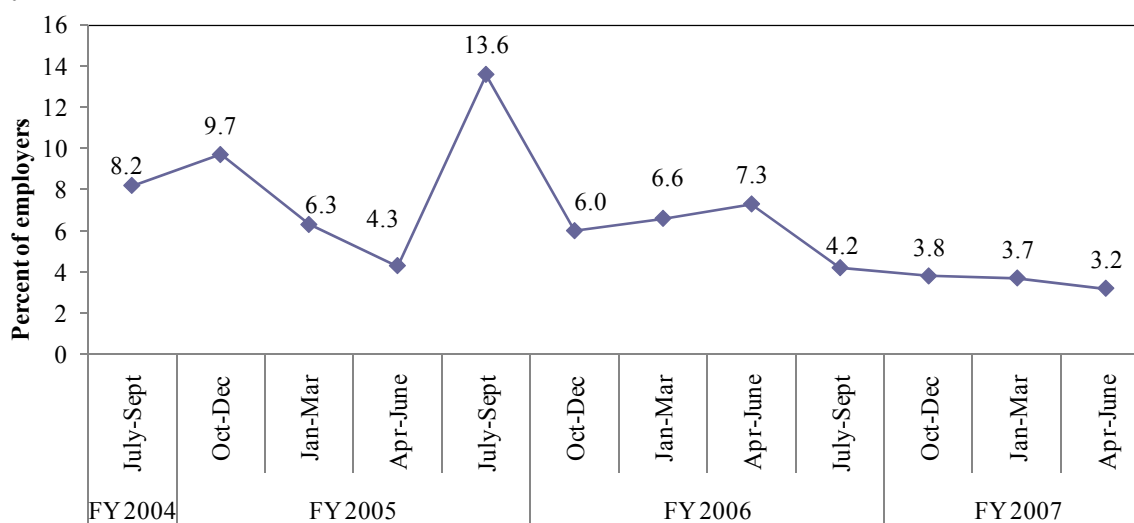
Exhibit IV-5. Percent of Employers That Used the E-Verify System Within Three Months of Signing an MOU: January 2005–March 2008



SOURCE: E-Verify Transaction Database.

Few employers enroll in E-Verify and then formally terminate using it within one year of signing. Among those employers that had signed up for E-Verify between April and June 2007, 3 percent (81 out of 2,495) of employers formally terminated their use of the system before July 2008 (Exhibit IV-6). Examination of the trend data shows considerable fluctuations in this rate. In April through June 2007, 3 percent of employers terminated using E-Verify within one year of signing an MOU compared to 7 percent in April through June 2006 and 4 percent in April through June 2005.

Exhibit IV-6. Percent of Employers Formally Terminating E-Verify Within One Year of Enrolling: July 2004–June 2007

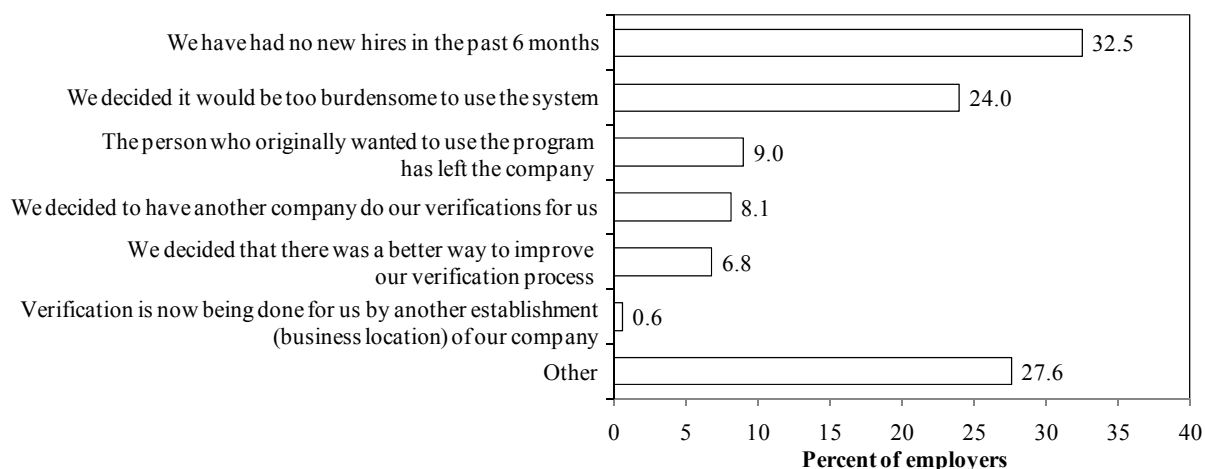


NOTE: April through June 2007 is the most recent quarter for which the percent of employers terminating use of E-Verify within a year can be accurately calculated.

SOURCE: E-Verify Transaction Database.

One-quarter of employers that registered but never started using E-Verify or that started and then stopped using it claimed that the system was too burdensome. Although the most frequently given reason (provided by 33 percent) for not using E-Verify among employers that had enrolled in the Program but had stopped using it or had never used it at the time of the 2008 survey was the lack of employees hired in the past six months, approximately one-quarter (24 percent) said that it was because it would be too burdensome to use the system (Exhibit IV-7).

Exhibit IV-7. Reasons Employers Give for Never Using or Stopping Use of E-Verify: 2008

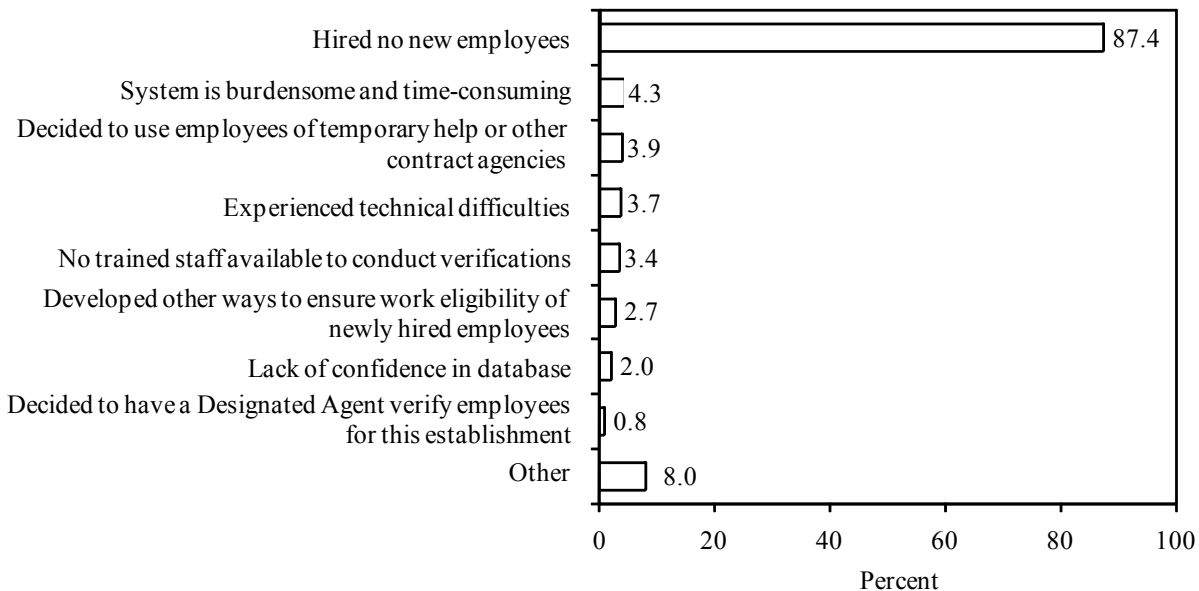


NOTE: Sum does not add to 100 percent because respondents could choose more than one response.

SOURCE: E-Verify Web Survey.

A large majority of those currently active E-Verify employers that had temporarily stopped using E-Verify suspended use simply because they did not have any newly hired employees. Among active employers, the most commonly reported reason for temporarily not using E-Verify, regardless of employer size, was a lack of newly hired employees. As Exhibit IV-8 shows, 87 percent of all employers that temporarily discontinued using E-Verify for their employment verification did so because of a lack of new hires.

Exhibit IV-8. Reasons Active Employers Give for Temporarily Not Using E-Verify: 2008



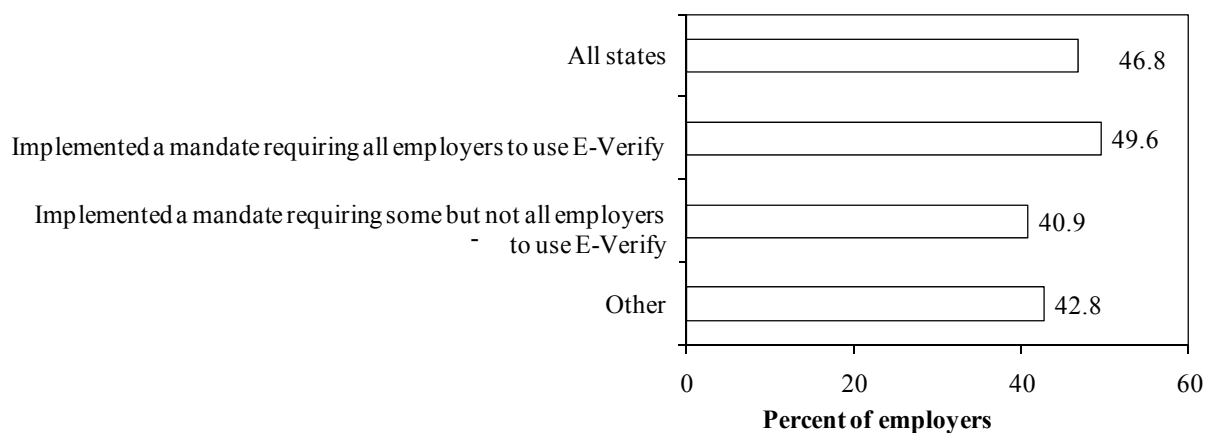
NOTE: Exhibit includes employers that reported that they had stopped using E-Verify for a month or more since starting use of E-Verify. Sum does not add to 100 percent because respondents could choose more than one response.

SOURCE: E-Verify Web Survey.

2.2. Impact of Legislative Changes

Employers in Arizona were somewhat more likely to transmit cases within three months of enrolling in E-Verify than were employers in other states. In Arizona, the only state that mandated the use of E-Verify by all employers, 50 percent of the employers signing an MOU in January through March 2008 transmitted cases within three months of signing the MOU (Exhibit IV-9). The rates for the states in other State Legislation Groups were 43 percent or less. It may be that the mandatory nature of the participation results in employers implementing the Program promptly or that Arizona employers are more likely to sign up for E-Verify only after they hire or are about to hire new employees.

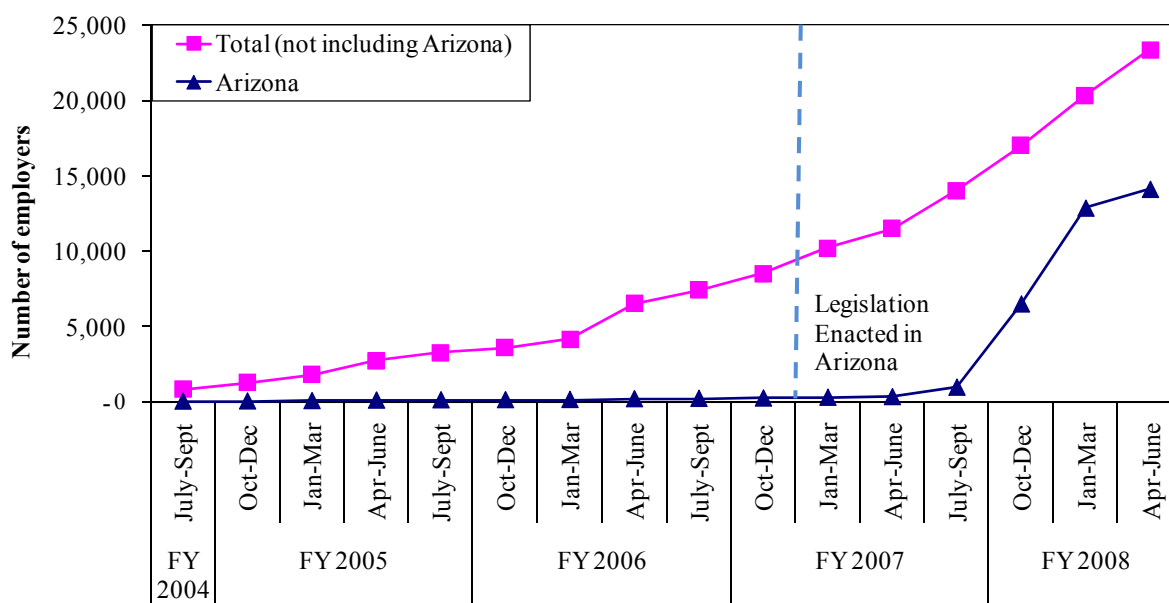
Exhibit IV-9. Percent of Employers Transmitting Cases to E-Verify Within Three Months of Signing an MOU, by State Legislation Group: Employers Signing MOU in January–March 2008



SOURCE: E-Verify Transaction Database.

Not surprisingly, growth in employer participation in E-Verify increases dramatically when E-Verify participation is mandated. In Arizona, the only state that mandated participation of all employers in the state prior to June 2008, the number of employers transmitting cases to E-Verify had a 50-fold increase between January through March 2007 when their mandatory participation law first took effect, to April through June 2008 (from 277 transmitting in January through March 2007 to 14,116 in April through June 2008). During the same time period, the increase in the remaining states increased from 10,193 to 23,373—between a two-fold and a three-fold increase (Exhibit IV-10).

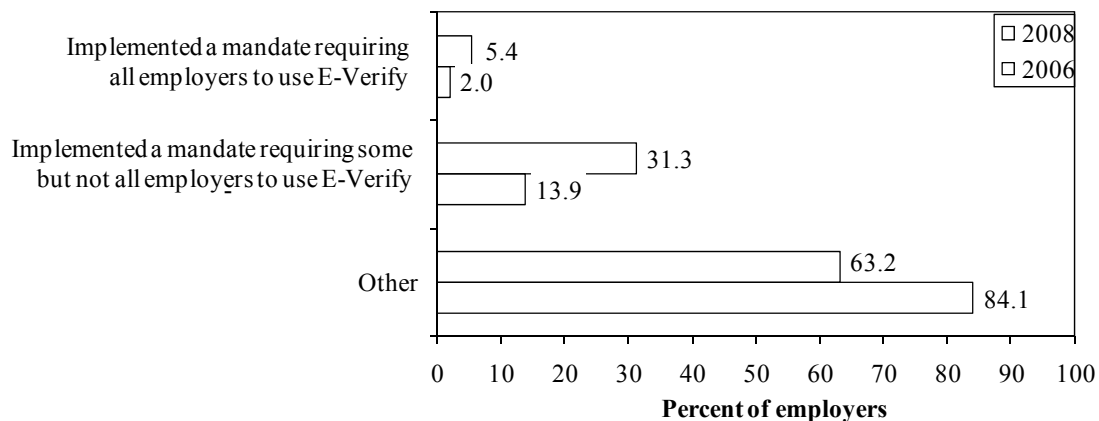
Exhibit IV-10. Number of Employers Transmitting Cases to E-Verify, Arizona and Other States: July 2004–June 2008



SOURCE: E-Verify Transaction Database.

Among employers in the Web survey, there was an increase in the percentage of responding employers from states with a mandate requiring some or all employers to use E-Verify between 2006 and 2008. The employers in Arizona, which required all employers to register, increased from 2 to 5 percent between 2006 and 2008, while the percentage of employers from states where some employers were mandated to participate rose from 14 percent in 2006 to 31 percent in 2008, as shown in Exhibit IV-11. Correspondingly, employers from states that did not implement a mandate requiring employers to use E-Verify constituted 63 percent of 2008 respondents compared to 84 percent of respondents in 2006.

Exhibit IV-11. Percent of Active E-Verify Employers Responding to the 2006 and 2008 Web Surveys, by State Legislation Group at Time of Survey



SOURCE: E-Verify Web Survey.

Most Arizona employers had not enrolled in E-Verify as of June 2008. According to information from the U.S. Census Bureau, there were approximately 138,000 employers in Arizona in 2006.¹⁰⁰ Assuming that 18 percent of these employers had new hires in June 2008,¹⁰¹ approximately 25,000 Arizona employers had new hires in that month. Since there were only approximately 8,000 Arizona employers that transmitted cases to E-Verify in June 2008,¹⁰² approximately one-third of Arizona employers that should have been using E-Verify in Arizona were doing so, though some Arizona employers may have had cases transmitted from other sites or from Designated Agents not located in Arizona; similarly, some cases for Arizona workers may be submitted by establishments or Designated Agents not located in Arizona.

E-Verify participation in states with laws requiring some but not all employers to participate increased only slightly less quickly than in states with no laws mandating E-Verify participation. Although the overall participation of employers in states other than Arizona increased dramatically between April through June 2005 and April through June 2008, the differences between the other two State Legislation Groups were quite modest. There was a nine-fold increase for states that had enacted

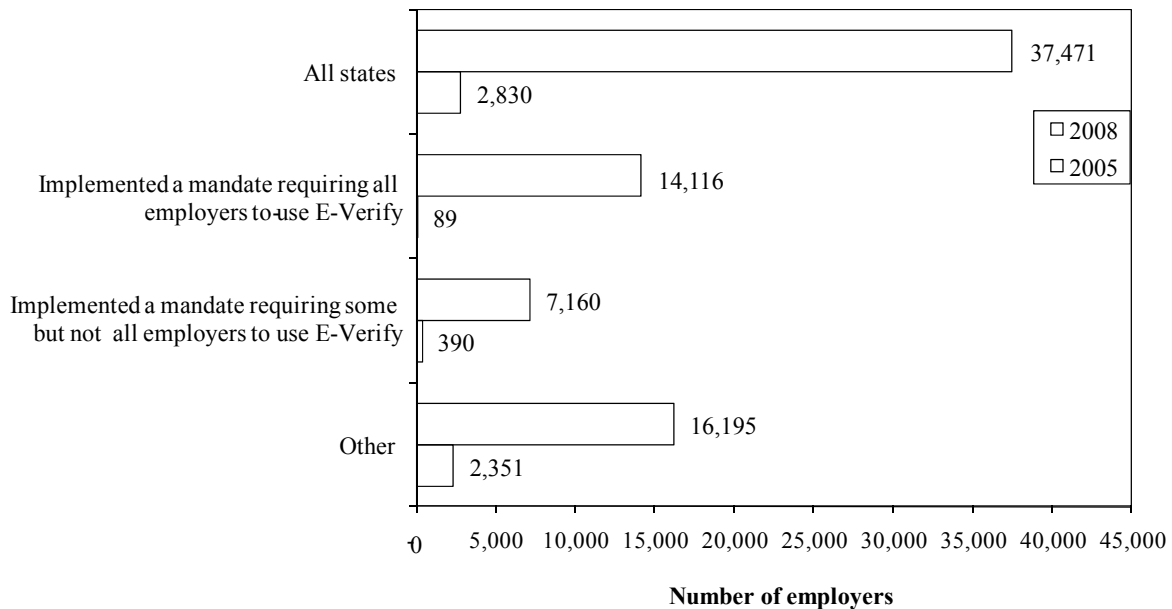
¹⁰⁰The 2006 County Business Patterns (<http://www2.census.gov/csd/susb/2006/usst06.xls>).

¹⁰¹See Steven J. Davis (http://www.aceaWeb.org/annual_mtg_papers/2007/0105_0800_0101.pdf) for information on the percentage of U.S. employers with new hires. The percentage of employers in Arizona with new hires may, of course, differ from this; however, the evaluation team was unable to locate state-specific estimates.

¹⁰²There are also undoubtedly some additional Arizona employers that are establishments of a larger company that has signed an MOU covering their establishments in Arizona and elsewhere.

legislation requiring some employers to participate in E-Verify and a seven-fold increase in the states that had not enacted any legislation mandating participation (Exhibit IV-12).¹⁰³

Exhibit IV-12. Increase in the Number of Employers Transmitting Cases From April–June 2005 to April–June 2008, by State Legislation Group



SOURCE: E-Verify Transaction Database.

¹⁰³See Chapter III for information on this classification, including a list of which states are included in each category.

CHAPTER V. TIMELINESS

1. BACKGROUND

An effective and efficient employment verification program requires results to be provided to employers, workers, and the Federal government in a timely manner. Not only is timeliness an important aspect of understanding how well the Program has been implemented, but timeliness strongly affects how well the Program meets its goals. Specifically, timely results help reduce discrimination during the time workers are resolving Tentative Nonconfirmations (TNCs), reduce burdens for employers that must terminate the employment of employees whose work authorization is not confirmed after they have invested in training them, and make the Program more effective by reducing unauthorized employment while workers are contesting their TNCs.¹⁰⁴

E-Verify timeliness is a shared responsibility of the Federal government and employers. Federal responsibilities include providing employers with initial findings in a timely manner and determining the employment-authorization status of workers who contest TNCs in a timely fashion. The only explicit employer responsibility with respect to timeliness is to transmit cases within three workdays of hiring a new employee. However, there are implicit employer requirements to perform the following additional tasks in a timely fashion: inform workers of TNCs; refer workers to the Social Security Administration (SSA) or the U.S. Citizenship and Immigration Services (USCIS) when they wish to contest TNCs; and terminate the employment of workers who do not contest or who are not found to be employment authorized. Worker conduct also influences the total time taken to resolve TNCs; although workers have eight Federal working days to contact the government, earlier contact helps to speed up the process.

Section 2 of this chapter first examines a general measure of timeliness for all cases, that is, the time from case initiation to final resolution. This measure reflects the timeliness of the Federal government, employers, and workers in completing those steps of the E-Verify process that are recorded on the Transaction Database.¹⁰⁵ It then examines how long it currently takes cases with different final findings to be completed and the trends in timeliness related to each of these findings except the finding of instantly found work authorized, which has remained constant at less than one minute since the Program was first initiated.¹⁰⁶

Next, Section 2 addresses the following measures of employer timeliness:

- Time from hiring to initiating the E-Verify case;
- Time from TNC issuance to referral;

¹⁰⁴These issues are discussed in Chapters X, IX, and VII.

¹⁰⁵It does not reflect the time between hiring and case initiation or between case resolution and employee termination for employees who are not found to be employment authorized, since reliable measures of these aspects of case hiring are not in the Transaction Database. However, other available information about these time frames is presented.

¹⁰⁶The approach to examining timeliness by focusing on time from case initiation to final finding rather than measuring timeliness from the start to the end of each step are taken because some of the data needed to determine the time from the start to finish of some of the key steps are not available. For example, good information on when the worker contacted SSA or USCIS is often not available.

- Time from TNC issuance to the worker's signing the TNC; and
- Time from Final Nonconfirmation (FNC)/unauthorized finding to termination of employment.

Finally, Section 2 looks at worker timeliness in contacting SSA to resolve TNCs. Similar information is not available for USCIS.

The following changes related to E-Verify, described in Chapter III, which have the potential to impact the timeliness of E-Verify case processing, are examined in Section 3:

- State legislative changes;
- The Photo Screening Tool;
- The SSA and USCIS pre-TNC data entry checks;
- EV-STAR;
- Naturalization Phase I; and
- Naturalization Phase II.

Most of the measures examined in this chapter are based on information from the E-Verify Transaction Database and the record reviews. Additional information from the Web survey and the onsite interviews are used to supplement this information. The limitations of these data and the analyses based on them are discussed in Chapter II. In addition to examining trends for the full Transaction Database, trends for employers consistently using E-Verify between October 2005 and June 2008 are examined. Since the characteristics of the employers in this longitudinal sample can be assumed to vary much less dramatically than the characteristics of all employers, examination of these trends allows inferences to be made about what the trends would have been without the changes in employer characteristics that have occurred due to growth in the Program.¹⁰⁷

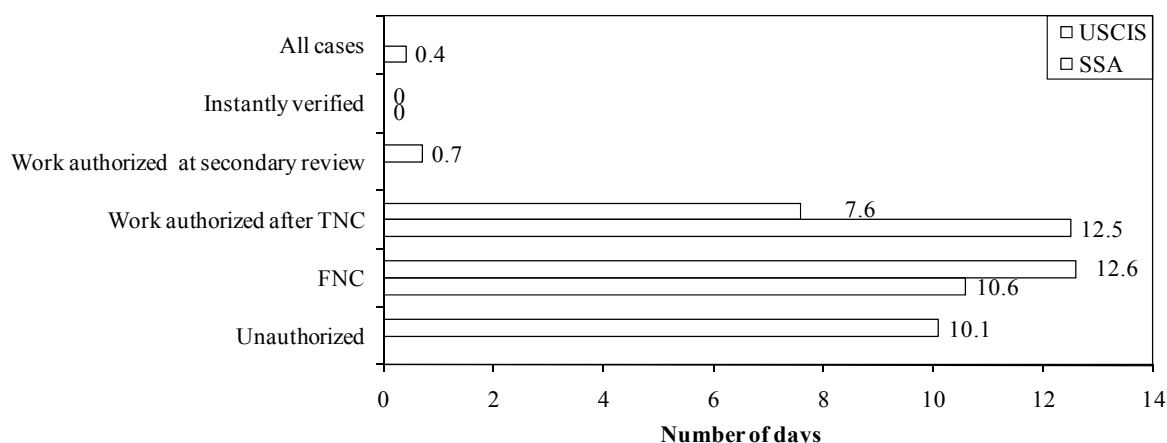
2. FINDINGS

2.1. Time From Case Initiation to Final Resolution

Average (mean) time from case initiation to final case resolution in April through June 2008 was less than a half day; however, not surprisingly, the mean time varies considerably based on the case finding. The mean number of calendar days to resolve an E-Verify case in April through June 2008 was 0.4 calendar days. However, the mean times from case initiation to case resolution ranged from less than one minute for cases that are resolved instantly to 12.5 days for cases found work authorized after TNCs with SSA and 12.6 days for cases receiving FNCs from USCIS (Exhibit V-1).

¹⁰⁷ See Chapter II for a discussion of the longitudinal Transaction Database.

Exhibit V-1. Mean Number of Calendar Days From Case Initiation to Case Resolution, by Case Outcome: April–June 2008



SOURCE: E-Verify Transaction Database.

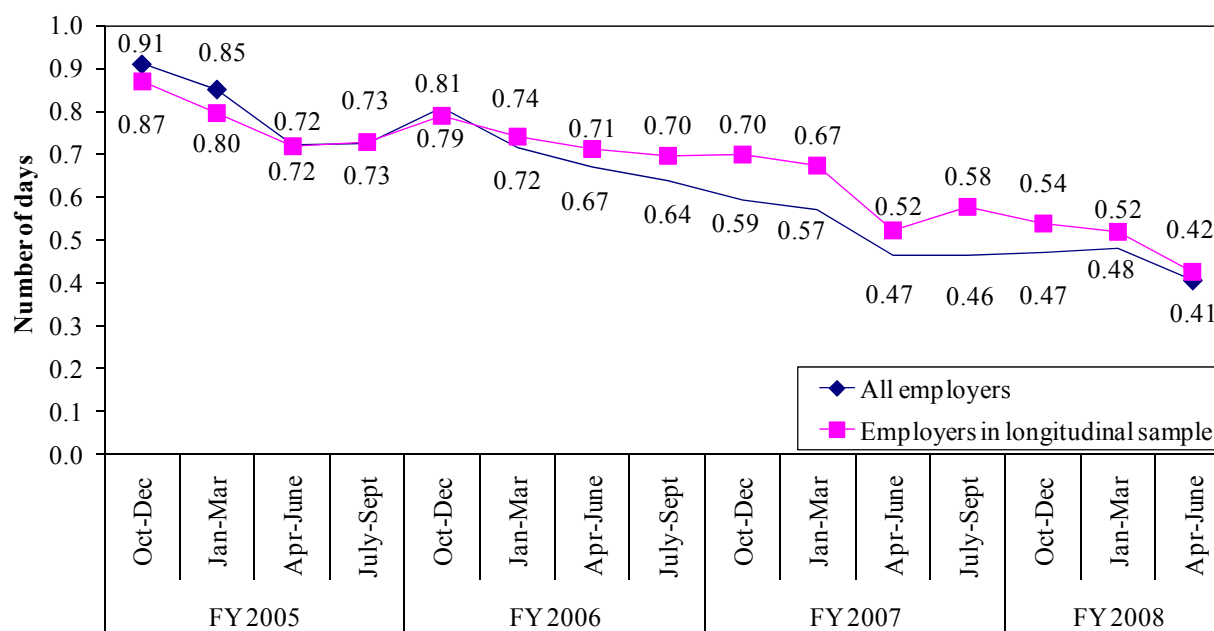
The time between case initiation and final resolution for cases found work authorized after a TNC appears to be longer for SSA than USCIS. The average time from case initiation to completion for cases found work authorized after a TNC was 7.6 calendar days for USCIS cases and 12.5 days for SSA cases. This difference could be because workers receiving TNCs from SSA must visit a local SSA office to contest the TNC finding and provide further documentation, whereas workers receiving TNCs from USCIS are able to call USCIS to contest and to fax further documentation to the agency when necessary.

The time from case initiation to final resolution for FNC cases appears to be longer for USCIS than SSA; however, this may be a function of the lack of an accurate measurement of final case resolution for many FNC cases. The mean number of calendar days from case initiation to case resolution is 12.6 days for USCIS and 10.6 days for SSA. However, the final resolution date for workers receiving FNCs is not very accurate because of limitations on the data captured in the Transaction Database for these workers.¹⁰⁸ For example, although employers are required to close cases, they do not necessarily do so. In this situation, the evaluation assumes that two weeks elapsed between issuance of the TNC and final resolution. Furthermore, there is no record of when workers decide whether or not to contest a TNC in the Transaction Database. The estimate of time for case completion for FNC cases is thus overestimated for these cases.

The mean number of calendar days from case initiation to final resolution has declined steadily over time. As seen in Exhibit V-2, the mean time for case resolution has declined steadily from 0.9 days in October through December 2004 to 0.4 days in April through June 2008 both for all employers and for employers in the longitudinal sample.

¹⁰⁸See Chapter II for a discussion of how case initiation to final resolution is measured.

Exhibit V-2. Mean Number of Calendar Days From Case Initiation to Final Resolution, for All Employers and for Employers in the Longitudinal Sample: October 2004–June 2008



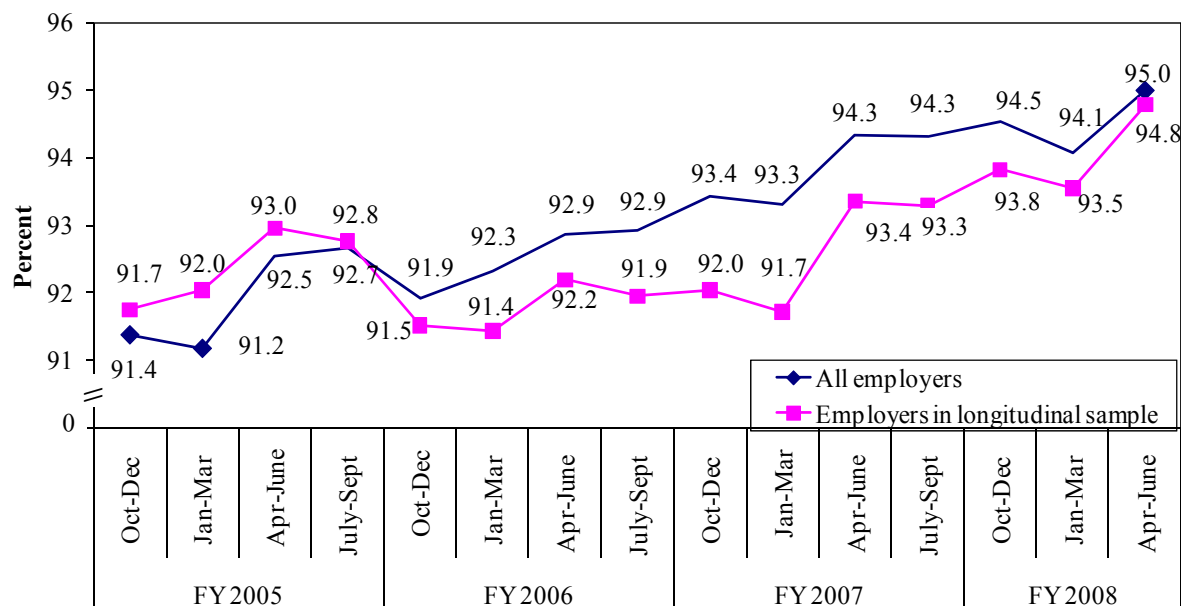
SOURCES: Total and Longitudinal E-Verify Transaction Databases.

2.2. Federal Timeliness

2.2.1. Percent Instantly Verified as Work Authorized

One major reason for the decrease in average time from case initiation to final resolution is that the percentage of all cases instantly verified as work authorized increased steadily between the start of the Program and June 2008. E-Verify instantly confirmed the work-authorization status of 95 percent (1.6 million cases) of the 1.7 million cases electronically processed in April through June 2008 compared to 91 percent in October through December 2004 (Exhibit V-3). Similarly, the percentage of cases instantly verified as work authorized for the longitudinal sample of employers that consistently used E-Verify between October 2004 and June 2008 increased over time. In October through December 2004, 92 percent of workers in the longitudinal sample were instantly verified as work authorized compared to 95 percent in April through June 2008—an increase of 3.1 percentage points compared to the increase of 3.6 percentage points for all employers during the same time period. This observation increases the likelihood that the noted improvement is not simply attributable to changes in the types of employers transmitting cases.

Exhibit V-3. Trend in Percent of Workers Who Were Verified Instantly as Work Authorized, for All Employers and for Employers in the Longitudinal Sample: October 2004–June 2008



SOURCES: Total and Longitudinal E-Verify Transaction Databases.

Although employers almost always obtain prompt responses from E-Verify when entering cases, there are occasional times when the system is down and employers cannot obtain immediate information on the results of their queries. During the year prior to the end of data collection for this study, July 2007 through June 2008, the E-Verify systems contractor documented 13 cases of the system being unavailable due to systems-related problems (or approximately once per month), ranging in length from less than 10 minutes to almost 11 hours. The system is closed to data entry every Sunday from 6:00 p.m. to midnight for routine maintenance. In addition, there are approximately 30 hours a week that the SSA system is unavailable. Even though E-Verify can be used, in these situations, the user will not receive an E-Verify response from the system instantly. Since these scheduled times are all over night, disruptions would only affect employers using E-Verify on night shifts.

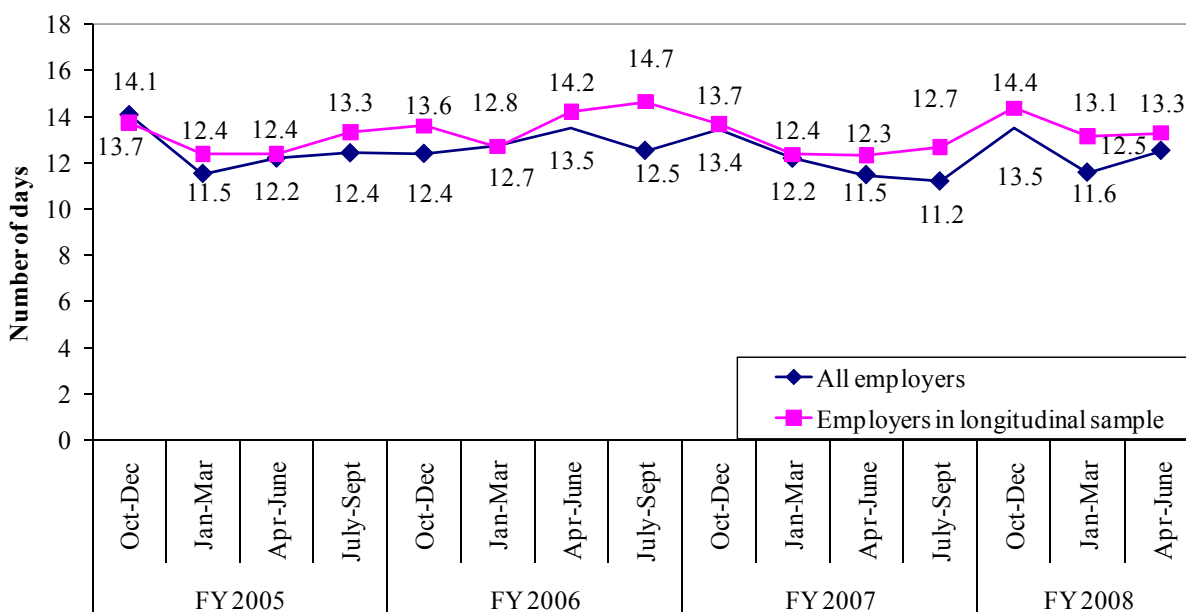
The Customer Contact center and ISVs are not available around the clock, which may be an inconvenience for some employers. The Customer Contact center is operational during normal East Coast business hours with special hours for Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands, and Guam; thus, employers entering cases over night would have trouble getting assistance on a timely basis. ISVs are available to resolve DHS TNCs from 7:00 a.m. to 5:00 p.m. West Coast time.

2.2.2. Time to Resolve SSA TNCs for Workers Found Work Authorized by SSA

The mean number of calendar days from case initiation to case resolution for cases found work authorized after a TNC by SSA has remained fairly constant over time. As seen in Exhibit V-4, the number of days from case initiation to resolution for cases that SSA finds to be work authorized after a

TNC varies between October through December 2004 and April through June 2008 from 11.2 to 14.1 for all employers and from 12.3 to 14.7 for employers in the longitudinal sample.

Exhibit V-4. Mean Number of Calendar Days From Case Initiation to Final Resolution for Cases Found Employment Authorized by SSA After a TNC, All Employers and Employers in the Longitudinal Sample: October 2004–June 2008



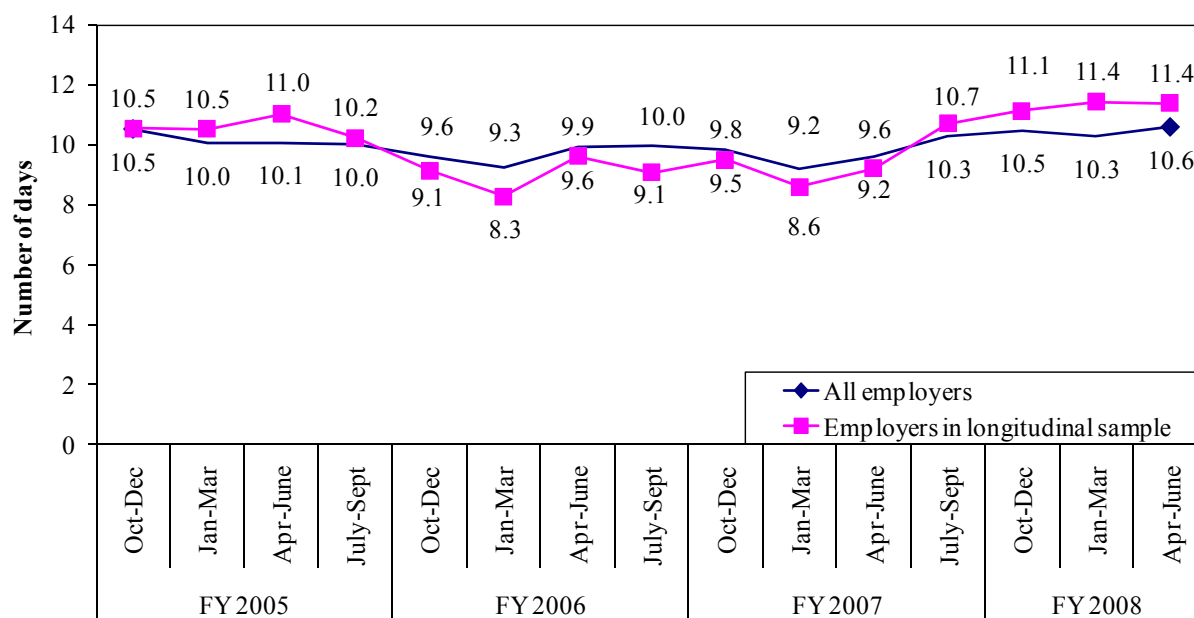
SOURCES: Total and Longitudinal E-Verify Transaction Databases.

Resolving TNCs with SSA usually requires a single trip to SSA; however, it sometimes requires the worker to visit SSA multiple times. Among the 126 workers who talked about how long it took them to resolve an SSA TNC, 103 said they resolved their TNCs in one trip to SSA, eight reported that they had to make two or more trips to SSA but were able to resolve the TNC in a single day, two said they resolved the TNC in two days, and two took eight to 14 days to resolve their problems. An additional 11 workers said that they had to make multiple trips to SSA but did not specify how long it took to resolve their problems.

2.2.3. Time to Resolve SSA TNCs for SSA FNC Cases

The mean number of calendar days from case initiation to case resolution for workers receiving SSA FNCs has fluctuated over time without showing a steady decrease or increase. As seen in Exhibit V-5, the mean number of days between case initiation and final resolution has fluctuated between 9.2 and 10.6 for all employers and between 8.3 and 11.4 for employers in the longitudinal sample. As noted above, the final resolution date for workers receiving FNCs is not very accurate because of limitations on the data captured in the Transaction Database for these workers, which may be obscuring trends that would have been observable if better data were available.

Exhibit V-5. Mean Number of Calendar Days From Case Initiation to Final Resolution for SSA FNC Cases, All Employers and for Employers in the Longitudinal Sample: October 2004–June 2008



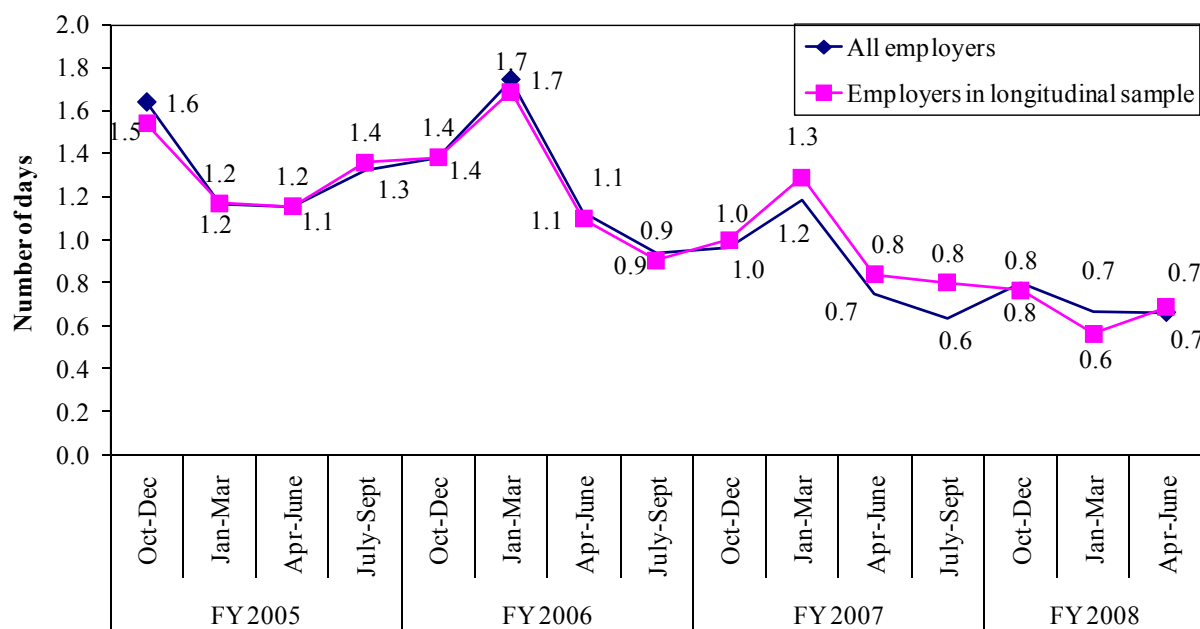
SOURCES: Total and Longitudinal E-Verify Transaction Databases.

2.2.4. Time to Complete USCIS Secondary Reviews for USCIS Cases Not Instantly Found Work Authorized¹⁰⁹

There has been a significant decrease in the time it takes Immigration Status Verifiers (ISVs) to complete secondary verifications for cases found work authorized. In April through June 2008, the mean number of calendar days from case initiation to final resolution was 0.7 days for all cases resolved as work authorized during the second level USCIS review compared to 1.6 days in October through December 2004 (Exhibit V-6). There was also a decline in the mean number of days for cases transmitted by employers in the longitudinal sample from 1.5 to 0.7 days. Thus, it appears that USCIS has become more efficient in conducting the secondary verification process. Specifically, USCIS reports that cases are now assigned on a flow basis rather than being batched for assignment to ISVs on the following day.

¹⁰⁹ This measure is of less interest than the other timeliness measures, because it is difficult to distinguish differences in the efficiency of processing these cases from differences that could arise because of changes in the thoroughness of these reviews. However, it is included here for completeness.

Exhibit V-6. Mean Number of Calendar Days From Case Initiation to Final Resolution for Cases Found Work Authorized by USCIS After a Secondary Review, All Employers and Employers in the Longitudinal Sample: October 2004–June 2008

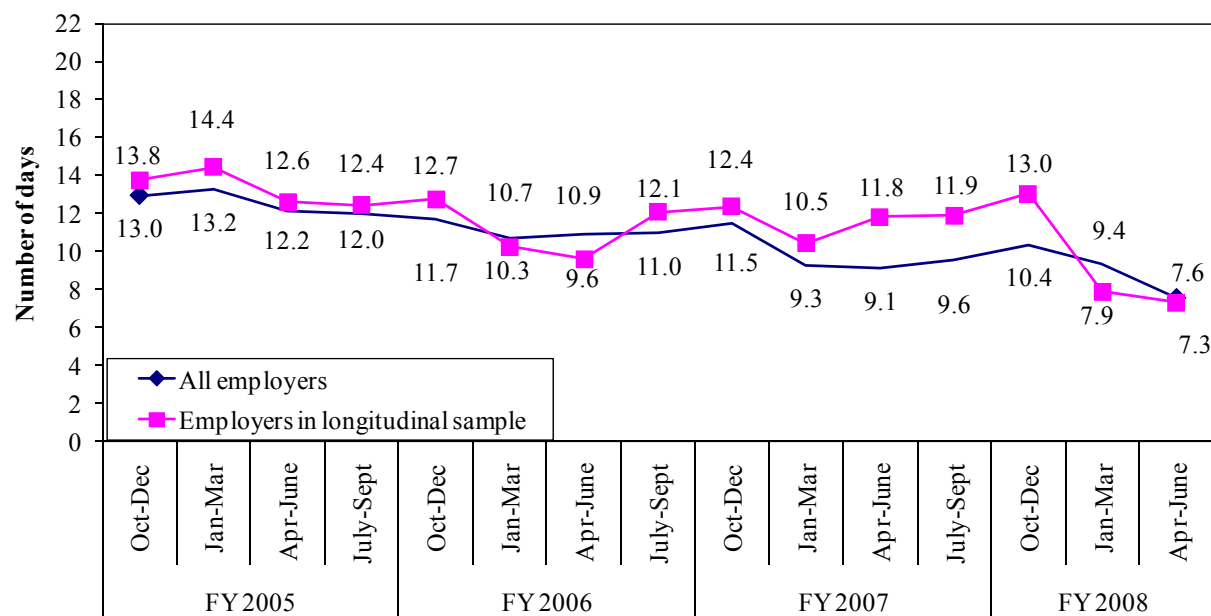


SOURCES: Total and Longitudinal E-Verify Transaction Databases.

2.2.5. Time to Resolve USCIS TNCs for USCIS Cases Found Work Authorized After Contesting a TNC

There has also been a significant decrease in the time from case initiation to final resolution for USCIS cases found work authorized after a TNC. In April through June 2008, the mean days from case initiation to final resolution was 7.6 calendar days for all USCIS cases found to be work authorized after a TNC compared to 13.0 days in October through December 2004 (Exhibit V-7). There was a similar decline for cases transmitted by employers in the longitudinal sample from 13.8 to 7.3 days.

Exhibit V-7. Mean Number of Calendar Days From Case Initiation to Final Resolution for Cases Found Work Authorized by USCIS After a TNC, All Employers and Employers in the Longitudinal Sample: October 2004–June 2008



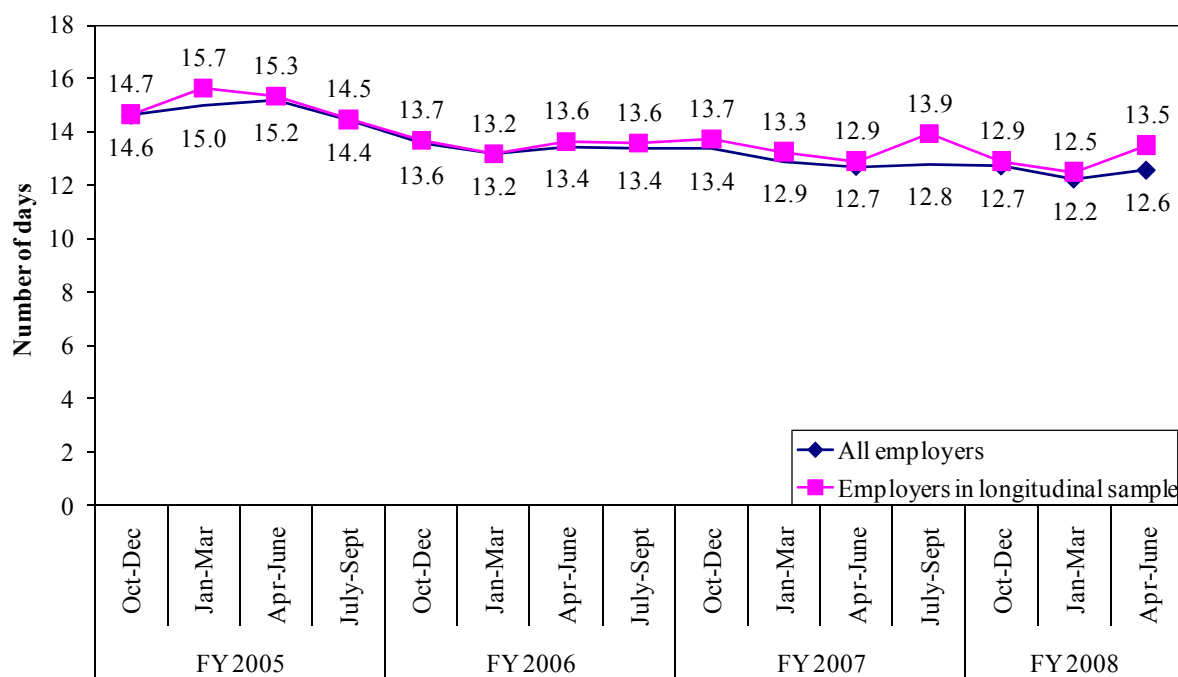
SOURCES: Total and Longitudinal E-Verify Transaction Databases.

The prompt resolution of USCIS cases is confirmed by data from the onsite study. Among workers interviewed, all 12 who discussed the length of time it took for them to resolve a USCIS TNC said that it took one day.

2.2.6. Time to Resolve USCIS TNCs for USCIS Cases Receiving FNCs

The mean number of days from case initiation to case resolution for workers receiving USCIS FNCs has decreased over time. As seen in Exhibit V-8, the mean number of calendar days between case initiation and final resolution decreased from 14.6 days in October through December 2004 to 12.6 days in April through June 2008. The decline for cases transmitted by employers in the longitudinal sample was from 14.7 to 13.5.

Exhibit V-8. Mean Number of Calendar Days From Case Initiation to Final Resolution for USCIS FNC Cases, All Employers and Employers in the Longitudinal Sample: October 2004–June 2008

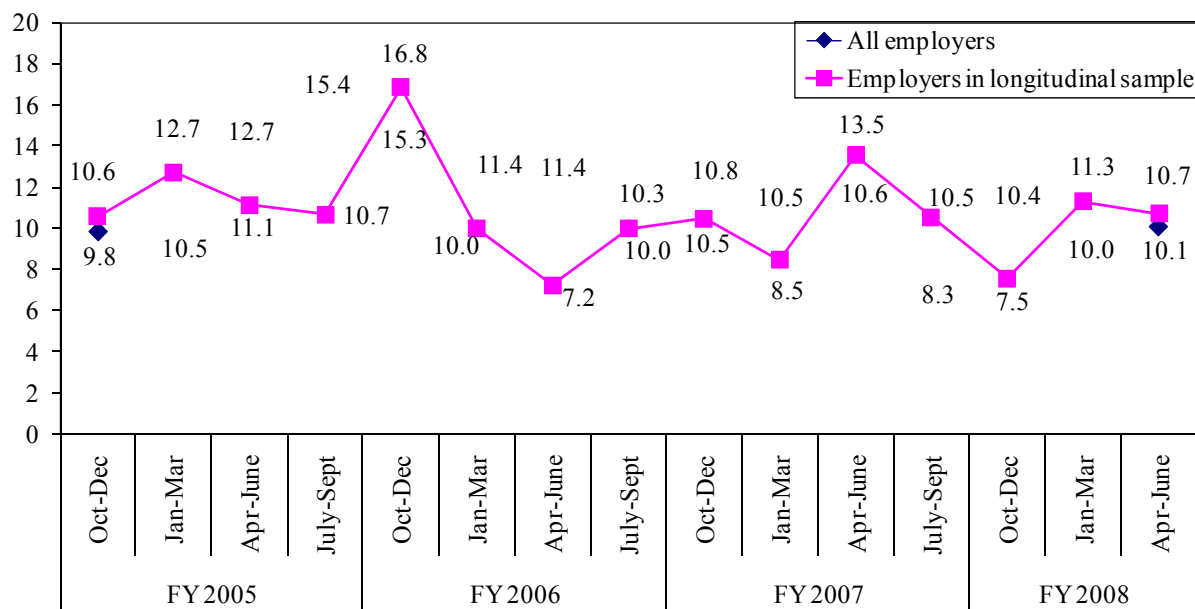


SOURCES: Total and Longitudinal E-Verify Transaction Databases.

2.2.7. Time to Resolve USCIS TNCs for USCIS Cases Not Receiving a Finding of Work Authorized

The mean number of calendar days from case initiation to case resolution for workers who are not found work authorized by USCIS has fluctuated over time. As seen in Exhibit V-9, the mean number of days between case initiation and final resolution jumped from 10.5 in January through March 2005 to 12.7 in April through June 2005 and 15.4 in July through September 2005. The mean remained steady through October through December 2005 and then decreased to 11.4 days in January through March 2006. Cases transmitted by employers in the longitudinal sample showed greater fluctuation over time but had a similar spike of 16.8 days in October through December 2005.

Exhibit V-9. Mean Number of Calendar Days From Case Initiation to Final Resolution for USCIS Cases Found Not Work Authorized, All Employers and Employers in the Longitudinal Sample: October 2004–June 2008



SOURCES: Total and Longitudinal E-Verify Transaction Databases.

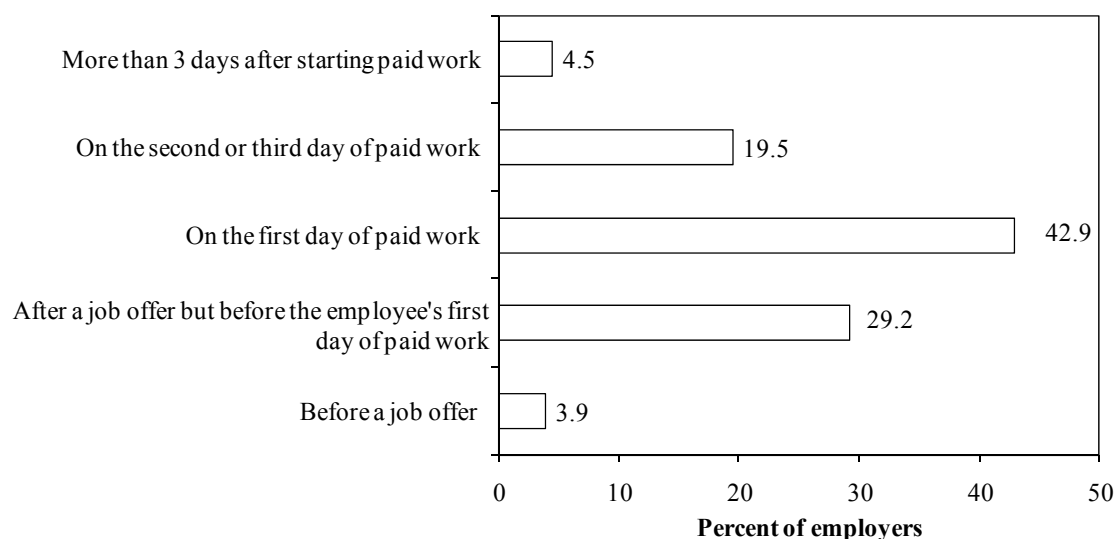
2.3. Employer Timeliness

2.3.1. Time From Hiring to Initiating an E-Verify Case

Most employers reported using E-Verify to verify work authorization promptly; however, record reviews indicate that employers tend to overstate the timeliness of their initial case submissions. Overall, 96 percent of employers responding to the Web survey reported using E-Verify within three workdays of an employee starting to work. Among employers that responded to this question, 43 percent reported using E-Verify to transmit cases on the first day of employment (Exhibit V-10). Some employers (29 percent) used E-Verify after the job offer but prior to the first workday. Another 20 percent used E-Verify by either the second or third workday. The response to the onsite interview was similar—of the 66 employers that commented on this aspect of E-Verify, 41 reported that they *always* enter information into E-Verify within three days of hire. Thus, the vast majority of employers reported that they entered data into E-Verify on a timely basis.¹¹⁰ However, the record reviews indicated that the Transaction Database record may overstate the promptness of these inputs because some employers input dates that are later than the actual hire dates (42 of the 108 onsite study employers had one or more cases in which the hire date entered was later than the hire date on the Form I-9).

¹¹⁰ See Chapter VIII for a discussion of the more general implications of these responses for employer compliance.

Exhibit V-10. When Employer Reports Using E-Verify to Verify Work Authorization



SOURCE: E-Verify Web Survey: 2008.

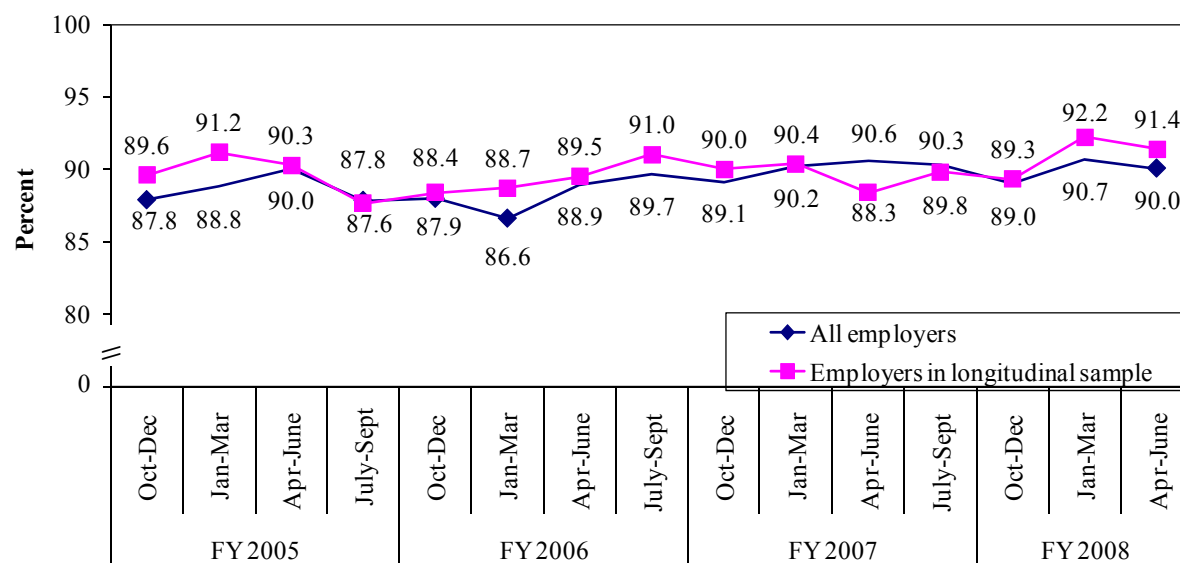
Information from the Transaction Database is consistent with employers' claims that they were generally inputting worker information into the E-Verify system promptly. According to the information input by employers between April and June 2008, 51 percent of cases were entered on the date the employee was hired and another 39 percent were entered within one week of hire.¹¹¹ However, 10 percent of the transactions were for employees that had been hired more than a week before the transaction was submitted. The accuracy of this information, however, is dependent upon the employer's entering the correct hiring dates for their employees, which is not always the case.¹¹²

There has been little change over time in the percentage of cases transmitted to E-Verify promptly. In April through June 2008, 90 percent of all cases were transmitted within one week of hire according to Transaction Database data compared to October through December 2004 when 88 percent of cases were transmitted within one week of hire (Exhibit V-11). Between these dates, the percentage varied from a low of 87 percent to a high of 91 percent. The trend for employers in the longitudinal sample between October 2004 and June 2008 was similar to that for all employers.

¹¹¹ The distribution is based on calendar days, which means that some of the cases entered within a week were entered more than three Federal workdays after the hire date.

¹¹² See Chapter VIII for a discussion of the reliability of employer response compared to the responses of workers and the record review.

Exhibit V-11. Trend in Percent of Cases Entered Within One Week of Hire Date, for All Employers and Employers in the Longitudinal Sample: October 2004–June 2008



SOURCES: Total and Longitudinal E-Verify Transaction Databases.

Employers could not always enter new employees' information into E-Verify within three work-days of hire. Onsite study employers provided a variety of reasons for not being able to input employee information into E-Verify promptly. Some employers could not keep up with entering cases during peak hiring times, such as seasonal times and after job fairs. Several employers reported that with a large number of employees and/or multiple sites, the three-day time period for entering employee information was difficult to meet. These employers stated that apart from the large number of employees being hired making it difficult to enter information promptly, there may also have been a delay in receiving paperwork from sites. A few employers reported that they had specific days for completing cases, which may have resulted in cases for some newly hired employees being entered into the system more than three days after they were hired. For example, one employer explained that the company did payroll on Monday, Tuesday, and Wednesday, so the staff member who submitted cases to E-Verify could not enter information until Thursday and Friday. A few employers reported having to wait to enter information for employees who had not yet been issued Social Security numbers, such as workers with H-2B or J-1 visas. Other reasons for not entering employee information promptly included not being able to keep up with entering cases when staff were out of the office, or simply forgetting to do so within three days of hire.

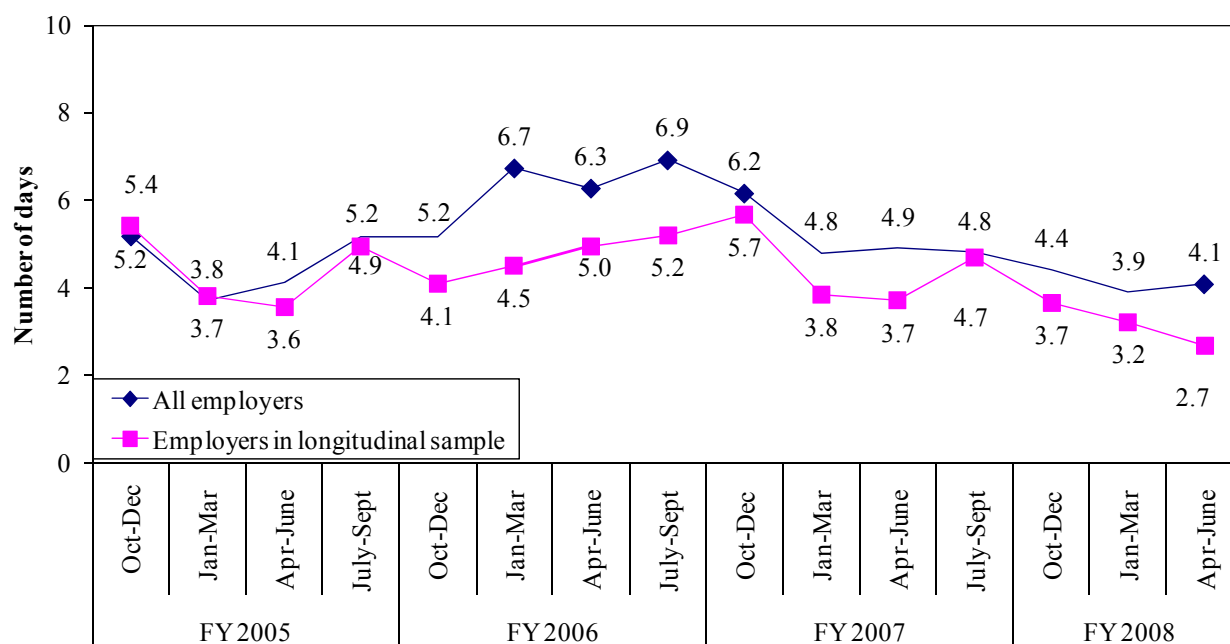
2.3.2. Time From TNC to Referral

2.3.2.1. Total Time From Issuance of TNC to Referral

The elapsed time between issuance of a TNC and referral has fluctuated over time, with a possible recent downward trend. As noted earlier there are no time requirements for employers to notify workers of TNCs or to refer those wishing to contest TNCs to USCIS or SSA other than the expectation that it be done expeditiously. As seen in Exhibit V-12, the mean number of calendar days between issuance of a TNC until the employer enters the fact that the worker is being referred has ranged from 3.7

to 6.9 days for all employers and from 2.7 days to 5.7 days for employers in the longitudinal sample. Although the number of days for employers in the longitudinal sample was lower in January through June 2008 than at any preceding time (2.7 in April through June and 3.2 for January through March compared to a low of 3.6 in the preceding quarters), a similar statement cannot be made about all employers.

Exhibit V-12. Trend in Number of Calendar Days Between Issuance of a TNC and Referral: October 2004–June 2008

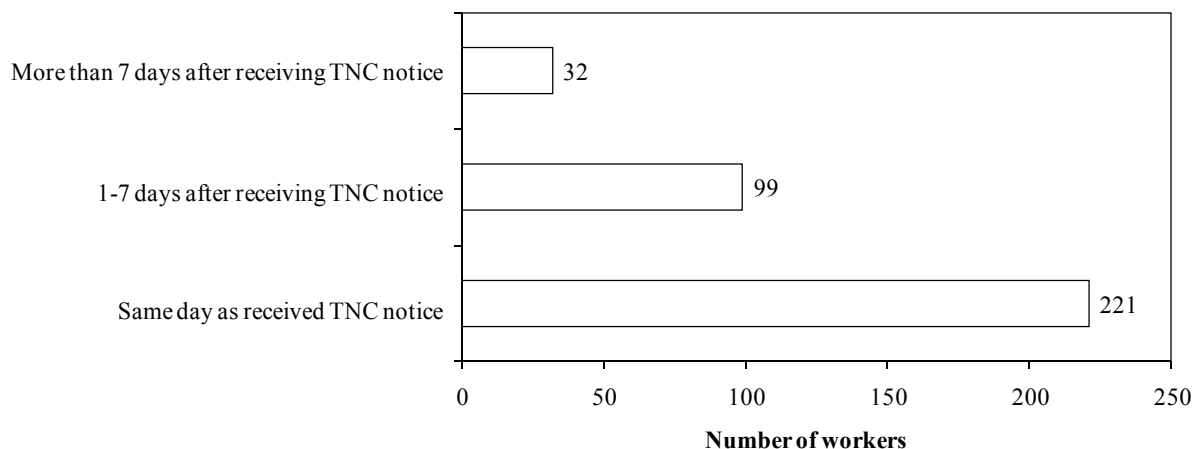


NOTE: Based on cases with an employer referral.

SOURCES: Total and Longitudinal E-Verify Transaction Databases.

2.3.2.2. Time From TNC Issuance to Workers' Signing TNC Notices

Most workers receiving TNCs received their TNC notices on the same day they were issued; however, it sometimes took a week or longer from the time a TNC notice was issued until it was signed. Among the 352 record review cases that included a signed TNC notice, 320 were signed by the worker within a week of the issuance of the TNC (Exhibit V-13).

Exhibit V-13. Number of Days Between Receiving and Signing TNC Notice

SOURCE: Record review of Form I-9 and related records.

Employers reported that it was sometimes difficult to provide information to their employees about TNCs promptly. Employer interviews provided a variety of reasons why there might be a delay in delivering TNC notices to employees, including the need to mail the document between office locations, human resources employees going on vacation, and difficulty in locating employees who might work at different worksites or during different shifts.

2.3.2.3. Time From Worker Notification to Referral

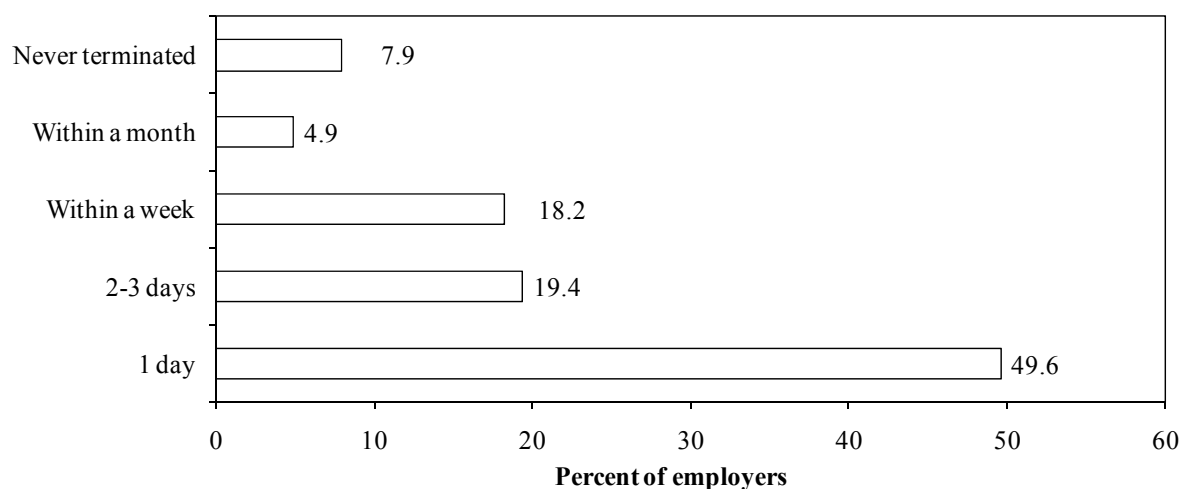
Almost all of the records reviewed for workers with both referral dates and TNC notices indicating that they wanted to contest the TNC had been referred within a week of signing the TNC notice.

Among the 191 record review cases with a signed TNC notice indicating that the worker wanted to contest the TNC and a referral date in E-Verify, 183 were referred to SSA or USCIS within a week of the date the worker signed the TNC notice.

2.3.3. Time From FNC/Unauthorized Finding to Termination

Employers do not always promptly terminate employment when E-Verify is not able to confirm that an employee is work authorized. Most Web survey respondents (87 percent) who had employees who received FNC or unauthorized findings reported terminating their employment within a week of receiving the FNC or unauthorized finding, while 8 percent reported that they had never terminated any of these employees and 5 percent had taken more than one week to terminate their employment (Exhibit V-14). Among the 85 onsite study employers commenting on their termination procedures, 68 reported promptly terminating employment for those who decided not to contest, 67 reported promptly terminating employment for those who received unauthorized findings, and 26 reported terminating employment for those who did not resolve their TNC in eight workdays. Seven employers terminated employment one to two weeks after an FNC or unauthorized finding, and only one employer said they never terminated employment after an FNC or unauthorized finding.

Exhibit V-14. Amount of Time for Employer to Terminate Employment After Employee Receives an FNC or Unauthorized Finding

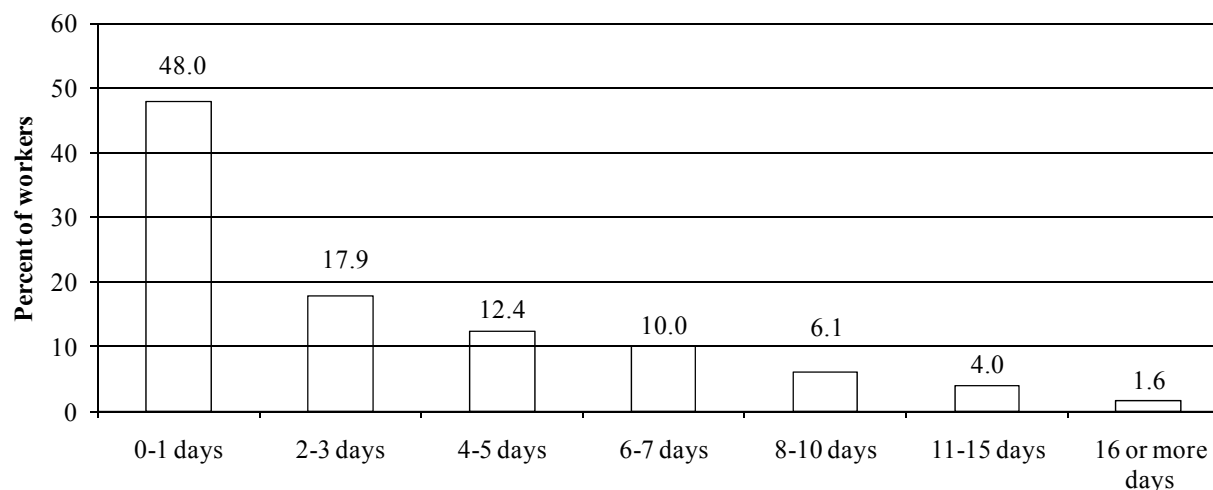


SOURCE: E-Verify Web Survey: 2008.

2.4. Worker Timeliness

Most workers contesting SSA TNCs do so shortly after they are referred to SSA. Workers receiving TNCs who wish to contest have eight Federal workdays to contact USCIS or SSA. Almost half of workers contesting SSA TNCs since the implementation of EV-STAR in October 2007 did so within one day of the referral date input into E-Verify by their employers; however, 6 percent took 11 or more calendar days to contact SSA (Exhibit V-15).

Exhibit V-15. Number of Calendar Days Between Employer Referral and Worker Contacting SSA: October 2007–June 2008



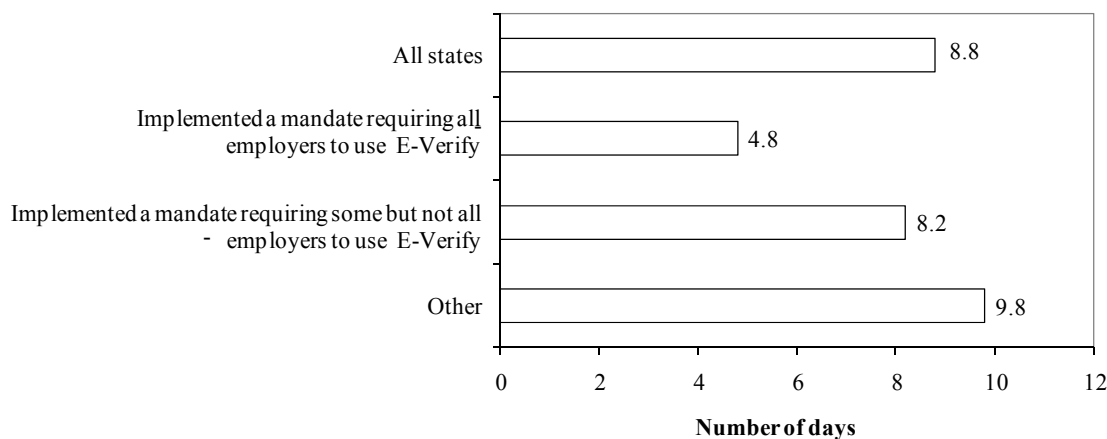
SOURCE: E-Verify Transaction Database, including EV-STAR data.

3. IMPACTS OF LEGISLATIVE AND PROGRAM CHANGES ON TIMELINESS

3.1. Legislative Changes

Employers in Arizona are among the fastest in the nation to submit cases to E-Verify after hiring workers. The average time from hire date to case initiation was 4.8 calendar days for employers in Arizona in April through June 2008 compared to 8.2 days for states requiring some employers to use E-Verify and 9.8 days for other employers (Exhibit V-16).

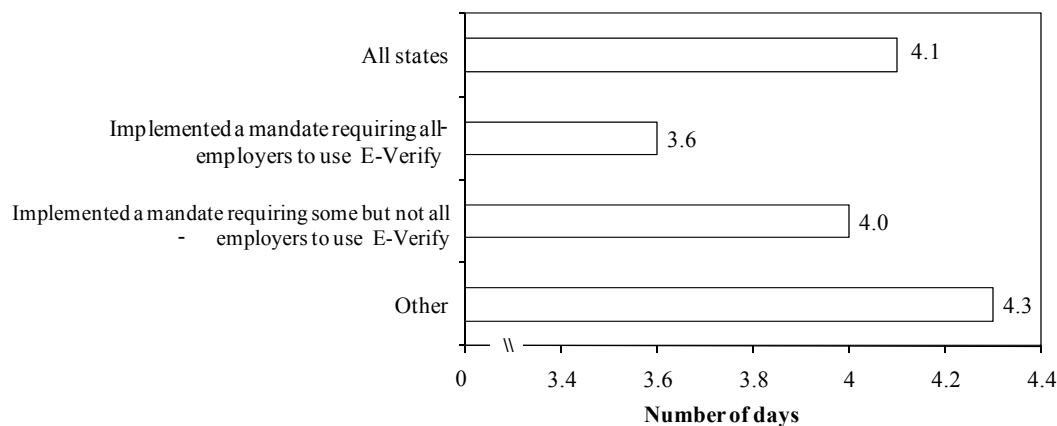
Exhibit V-16. Mean Number of Calendar Days Between Hire Date and Case Initiation, by State Legislation Group: April–June 2008



SOURCE: E-Verify Transaction Database.

The time from issuance of TNCs to referral appears to be shorter for employers in states that require some or all employers to register for E-Verify. The average time from TNC issuance to referral for Arizona was 3.6 days, compared to 4.0 days for employers requiring some but not all employers to register and 4.3 days for employers in other states (Exhibit V-17).

Exhibit V-17. Mean Number of Calendar Days Between TNC Issuance and Referral, by State Legislation Group: April–June 2008



SOURCE: E-Verify Transaction Database.

3.2. Photo Screening Tool

There was a slight decrease in the percentage of noncitizen cases instantly verified as work authorized attributable to the institution of the Photo Screening Tool. The Photo Screening Tool process, implemented in mid-September 2007 and revised on May 5, 2008, requires employers to verify the consistency of photographs returned by the Photo Screening Tool with photocopies of photographs on certain immigration documents (Permanent Resident “green” card and Employment Authorization Document (EAD)) provided by the worker. This comparison is made whenever the USCIS electronic matching process indicates that the worker is employment authorized. Of the approximately 93,900 noncitizen cases transmitted by regular employers¹¹³ between May 5 and June 30, 2008, there were 177 cases submitted that received a TNC attributable to the Photo Screening Tool and one additional case found work authorized during the ISV review. If the Photo Screening Tool had not been operating during that time, these 178 Photo Screening Tool cases would have been found to be instantly work authorized. The percentage of noncitizen cases submitted by regular employers found work authorized instantly would have been 73.6 percent instead of 73.4 (see Exhibit V-18). The Photo Screening Tool change also presumably explains the 0.1 percentage point decrease for noncitizen cases instantly verified as work authorized (from 83.0 to 82.9 percent) between July through September 2007 and October through December 2007.¹¹⁴

Exhibit V-18. Observed Case Outcomes and Case Outcomes Without the Photo Screening Tool: May 5–June 30, 2008

Observed Outcome	All		Photo Tool Cases		Non-Photo Tool Cases	
Total transactions	93,866	100.0	42,694	100.0	51,172	100.0
FNC by SSA	9,775	10.4	0	0.0	9,775	19.1
Instantly Verified as Work Authorized by USCIS	69,190	73.7	42,516	99.6	26,674	52.1
With SSA TNC	284	0.3	170	0.4	114	0.2
Without SSA TNC	68,906	73.4	42,346	99.2	26,560	51.9
Second Stage Work Authorization by USCIS	6,947	7.4	1	0.0	6,946	13.6
With SSA TNC	35	0.0	0	0.0	35	0.1
Without SSA TNC	6,912	7.4	1	0.0	6,911	13.5
Third Stage Work Authorization by USCIS	1,383	1.5	1	0.0	1,382	2.7
FNC by USCIS	6,486	6.9	176	0.4	6,310	12.3
Unauthorized by USCIS	85	0.1	0	0.0	85	0.2
Outcomes Without Photo Screening Tool	All		Photo Tool Cases		Non-Photo Tool Cases	
Total transactions	93,866	100.0	42,694	100.0	51,172	100.0
FNC by SSA	9,775	10.4	0	0.0	9,775	19.1
Instantly Verified as Work Authorized by USCIS	69,368	73.9	42,694	100.0	26,674	52.1
With SSA TNC	284	0.3	170	0.4	114	0.2
Without SSA TNC	69,084	73.6	42,524	99.6	26,560	51.9
Second Stage Work Authorization by USCIS	6,946	7.4	0	0.0	6,946	13.6
With SSA TNC	35	0.0	0	0.0	35	0.1
Without SSA TNC	6,911	7.4	0	0.0	6,911	13.5
Third Stage Work Authorization by USCIS	1,382	1.5	0	0.0	1,382	2.7
FNC by USCIS	6,310	6.7	0	0.0	6,310	12.3
Unauthorized by USCIS	85	0.1	0	0.0	85	0.2

NOTE: Designated Agent and Web Services cases that are not processed through the Photo Screening Tool are not included in these numbers.

SOURCE: E-Verify Transaction Database.

¹¹³Designated Agent and Web Services cases that are not processed through the Photo Screening Tool are not included in these numbers.

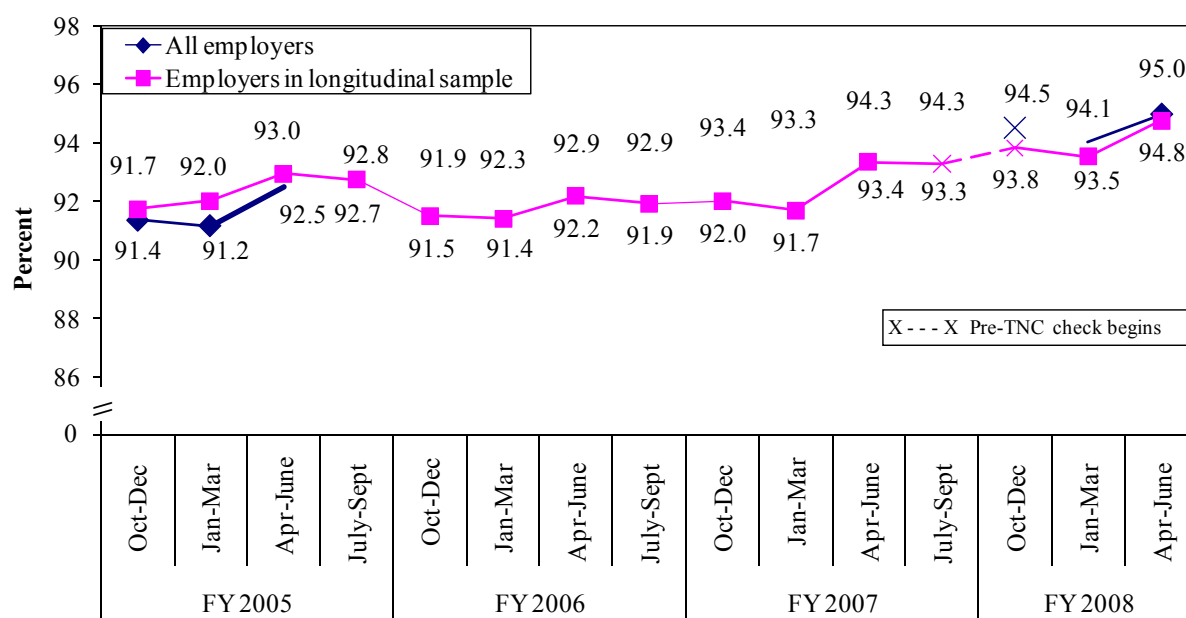
¹¹⁴See Chapter VI for a flow diagram of the Photo Screening Tool with additional details about this process.

3.3. SSA and USCIS Pre-TNC Checks

The SSA and USCIS pre-TNC checks (begun in September 2007) were designed to reduce the number of data input errors creating erroneous TNCs. This should improve timeliness by increasing the number of cases resolved immediately.¹¹⁵

The pre-TNC checks may have led to a slight increase in the percentage of E-Verify cases instantly verified as work authorized. The percentage of cases instantly found to be work authorized increased 0.2 percentage points (from 94.3 to 94.5) between July through September 2007 and October through December 2007, which was less than the increase of 0.5 percentage points (92.9 to 93.4) between July through September 2006 and October through December 2006 but well above the decrease of 0.8 percentage points (92.7 to 91.9) between July through September 2005 and October through December 2005 (Exhibit V-19).¹¹⁶ However, data from the longitudinal database suggest an increase in the percentage of cases instantly verified as work authorized attributable to the pre-TNC check. There was an increase between July through September 2007 and October through December 2007 of 0.5 percentage points (93.3 to 93.8) compared to an increase of 0.1 between July through September 2006 and October through December 2006 (91.9 to 92.0) and a decrease of 1.3 percentage points between July through September 2005 and October through December 2005 (92.8 to 91.9).

Exhibit V-19. Trend in Percent of Workers Who Were Verified Instantly as Work Authorized, for All Employers and for Employers in the Longitudinal Sample: October 2004–June 2008



SOURCES: Total and Longitudinal E-Verify Transaction Databases.

¹¹⁵The impact of pre-TNC checks on erroneous TNC rates is discussed in Chapter VI.

¹¹⁶The SSA pre-TNC check was instituted on September 16, 2007.

3.4. EV-STAR

Employers had mixed views on the impact of EV-STAR on SSA response time. Some employers commented that the change in SSA procedures that occurred when EV-STAR was implemented¹¹⁷ has had a positive impact on SSA response time, stating that there appeared to be a “tremendous improvement in turnaround time and efficiency” due to the changed SSA procedures, saving the employer time, effort, and money. One employer commented that the employer no longer has to wait and “wonder what's going on” when the employee is not prompt in returning the stamped letter from SSA. However, several other employers reported dissatisfaction with changed procedures because the change has made the process more time consuming.¹¹⁸ These employers indicated delays in response times from SSA or sometimes no response at all, and increased burden on employer staff that must check the system multiple times for SSA responses. These employers reported extreme frustration with the lack of communication from SSA and the inability to get an explanation for delays. These employers also reported that it took several days for the database to be updated once their employees had visited an SSA office and resolved their issues. These negative views may result from employer misunderstanding of the changes in the procedures.

3.5. Naturalization Phase I

The institution of Naturalization Phase I led to an increase in the percentage of those persons attesting to being citizens who were instantly found to be work authorized. From May 5 through June 30, 2008, approximately 6,100 persons were found to be work authorized instantly during the Naturalization Phase I check who would not have instantly been found to be work authorized prior to the implementation of Naturalization Phase I (Exhibit V-20). These cases constituted over half of the 11,100 cases checked during the Naturalization Phase I process and were 0.6 percent of all cases in which persons attested to being U.S. citizens on the Form I-9 during this time. This explains the observed 0.6 percent increase in the percentage of citizen cases instantly found work authorized (from 98.0 to 98.6 percent) between the start of Naturalization Phase I on May 5, 2008, and June 30, 2008, compared to cases verified in April 1 through May 4, 2008.

Exhibit V-20. Case Outcomes for Workers Attesting to Being Citizens in April–June 2008

Outcome	April 1– May 4, 2008		May 5– June 30, 2008	
	Number	Percent	Number	Percent
Total transactions	539,890	100.0	1,008,829	100.0
Instantly verified as work authorized	528,937	98.0	994,947	98.6
Cases meeting criteria for Naturalization Phase I	0	0.0	6,137	0.6
Cases NOT meeting criteria for Naturalization Phase I	528,937	98.0	988,810	98.0
Verified as work authorized after a TNC	2,748	0.5	2,102	0.2
Cases meeting criteria for Naturalization Phase I	1,951	0.4	744	0.1
Cases NOT meeting criteria for Naturalization Phase I	797	0.1	1,358	0.1
FNC	8,205	1.5	11,780	1.2
Cases meeting criteria for Naturalization Phase I	3,454	0.6	4,190	0.4
Cases NOT meeting criteria for Naturalization Phase I	4,751	0.9	7,590	0.8

SOURCE: E-Verify Transaction Database.

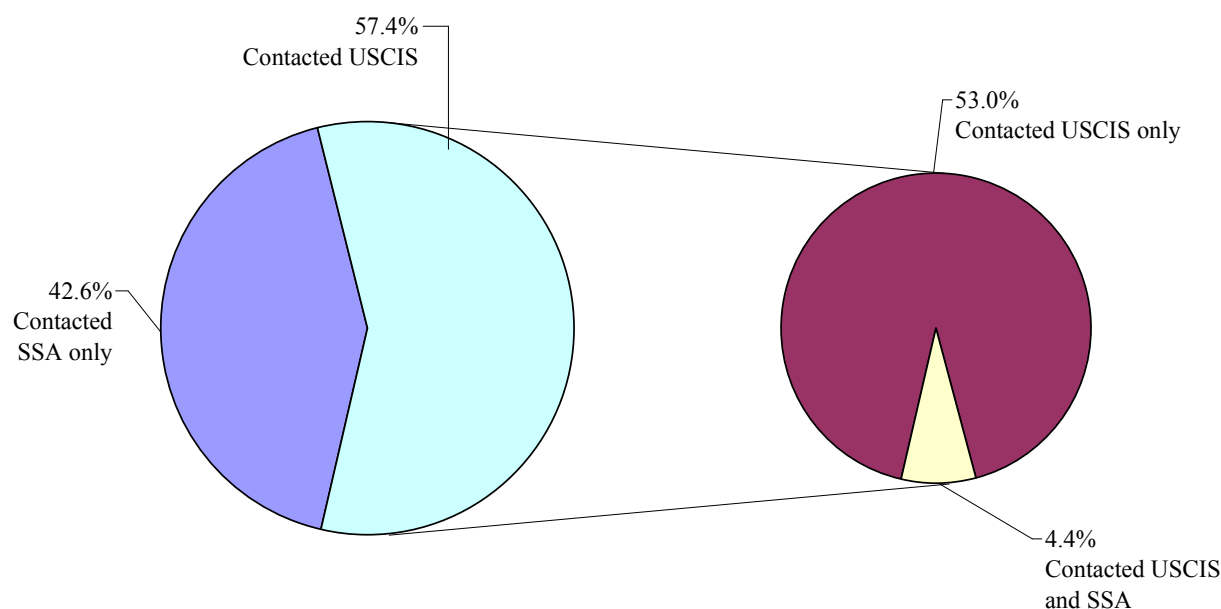
¹¹⁷ Because a number of employers at the stakeholders meeting did not know EV-STAR by name, the interviewers asked about the new SSA procedures and provided additional information about EV-STAR as needed.

¹¹⁸ SSA says that EV-STAR should not have increased the time between worker referral and final system response from SSA.

3.6. Naturalization Phase II

Naturalization Phase II has presumably reduced the time to resolve TNCs for many naturalized citizens; however, the long-term impact may prove to be less than the initial impact. Naturalization Phase II, implemented on May 5, 2008, allows naturalized citizens to avail themselves of the opportunity to resolve erroneous TNCs by contacting USCIS by phone rather than by making a trip to an SSA office. Over half (57 percent) of the eligible workers who contacted either agency took advantage of the option to contact USCIS (Exhibit V-21), presumably reducing the time employers need to spend to resolve their TNCs. However, 4 percent of workers eligible for participating in Naturalization Phase II had to contact both SSA and USCIS, presumably increasing the workers' time to resolve their TNCs. Furthermore, contacting USCIS rather than SSA means that the worker's SSA record is not updated, making it more likely that similar problems may occur in the future if the worker moves to another participating employer, unless the worker independently visits SSA to correct the problem.

Exhibit V-21. Extent to Which Naturalized Citizens Availed Themselves of the Opportunity to Contact USCIS Instead of SSA: May 5–June 30, 2008



SOURCE: E-Verify Transaction Database.

CHAPTER VI. ACCURACY

1. BACKGROUND

The overall success of E-Verify is closely tied to the accuracy of its findings. Issues related to program accuracy are frequently raised by groups opposed to E-Verify and its expansion. Not only do accurate data constitute a measure of successful implementation, but inaccurate findings create burdens for employers, workers, and the Federal government; increase the possibility of actions prohibited by the Memorandum of Understanding (MOU); and dilute the ability of the Program to detect workers who are not employment authorized. Ensuring program accuracy is, therefore, of paramount importance in gaining widespread acceptance of E-Verify.

In previous evaluations estimates have been made of the erroneous Tentative Nonconfirmation (TNC) rate, i.e., the percentage of workers found employment authorized by E-Verify who receive TNCs prior to being found employment authorized. While this provides an indicator of the accuracy of E-Verify in finding authorized workers to be employment authorized, stakeholders have also sought an estimate of the percentage of workers found employment authorized who, through identity fraud or misrepresentation, have been incorrectly found to be employment authorized. Therefore, this evaluation has estimated both factors, which are referred to in this report as inaccuracy rates.¹¹⁹

The following inaccuracy rates are estimated in this report:

- The *inaccuracy rate for authorized workers* is the percentage of workers with employment authorization who are not found to be work authorized.¹²⁰ These inaccuracies are attributable primarily to Federal records that are not current or are otherwise inaccurate and to data input errors.
- The *inaccuracy rate for unauthorized workers* is the percentage of workers without employment authorization found to be employment authorized. These inaccuracies are primarily due to identity fraud that occurs when workers without employment authorization provide employers with identity information for work-authorized persons.
- The *total inaccuracy rate* is the percentage of workers who received findings that were inconsistent with their true employment-authorization status. Note that this is not equal to the sum of the preceding *inaccuracy rates* because the disproportionately large number of workers with employment authorization in the labor force results in the total inaccuracy rate being much closer to the inaccuracy rate for authorized workers. This can be seen in Exhibit VI-1, which shows that the estimated initial total inaccuracy rate for April through June 2008 was approximately 4.1 percent (i.e., 3.3 percent of all E-Verify case findings were for unauthorized workers found employment authorized and 0.7 percent were for authorized workers who were not found to be work authorized initially¹²¹). However, approximately half of the small

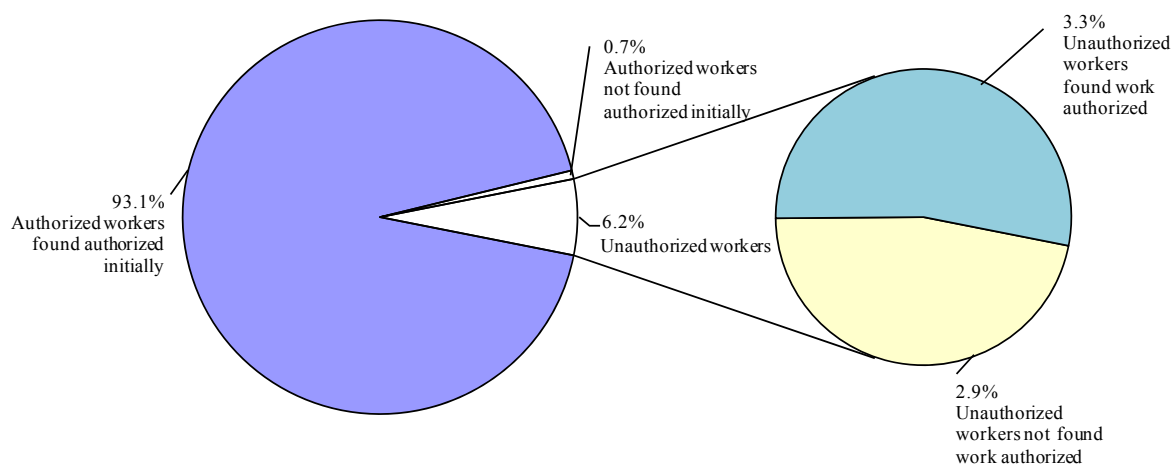
¹¹⁹ Researchers often refer to these as error rates.

¹²⁰ In this report, “authorized” and “unauthorized” refer to the work-authorization status of the workers.

¹²¹ The total inaccuracy rate (4.1 percent) is not equal to the sum of the two component parts (4.0 percent) because of rounding.

population of unauthorized workers ($3.3/(3.3+2.9)$) were inaccurately found to be work authorized by E-Verify.

Exhibit VI-1. Estimated Consistency Between Initial E-Verify Finding and True Work-Authorization Status



SOURCE: Model-based estimates using data from the E-Verify Transaction Database.

Since it is not possible to accurately determine the true employment-authorization status of workers at the time that their cases were submitted to E-Verify, this report uses a model to obtain approximate estimates of these rates. Like any model-based estimates, these estimates are dependent upon the reasonableness of the assumptions underlying the model as well as the accuracy of the data used in constructing the model.¹²² As is typical of model-based assumptions, the assumptions used in developing these estimates are based on the best data available from the evaluation and other reliable sources.

Most inaccuracy rates in this report are based on the initial case findings (i.e., a TNC or an employment-authorized finding without a TNC), because estimating final inaccuracy rates is generally more difficult than estimating the initial inaccuracy rates. If a final inaccuracy rate is estimated, it will be noted; otherwise, it can be assumed that the report is referring to initial inaccuracy rates.¹²³

Given the broad plausible ranges of these model-based estimates, it is not possible to use them for meaningful trend analyses. Therefore, model-based estimates are made only for the April through June 2008 period. An alternate measure, the *erroneous TNC rate* for workers ever found work authorized, i.e., the percentage of all workers found to be employment authorized at any stage of the verification process who are verified as work authorized after receiving a TNC, is used to examine trends. The erroneous TNC rate has the advantage that it is not model-based and, therefore, can be estimated more precisely than the

¹²²See Chapter II and Appendix B for a discussion of the model and the assumptions made in calculating inaccuracy rates. See Chapter X for a discussion of the role that accuracy plays in discrimination and Chapter VII for information about accuracy related to detecting unauthorized employment.

¹²³The final inaccuracy rate for employment-authorized workers would be lower than that based on the initial finding and the final inaccuracy rate for unauthorized workers would be approximately the same as the initial inaccuracy rate, since the contesting process permits some TNCs to be corrected, resulting in a final finding of work authorized. Although employers can ask for a reconsideration of a work-authorization finding, as discussed in Chapter VII, it is rare for an initial finding of work authorized to be changed, so the initial and final inaccuracy rate for workers without employment authorization should be virtually the same.

inaccuracy rate for all authorized workers, making trend analyses possible. It also has the advantage that it can be estimated separately by citizenship and place of birth status as indicated in Social Security Administration (SSA) records.¹²⁴ However, as discussed in Chapter II, the erroneous TNC rate is an imperfect measure of program success because it underestimates the inaccuracy rate for authorized workers and because it is not possible to produce an estimate of an analogous inaccuracy rate for non-employment-authorized workers.

Most of the measures examined in this chapter are based on information from the E-Verify Transaction Database. Additional information from the Web survey and the site visits provide a more in-depth understanding of changes in the accuracy of E-Verify. The limitations of these data and the analyses based on them are discussed in Chapter II. In addition to examining trends for the full Transaction Database, trends for employers consistently using E-Verify between October 2004 and June 2008 are examined. Since the characteristics of the employers in this longitudinal sample can be assumed to vary less dramatically than the characteristics of all employers, examination of these trends permits making inferences about what the trends would have been without changes in the characteristics of participating employers.

Legislative changes and the following program changes that have an impact on the accuracy of E-Verify findings are also examined:¹²⁵

- The Photo Screening Tool;
- The SSA and USCIS pre-TNC checks;
- EV-STAR; and
- Naturalization Phase I.

A number of other modifications taken to improve the Program, such as changes in the tutorial, may also affect accuracy. However, since these changes have been implemented incrementally, it is not possible to disentangle the impact of any particular change on trends. To the extent that these changes were successful, they would have led overall to downward trends in inaccuracy rates.

2. FINDINGS

2.1. General Findings

The model-based estimate of the total inaccuracy rate was 4.1 percent with a plausible range of 2.3 to 5.7 percent in April through June 2008.¹²⁶ Among the 1.73 million initial findings during April through June 2008, there were an estimated 12,500 workers who received TNCs who should have been found work authorized and approximately 58,000 workers without employment authorization who were

¹²⁴This information is not normally available for workers not found employment authorized.

¹²⁵See Chapter III for a description of these changes.

¹²⁶See the Addendum to the Executive Summary for additional information and Chapters II and VI and Appendix B in the full report for an explanation of total inaccuracy rate estimation procedures.

found to be work authorized. Thus, the estimated total number of inaccurate responses is approximately 70,500 out of the 1.73 million cases submitted to E-Verify (4.1 percent) (Exhibit VI-2).¹²⁷

Exhibit VI-2. Estimated Total Inaccuracy Rates, Using Alternate Assumptions: April–June 2008

Assumed percent of cases submitted to E-Verify that are for unauthorized workers	Assumed percent of workers informed of their TNCs		
	60 percent	70 percent	80 percent
4.7	2.9	2.6	2.3
6.2	4.4	4.1	3.8
7.5	5.7	5.4	5.1

SOURCE: Model-based estimates using data from the E-Verify Transaction Database.

The estimated inaccuracy rate for authorized workers is 0.8 percent with a plausible range from 0.6 to 1.0 percent, and the estimated inaccuracy rate for unauthorized workers is 54 percent with a plausible range of 37 to 64 percent. Exhibit VI-3 presents information on the model-based estimated inaccuracy rate for authorized workers under alternate assumptions and Exhibit VI-4 presents similar information for the estimated inaccuracy rate for unauthorized workers. The substantial estimated inaccuracy rate for unauthorized workers is not surprising, given that since the inception of E-Verify it has been clear that many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify.¹²⁸

Exhibit VI-3. Estimated Inaccuracy Rate for Authorized Workers, Using Alternate Assumptions: April–June 2008

Assumed percent of cases submitted to E-Verify that are for unauthorized workers	Assumed percent of workers informed of their TNCs		
	60 percent	70 percent	80 percent
4.7	0.9	0.8	0.6
6.2	0.9	0.8	0.6
7.5	1.0	0.8	0.7

SOURCE: Model-based estimates using data from the E-Verify Transaction Database.

Exhibit VI-4. Estimated Inaccuracy Rate for Unauthorized Workers, Using Alternate Assumptions: April–June 2008

Assumed percent of cases submitted to E-Verify that are for unauthorized workers	Assumed percent of workers informed of their TNCs		
	60 percent	70 percent	80 percent
4.7	43	39	37
6.2	57	54	52
7.5	64	62	60

SOURCE: Model-based estimates using data from the E-Verify Transaction Database.

The initial inaccuracy rate for all authorized workers is larger than the erroneous TNC rate for ever-authorized workers. The initial inaccuracy rate for authorized workers is estimated to be

¹²⁷ An overview of the model used in this evaluation is presented in Chapter II and additional information is provided in Appendix B.

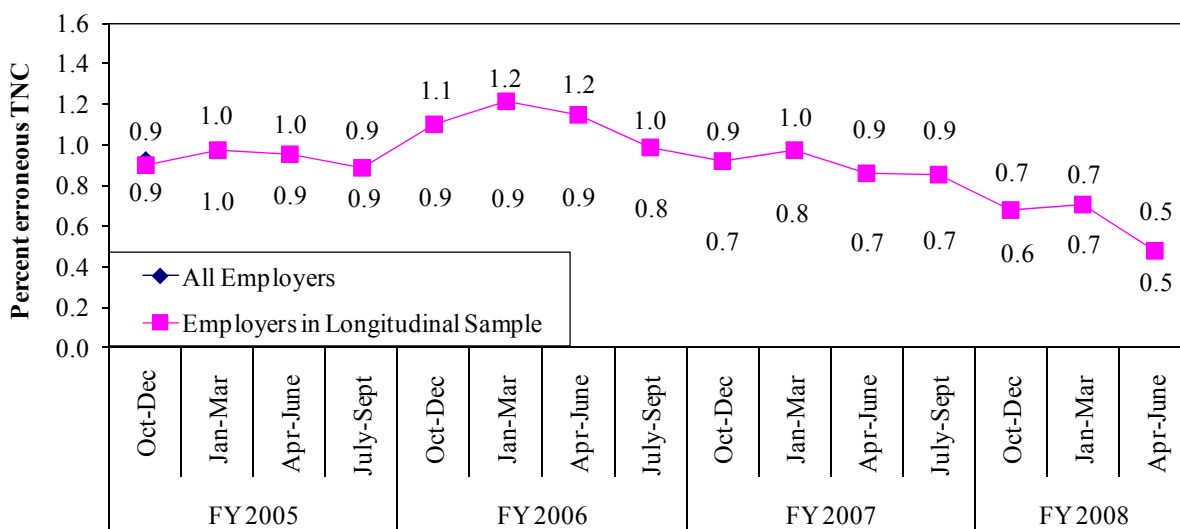
¹²⁸ For additional information, see the Addendum to the Executive Summary and Chapters II and VI and Appendix B in the full report.

0.8 percent compared to the erroneous TNC rate for workers ever found authorized of 0.5 percent (see Exhibit VI-5). The difference between these two rates is attributable to the fact that the model-based estimate includes an estimate for employment-authorized workers who do not contest TNCs.

The accuracy of the E-Verify Program, as measured by the erroneous TNC rate for workers ever found authorized, continues to improve. According to the transaction data, the erroneous TNC rate has been declining since April through June 2006. In April through June 2008, an overall TNC finding was initially issued in 0.5 percent of all E-Verify cases found to be work authorized at some point in the verification process (Exhibit VI-5).¹²⁹ This contrasts with a rate of 0.7 percent for April through June 2007 and 0.9 percent for April through June 2006.¹³⁰ The erroneous TNC rate for the longitudinal sample of employers (i.e., employers consistently using E-Verify between October 2004 and June 2008) shows a similar decline in the erroneous TNC rate, indicating that the change is unlikely to be attributable to changes in employer characteristics.

The inaccuracy rate for unauthorized workers far exceeds the inaccuracy rate for authorized workers. The inaccuracy rate for unauthorized workers in April through June 2008 was estimated to be roughly 54 percent of workers without employment authorization for whom cases were transmitted to E-Verify compared to the inaccuracy rate for authorized workers of 0.8 percent. Given that many unauthorized workers are highly motivated to avoid having their work-authorization status detected and the fact that, as prior evaluations have pointed out, E-Verify cannot identify most types of identity fraud, this difference is not surprising.

Exhibit VI-5. Trend in Erroneous TNC Rate for Ever-Authorized Workers, for All Employers and Employers in Longitudinal Sample



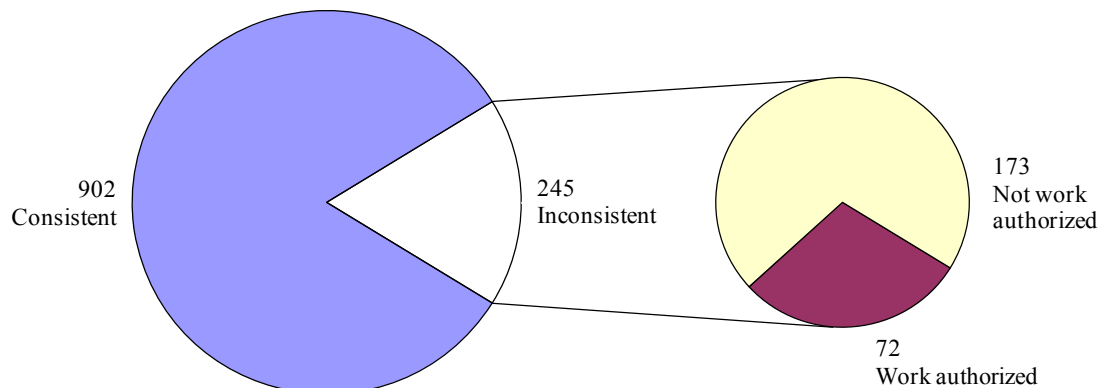
SOURCES: Total and Longitudinal E-Verify Transaction Databases: October 2004–June 2008.

¹²⁹When appropriate, comparisons over time are made from a single quarter to the same calendar quarter in preceding years to avoid spurious trends attributable to seasonality.

¹³⁰As noted in the last report, there was an increase in the erroneous TNC rate between July through September 2005 and October through December 2005 that is presumably attributable to the changed verification processing procedures for some noncitizens implemented in October 2005.

Employer input errors continue to be a source of inaccuracies for employment-authorized workers. Among the 1,147 records reviewed in the onsite study that initially received TNCs, 245 (21.4 percent) were found to have input errors when the transaction data were compared to the Form I-9 data in one or more of the following fields: date of birth, Social Security number (SSN), alien number, or citizenship status (Exhibit VI-6). Among these 245 cases, 72 (29.4 percent) were eventually found to be work authorized.¹³¹

Exhibit VI-6. Consistency Between Form I-9 and Transaction Database Information for Discrepancies Likely to be Attributable to Input Errors in Cases Receiving TNCs



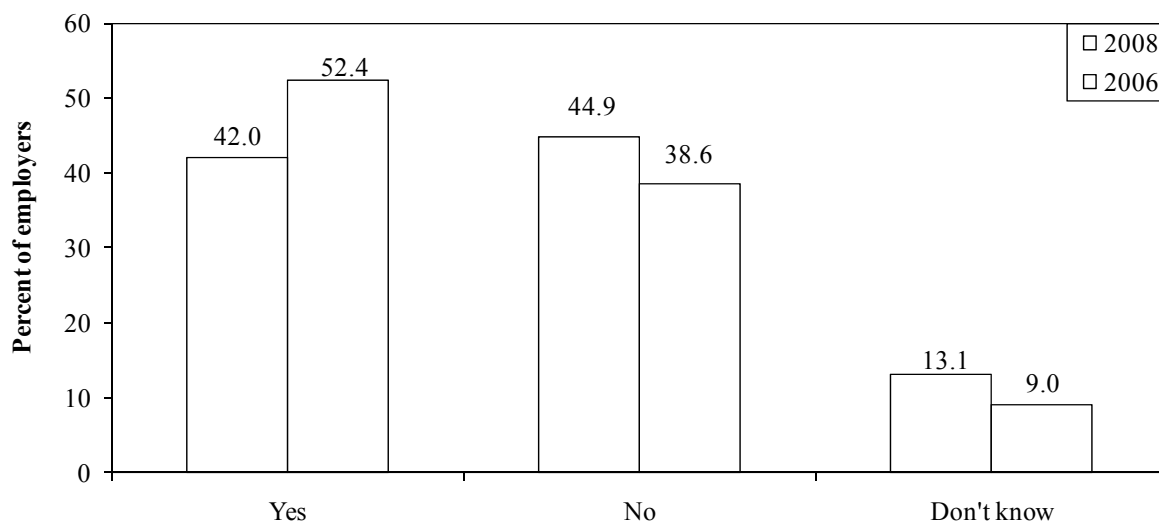
NOTE: The name match was not checked in the record reviews since the criteria for name match are less straightforward than those for other matches.

SOURCES: Record review of Form I-9 and related records and E-Verify Transaction Database.

¹³¹The name match was not checked since criteria for the name match are less straightforward than those for the other matches.

Employers report fewer input errors causing TNCs. According to the employers completing the 2008 Web employer survey, 42 percent had received at least one TNC finding that was due to data entry mistakes compared to 52 percent of employers responding to the 2006 survey (Exhibit VI-7).

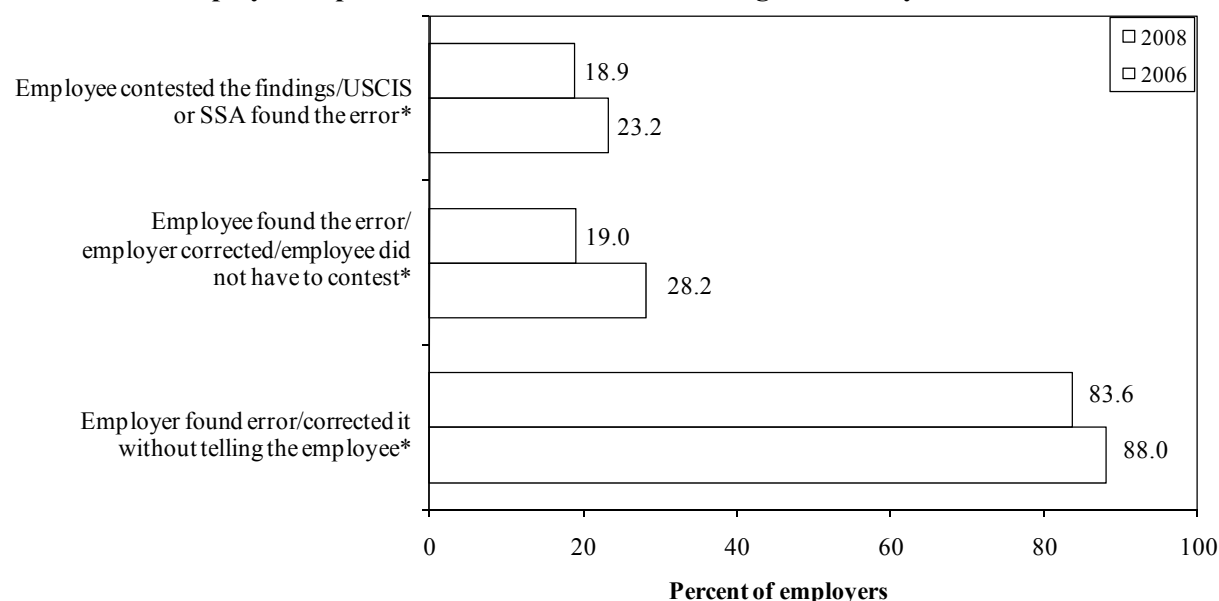
Exhibit VI-7. Percent of Employers Reporting at Least One TNC Due to Data Entry Error



SOURCE: E-Verify Web Survey.

Employers reported that they found and corrected most of the data entry errors they were aware of themselves; however, some of these errors were resolved only after the worker contacted SSA or U.S. Citizenship and Immigration Services (USCIS). Of those employers that had TNC findings for their employees, 84 percent of 2008 respondents had TNCs due to errors that they discovered themselves compared to 88 percent in the 2006 survey (Exhibit VI-8). Nineteen percent of employers completing the 2008 Web survey compared to 23 percent of employers completing the 2006 survey reported that they also had data entry errors discovered by SSA or USCIS. Nineteen percent of E-Verify evaluation Web survey respondents compared to 28 percent of 2006 respondents reported having a case in which the employee found the error.

Exhibit VI-8. Employer-Reported Information About Finding Data Entry Errors



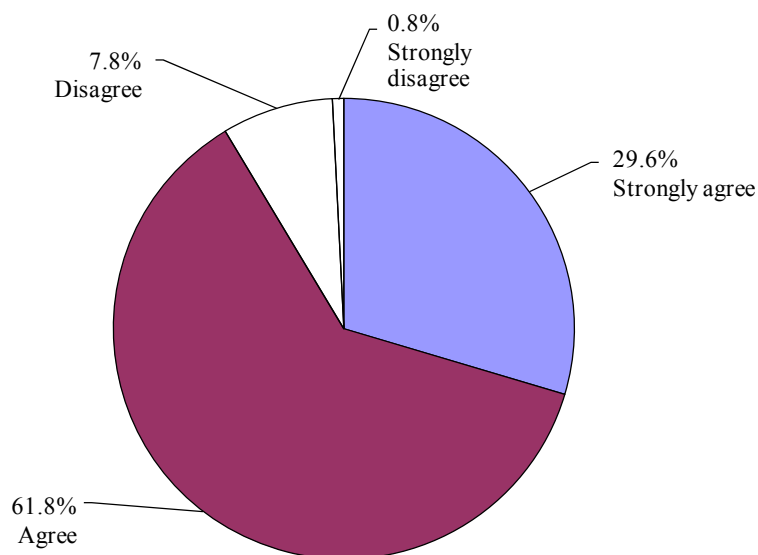
*Statistically significant difference between 2008 and 2006 E-Verify users at $p < 0.05$.

NOTE: Sums do not add to 100 percent because some respondents chose multiple responses.

SOURCE: E-Verify Web Survey.

The majority of employers perceive E-Verify to be a highly accurate system for verifying work authorization. When asked for their views on the accuracy of E-Verify in the 2008 Web survey, 92 percent of employers expressing an opinion agreed or strongly agreed with the statement, “We believe E-Verify is highly accurate” (Exhibit VI-9).

Exhibit VI-9. Employer Opinions on Whether They Believe E-Verify is Highly Accurate



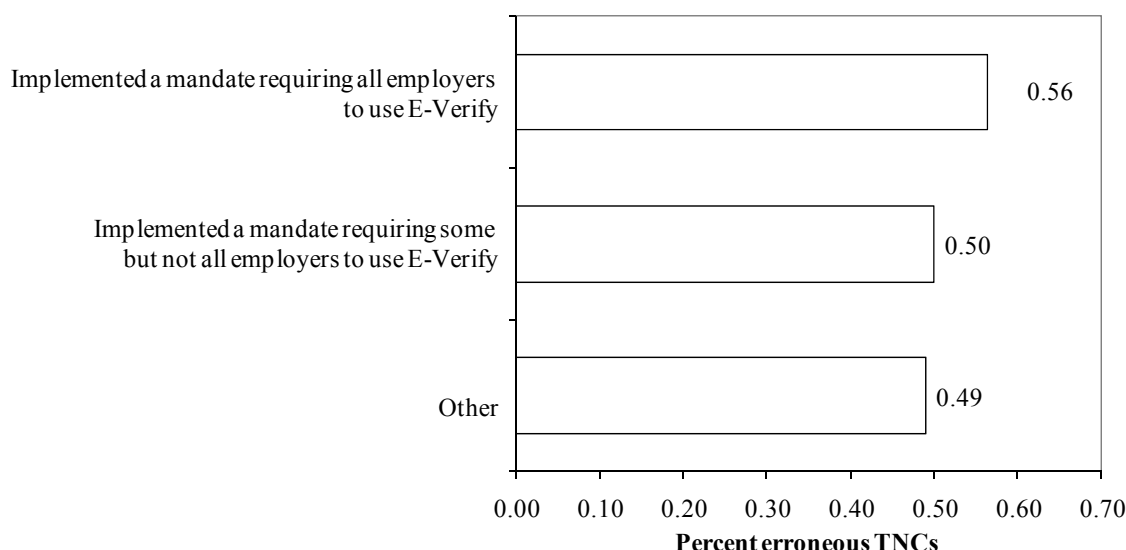
SOURCE: E-Verify Web Survey: 2008.

2.2. Impacts of Legislative and Program Changes on Accuracy

2.2.1. Legislative Changes

Employers in states that require the use of E-Verify for all or some of their employees have higher erroneous TNC rates than employers in states with no requirement to use E-Verify. The erroneous TNC rate for Arizona is 0.56 percent, while the erroneous TNC rate for employers in states requiring some employers to implement E-Verify is 0.50 percent, and the erroneous TNC rate for other employers is 0.49 percent (Exhibit VI-10). It is possible to hypothesize that employers required to implement E-Verify are less careful when they input and check their data entries than are other employers. However, there are other plausible reasons to explain this difference, e.g., it may be attributable to differences in the types of employers or the workers with cases submitted to E-Verify among states or perhaps a higher percentage of workers with employment authorization decide to contest the TNCs since it is harder for them to find alternate employment.

Exhibit VI-10. Erroneous TNC Rates for Ever-Authorized Workers, by State Legislation Group: April–June 2008



SOURCE: E-Verify Transaction Database.

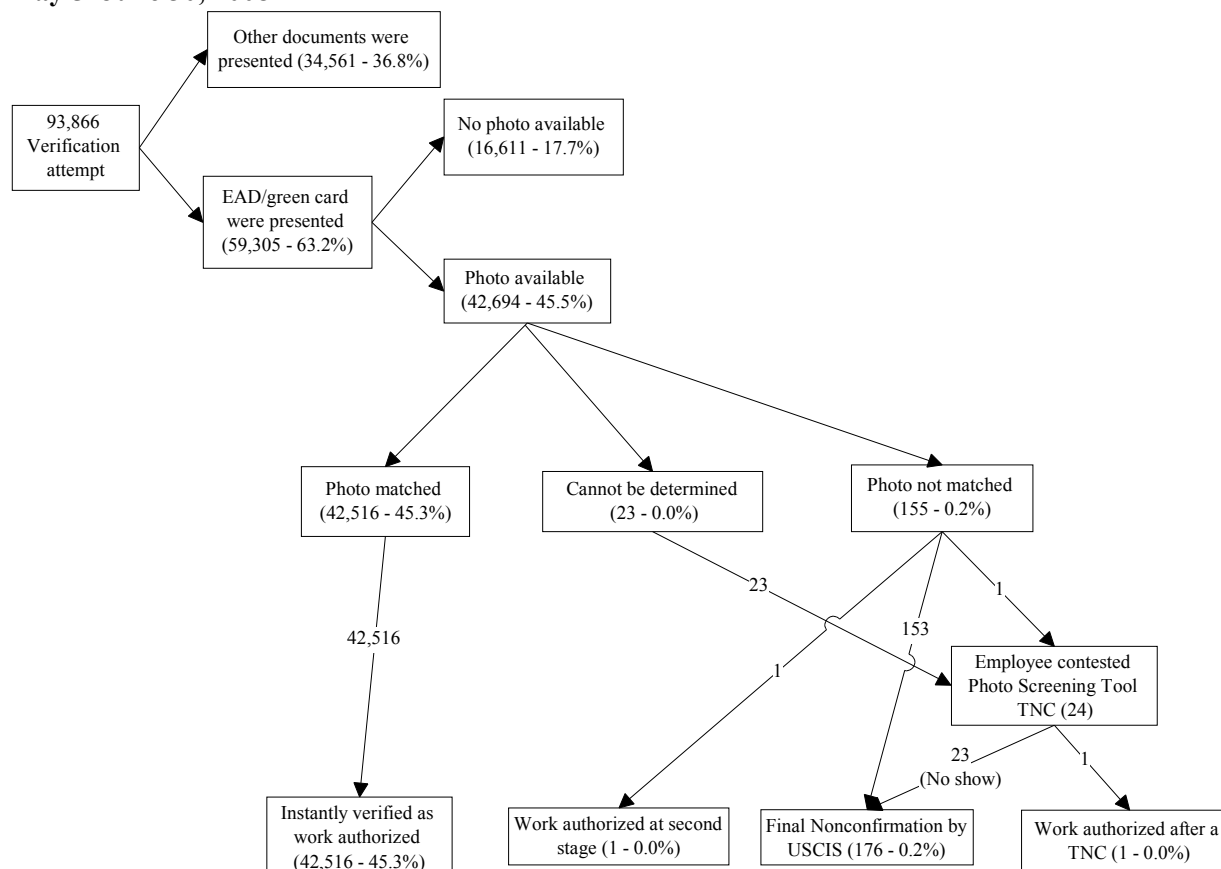
2.2.2. The Photo Screening Tool

The Photo Screening Tool slightly decreased the inaccuracy rate for unauthorized workers. The Photo Screening Tool, implemented in September 2007, was designed to identify situations in which workers without employment authorization substitute their photographs for photographs on documents belonging to someone else or use counterfeit documents with their own photograph but information about someone with work authorization. As illustrated in Exhibit VI-11, almost two-thirds (63 percent) of the 93,900 cases submitted by regular employers for persons attesting to being noncitizens in May 5 through June 30, 2008, were processed with an Employment Authorization Document (EAD) or a green card, the only documents available in the Photo Screening Tool. Photographs were available for 42,700 of these workers (45 percent of all cases and 72 percent of the 59,000 cases using an EAD or green card).

Among the 42,700 cases in which employers responded that they had attempted to match the photo presented by E-Verify with the document photo, almost all (42,500) were found to match and then were instantly verified as work authorized. In the remaining 200 cases, the employer either said that the photographs did not match or they could not determine if they matched. Given the low rate of successfully contested Photo Screening Tool TNC cases (0.6 percent) compared to all noncitizen TNC cases (19 percent), it is likely that almost all of these cases are workers who are not work authorized. Since the Photo Screening Tool increased the number of FNC cases by approximately 0.2 percent of the estimated number of unauthorized workers, it is reasonable to estimate that the April through June 2008 inaccuracy rate for unauthorized workers would have been 54.2 percent without the Photo Screening Tool compared to the estimated 54.0 percent inaccuracy rate with the Photo Screening Tool.¹³²

¹³²See Chapter VII for additional discussion of the effectiveness of the Photo Screening Tool in identifying workers without employment authorization.

**Exhibit VI-11. Flow Diagram of the Photo Screening Tool Process for Noncitizens:
May 5–June 30, 2008**



SOURCE: E-Verify Transaction Database.

The Photo Screening Tool had an extremely small impact on the inaccuracy rate for authorized workers. By introducing another requirement for verification of work-authorization status, the Photo Screening Tool has the potential for contributing to inaccurate findings for noncitizens with employment authorization. This could occur if a system or database error resulted in the employer receiving the wrong picture or could occur if the employer does not properly compare the picture returned from E-Verify with the appropriate document. However, given the extremely small number of successfully contested TNCs in this group, the impact of the Photo Screening Tool as implemented to date on the inaccuracy rate for workers with employment authorization is estimated to be well under 0.01 percent.

2.2.3. Pre-TNC Checks

The SSA and USCIS pre-TNC checks appear to have significantly decreased the erroneous TNC rate. The SSA and USCIS pre-TNC checks that were fully implemented in September 2007¹³³ were designed to reduce the number of employer input errors contributing to erroneous TNCs for workers with employment authorization by letting employers know that there might be an input error in a case and then allowing employers to correct any input errors before issuing a TNC. The erroneous TNC rate for all

¹³³USCIS implemented pre-TNC checks earlier in 2007 for a small group of employers on a pilot basis.

ever-authorized workers declined from 0.72 to 0.58 (a decline of 0.14 percent) between July through September 2007 and October through December 2007 (see Exhibit VI-5); during the same time, the erroneous TNC rate for authorized workers in the longitudinal sample declined 0.17 percentage points (from 0.85 percent in July through September 2007 to 0.68 percent in October through December 2007). The observed erroneous TNC rate declines are larger than declines observed between July through September 2006 and October through December 2006. In 2006, the erroneous TNC rate decline was 0.07 percentage points for both the sample of all employers and the longitudinal sample (from 0.81 percent in July through September 2006 to 0.74 percent in October through December 2006 for all employers and from 0.99 percent to 0.92 percent for the longitudinal sample).¹³⁴ It also seems plausible that the decline in data input errors resulting in TNCs noticed by employers (from 52 percent to 42 percent reporting having had such errors) between the 2006 and 2008 Web surveys (see Exhibit VI-7) can also be attributed, at least in part, to the pre-TNC checks.

It is possible that some of the impact of the pre-TNC checks was obscured by the implementation of EV-STAR so soon after the implementation of the pre-TNC checks. The implementation of EV-STAR only two weeks after the implementation of the pre-TNC checks prevented the evaluation team from disentangling effects from the two program changes. However, as discussed in the next section, implementation of EV-STAR *may* have led to an increase in the erroneous TNC rate for ever-authorized workers. If it did have such an effect, the impact of the pre-TNC checks on the erroneous TNC rate is greater than what was observed.

2.2.4. EV-STAR

EV-STAR probably led to a decrease in the *final* inaccuracy rate for authorized workers. Two features of EV-STAR are particularly relevant to data accuracy:

1. EV-STAR permits SSA to track cases automatically, including those in which workers receiving TNCs need to obtain documents that cannot reasonably be obtained within the 10 Federal workday time frame normally allowed for resolving TNCs. In this situation, E-Verify notifies the employer that the case is in continuance. Prior to EV-STAR, the SSA field office was supposed to advise the employer by phone that SSA's action was still pending and to defer resubmitting the case. However, if the SSA office did not contact the employer, then the employer would resubmit the case and receive a premature and possibly inaccurate FNC.
2. The pre-FNC check was implemented along with EV-STAR. The pre-FNC check automatically resubmits all SSA TNC cases to E-Verify except those that EV-STAR indicates have been resolved. This check should avoid FNCs attributable to employers' not correctly resubmitting cases after workers have visited SSA to resolve their TNCs.

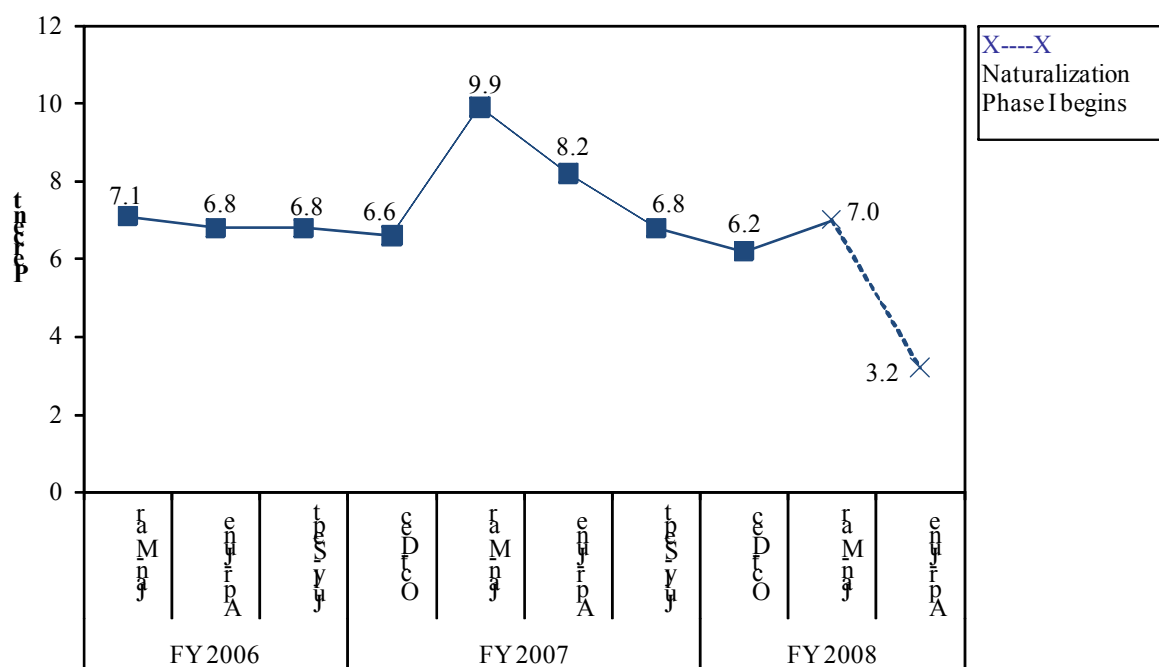
Implementation of both the EV-STAR case-tracking feature and the pre-FNC check presumably led to decreases in the *final* inaccuracy rate for authorized workers. However, these changes could contribute to an observed increase in the *erroneous TNC rate*, because cases that would have been classified as FNCs in the past would now be classified as work authorized after a TNC.

¹³⁴Because of procedural changes between July through September 2005 and October through December 2005, the erroneous TNC rates were not considered comparable to the 2006 and 2007 rates.

2.2.5. Naturalization Phase I

Naturalization Phase I led to a dramatic decrease in the erroneous TNC rate for foreign-born citizens. Naturalization Phase I, implemented on May 5, 2008, was designed to reduce erroneous TNC findings for naturalized citizens by checking USCIS data files with information about naturalized citizens when SSA can confirm the identity but not the citizenship status of workers attesting to be citizens. The erroneous TNC rate for foreign-born citizens dropped from 7.0 percent to 3.2 percent between January through March 2008 and April through June 2008, even though Naturalization Phase I did not take effect until May 5, 2008 (Exhibit VI-12).

Exhibit VI-12. Trend in Erroneous TNC Rates for Foreign-Born Citizens: January 2006–June 2008



SOURCES: E-Verify Transaction Database and SSA data on birth/citizenship status.

The institution of Naturalization Phase I also led to a dramatic reduction in the erroneous TNC rate for all citizens. The erroneous TNC rate for ever-authorized workers attesting to being citizens fell from 0.5 percent to 0.2 percent between the periods immediately before and after the implementation of Naturalization Phase I. As discussed in Chapter V, from May 5 through June 30, 2008, there were approximately 6,100 workers attesting to being citizens who were instantly found to be work authorized during the Naturalization Phase I check. Previously these workers would have received TNCs and would have had to visit an SSA office if they wished to resolve them. The cases cleared by the Naturalization Phase I check constituted a little over half (55 percent) of the 11,100 cases checked during the Naturalization Phase I process and 0.6 percent of all cases in which persons attested to being U.S. citizens on the Form I-9.

Exhibit VI-13 provides additional information that helps explain why Naturalization Phase I had such a dramatic impact on the erroneous TNC rate of all citizens. There were approximately 700 cases eligible for Naturalization Phase I that were successfully contested between May 5 and June 30, 2008, and an

additional 1,400 successfully contested cases for U.S. citizens not meeting the Naturalization Phase I criteria for a total of 2,100 successfully contested cases. Assuming that in the absence of Naturalization Phase I, the distribution of case outcomes in May 5 and June 30, 2008, would have been the same as was observed between April 1 and May 4, 2008, it is estimated that if Naturalization Phase I had not been implemented, there would have been approximately 4,000 successfully contested cases among those eligible for Naturalization Phase I between May 5 and June 30, 2008, and approximately 5,400 successfully contested cases for all U.S. citizens. Therefore, the reduction in successfully contested TNC cases of approximately 3,300 represents not only a substantial reduction in successfully contested TNC cases for cases eligible for Naturalization Phase I, it also represents a substantial reduction in the total number of successfully contested cases for all citizens. This drop led to an estimated reduction of 0.3 percentage points in the erroneous TNC rate for all citizens from 0.5 percent to 0.2 percent.

Exhibit VI-13. Observed E-Verify Outcomes for Citizens and Estimated Outcomes if Naturalization Phase I Had Not been Implemented: May 5–June 30, 2008

Type of outcome	Observed		Estimated without Naturalization Phase I	
	Number	Percent	Number	Percent
Total transactions	1,008,829	100.0	1,008,829	100.0
Automatically verified as work authorized	994,947	98.6	988,810	98.0
Cases meeting criteria for Naturalization Phase I	6,137	0.6	0	0.0
Cases NOT meeting criteria for Naturalization Phase I	988,810	98.0	988,810	98.0
Verified as work authorized after a TNC	2,102	0.2	5,354	0.5
Cases meeting criteria for Naturalization Phase I	744	0.1	3,996	0.4
Cases NOT meeting criteria for Naturalization Phase I	1,358	0.1	1,358	0.1
FNC	11,780	1.2	14,665	1.5
Cases meeting criteria for Naturalization Phase I	4,190	0.4	7,075	0.7
Cases NOT meeting criteria for Naturalization Phase I	7,590	0.8	7,590	0.8
Erroneous TNC	0.21%		0.54%	

NOTE: The estimates of case outcomes in the absence of Naturalization Phase I assumes that the distribution of case outcomes was the same as the observed outcomes between April 1 and May 4, 2008.

SOURCE: E-Verify Transaction Database.

There was an unintended increase in the inaccuracy rate for unauthorized workers under Naturalization Phase I. Since workers providing valid information about naturalized U.S. citizens would be more likely to be found work authorized under Naturalization Phase I, those unauthorized workers who committed identity fraud by providing valid information about naturalized citizens were also more likely to be found work authorized under Naturalization Phase I. Using the work-authorized model, it is estimated that between 300 and 1,900 (5 to 31 percent) of the 6,100 workers found employment authorized during the checks instituted by Naturalization Phase I had committed identity fraud and were, in fact, not work authorized.¹³⁵ The increase in the inaccuracy rate for unauthorized workers attributable to Naturalization Phase I is estimated to be 2.3 percent with a plausible range between 0.4 and 4.0 percent.

¹³⁵These estimates are based on the part of the work-authorization model using the estimated percentage of workers informed of a TNC but not the estimate of the total E-Verify population who are, in fact, unauthorized.

Naturalization Phase I led to a significant decrease in the total E-Verify inaccuracy rate. Since in all of the model-based estimates, the number of TNCs for authorized workers averted by Naturalization Phase I was larger than the number of inaccuracies for unauthorized workers attributable to Naturalization Phase I, the net impact of the program was to decrease the total inaccuracy rate. The estimated reduction was 0.4 percent with a plausible range of 0.2 percent to 0.6 percent for May 5 through June 30, 2008.

The accuracy of information about naturalized citizens checked during Naturalization Phase I is likely to improve over time as data on more newly naturalized citizens are added to USCIS databases and are available for checking. As SSNs for newly naturalized citizens are captured and added to the USCIS databases and older workers without electronically searchable records leave the work force, the percentage of naturalized citizens that can be verified as work authorized through Naturalization Phase I is expected to increase.

CHAPTER VII. EFFECTIVENESS IN REDUCING UNAUTHORIZED EMPLOYMENT

1. BACKGROUND

One of the primary goals of E-Verify is to reduce unauthorized employment. This chapter addresses the question of how well E-Verify is meeting this goal. Underlying the analyses in this chapter is the assumption that the effectiveness of E-Verify in reducing unauthorized employment depends upon its ability to identify workers without employment authorization, the length of time unauthorized workers identified by E-Verify are permitted to work, and the time lag between the employee's termination and any re-employment, which, in turn, is strongly influenced by how widespread the use of E-Verify is.

This section will present background information for the discussion. The remainder of the chapter will look at the general findings related to unauthorized employment and to the impacts of recent E-Verify changes likely to affect unauthorized employment.

This chapter relies on information from the Web survey of employers, the onsite study, the Transaction Database, and other secondary data. These data sources are discussed in Chapter II. In addition, it presents model-based estimates of the effectiveness of E-Verify in identifying workers without employment authorization.¹³⁶

1.1. Ways Noncitizens Without Work Authorization Can Obtain Employment

In discussing the employment of persons without employment authorization, it is important to understand that not all workers without employment authorization entered the country illegally. In addition to illegal entrants, there are many persons in this country who entered legally but have overstayed their admission period. There are also persons, such as international tourists, who are in the United States legally but are not authorized to work.

As discussed in Chapter I, in accordance with Form I-9 requirements, all newly hired employees should provide their employers with valid documents to prove their identity and to demonstrate that they are authorized to work in the United States; however, there are many noncitizens who are currently employed without work authorization. To understand the impact of E-Verify on the employment of unauthorized¹³⁷ workers, it is useful to understand the methods commonly used to obtain such employment. Specific methods include obtaining valid identification documents by using fraudulent "breeder" documents; using altered or counterfeit documents; buying, borrowing, or stealing valid documents; and looking for alternative employment where employers do not check documents or will provide employees with fraudulent documents containing information for workers with employment authorization. This section discusses these methods and how E-Verify is likely to impact obtaining unauthorized employment using the methods.

¹³⁶See Chapter II and Appendix B for a discussion of how these estimates are made.

¹³⁷"Unauthorized" and "authorized" in this report refer to work-authorization status.

1.1.1. Using Documents Obtained Through the Use of Fraudulent Breeder Documents

Breeder documents are fraudulent documents that are used to obtain other official identification documents. For example, easily counterfeited documents such as birth certificates may be used to obtain relatively secure documents such as drivers' licenses. It is, of course, virtually impossible for employers to differentiate these fraudulently obtained documents from other documents issued by the same source. E-Verify will only detect this type of fraud if the person obtains the "valid" document using information about a fictitious person or alters the data about a real person that the E-Verify system checks, such as date of birth.

1.1.2. Using Counterfeit or Altered 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.¹³⁸ Current employment verification procedures require the employer to certify on the Form I-9 that the documents presented by the newly hired employee "appear to be genuine."¹³⁹ In this situation, the likelihood of employers detecting counterfeit documents depends on the quality of the documents, the employers' familiarity with immigration and other documents, and their expertise in detecting fraudulent documents. The U.S. Department of Homeland Security (DHS) expects employers to exercise reasonable diligence in reviewing documents but does not expect them to be experts or to question reasonable-appearing documents.¹⁴⁰

The E-Verify 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, with DHS records. These checks are designed to assist employers in detecting counterfeit documents containing information about nonexistent persons or incorrect information about real people. Starting in September 2007, a Photo Screening Tool feature was added to E-Verify that permits the employer to compare digital photographs stored in an electronic U.S. Citizenship and Immigration Services (USCIS) database with the photographs on the documents provided by workers during the Form I-9 process. The purpose of this step is to detect identity fraud arising from the substitution of photographs on the original document or the use of a counterfeit document with information about a real person and a photograph of the unauthorized worker. At the time this report was being written, only two USCIS-issued documents were available from the Photo Screening Tool (the green card and the Employment Authorization Document (EAD)).

Except for situations of identity fraud detectable by the Photo Screening Tool, if the counterfeit documents are of reasonable quality and contain information about actual work-authorized persons who resemble the worker providing the documentation, the Form I-9 process and the E-Verify system will incorrectly confirm the bearer as work authorized. It should be noted that in the future, even if the worker

¹³⁸For example, an online article by Lisa Myers and the NBC News Investigative Unit (June 20, 2007) reports that "for about \$500 [in Juarez, Mexico], we could rent what is known as a look-alike document—a real 'green card'—with a photo of someone resembling our undercover producer. Because the document is authentic, it will pass inspection unless a customs officer notices the photo doesn't match the person....U.S. officials say so far this year, some 15,000 bogus documents have been confiscated along the southern border. There are no numbers on how many people actually entered the U.S. using fraudulent documents. ...There's also a problem on this side of the border. Near downtown Los Angeles, fake documents are sold openly." *How easy is it to cross the U.S.-Mexico border? Fraudulent documents easy to obtain, NBC News investigation reveals* (<http://www.msnbc.msn.com/id/19337264/>, downloaded August 30, 2007).

¹³⁹Form I-9 is included in Appendix E.

¹⁴⁰Indeed, if employers are too zealous in questioning reasonable-looking documents, they may leave themselves open to discrimination claims.

had to provide a document with a photograph available through the system, not all identity fraud would be prevented because workers would still be able to obtain “valid documents” using less secure fraudulent breeder documents as discussed above. Furthermore, it could be argued that to the extent that employers rely on E-Verify to detect fraudulent documents, they may be less vigilant in screening documents themselves to detect types of identity fraud that are not detectable through the use of E-Verify.

1.1.3. Borrowing, Buying, or Stealing Valid Documents

Another 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 have been sold by the owner. To decrease the probability of this happening, employers are required to certify on the Form I-9 that the documents “...relate to the employee named....” However, E-Verify cannot identify these documents as fraudulent since they are, in fact, genuine. Employers can only rely on the extent to which the document information, such as a photograph, date of birth, and/or signature or other biometric identifiers, resembles the worker and matches any other documents presented in the verification process, as well as information on the employment application. Since some documents are valid for many years, it is often difficult to make the comparison as the person presenting the documents may have changed in appearance over time. Thus, the E-Verify system as currently designed and the Form I-9 process cannot be effective in detecting fraudulent activity involving valid documents. Indeed, as is true for the use of counterfeit documents, it could be argued that to the extent that E-Verify employers trust E-Verify to detect workers without authorization, they may reduce their diligence in screening documents and may not question some discrepancies between the individual’s appearance and the documents used in the verification process.

1.1.4. Finding Alternative Employment

Unauthorized workers can also obtain employment in jobs where employment verification is not rigorous because the employer is either ignorant of or knowingly violating the law. Undocumented immigrants who are self-employed¹⁴¹ are also able to avoid the employment verification system since they are not required to complete the Form I-9 for themselves. Other possible sources of alternative employment include the underground economy,¹⁴² casual labor, and criminal activities, which are unlikely to require any type of document review. There is no reason to believe that E-Verify or any employment verification system can prevent unauthorized employment when employers do not want to verify work authorization, unless there is strict monitoring and enforcement of the verification requirements.

1.2. Expected Impact of E-Verify Versus the Form I-9 Paper Process in Reducing the Employment of Noncitizens Without Work Authorization

E-Verify is designed to be more effective than the paper Form I-9 process in detecting counterfeit fraud in which the workers’ documents contain information about nonexistent persons. However, E-Verify is expected to have a more limited impact on employers’ ability to detect fraud when documents with

¹⁴¹ According to the Bureau of Labor Statistics, approximately 7 percent of all workers were self-employed in 2006 (<http://www.bls.gov/cps/labor2006/chart3-1.pdf>).

¹⁴² Judith Gans, *Arizona’s Economy and the Legal Arizona Workers Act*, December 11, 2008, (downloaded from http://udallcenter.arizona.edu/immigration/publications/2008_GANS_lawa.pdf on February 8, 2009) cites an article in the November 30, 2008, edition of *The Arizona Republic* that a move toward underground employment has indeed occurred in Arizona in response to their mandating that all employers use E-Verify.

information about work-authorized persons are used to prove work authorization, and is, of course, totally ineffective when employers do not use the system to check work-authorization documents of all or selected groups of workers likely to be unauthorized. Thus, the E-Verify Program should decrease the ease with which noncitizens without work authorization can obtain employment but cannot totally eliminate the employment of such workers.

Furthermore, as unauthorized workers learn more about how E-Verify works, it is likely that they will more frequently obtain counterfeit, borrowed, or stolen documents with information about persons who are work authorized or will use easily counterfeited breeder documents to obtain legitimate documents. Employers using E-Verify but wishing to use unauthorized workers may also be slow to terminate employment when required to do so and may go as far as providing employees with documents containing information about work-authorized individuals. It is also of concern that a likely unintended consequence of E-Verify would be an increase in alternative employment in response to making legitimate employment harder to obtain.¹⁴³

As it becomes harder to obtain fraudulent documents that will not be detected by E-Verify, the cost of such documents will presumably increase. Therefore, an important deterrent value of the Program ultimately may be to increase the cost of obtaining unauthorized employment, which, in turn, would cause some reduction in unauthorized employment; however, the amount of such reduction cannot be easily determined.

In this chapter, the available evaluation information is used to provide insight into how the Program is operating to reduce unauthorized employment within the context of the preceding discussion.

The chapter will also examine the impact on unauthorized employment of the Photo Screening Tool, the only major program change since the last evaluation report that is likely to have an immediate significant impact on unauthorized employment. It will also discuss the potential long-term impact of EV-STAR on unauthorized employment.

2. FINDINGS

2.1. General Findings

2.1.1. Estimating the Effectiveness of E-Verify in Identifying Workers Without Employment Authorization

Given the complexity of estimating the total impact of E-Verify on unauthorized employment, it is not feasible to estimate that total impact. However, it is feasible to explore several factors that provide insights into the effectiveness of E-Verify:

- **The ability to identify unauthorized workers.** Obviously, to be effective, E-Verify must identify workers without employment authorization.
- **The impact of being identified as an unauthorized worker on the length of the worker's employment.** The role of the length of time of unauthorized employment may not be

¹⁴³See Gans, *op cit.*

intuitively obvious and is perhaps best explained by an example. If an employee who would otherwise be continually employed repeatedly works for three workdays and then searches for a new job for three workdays, the employee would be working for only 50 percent of the available workdays. If this were the pattern for all unauthorized workers and if all employers (including employers in the informal market) used E-Verify, the result would be a 50 percent reduction in unauthorized employment at any point in time. If some employees decide that working 50 percent of the time is not preferable to returning home (and/or if potential employees decide not to come to the United States because of this situation), there would be an even greater decrease in unauthorized employment. On the other hand, if the informal market were to expand to provide additional employment opportunities for undocumented workers or if not all employers used E-Verify, the decrease would be less than 50 percent.

- **The restriction of available jobs for unauthorized workers who avoid applying to E-Verify employers because they are concerned about being identified as an unauthorized worker.** Workers without employment authorization may decide not to apply to employers participating in E-Verify, presumably making it harder for these workers to obtain work. The impact of this outcome on unauthorized employment depends upon the length of the additional time it takes the unauthorized worker to find employment, as well as the length of employment after 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.
- **E-Verify usage.** As discussed in Chapter IV, the impact of E-Verify on unauthorized employment is a function of how extensively the Program is used. If the Program is not used extensively, few unauthorized workers will be identified and it will not have an extensive impact on the ability of those identified in obtaining other employment. Conversely, if E-Verify is widely used, the impact on unauthorized employment is likely to be greater. Since findings related to program usage were presented in Chapter IV, there is no need to reiterate these findings here other than to note that no more than 12 percent of all new hires were processed through E-Verify in April through June 2008.

2.1.2. Identifying Unauthorized Workers

2.1.2.1. Introduction

At the heart of E-Verify's ability to reduce unauthorized employment is its ability to identify which transactions submitted are for unauthorized workers. This report estimates E-Verify's ability to identify unauthorized workers by using a work-authorization model to estimate the percentage of unauthorized workers who receive Final Nonconfirmations (FNCs) or unauthorized findings.¹⁴⁴ As discussed in the Background section of this chapter, it has long been clear that the current design of E-Verify would not be effective in identifying unauthorized workers who present documents with information about workers who do have work authorization (other than possibly workers subject to the recently instituted Photo Screening Tool that applies to only a small group of workers).¹⁴⁵

¹⁴⁴This measure is referred to as the E-Verify effectiveness rate and is equal to 100 minus the inaccuracy rate for unauthorized workers.

¹⁴⁵In some situations, employers may identify a worker as being unauthorized (e.g., if a worker provided information about someone who was much younger or older than the worker); however, this detection cannot be attributed to E-Verify, since it is a function of the Form I-9 process.

2.1.2.2. Model-Based Estimates

The effectiveness of E-Verify in correctly identifying unauthorized workers in April through June 2008 was estimated to be 46 percent with a plausible range of 36 to 63 percent. The work-authorization model used in this evaluation estimates that approximately 107,000 cases for unauthorized workers were submitted to E-Verify in April through June 2008. Of those cases, it is estimated that close to half (49,000) were correctly found to have received FNC or unauthorized findings; the other cases for unauthorized workers (58,000) were estimated to have been incorrectly found to be work authorized¹⁴⁶ (Exhibit VII-1).

Exhibit VII-1. Estimated Effectiveness Rates, Using Alternative Assumptions: April–June 2008

Assumed percent of cases submitted to E-Verify that are for unauthorized workers	Assumed percent of workers informed of their TNCs		
	60 percent	70 percent	80 percent
4.7	57	61	63
6.2	43	46	48
7.5	36	38	40

TNC = Tentative Nonconfirmation.

SOURCE: Model-based estimates using data from the E-Verify Transaction Database.

2.1.2.3. Cases Having a High Probability of Being for Unauthorized Workers

This section examines two groups of E-Verify cases that are likely to include fairly high numbers of unauthorized workers: (a) cases in which workers who attest to being noncitizens but present documents indicating that they are U.S.-born workers, and (b) cases in which workers use SSNs or A-numbers that appear frequently on the Transaction Database. Also discussed are cases in which the employer appeals a work-authorized finding from the E-Verify system.

2.1.2.3.1. Noncitizens Providing Information About U.S.-Born Workers

Nearly all cases (95 percent) in which workers attesting to being noncitizens present identification information belonging to persons born in the United States receive FNC or unauthorized findings.

Assuming that workers born in the United States generally know that they are U.S. citizens, cases in which workers attesting to be noncitizens on their Form I-9 but use Social Security numbers (SSNs) belonging to U.S.-born persons are highly likely to include a high number of identity fraud cases. In April through June 2008, there were approximately 3,400 cases (0.2 percent of all cases) in which this combination occurred. In 95 percent of these cases, the final E-Verify finding was either an FNC or an unauthorized finding, indicating that the Program is highly effective in identifying unauthorized workers among these cases.

2.1.2.3.2. Duplicate SSNs and A-Numbers

There are a number of possible reasons for duplicate SSNs or A-numbers existing on the Transaction Database:

¹⁴⁶The effectiveness rate is 100 minus the inaccuracy rate for unauthorized workers discussed in Chapter VI. See Chapter II and Appendix B for a discussion of the methodology and assumptions related to this model, including empirical evidence used to inform the assumptions.

- A worker may have had more than one job with E-Verify employer(s) during the time covered by the data analysis (July 2004 through June 2008), because the worker held multiple jobs with different employers at one point in time and/or because the worker moved between several different jobs with E-Verify employers during this time;¹⁴⁷
- The worker may have been a temporary worker whose employment authorization was repeatedly verified for multiple hiring actions by his or her employer;
- An employer may have made a data entry or other mistake that was not detected as an obvious duplicate case during the cleaning process;
- A worker may have applied to multiple employment or temporary help agencies that use E-Verify to prescreen job applicants; or
- A worker may have borrowed or purchased documents with identity information that has also been borrowed or purchased by others.

Although there are legitimate reasons for there being duplicate SSNs and A-numbers on the Transaction Database, it is reasonable to believe that the larger the incidence of duplicate SSNs or A-numbers associated with a particular SSN or A-number, the more likely the workers using these numbers are to be unauthorized.

E-Verify is not currently successful in identifying most cases in which workers present identification belonging to employment-authorized workers. As expected, for cases using SSNs or A-numbers with more than two duplicate SSNs or A-numbers on the July 2004 through June 2008 Transaction Database, the percentage of cases not found work authorized in April through June 2008 increases with the number of times the associated SSN/A-number appears (Exhibit VII-2) on the July 2004 through June 2008 Transaction Database (from 3 percent for cases using SSN/A-numbers appearing on the Transaction Database three times to 9 percent for those transmissions using SSN/A-numbers appearing nine or more times). However, the percentage of cases with FNCs or unauthorized findings for cases in which workers used SSNs or A-numbers frequently on the Transaction Database is much lower than one might expect. For example, it does not seem plausible to the evaluation team that only 9 percent of the cases in which workers used SSNs or A-numbers on the Transaction Database nine or more times were for unauthorized workers. This result is not surprising, given that E-Verify is generally now limited to verifying the consistency of the data provided by workers on the Form I-9 with information on SSA and DHS databases.

¹⁴⁷ Given that no more than 12 percent of new hires are by employers participating in E-Verify, not very many job changes would involve two or more E-Verify employers.

Exhibit VII-2. April–June 2008 Case Outcomes by Number of Times Associated SSNs or A-Numbers Appear on the July 2004–June 2008 Transaction Database

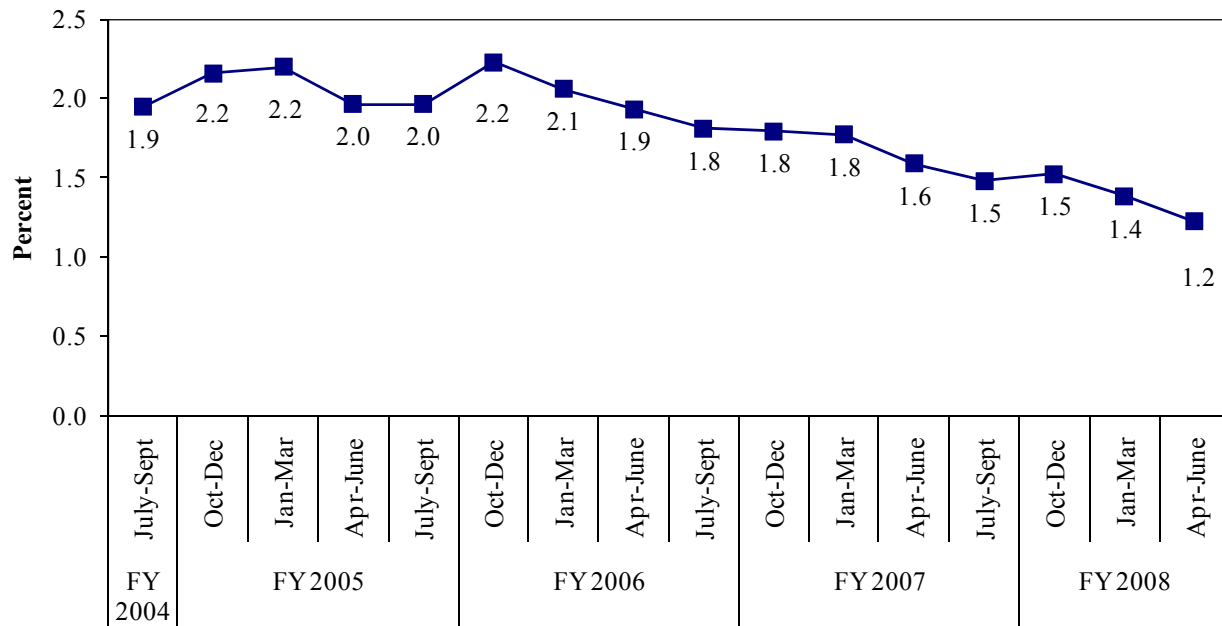
Number of times an SSN or A-number was used in E-Verify cases between July 2004 and June 2008	Outcomes for cases submitted in April–June 2008 cases			
	Number of cases submitted to the Transaction Database in April–June 2008 cases			Percent of cases receiving FNCs or unauthorized findings
	Total	Work authorized	Not work authorized	
1	1,211,758	1,174,164	37,594	3.1
2	328,206	318,777	9,429	2.9
3	109,220	105,942	3,278	3.0
4	42,277	40,770	1,507	3.6
5	18,355	17,644	711	3.9
6	8,984	8,541	443	4.9
7	4,614	4,358	256	5.5
8	2,651	2,479	172	6.5
9 or more	4,878	4,447	431	8.8
All Transactions	1,730,943	1,677,122	53,821	3.1

NOTE: This table refers to cases submitted in April through June 2008 with SSNs or A-numbers appearing on the full Transaction Database for July 2004 and June 2008.

SOURCE: E-Verify Transaction Database.

The percentage of cases involving frequently used SSNs or A-numbers has been decreasing over time. In July through September 2004, the percentage of cases involving SSNs or A-numbers used six or more times was 1.9 percent compared to 1.2 percent in April through June 2008 (Exhibit VII-3). It is not known whether this is attributable to changes in the type of identity fraud, the types of employers using E-Verify, or a general decrease in identity fraud.

Exhibit VII-3. Trend in Percent of Cases Involving an SSN or A-Number Used Six or More Times: July 2004–June 2008



SOURCE: E-Verify Transaction Database.

2.1.2.3.3. Employers Requesting Additional Verification

There have been a few cases in which employers have requested additional verification after initial work-authorized findings. An indirect indicator of the ability of E-Verify to detect unauthorized workers is the extent to which cases initially found work authorized are reversed and not found work authorized after an employer requests additional verification. Although the USCIS second-level review is normally instituted for workers attesting to being noncitizens when there is a mismatch or lack of information on current work-authorization status, it is possible for an employer to initiate a case review through the E-Verify system. This might happen, for example, when a case passes the E-Verify name check but the employer does not think that the match is close enough—a situation that occurs because the name-matching routines do not require exact matching of the full name to avoid an excessive number of erroneous Tentative Nonconfirmations (TNCs) attributable to minor variations in names.

Between April and June 2008, approximately 130,000 noncitizen cases were initially found to be work authorized. In approximately 3,700 of these cases (3 percent), employers requested additional verification of the work-authorized decision through the E-Verify system. Among these questionable cases, 135 cases had a final finding of FNC or unauthorized to work. These 135 cases represent 0.1 percent of all cases initially found work authorized by E-Verify. These cases were presumably erroneously determined to be work authorized initially, but their final finding was correct. However, given the amount of employer lack of familiarity and/or noncompliance with procedures that are more widely publicized than this one, it is reasonable to believe that for each case in which the employer requests additional verification, there are several similar cases in which employers did not request additional verification when it would have been reasonable to do so.

2.1.3. Percentage of Time Employed

2.1.3.1 Introduction

For E-Verify to reduce unauthorized employment, it is necessary not only for it to identify workers without employment authorization, but also for the Program to reduce the length of time that the identified workers are employed. The effectiveness of E-Verify in this regard is a function of the average amount of time that unauthorized workers identified by E-Verify are permitted to work for E-Verify employers and the amount of time it takes for unauthorized workers who are not hired or who have their employment terminated to find new jobs. Both of these topics are discussed in this section.

2.1.3.2. Time Working for E-Verify Employer

The amount of time that unauthorized workers are employed by an E-Verify employer depends both upon the program requirements and how employers follow or do not follow them. Under the E-Verify Program, as currently formulated, newly hired employees without work authorization who say they plan to contest may work during the three-workday time period allowed for the employer to enter the case, an unspecified number of days between the worker's receiving a TNC and when the employer enters the fact that the worker wishes to contest, the 10-workday period allowed for contesting the TNC plus another unspecified time between issuance of the E-Verify FNC finding, and the time that the employer actually terminates the worker's employment. Although the evaluation does not have good data on the total number of days that the worker is permitted to work in this situation, the amount of time could easily add up to a month, even when the employer adheres to the explicit and implicit E-Verify requirements. When employers do not closely adhere to E-Verify requirements, the elapsed time between hiring and employment termination may extend well beyond a month.

However, the actual employment period is presumably shorter than a month when the employer is very prompt in inputting information into E-Verify and in notifying the worker of actions, and/or when workers say that they do not wish to contest—indeed, this could all occur within a single day. Furthermore, the worker may never be employed if the employer submits cases prior to the start of work and does not permit workers to start work unless they are found to be work authorized.

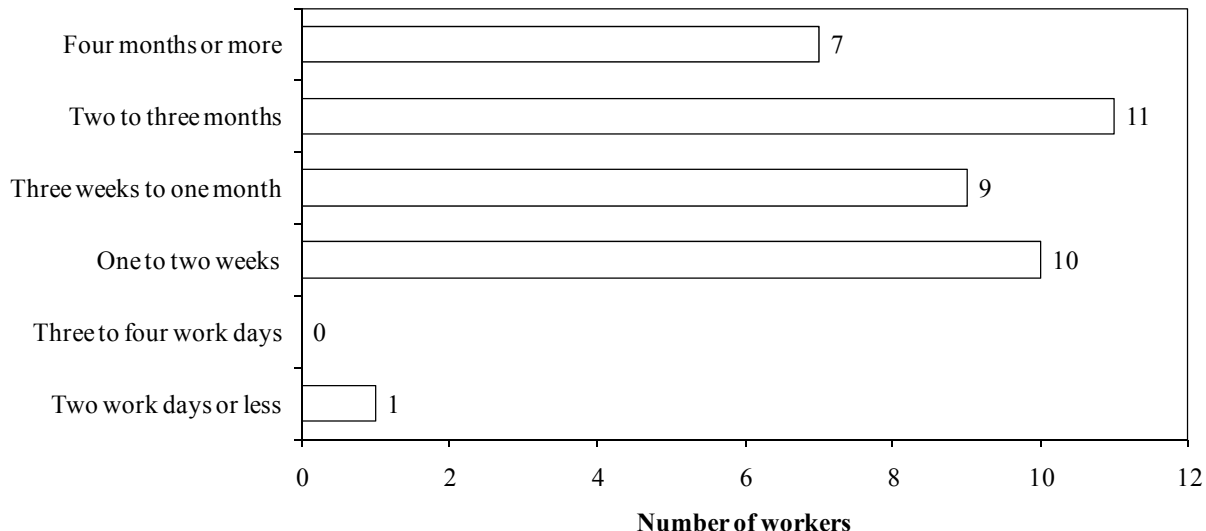
Although accurate information about the length of time unauthorized workers are employed is not available, it appears that a rough estimate of approximately two weeks is reasonable. There is limited information discussed in Chapter V that permits a rough estimate of this time period:

- Approximately 43 percent of Web survey respondents reported using E-Verify to transmit cases on the first day of employment, 29 percent used E-Verify after the job offer but prior to the first workday, and another 20 percent used E-Verify by either the second or third workday.
- The average time from case initiation to case resolution for cases with FNCs or unauthorized findings is approximately 11.5 calendar days.
- Although most employers reported terminating workers promptly, 8 percent of Web survey respondents reported that they never terminated respondents who received FNCs or unauthorized findings and another 5 percent reported that they took more than a week.

2.1.3.3 Time Between Jobs

The average amount of time it took workers with TNCs who were not offered jobs to find another job was approximately three weeks. As discussed in the Background section of this chapter, the ability of E-Verify to reduce unauthorized employment is closely linked to the time it takes unauthorized workers to find alternate employment after they are not hired or have their employment terminated. Among the 38 workers reporting in the onsite interview that they had been prescreened and not been offered a job, and who also discussed how long it took them to find an alternate job, 11 said it took them one to two weeks, nine said three weeks to one month, and the remaining 18 said two months or longer¹⁴⁸ (Exhibit VII-4). The number of days between jobs would presumably increase if E-Verify usage was more widespread. As noted in Chapter IV, no more than 12 percent of all newly hired employees were processed through E-Verify between April through June 2008,¹⁴⁹ making it likely that workers who know they will not be confirmed by E-Verify can easily avoid other E-Verify employers.

Exhibit VII-4. Time to Obtain an Alternate Job for Workers Receiving TNCs Who Reported That They Had Been Prescreened and Had Not Been Offered a Job



SOURCE: Onsite Interviews of Workers.

2.1.4. Avoiding E-Verify Employers

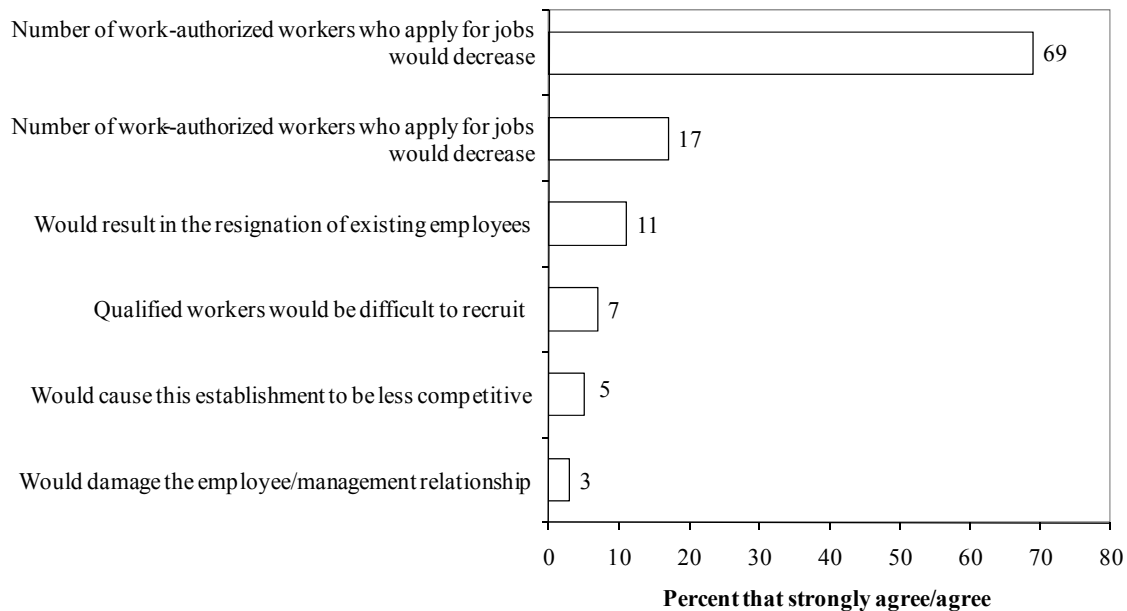
As discussed in the Background section of this chapter, unauthorized workers who are aware of which employers are using E-Verify may avoid these employers, thereby making it more difficult for these workers to find employment. The limited information from the evaluation on the extent to which this is happening is presented in this section.

¹⁴⁸Workers believed to be not work authorized as well as workers believed to be work authorized were included in this estimate.

¹⁴⁹The ratio of the number of E-Verify verifications cases to the number of newly hired employees was approximately 12 to 1. However, the fact that many employers are using the program to prescreen job applicants makes it likely that the percentage of newly hired employees with cases submitted to E-Verify is lower than this estimate.

There is some evidence from the onsite study employer interviews that some workers may avoid E-Verify employers. A few employers in the onsite interviews reported word-of-mouth communication among unauthorized workers to learn about which companies would allow them to work and/or would not check work authorization rigorously. Furthermore, 69 percent of employers that had registered for E-Verify but had not recently used it agreed or strongly agreed with a statement that the number of unauthorized workers who apply for jobs would decrease if E-Verify was used (Exhibit VII-5).

Exhibit VII-5. Opinions of Employers Registered for E-Verify But Not Using It About the Likely Impact of E-Verify on Items Related to Recruitment of Workers and Competitiveness



SOURCE: E-Verify Web Survey: 2008.

Onsite interviews of workers indicated most workers interviewed were unaware that their employers were using E-Verify prior to the job interview. Of the 396 workers who commented on whether or not they were aware of their employer's use of E-Verify, 298 stated that they were unaware that the employer was using a program to verify their work authorization prior to the job interview (or completing an application if there was no job interview). Furthermore, it is likely that some of the workers who reported knowing about E-Verify prior to the job interview learned about the Program from the required notice posted at the employer's establishment. This evidence implies that knowledge of the E-Verify Program was not sufficiently widespread that it would lead large numbers of unauthorized workers to avoid E-Verify employers.

2.2. Impacts of Recent Legislative and Program Changes on the Ability of the E-Verify Program to Reduce Unauthorized Employment

2.2.1. Legislative Changes

Mandating the use of E-Verify is expected to make the Program more effective in preventing unauthorized employment. As discussed in the Background section of this chapter, it is clear that the

ability of E-Verify to reduce unauthorized employment depends upon the extent to which it is used. However, the evaluation team did not have adequate data for estimating the impact of E-Verify on unauthorized employment in Arizona, the only state that has implemented E-Verify for all employers.

2.2.2. Photo Screening Tool

The Photo Screening Tool increased the effectiveness of E-Verify in identifying workers without employment authorization; however, its impact was small. If the Photo Screening Tool had not been available for use in April through June 2008, the estimated effectiveness rate in identifying workers without employment authorization would have been approximately 45.8 percent instead of 46.0 percent with the Photo Screening Tool. Thus, although the Photo Screening Tool increased the estimated E-Verify effectiveness rate for identifying persons without work authorization, the increase was quite modest.

One reason that the Photo Screening Tool's ability to detect unauthorized employment is currently limited is that it is not available to Designated Agents and may not be available to them in the future because of privacy rules and logistical challenges. The cases submitted by Designated Agents and Web Services providers constituted 21 percent of all cases submitted in April through June 2008. Furthermore, as discussed in Chapter III, the percentage of cases submitted by these employers has been increasing rapidly (only 5 percent of the cases transmitted in April through June 2007 were transmitted by Designated Agents and Web Services providers). Assuming that the use of Web Services providers and Designated Agents continues to increase as more employers become aware of this option, this limitation will become even more problematic in the future unless the Photo Screening Tool is made available to Designated Agents, as USCIS is planning to do.

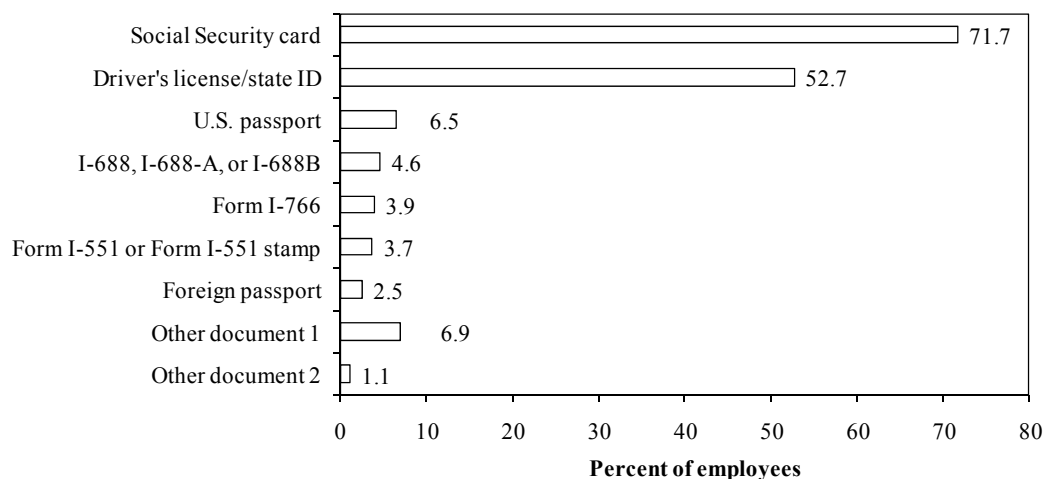
A second reason for the small impact of the Photo Screening Tool is that the types of documents available in the Photo Screening Tool are quite limited. The only photographs that activated the Photo Screening Tool at the time of writing of this report were recent Permanent Resident ("green" cards) and Employment Authorization Documents (EADs). These immigration documents were provided by workers in 5.3 percent of all cases according to the Transaction Database in May 5 through June 30, 2008; however, the Photo Screening Tool could only be activated in 3.8 percent of the cases transmitted during this time period. In the other 1.5 percent of the cases transmitted in which these documents were used, the Photo Screening Tool was not activated either because the documents were older documents without stored photographs or because the cases were submitted by Designated Agents. As workers using older EADs and green cards without photographs obtain newer cards and/or are replaced by labor force members with newer cards, the lack of stored photographs will become less of a problem. However, even if all EADs and green cards, including those for workers with cases submitted to E-Verify by Designated Agents and Web Services providers, activated the Photo Screening Tool, only a minor improvement in effectiveness would result.

To improve the effectiveness of the Photo Screening Tool, assuming the allowable documents used for verification do not change, it would be necessary to expand its use to include driver's licenses. As seen in Exhibit VII-6, driver's licenses were presented in 53 percent of the cases resulting in TNCs that were reviewed in the onsite site visits. The only other document used by at least half of the workers were SSN cards, which were presented in 72 percent of cases; however, SSN cards do not contain photographs, so they are not suitable for the Photo Screening Tool.¹⁵⁰ It is thus reasonable to believe that

¹⁵⁰Transaction data do not differentiate between many of the different types of documents.

the Photo Screening Tool cannot be highly effective in identifying unauthorized workers unless driver's licenses were to be incorporated into it, which does not appear to be likely in the foreseeable future.

Exhibit VII-6. Percent of Workers Providing Specified Types of Documents Among Workers Screened by E-Verify: October 2007–June 2008



SOURCE: Onsite record reviews: 2008.

A third reason for the limited impact of the Photo Screening Tool in detecting workers without employment authorization is that the immigration documents used with E-Verify are designed to be highly tamper-proof. USCIS immigration documents issued in recent years use a number of techniques to safeguard against photo substitution—the primary type of identity fraud that the Photo Screening Tool is designed to detect.¹⁵¹ It, therefore, seems relatively unlikely that individuals producing fraudulent documents or altering real ones would choose these particular documents for use in the employment verification process.

Another limitation to the effectiveness of the Photo Screening Tool in detecting workers without employment authorization is that workers committing fraud may increase their use of identification documents that do not activate the Photo Screening Tool. Prior to the start of the Photo Screening Tool in July 1 through September 16, 2007, 72 percent of noncitizen cases used an EAD or green card compared to 66 percent immediately after the introduction of the Photo Screening Tool (September 17 through December 31, 2007). Of 90 onsite study employers that discussed whether the Photo Screening Tool increased the probability of workers using documents that could not be used with the Photo Screening Tool, 80 employers said they had not noticed a change in the types of work documents noncitizen employees submitted since they began using the Photo Screening Tool. (One of these employers had altered their policies to require employees to submit work documents that would appear in the Photo Screening Tool, a prohibited practice). The remaining 10 employers said they did notice a change in the types of work documents employees submitted. Employers stated that workers were now presenting driver's licenses, Social Security cards, or other forms of identification that would not require use of the Photo Screening Tool. They also stated that noncitizen workers sometimes attest on the Form

¹⁵¹ USCIS Permanent Resident Cards and Employment Authorization Cards have been made increasingly counterfeit resistant and tamper-proof and currently include digital photographs imbedded in the document to make photo substitution difficult. Cards also include features such as fingerprints, holograms, barcodes, and optical memory strips.

I-9 that they are U.S. citizens so that they will not be required to show identification that will trigger the Photo Screening Tool.

The use of the Photo Screening Tool may lead to employers' being less likely to compare documents presented as part of the Form I-9 process, because they rely on E-Verify to do all the necessary document verification. E-Verify is supposed to supplement rather than replace the Form I-9 process that requires employers to verify that documents presented by the worker appear to be genuine and to belong to the individual presenting them. This Form I-9 requirement should permit the employer to detect some cases in which the worker is using borrowed, stolen, or counterfeit documents that will not be detected by E-Verify. The Photo Screening Tool may make employers less likely to check worker documents. Among Web survey employers using the Photo Screening Tool, 43 percent agreed or strongly agreed with the statement, "Using the Photo Tool reduces our responsibility to compare employees to the documents they present." However, 48 of the 52 onsite study employers that discussed the impact of the Photo Screening Tool on whether they were less careful in comparing the document photo to the person since the start of Photo Screening Tool use said that the Photo Screening Tool has had no effect on whether they make this comparison. The other four onsite study employers said that since they began using the Photo Screening Tool, they are less likely to compare the photograph on the document to the person presenting it.

Furthermore, since states vary in the extent to which they make driver's licenses tamper-proof, it is highly likely that driver's licenses will be used more frequently for the purpose of photo substitution and production of counterfeit documents with information about real people. DHS and USCIS have discussed the feasibility of sharing driver's license data and/or photographs with a few states, but they have been unsuccessful at entering into an agreement for such a process on a test basis. Some states that originally expressed interest in working on such an agreement discovered that it was not possible under their laws. Additionally, for such a matching program to be effective, it would require DHS to work with and enter into agreements with some 54 jurisdictions to obtain the information in a common electronic format and would require determining how mismatches of driver's license information would be resolved in the E-Verify context. Although a single link to many or all State Departments of Motor Vehicles through the American Association of Motor Vehicle Administrators (AAMVA) may eventually be possible, many of the same barriers would be likely to persist. Therefore, it appears unlikely that driver's license photographs will be added to the Photo Screening Tool in the foreseeable future.

2.2.3. EV-STAR

Automatic employer notification of "SSA Verification in Process" by EV-STAR may, in the long run, lead unauthorized workers to prolong the time they can work by telling SSA that they need to obtain a document that is likely to take a long time to obtain. As workers without employment authorization become more knowledgeable about how the verification system works, it is more likely that they will attempt to prolong the time they can work by telling SSA that they need to obtain documents such as birth certificates from states known to be slow in processing requests. In this situation, SSA now extends the time that the worker has to resolve the TNC. Prior to the implementation of EV-STAR, this strategy would only have worked if SSA had contacted the employer and told the employer to disregard the FNC that would be automatically issued by E-Verify after 10 days.

2.2.4. Naturalization Phase I

Naturalization Phase I reduced the effectiveness of E-Verify in identifying workers without work authorization. As discussed in Chapter VI, an unintended consequence of Naturalization Phase I was that

while it resulted in a noticeable reduction in erroneous TNCs, it also resulted in an increase in the percentage of workers without employment authorization who were found to be work authorized because they were involved in identity fraud. It is estimated¹⁵² that between 300 and 1,900 (5 to 31 percent) of the 6,100 cases found work authorized by the Naturalization Phase I check concerned workers without employment authorization who falsely attested to U.S. citizenship and used documents with valid information about U.S. citizens. These cases represent approximately 2.0 percent of the cases for workers without employment authorization submitted to E-Verify between the start of Naturalization Phase I on May 5, 2008, and June 30, 2008. Thus, while having the desired effect of expediting the verification of work authorization for many naturalized citizens, the implementation of Naturalization Phase I inadvertently decreased the effectiveness of E-Verify in identifying non-work-authorized workers by approximately 2.3 percentage points. If Naturalization Phase I had not been in effect, the estimated effectiveness rate for identifying workers without employment authorization would have been approximately 48 percent instead of the estimated 46 percent.

¹⁵²Based on the work-authorization model.

CHAPTER VIII. EMPLOYER COMPLIANCE

1. BACKGROUND

This chapter explores the extent to which employers are complying with the E-Verify program requirements. Understanding the extent of employer compliance is important because high employer compliance strengthens the overall program, and lack of compliance with requirements can reduce the Program's effectiveness in reaching such key goals as reducing unauthorized employment and avoiding discrimination. Furthermore, to the extent that noncompliance is the result of employers not understanding the Program's requirements, noncompliance may also point to weaknesses in the Program's implementation and the need for specific program improvements.

Much of the information presented in this chapter is based on employers' self-reported behavior in the Web surveys and onsite interviews. Even though employers were given assurances that information provided would be kept confidential, it is likely that noncompliant employers were especially unlikely to cooperate with the evaluation.¹⁵³ Furthermore, some employers were probably not totally candid and, at least for some employers, the central office respondent may not have been aware of what was actually happening in field offices where procedures were implemented.

Because of the likely bias in employer self-reports about their compliance with E-Verify procedures, the evaluation also examines information from record reviews and worker interviews conducted during the site visits and information from the Transaction Database, where feasible.¹⁵⁴ This multimodal approach permits obtaining a clearer picture of employer compliance than can be obtained from employer self-reports alone; however, since all site visit information about workers is obtained from employers cooperating with the evaluation and because transaction data are input by employers, these sources may underestimate noncompliance, though presumably not as much as the self-reported data.

Noncompliance with the following procedures established prior to the last evaluation is explored in this chapter:

- Training procedures;
- What types of cases should be submitted to E-Verify;
- TNC procedures;
- Taking adverse actions against workers; and
- Other verification procedures.

Also examined in this chapter is whether employers are complying with procedures related to two recently implemented program changes: the Photo Screening Tool and EV-STAR. The chapter also

¹⁵³See Chapter II for a discussion of the differences between responding and nonresponding employers.

¹⁵⁴The strengths and limitations of these data sources are discussed in Chapter II.

discusses the impact of recent legislation, program outreach, and program monitoring and compliance units on employer compliance. In examining the impact of recent legislation, the evaluation team uses a summary scale for compliance.¹⁵⁵

2. FINDINGS

The findings related to compliance are organized into two sections:

- General findings examining how much noncompliance exists, whether the amount of noncompliance has changed over time, and how employer understanding of procedures affect compliance; and
- Examination of the impacts of recent legislative and programmatic changes on compliance.

It should be emphasized that although employer compliance for the various employer behaviors discussed is generally much higher than noncompliance, as is standard evaluation practice, the findings and descriptions focus on the noncompliant behaviors of interest.

2.1. General Findings

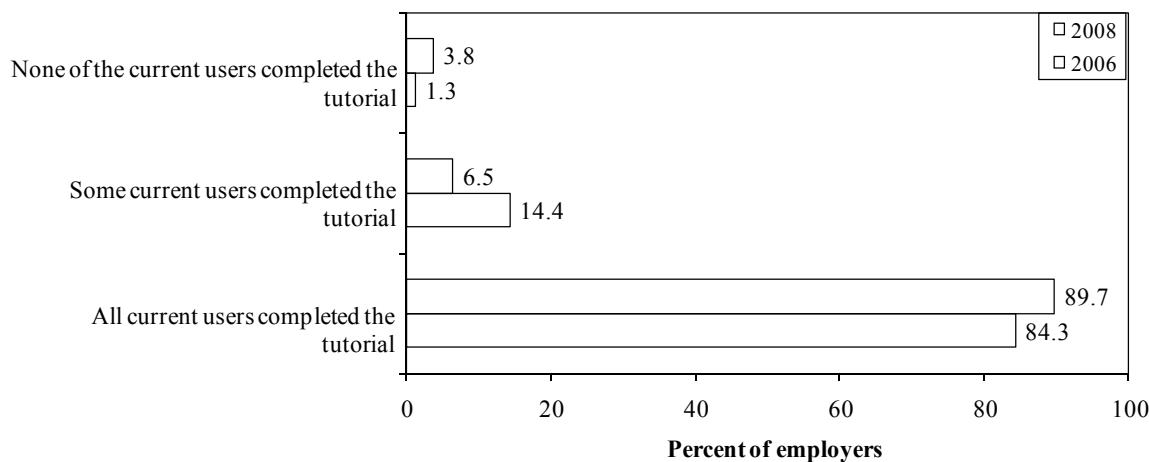
2.1.1. Compliance With Ongoing E-Verify Procedures

2.1.1.1. Training Procedures

Most but not all employers followed E-Verify procedures with respect to training workers on the E-Verify system. Even though E-Verify users must, in theory, complete the tutorial before using the system, it is possible for employer staff members who have not completed the tutorial to use the user name and password of a coworker who has completed the tutorial, resulting in some employer staff not having completed training prior to using E-Verify. When asked how many staff had completed the E-Verify online tutorial in the 2008 Web survey, 90 percent of employers indicated that all staff that currently used the system for verification had completed the tutorial and 4 percent of employers indicated that no current system users had completed it (Exhibit VIII-1). In the 2006 survey, 84 percent of employers reported that all staff had completed the tutorial and 1 percent had no staff having completed the tutorial. Although the onsite study employer protocol did not specifically ask about E-Verify training procedures, 61 onsite study employers commented on their training procedures, with 58 reporting that they follow the required procedures for those staff members using the system. Almost all (39 of the 41 employers describing their understanding of the training procedures) reported that they understood the training procedures and the need to require staff using E-Verify to complete the tutorial and test.

¹⁵⁵See Chapter II for a discussion of how this scale was constructed.

Exhibit VIII-1. How Many Staff Completed the Online Tutorial



SOURCE: E-Verify Web Survey.

2.1.1.2. What Types of Cases Should be Submitted to E-Verify?

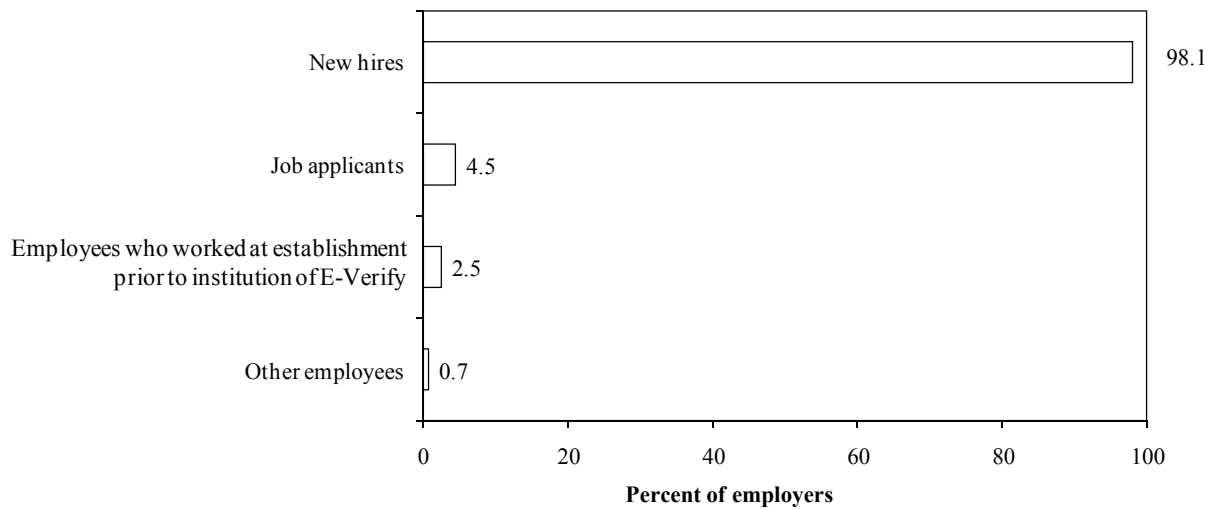
2.1.1.2.1. Newly Hired Employees

Almost all employers that used E-Verify reported that they used it for all of their newly hired employees. The majority of employers (98 percent) responding to the Web survey reported that they used E-Verify for all new employees—including workers who attested to being U.S. citizens and workers who attested to being noncitizens (Exhibit VIII-2).¹⁵⁶ Of the 85 onsite study employers who responded to the question, all 85 stated that they used E-Verify for all newly hired employees.

The transaction data were consistent with the claim that employers generally do not single out either citizens or noncitizens for verification. Of the 8,646 employers that had submitted cases to E-Verify for at least 100 workers between July 2004 and June 2008, 0.1 percent (five employers) did not submit cases for any workers attesting to being citizens. Additionally, 4.2 percent (365 employers) did not submit any noncitizen cases. These numbers are small enough that it is reasonable to believe that few, if any, of these employers are selectively submitting cases for either citizens or noncitizens among their new hires.

¹⁵⁶The other 2 percent of the respondents answered “no” to the question of whether they use E-Verify for all new employees.

Exhibit VIII-2. Percent of Employers Reporting Using E-Verify for Different Types of Workers



NOTE: Sum does not add to 100 percent because employers could check more than one response.

SOURCE: E-Verify Web Survey: 2008.

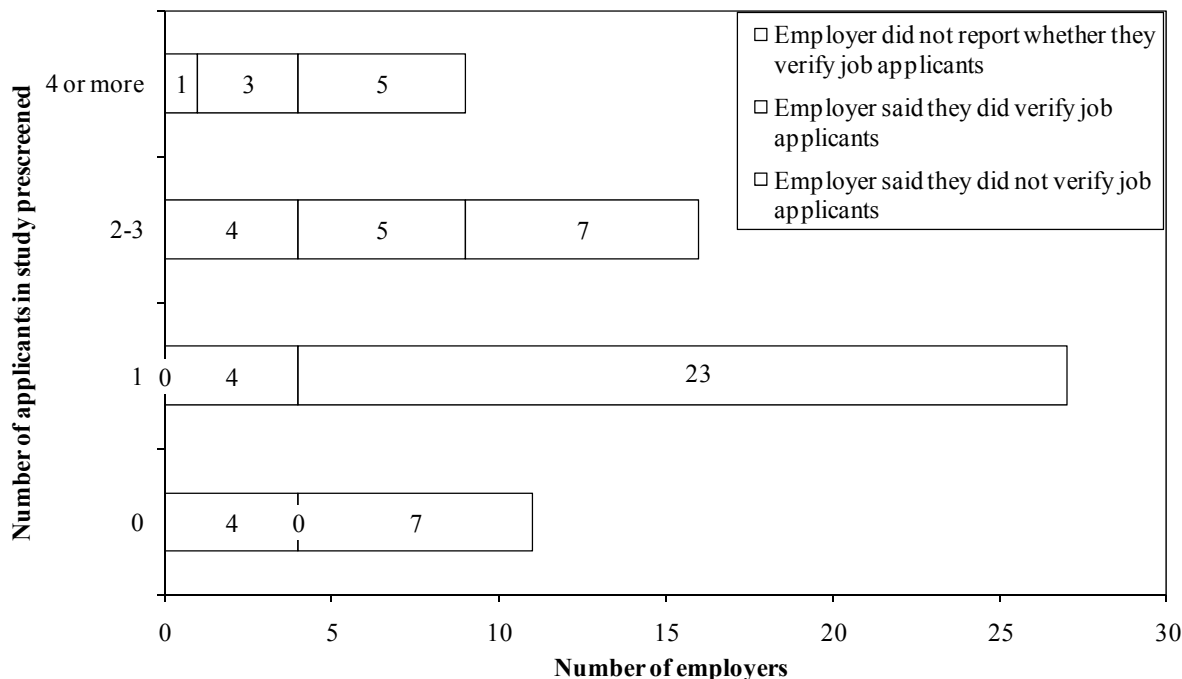
2.1.1.2.2. Job Applicants

Some employers report using E-Verify for job applicants. On the Web survey, 5 percent of employers reported submitting cases for job applicants (see Exhibit VIII-2). Of the 86 onsite study employers who reported on their screening procedures, 11 said they used E-Verify for all job applicants. One other onsite study employer reported using E-Verify only for the applicants who passed a verbal interview, and another only used E-Verify for applicants when a client specifically requested it.

However, the incidence of prescreening based on worker information appears to be much greater than that reported by employers. According to the record review information, at least 27 of the 108 onsite study employers had submitted at least one case for a job applicant. Of the 42 onsite study employers who said they did not screen job applicants as a general practice, 35 had one or more workers who reported their work authorization status was determined through E-Verify when they were job applicants (Exhibit VIII-3). Some of the workers' reports of being prescreened may be inaccurate because of confusion about the job being referred to,¹⁵⁷ the definition of new hire, or another reason. However, it seems reasonable to believe that many of these were cases in which the employer did, in fact, prescreen at least some of their workers but failed to report such behavior in an interview. In addition, five of the nine onsite study employers not indicating whether they prescreened had at least one job applicant prescreened according to the worker interviews, as, not surprisingly, did all 12 of the employers saying that they did screen job applicants. Furthermore, of the 396 workers who reported on their employment status at the time their work authorization was determined, 114 were job applicants, 123 indicated that they were new hires, and 139 were unsure of their employment status. The remaining workers said they were existing employees or rehires. Thus, assuming it is unlikely that more than one worker of an employer misreported being prescreened, the worker interviews suggest that between 12 and 25 employers on the onsite survey of the 63 that could be examined did, in fact, prescreen.

¹⁵⁷Some of the workers interviewed changed jobs frequently or used multiple employment services, making it difficult for them to report on a specific employment experience.

Exhibit VIII-3. Number of Employers Whose Workers Report Being Job Applicants When Their Work-Authorization Status Was Determined and Whether the Employer Reported Using E-Verify for Job Applicants



NOTE: The table excludes employers with no workers reporting prescreening when a determination could not be made whether some of their interviewed workers were prescreened; the total number of employer respondents was 63.

SOURCE: Onsite Interviews of Employers and Workers.

The majority of onsite study employers that reported prescreening apparently did not understand that prescreening is not allowed by E-Verify. Of the 12 onsite study employers that reported prescreening some or all of their job applicants, eight did not appear to understand that prescreening is not allowed by E-Verify.

Furthermore, of the 30 employment or temporary help agencies that reported that they do not screen job applicants, eight submitted information for workers who were conditionally hired—a term that is not defined by E-Verify procedures. Among these eight employers, five had one or more workers reporting that their work authorization was determined through E-Verify when they were job applicants.

In addition to confusion about whether prescreening is allowed, there was considerable confusion about how to define prescreening. Whether or not it is acceptable to verify workers prior to the start of work depends upon the definition of new hire. Although USCIS staff have reported clarifying the definition of “new hire” as the time at which a job offer has been made and accepted, the evaluation found no evidence of a major effort to educate employers about this clarification. Furthermore, the definition of new hire differs among Federal agencies, making it even more confusing for employers. Most of the 105 employers in the onsite survey defined hire date in a way that was the same as or more restrictive than the date specified by E-Verify (Exhibit VIII-4)—30 respondents defined hire date as “the date the job offer was accepted,” which is the same as the E-Verify definition, and another 45 defined it as the first day of

paid work. The remaining 30 employers used a definition that is less restrictive than the E-Verify definition: the date the application was completed (14), the date the workers completed paperwork, e.g., Form I-9 (10), and the date the worker was placed with a client (1).¹⁵⁸

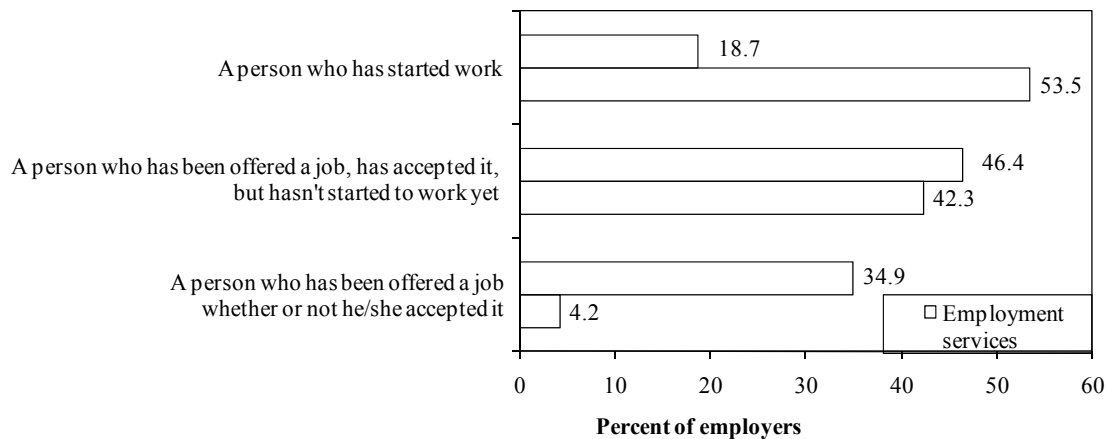
Exhibit VIII-4. Employer Definition of Hire Date



SOURCE: Onsite Interviews of Employers.

Employers involved in providing employment services are especially likely to define “new hire” to include some or all job applicants. Among Web survey employers, 35 percent of employment services employers defined “new hire” to include job applicants compared to 4 percent of other employers (Exhibit VIII-5). A similar difference was found in the onsite interviews—13 of the 43 temporary help or staffing agencies in the sample defined new hires as including workers who would be classified as job applicants by E-Verify, compared to six of the 66 general employers in the sample (Exhibit VIII-6).

Exhibit VIII-5. Percent of Web Survey Employers, by Definition of New Hire Used and Industry



SOURCE: E-Verify Web Survey: 2008.

¹⁵⁸Some employment or temporary help agencies used the term “conditional job offer” to indicate that an individual was hired and his or her work authorization could therefore be determined using E-Verify. In this case, the job offer was contingent upon the person being verified as work authorized by E-Verify. Using this definition is not consistent with the general E-Verify prohibition against taking adverse action while the worker is contesting a TNC.

Exhibit VIII-6. Number of Onsite Study Employers, by Definition of New Hire Used and Industry

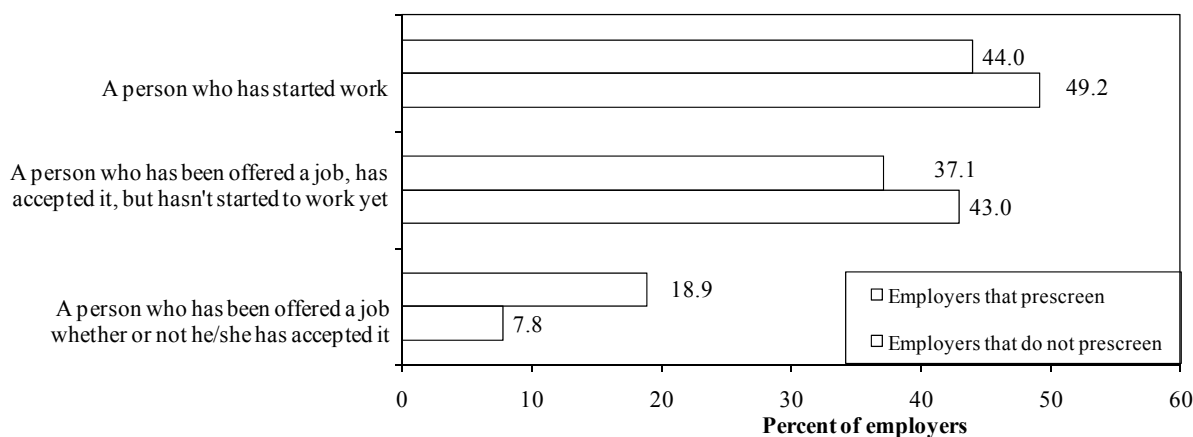


NOTE: Numbers do not total to the actual number of employers interviewed because some definitions were omitted from the chart.

SOURCE: Onsite Interviews of Employers.

Employer confusion about the meaning of “new hire” has apparently contributed to employer violations of the E-Verify requirement to not verify job applicants. Exhibit VIII-7 compares responses of Web survey employers to a question on how they define new hire with their responses to the question of whether they screen job applicants. Of the employers saying that they screen job applicants, 19 percent use a definition of new hire that includes job applicants compared to 8 percent of employers that do not screen job applicants.

Exhibit VIII-7. Employers’ Definition of New Hire, by Whether They Prescreen Job Applicants



NOTE: Tests of significance were done to compare employers that prescreen and do not prescreen, and there were no significant differences.

SOURCE: E-Verify Web Survey: 2008.

A small number of onsite study employers defined hire as “offer and accept” and also postponed the start of work until after the TNC was resolved. Of the 37 employers who defined hire as “offer and accept,” seven did not allow workers to work while contesting a TNC. However, five of these seven employers allowed workers to begin job training.

2.1.1.2.3. Existing Employees

Very few employers report using E-Verify for existing employees. Among Web survey respondents, 4 percent of employers reported that they had used E-Verify for employees who “worked at this establishment prior to the institution of E-Verify.” Similarly, only six of the onsite study employers reported submitting cases for some existing employees. Of these six onsite study employers, three did not seem to understand that E-Verify does not allow employers to use the program for their current workforce. There was an additional employer who had one worker interviewed for this evaluation who said he was a pre-existing employee when his information was submitted to E-Verify, though the employer did not report using E-Verify for existing employees. Examples given by employers of reasons for using E-Verify for existing employees included workers who received promotions or whose names changed, for example, due to marriage. These inaccuracies are likely to be due to misunderstanding of the correct procedures.

Record review information indicates the incidence of using E-Verify for existing employees is likely to be much higher than that reported by the employers. Of the 108 employers for which record reviews were done, 45 had at least one worker who had a hire date on his paperwork more than 30 days before the case initiated date entered into the E-Verify system.

The Transaction Database confirms that a substantial percentage of employers were using E-Verify for at least some existing employees. Of the 37,521 employers that used E-Verify between July 2004 and June 2008, 34 percent had at least one employee who was hired more than 30 days before the initiated date. Among these 12,612 employers, the mean number of workers with cases submitted to E-Verify more than 30 days before the hire date was 24.5.

Reported employer compliance with E-Verify procedures on types of cases to be submitted to E-Verify increased from 2006 to 2008. Among 2008 Web survey respondents, 93 percent indicated that they submitted cases for newly hired employees and only newly hired employees. In 2006, the percentage of employers reporting submitting cases for newly hired employees and only newly hired employees was 85; however, the wording of the questions were slightly different, which may account for some or all of this difference.

2.1.1.3. TNC Procedures

Almost all employers reported consistently notifying their workers of TNCs. On the employer Web survey, 98 percent of employers reported that they always informed their employees of TNCs. Of the 100 onsite study employers who commented on their notification procedures, 96 reported that they always notified employees of TNCs, although 24 of them said that workers sometimes quit before the employer had an opportunity to notify them. The employers said that this was the only circumstance under which they would not notify workers of TNCs. Four employers reported that they do not notify some or all of their employees who receive TNCs; one of them, a temporary help agency, said they do not notify workers who are hired permanently by the placement company about their TNCs. Of the 12 employers that prescreened job applicants, 10 reported notifying job applicants of TNC findings.

Interviews of workers indicated that employers significantly overestimated the frequency with which they notified workers of TNCs. Of the 96 onsite study employers who said they always notified employees of TNCs, 41 had one or more workers who said they were not notified of a problem with their documents. Among the 403 workers who commented on whether they were notified of a TNC, 233 said they were notified by their employers. Of course, it is likely that some of these workers do not remember being notified or were notified but did not understand what the employer meant, and others may be workers who quit before being notified.

Even though most employers reported notifying workers of TNC findings, they did not always explain the meaning of the TNC or the workers' options. There were 82 onsite study employers reporting that they explained the meaning of the TNC notice to workers. However, of these 82 employers, 37 had one or more employees who reported that they did not receive an explanation. Two employers reported sometimes explaining the notice and two employers said that they never explained the notice. Among the 225 workers who commented on whether the notice was explained to them, 104 said they received an explanation of the TNC notice. Among the employers reporting that they explained the TNC notices to their employees, 25 specifically reported explaining to employees that they would lose their jobs if they did not contest the TNC. Of these 25 employers, eight had one or more employees who said that the employer did not explain that they would lose their jobs if they did not contest.

Some employers did not provide workers with the proper notice informing them of TNC findings. The TNC notice provides workers with critical information about their right to contest the finding and the implications of not contesting. Many employers (86 percent) reported in the Web survey that they always provide written notification of TNC findings, compared to 84 percent of employers reporting the same thing in the 2006 survey. Although not required, 86 percent of employers in 2008 also reported that they always provide in-person notification of TNC findings compared to 81 percent in the 2006 survey. All but one onsite study employer of the 101 who responded said that they always provided the written TNC notice. However, of the 100 onsite study employers that said that they always provided the TNC notice, 63 had one or more workers who reported that they did not receive a notice.

There was evidence that a small number of E-Verify employers discouraged workers with TNCs from contesting. On the employer Web survey, only 4 percent of employers indicated that they did not encourage workers to contest TNCs because the process required too much time, and 3 percent indicated that they did not do so because the workers that contest rarely get a work-authorized result. This finding is similar to that in the 2006 evaluation¹⁵⁹. There was no evidence from the onsite studies that employers actively discouraged the contesting process; however, of the 96 employers responding to the question, 32 said that they did not discourage or encourage workers to contest and 20 of these employers said that it is “up to the worker to decide for themselves what they want to do” after they receive the information about contesting.

The majority of onsite study employers that discussed contesting time frames with their employees said that they correctly informed them that they had eight Federal business days to contest. Among the 98 onsite study employers that reported on what they told workers about contesting time frames, 60 reported that they properly explained to workers that they had eight Federal business days to contest the TNC finding with SSA or USCIS. However, 38 employers did not follow E-Verify procedures for

¹⁵⁹ The term “similar” is used when comparing the 2006 and 2008 Web surveys to indicate that the difference between the two percentages is not statistically significant at the .05 level.

explaining the contesting time frame to workers, with 22 telling workers that they had more than eight Federal business days to contest, 14 telling workers they had less than eight Federal business days to contest, and two never telling workers how long they had to contest. Some employers that were not correctly explaining contesting time frames thought that the number of days to contest a TNC was 10 Federal business days, which is the length of time that the Federal government has to resolve contested TNCs rather than the number of days the worker has to contact SSA or USCIS.¹⁶⁰ Of the 60 employers who reported that they told workers the accurate contesting time frame, 24 had one or more workers who said that they were told an inaccurate time frame. In total, of the 142 workers who responded to this question, 35 said that they were told they had eight Federal business days to contest the TNCs, 48 workers were told an inaccurate time frame, and 59 workers were never told how long they had to contest.

Some employers did not inform workers wishing to contest TNCs that they would lose their jobs if they did not contact SSA or USCIS within eight Federal business days. Although 63 onsite study employers said that they tell employees who want to contest that they would lose their jobs if they did not contact SSA or USCIS within eight Federal business days, 11 said that they never told workers this. Of the 63 employers who reported telling employees they would lose their jobs if they did not contact SSA or USCIS within eight Federal business days, 12 had one or more workers who said that they were not so informed. Out of 117 workers who responded to the question about what they were told after they said they wanted to contest, 76 were told they would lose their jobs if they did not contact SSA or USCIS. The remaining workers said that they had not been told this; however, it is possible that some had been told and forgotten.

Some employers did not provide workers with the required referral form for workers who wish to contest TNCs. Workers deciding to contest are supposed to be given a referral form that explains the procedures for resolving TNC findings with SSA or USCIS.¹⁶¹ Both SSA and USCIS referral notices also explain to workers that employers cannot take adverse actions against them while they are contesting the TNC. Among the 86 employers who responded to this question in the onsite interview, 83 said that they always provided the written referral letter to workers. However, of these employers, 21 had one or more workers who reported that they had not received a written referral letter. Overall, 94 workers reported that they received a written referral letter, while 48 said that they had not received a letter. SSA reports that another concern with the referral notification process is whether the worker received the correct version of the SSA referral letter. They have learned anecdotally that some Web Services users are giving new hires obsolete versions of the letters that lack the evidence requirements, legal rights, and Naturalization Phase II options.

Almost all of the onsite study employers who responded to the question about referral procedures reported that they informed workers of the referral process. Out of the 77 onsite study employers that responded to the question about informing workers of the referral process, 73 said that they notified workers of the SSA or USCIS referral process. The remaining four employers did not notify workers of the referral process, stating that they often forgot to inform workers. One employer did not seem to understand that they were required to explain the referral process to workers. Only seven of the 73 employers that reported informing workers of the referral process had one or more workers who said that they were not informed of it. Out of the 119 workers who reported on whether they were informed of the referral process, 103 said that they were notified.

¹⁶⁰If a worker contacts SSA or USCIS on the ninth or 10th Federal business day after referral, the government will still work with the worker to resolve the TNC.

¹⁶¹Refer to Appendices K and L for copies of the TNC and referral forms.

Of the 52 onsite study employers discussing how promptly they informed contesting workers of the referral requirements, 50 said that they did it promptly. Only one employer consistently did not inform workers promptly, stating that workers were typically notified of the referral process one to two weeks after the workers indicated they were going to contest the finding.

The majority of worker files did not contain the appropriate TNC and referral forms, even when employers indicated that they provided workers with the forms. Among the 108 onsite study employers for which the evaluation team reviewed employment verification files, 56 were missing TNC notices for half or more of the workers in their files (Exhibit VIII-8). Similarly, among the 87 employers that should have included SSA referral letters in their files, 39 were missing referral forms for half or more of their workers that had been referred to SSA. System problems may account for at least some of the missing referral letters;¹⁶² however, they do not explain the noncompliance with the requirement to retain TNC notices. It is possible that the high level of noncompliance results from many employers not feeling obligated to keep hardcopy records of the forms. Anecdotal evidence from employer interviews also indicated that some employers disposed of the paperwork for workers who chose not to contest the TNC and whose cases were therefore resolved as Final Nonconfirmations (FNCs).

Exhibit VIII-8. Number of Onsite Study Employers, by Approximate Percent of Their Workers With TNC Notices in Their Files



SOURCE: Record review of Form I-9 and related records.

Most employers correctly referred cases through E-Verify when workers said they wished to contest TNC findings. When workers inform employers that they will contest TNC findings, employers are required to refer the case to SSA or USCIS through the E-Verify 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 TNCs. Of the 48 employers that discussed whether they initiated referrals through the E-Verify system when appropriate to do so, only three said that they did not follow the correct procedures. A review of the employer records indicated that of the 203 workers who contested and signed an SSA TNC notice, only one did not have a referral date entered into the E-Verify system. All of the 55 workers who contested and signed a USCIS TNC notice had a referral date in the E-Verify system. Thus, it appears that for the most part, these employers are correctly initiating referrals.

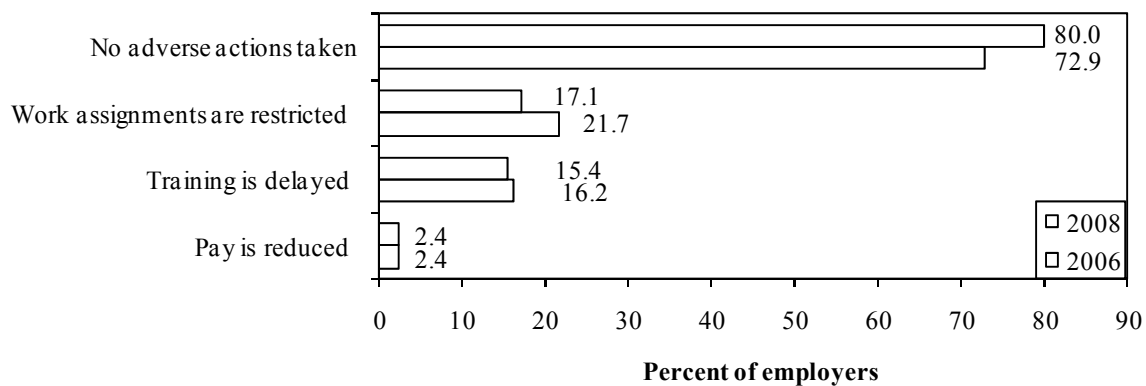
¹⁶²Pop-up blockers on employers' computers did not always permit printing the referral letter. USCIS is currently addressing this problem.

2.1.1.4. Taking Adverse Actions Against Workers

Some Web survey employers reported taking adverse actions against workers contesting TNCs.

Among Web survey employers, 17 percent reported restricting work assignments until employment authorization was confirmed (Exhibit VIII-9), 15 percent reported delaying training until employment authorization was confirmed, and 2 percent reported reducing pay during the verification process. These results are similar to what was reported in the Web survey in 2006, where the corresponding results were 22, 16, and 2 percent. All of these adverse actions are prohibited by the statute behind the E-Verify Program.

Exhibit VIII-9. Reported Incidence of Noncompliance With E-Verify Procedures for Handling TNCs



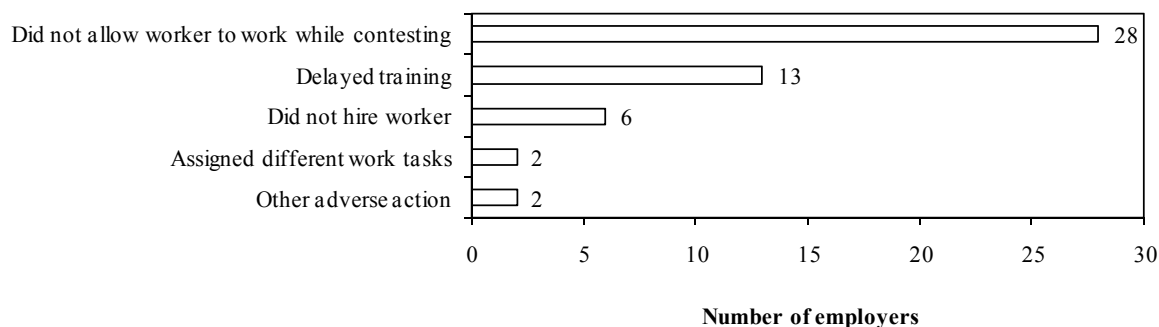
NOTE: Total does not add to 100 percent because employers could check more than one response. Twenty percent of employers took one or more adverse actions.

SOURCE: E-Verify Web Survey.

Taking adverse actions against workers was also reported by employers in the onsite survey.

Among the 99 onsite study employers that commented on the action they took after workers received TNCs, 37 reported taking some type of adverse action against workers who received TNCs, such as not allowing workers to work while contesting, delaying training, not hiring the worker (when the employer had screened job applicants), or assigning different work tasks (Exhibit VIII-10). Furthermore, 29 of the 62 employers that said they took no adverse actions against workers receiving TNCs had one or more workers who reported such adverse actions being taken against them by their employers.

Exhibit VIII-10. One or More Types of Adverse Actions Taken as Reported by Onsite Study Employers



NOTE: Sum does not add to total (number of employers reporting) because some employers reported taking more than one type of adverse action.

SOURCE: Onsite Interviews of Employers.

There was also evidence that some onsite study employers took adverse actions against workers who initially received a “DHS verification in process” finding. Of the 21 onsite study employers that reported taking some type of adverse action against workers who received a “verification in process” finding, 12 did not understand the E-Verify procedures for dealing with that finding. Adverse actions included not allowing workers to work while waiting for a response from E-Verify and not hiring workers because of the “verification in process” finding.

2.1.1.5 Other E-Verify Procedures

Employers usually input information about new hires into E-Verify within three workdays of hire. As discussed in Chapter V, most employers transmitted cases within the required three days; however, a few employers reported that they were unable to do so.

Employers sometimes do not input information into the system that is consistent with information on the Form I-9 and accompanying documents. A number of discrepancies were found between the employer records that were reviewed and the Form I-9 information entered into the Transaction Database. In addition to the discrepancies that could affect case findings discussed in Chapter VI, 214 of 1,147 of the TNC cases reviewed had discrepancies between the hire date on the I-9 Form and the hire date entered into the Transaction Database (Exhibit VIII-11). Of these 214 cases, 128 had a hire date on the Transaction Database that was later than the hire date on the I-9 Form. Of these 128 cases, 24 differed by more than 100 days between the two hire dates. Although some of these were due to entry errors, others may represent cases in which the employer is screening existing employees and trying to mask that fact by inputting incorrect information into the Transaction Database.

Exhibit VIII-11. Discrepancies Between Information in Reviewed Records and Transaction Database Information Related to Processing Dates

Type of information	Number of reviewed records
Cases checked for Form I-9 consistency with Transaction Database information	1,147
Cases with Form I-9 and database hire dates consistent	933
Cases with Form I-9 and database hire dates inconsistent	214
Form I-9 earlier than database	128
Form I-9 later than database	86
Cases checked record file for consistency with Transaction Database information and record review referral dates for SSA TNC cases	266
Referral dates consistent	230
Referral dates inconsistent	36
Cases checked record file for consistency with Transaction Database information and record review referral dates for USCIS TNC cases	64
USCIS referral dates consistent	62
USCIS referral dates inconsistent	2

NOTE: Only cases that include the indicated form were used for these analyses.

SOURCES: Record review of Form I-9 and related records and E-Verify Transaction Database.

There were also 86 cases with a hire date on the Transaction Database prior to the hire date on the Form I-9. Of these 86 cases, nine differed by more than 100 days between the two hire dates. Although some of these were probably due to data entry errors, others are likely cases in which employers were prescreening job applicants.¹⁶³ Of the 266 TNC records containing SSA referral letters, 36 were found to have a discrepant referral letter date entered into the Transaction Database. Of the 64 TNC cases that received a USCIS referral letter, two were found to have a discrepant date entered into the Transaction Database.

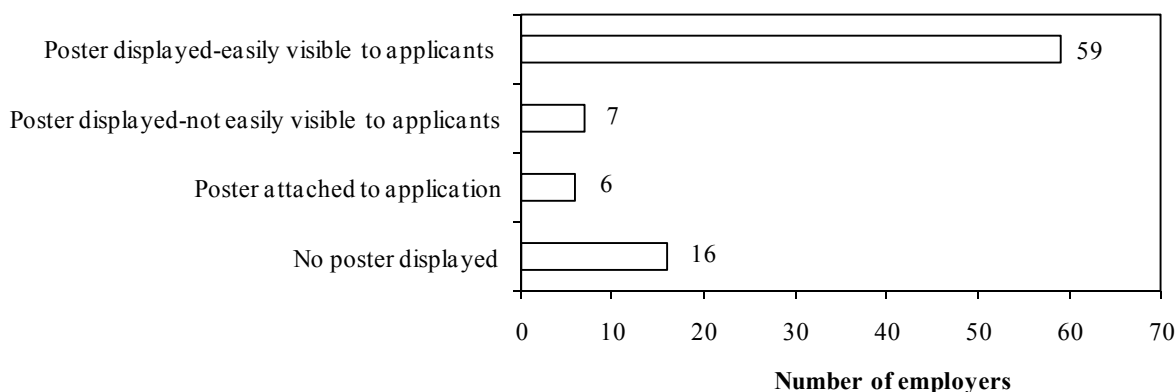
Few workers were aware that their employers were using E-Verify prior to their job interviews. Of the 396 workers who commented on whether they were aware of the employer's use of E-Verify, 298 stated that, prior to their job interviews, they were unaware the employer was using a program to verify their work authorization. Though it is possible that some of the locations where these workers applied did have the E-Verify poster properly placed, it may be an indication that more needs to be done to adequately notify applicants of a company's use of E-Verify.

Employers did not consistently post the E-Verify notice in an area where it was likely to be noticed by job applicants. Onsite interviewers attempted to observe whether the E-Verify poster was displayed where prospective employees are likely to see it. When they were unable to observe the poster, they asked the employer whether it was displayed. Information about the placement of the poster was available for 82 employers. For 49 of these employers, interviewers observed the E-Verify poster in a location where it could be noticed by applicants, and an additional 10 employers reported displaying it (Exhibit VIII-12). Six employers had the poster placed where applicants were unlikely to notice it (as observed by interviewers) and one additional employer reported such placement. For 13 employers, interviewers observed that the poster was not placed anywhere in the establishment, and an additional three employers reported that the poster was not placed anywhere in the establishment. Some employers attached the

¹⁶³E-Verify will not let an employer enter a future hire date in the event that the employer prescreens.

E-Verify poster to the job application—this was observed at the site of one employer and five additional employers reported this behavior.¹⁶⁴ Interviewers observed 41 employers that displayed both the English and Spanish versions of the poster, and seven additional employers reported this behavior.

Exhibit VIII-12. Employer Compliance With Requirement to Display E-Verify Participation



NOTES: Information on the placement of the poster was available for 82 employers. Some employers were included in more than one category, e.g., adding the notice to the job application and also displaying it.

SOURCE: Onsite Interviews of Employers.

Employers do not always follow the requirement to promptly terminate employment when E-Verify is not able to confirm that an employee is work authorized. As discussed in Chapter V, a small number of employers reported that they never terminated employees receiving unauthorized or FNC findings (8 percent of Web survey respondents and 1 of 85 onsite study employers commenting on their termination procedures). Another small group reported taking more than a week to terminate the employment of these workers (5 percent of Web survey respondents and 7 of the 85 onsite study employers).

Many employers did not comply with the E-Verify procedural requirement of entering closure codes for all cases. Although the Web-based E-Verify procedures require that employers input closure codes that explain the final outcome of each case, the E-Verify system does not force the user to enter such codes. When a data entry error is found, 71 percent of the active Web survey respondents in 2008 reported that they closed the original case as an error case (i.e., Invalid Query or IQ code) and entered the corrected information as a new case as required by E-Verify procedures.¹⁶⁵ Of the 34 onsite study employers who commented on closing cases, 28 seemed to understand the proper procedures for closing cases, including when to close cases and what codes to use for each final outcome.

Although failure to input codes has little consequence for workers, it reduces available information about case outcomes in the Transaction Database and therefore impedes evaluation and monitoring of the Program. Although this issue has been raised in previous evaluation reports, it is becoming more critical now than in the past, since there is now a Monitoring and Compliance Unit that is expected to perform employer monitoring, primarily using the transaction data.

¹⁶⁴Some employers were included in more than one category, e.g., adding the notice to the job application and also displaying it.

¹⁶⁵Since the E-Verify system automatically enters closure codes based on the final case finding when employers fail to do so, it is difficult to determine what percentage of employers are correctly entering closure codes based on the transaction data.

Some employers did not fully cooperate with the evaluation, as required by the Memorandum of Understanding (MOU). As discussed in Chapter II, some employers participating in E-Verify declined to complete Web surveys or participate in onsite studies as they had agreed to do when they signed the MOU. Although the reasons for nonparticipation were sometimes understandable (e.g., the primary user was on leave during the data collection period), in other cases this failure may indicate a more general lack of cooperation with MOU requirements.

2.1.2. Compliance With Recently Instituted and Changed E-Verify Program Procedures

2.1.2.1. Procedures Related to the Photo Screening Tool

The Photo Screening Tool requires employers other than Designated Agents or Web Services providers to compare a stored digital photograph, when available,¹⁶⁶ to the document photograph provided by the worker. When the photograph is displayed by E-Verify, the employer is required to compare the downloaded photograph with the photograph on the document (or a photocopy of the document) and select the correct answer to the question of whether the two pictures match from three possible responses (yes, no, and cannot determine). The employer is also required to retain a photocopy of the document in the worker's file and, if the two photographs do not match, or the employer cannot determine whether they match and the worker wishes to contest the resulting TNC, the employer is required to send a photocopy of the document to USCIS for additional review. By adding additional steps to the procedures that employers must take in verifying some workers, the Photo Screening Tool provided new opportunities for noncompliance.

Most onsite study employers reported having used the Photo Screening Tool. Of the 105 employers who commented on their Photo Screening Tool use, 92 had used it at least once. At one employer site, the Photo Screening Tool was sometimes not used because it was the employer's understanding that the tool could be used at the employer's discretion.¹⁶⁷

Most employers reported comparing the photograph from the Photo Screening Tool with the documents that workers present, as required; however, many employers did not completely follow the Photo Screening Tool requirements. Procedures for using the Photo Screening Tool require the employer to compare a photocopy of the photograph on the document submitted with the photograph returned from the system. Among Web survey respondents that had used the Photo Screening Tool, 70 percent reported they made this comparison; 59 percent compared the Photo Screening Tool photograph to the person presenting it (58 percent compared the Photo Screening Tool to both the document and the person, and 1 percent compared it to the person only). This finding is consistent with the onsite finding that 42 of the 92 onsite study employers that had used the Photo Screening Tool reported comparing the photograph in the system to the person being verified. Interestingly, 29 percent of Web survey respondents and one onsite participant reported that they did not compare the Photo Screening Tool photograph to the document or the person.

¹⁶⁶ Currently, as discussed in Chapter VII, photographs are only available for approximately 4 percent of E-Verify cases.

¹⁶⁷ Although USCIS stored document photographs were always provided to regular employers when available, the employer may not actually compare the photograph downloaded to the document photograph. In this case, the employer may select "cannot determine" when requested to provide the outcome of the match.

It appears that a few employers asked workers to submit documents that would trigger the Photo Screening Tool, even though employers are prohibited from asking for specific documents in the Form I-9 process. The Form I-9 procedures prohibit employers from asking for specific documents if workers present acceptable documents. However, the use of the Photo Screening Tool appears to have led some employers to ask for documents that are available for screening with the Photo Screening Tool. According to the Web survey, 10 percent of employers that used the Photo Screening Tool indicated that they have been more likely to ask for immigration documents since the start of the tool use and another 40 percent indicated that they do not know whether the Photo Screening Tool made them more likely to ask for immigration documents. In the onsite study, one of the employers reported requiring noncitizen workers to provide immigration documents.

None of the very small number of record review cases that had activated the Photo Screening Tool had included photocopies of the immigration documents with photographs as required by E-Verify. Only three onsite study employers had Photo Screening Tool cases that had activated the Photo Screening Tool, and none of them retained copies of the document in the workers' files.

Some employers did not submit the document photographs to USCIS when required to do so. According to the E-Verify User Manual, the employer is supposed to send a copy of the worker's document to USCIS if the employer is unsure whether the document photograph matches the photograph returned by the Photo Screening Tool or if the employer believes they do not match. USCIS staff interviewed indicated that this does not seem to be consistently done.

2.1.2.2. Procedures Related to EV-STAR

Employers often continued to ask workers to obtain signed SSA letters, even though automated SSA procedures under EV-STAR do not require SSA to provide such letters. Employer procedures under EV-STAR make the handling of SSA TNC cases more similar to procedures used by USCIS than was true in the past. In the long run, it is reasonable to expect that this change will make it easier for employers to understand the proper procedures for handling TNCs; however, in the short run, employers may not be aware of the changed procedures or may not understand how they are supposed to implement the new procedures. Among the 101 onsite study employers commenting on whether they were aware of a change in the way SSA TNCs were handled, 48 reported that they had noticed a change in the process.¹⁶⁸ Of the 91 employers in the onsite survey that reported on their use of the new EV-STAR process, 48 still required workers to bring back a signed letter from SSA. One of the other employers did not check case statuses in the system and another re-entered worker information if they did not get an update in the E-Verify system within 24 hours of submitting the case. SSA Operations staff corroborate this finding that many employers still request a letter from SSA as provided under the old manual procedure that was replaced by EV-STAR.

2.1.3. Impacts of Recent Legislative and Program Changes

2.1.3.1. Legislative Changes

Mandating the use of E-Verify may lead to reduced compliance with E-Verify procedures. State legislation requiring employers to use the E-Verify system may decrease voluntary compliance with program procedures and tempt some employers to bypass E-Verify procedures that they do not like. To

¹⁶⁸ Employers that had not transmitted data prior to the implementation of EV-STAR were excluded from this analysis.

determine whether this appears to be the case in Arizona, the evaluation team compared Arizona employers responding to the Web survey with other employers based on a general measure of compliance with E-Verify procedures on a measure that has a mean of 500 and a standard deviation of 100.¹⁶⁹ The analysis indicated that Arizona employers were slightly less compliant than other employers, with an average score of 474 compared to 510 for employers in other states.¹⁷⁰ It is, of course, possible that the difference arises from factors other than the states' legislative status, including the possibility that the lower compliance of employers in Arizona can be attributable to their having a disproportionately high number of employers newly enrolled in E-Verify.

The impact of the mandatory use of E-Verify on compliance is presumably a function of the extent to which there are penalties associated with noncompliance. While the Arizona State legislation does not include specific penalties for not enrolling in E-Verify, failing to sign up deprives the employer of an affirmative defense argument if the employer is charged with hiring employees without work authorization.

2.1.3.2. Outreach Efforts

Ongoing USCIS outreach efforts and efforts to improve the tools, such as the tutorial designed to explain E-Verify procedures, should help reduce employer noncompliance attributable to a lack of understanding of the program. However, the impacts of such changes cannot be easily evaluated because there is not a single date that can be isolated to examine compliance before and after the event. Furthermore, the evolving nature of E-Verify makes it difficult to obtain a consistent metric for use in measuring trends.

2.1.3.3. Monitoring and Compliance Units

USCIS has implemented monitoring and compliance units that are expected to be a step forward in reducing both intentional and unintentional violations of program requirements. However, the units were not, for the most part, operational during the data collection time, making it unlikely that they had a noticeable impact on compliance during the time period covered by this evaluation.

¹⁶⁹See Chapter II for additional information on the Compliance Scale.

¹⁷⁰This difference is statistically significant at the .05 level, using a one-tail test, but not using a two-tail test.

PART 3. STAKEHOLDER PERSPECTIVES

Part 3 focuses on the distinctive perspectives of the three major stakeholder groups about E-Verify:

- Chapter IX focuses on **employer** satisfaction with E-Verify.
- Chapter X examines the effects of E-Verify on **workers**. It includes discussions of the Program's impact on worker rights, the financial and nonfinancial burdens of the Program, and its impact on discrimination against foreign-born workers.
- Chapter XI examines issues not discussed in previous chapters that are related to E-Verify from the **Federal** perspective. These include Federal costs and nonfinancial burdens associated with this rapidly growing program.



CHAPTER IX. E-VERIFY FROM THE EMPLOYER PERSPECTIVE

1. BACKGROUND

This chapter discusses two closely linked topics: employer satisfaction with E-Verify and employer burden in implementing and operating the Program. Information from the onsite study employer visits and from the 2008 Web survey of E-Verify employers and employers enrolled in E-Verify but not using it at the time of data collection are presented.¹⁷¹ Where feasible, the Web survey responses from the 2008 and 2006 E-Verify users are compared.¹⁷² Strengths and limitations of these data sources are discussed in Chapter II.

This chapter also summarizes employer recommendations for improving E-Verify and discusses how well E-Verify does in meeting the unique needs of different types of employers. The Federal government is aware that under a mandatory program, types of employers currently underrepresented in E-Verify would be required to enroll in the Program. In part to provide for this contingency, as E-Verify has expanded, U.S. Citizenship and Immigration Services (USCIS) has increased efforts to provide features needed to accommodate the unique needs of different types of employers that may not have been contemplated when the Program was originally designed. For example:

- Verification staff have for a long time been aware that employment service providers, especially staffing agencies (i.e., employers that refer job applicants to their client companies for possible hire), have unique needs because their clients often expect them to screen potential employees before placing them. There is, therefore, a long-standing USCIS policy that staffing agencies may use E-Verify for potential employees who can be placed immediately in an actual position or, if one is not available, placed in a “hiring pool,” as long as all potential employees are treated the same. However, this is an informal policy and is not articulated in current training or resource materials. The Verification Division is working to address this deficiency and will be adding guidance to the *Customer Guide E-4, How Do I Use E-Verify?*
- The increased popularity of E-Verify has provided business opportunities for service companies to assist employers that want to use E-Verify but either prefer not to do all of the work themselves, do not have Internet service, or want to have specialized software to facilitate their use of E-Verify. Service providers that provide specialized software are referred to as **Web Services providers**, while those that provide more general verification services, which may or may not include Web services, are referred to as **Designated Agents**. Companies using the services of Designated Agents are referred to as **Users of Designated Agents**.¹⁷³

¹⁷¹The 2006 Web survey did not include employers not currently using E-Verify, so there is no comparable 2006 information for these employers.

¹⁷²Comparisons are made when the two surveys ask the same question.

¹⁷³At the time of data collection for this report, E-Verify employers were classified according to the type of access they wanted to use as they specified when they registered. Since the distinctions between the categories were not clear to many employers, USCIS was working on a better classification system at the time this report was drafted. Employers responding to the Web survey and the onsite interviews were reclassified as appropriate based on their Web or interview responses.

This chapter discusses both financial and nonfinancial burdens. The financial cost information provided by employers in the Web survey was sometimes based on actual records and sometimes on their best estimates.¹⁷⁴ Almost three-quarters of employers reported no direct costs for setting up E-Verify and 77 percent reported no direct costs for maintenance of E-Verify, which may be true or may simply indicate that the employer found it easier to say so than to estimate the costs, especially if the costs were minor. Since the cost questions were significantly modified from those used in the 2006 survey, it is not possible to compare the costs reported in this evaluation with those of the earlier evaluation.¹⁷⁵

In addition to discussing legislative changes likely to affect employers, the following recent E-Verify Program changes¹⁷⁶ that would be expected to have a significant impact on employer satisfaction and burden are discussed:

- The Social Security Administration (SSA) and USCIS pre-Tentative Nonconfirmation (pre-TNC) checks;
- The Photo Screening Tool;
- EV-STAR;
- Naturalization Phase I; and
- Naturalization Phase II.

Changes in the tutorial and employer resources available on the Web and other outreach efforts to employers are designed to address some of the confusion about E-Verify procedures that employers have expressed in previous evaluations. However, these clarifications may also raise concern on the part of some employers, especially those that need to modify their procedures as a result of the changes. Most of these changes have been made incrementally, which prevents isolating their effects for evaluation purposes.

As discussed below, employer satisfaction with E-Verify was generally quite high, although some E-Verify users reported being dissatisfied with aspects of E-Verify. They also had a variety of recommendations for how the Program could either address areas of dissatisfaction or otherwise improve the Program. These recommendations are important, because they point to possible changes that USCIS and SSA may want to implement in the future. These recommendations are, therefore, taken into account in developing the report recommendations in Chapter XIII. However, since the report recommendations include a variety of perspectives and E-Verify goals, not all employer recommendations are included in the final recommendations.

¹⁷⁴See Chapter II for a discussion of this issue.

¹⁷⁵However, given that the current program eliminated the need for employers to use a dedicated PC and phone line and a special modem, lower implementation costs could be anticipated.

¹⁷⁶See Chapter III for a description of these changes.

2. FINDINGS

The findings in this chapter are organized into four sections:

- Employer satisfaction with E-Verify, including recommendations for changes;
- Financial costs;
- Variation in the needs of different types of employers; and
- Impacts of recent programmatic and legislative changes on employer satisfaction and costs.

2.1. Satisfaction and Burden

This section of the chapter examines information employers provided about how satisfied they are with E-Verify and their views of the burden of the Program. The section is divided into the following somewhat overlapping topics:

- General satisfaction and burden;
- Registration and start-up procedures;
- Resources;
- User-friendliness of the E-Verify system;
- Communication with USCIS and SSA; and
- Other issues and recommendations.

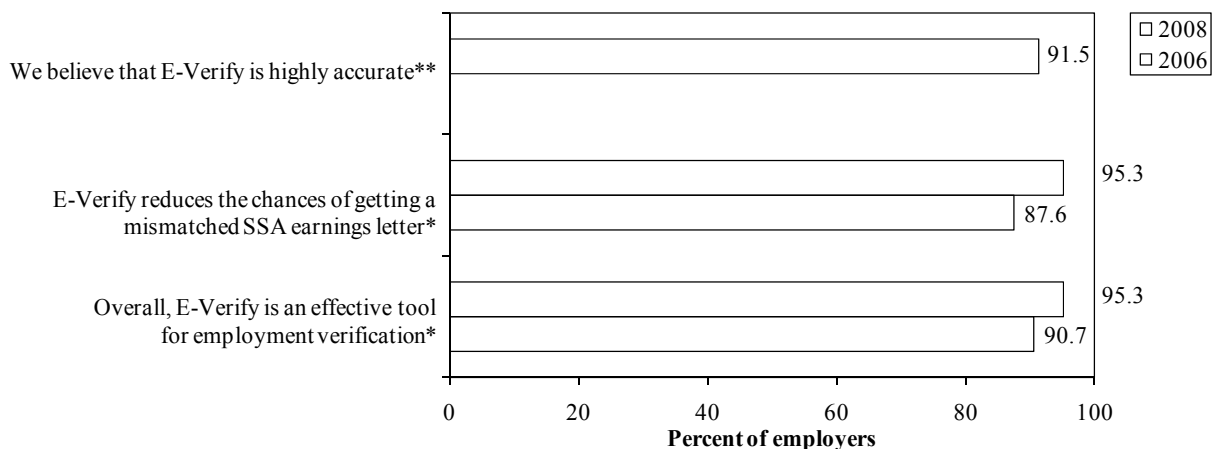
2.1.1. General Satisfaction and Burden

Employers generally expressed satisfaction with E-Verify in the Web survey. Most Web survey employers reported that E-Verify is an effective tool (95 percent) and that they believe it is highly accurate (92 percent) (Exhibit IX-1). In addition, 95 percent agreed or strongly agreed that E-Verify reduces the chances of getting a mismatched SSA earnings letter. These figures are similar to results obtained in the 2006 survey in which 91 percent agreed or strongly agreed that E-Verify is an effective tool for employment verification and 88 percent agreed or strongly agreed that E-Verify reduces the chances of getting a mismatched SSA earnings letter.

Onsite study employers were also generally satisfied with E-Verify. Of the 104 onsite study employers discussing their overall satisfaction with E-Verify, 99 reported being generally satisfied. Employers stated that E-Verify “takes the guesswork out of the hiring process” and “simplifies the process,” and one said that the question of whether a person was authorized to work could be “immediately resolved.” Employers also mentioned that the Program saved them time because they no longer had to examine work

documents and determine work authorization on their own, as E-Verify did this for them.¹⁷⁷ Finally, several employers mentioned that they were pleased with E-Verify because it “ensures that they are operating without employing persons that are not authorized to work.”

Exhibit IX-1. Percent of Employers Agreeing With Statements About the Overall Functioning of E-Verify



*Statistically significant difference between 2008 and 2006 E-Verify users at $p < 0.05$.

**There was not a comparable question asked in the 2006 survey.

SOURCE: E-Verify Web Survey.

Employers also generally indicated that E-Verify was not burdensome. A large majority of employers completing the Web survey (80 percent) disagreed or strongly disagreed with the statement that “it is impossible to fulfill all the employer obligations required by the E-Verify process.” This is lower than the 95 percent of employers surveyed in 2006 who disagreed or strongly disagreed with this statement. Of 84 onsite study employers who discussed the burden of using E-Verify, only one felt that E-Verify was very burdensome, 70 reported that E-Verify was not at all burdensome, and 13 reported it was somewhat burdensome.

Although dissatisfaction and burden were often cited as reasons for terminating use of E-Verify, many former users reported other reasons for terminating their use of the system. As discussed in Chapter IV, only 24 percent of employers had terminated system use or decided not to use the system because they decided that the system “would be too burdensome to use.”

2.1.2. Registration and Start-Up Procedures

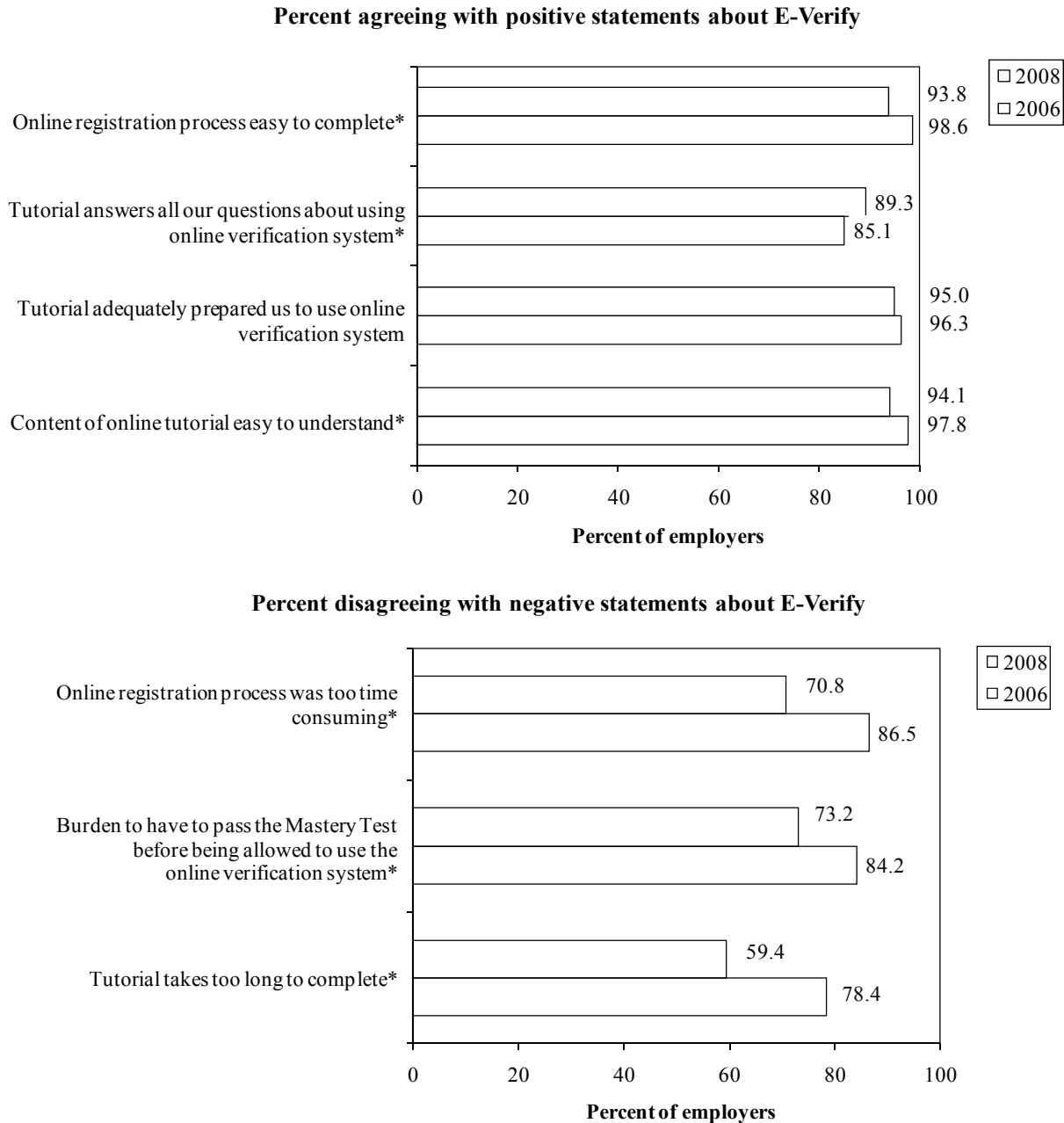
2.1.2.1. Satisfaction Level

Most employers responding to the Web survey expressed satisfaction with the E-Verify registration and start-up procedures. When E-Verify users were asked in 2008 to rate their experiences with the E-Verify system registration and start-up process, almost all (94 percent) reported the online registration process was easy to complete—quite comparable to the 99 percent in 2006 (Exhibit IX-2). However,

¹⁷⁷Note that E-Verify employers still have responsibility for examining work documents as discussed in Chapter VIII; this response may, therefore, be due to misunderstanding the proper methods for verifying employment under E-Verify.

there was a 16 percentage point drop in users who indicated that the registration did not consume much of their time (from 87 percent in 2006 to 71 percent in 2008). This difference between 2006 and 2008 may be attributable to the greater complexity entailed in registration, as the number of access types had increased.

Exhibit IX-2. Employer Views of E-Verify Registration and Start-Up Procedures: 2006 and 2008



*Significant difference between 2008 and 2006 surveys at the .05 level.

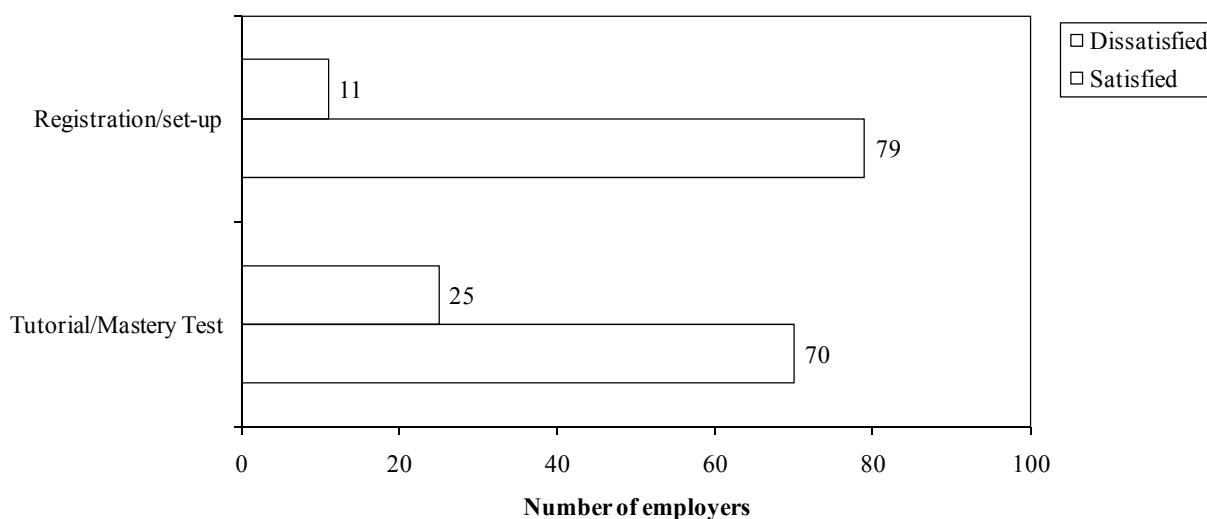
SOURCE: E-Verify Web Survey.

Most Web survey respondents also expressed considerable satisfaction with the online tutorial.

Almost all Web survey respondents reported that the online tutorial provided adequate information about the use of the system (95 percent) and was easy to understand (94 percent). This was not substantially different from 2006, when 96 percent of employers reported that the online tutorial adequately prepared them to use the system and 98 percent said it was easy to understand.

Most onsite study employers were also satisfied with the registration procedures. Of the 90 employers who reported on their satisfaction level with registration and start-up procedures, 79 were generally satisfied, saying that they had no problems registering for E-Verify (Exhibit IX-3). However, 11 employers described the registration/start-up procedures as “lengthy” and “confusing.” A few of these employers had to make several calls to the E-Verify helpline before they successfully registered for E-Verify.

Exhibit IX-3. Number of Onsite Study Employers That Reported Being Satisfied or Dissatisfied With Registration Procedures



SOURCE: Onsite Interviews of Employers.

Most onsite respondents also reported being satisfied with the online tutorial and Mastery Test. A total of 95 onsite study employers commented on the tutorial and Mastery Test, with 70 employers reporting they were satisfied with them. They felt the tutorial and test were easy to use and they had no problems with either. One employer stated that the tutorial “gave her a base of knowledge that she didn’t have before.” The remaining 25 onsite study employers were dissatisfied with the tutorial and test, citing the length of the tutorial and technical problems, such as timeouts during sessions. Employers felt the tutorial was too long, and several mentioned that there was too much information about the technical aspects of the Web site (pointing and clicking buttons, navigating the site, etc.) and not enough information on the more difficult concepts. Some onsite study employers found the tutorial instructions unclear.

2.1.2.2. Employer Recommendations

Employers made the following suggestions for improving start-up procedures:

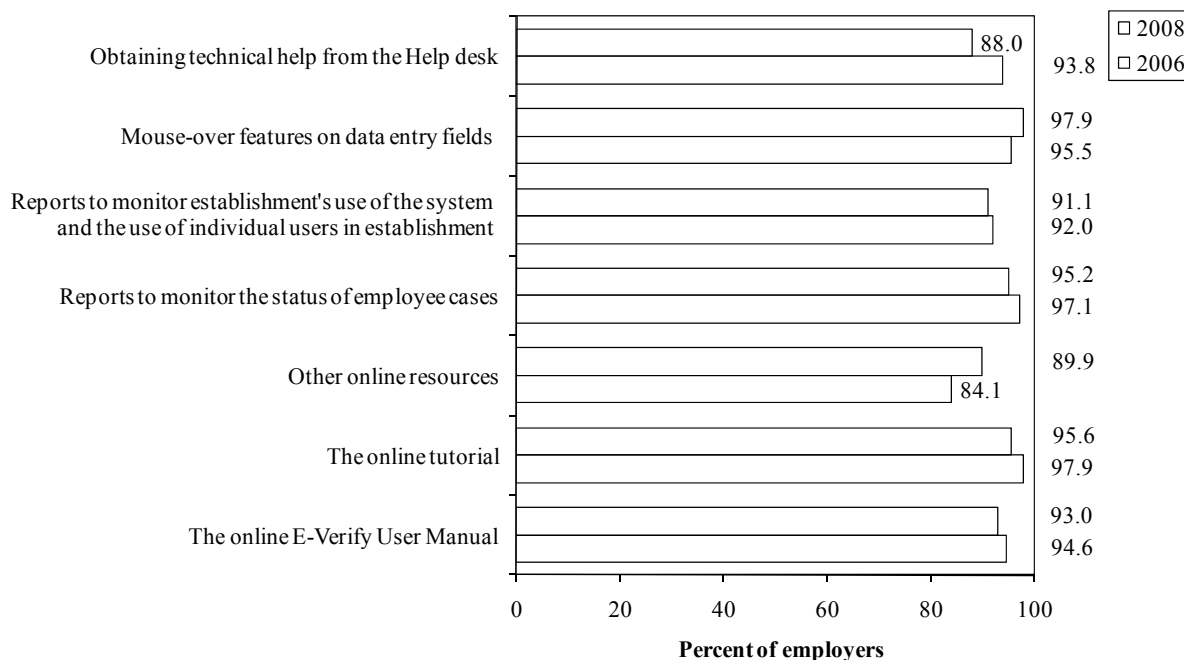
- Additional information in the tutorial to better explain why an employee may receive a TNC;
- Regular Web seminars that could assist new users, especially when they are going through the tutorial and Mastery Test; and
- A way to easily print out the tutorial so that it can be used as a reference.

2.1.3. Resources

2.1.3.1. Satisfaction Level

Employer views of the resources provided to E-Verify participants were generally positive. As Exhibit IX-4 shows, more than 90 percent of employers in the Web survey reported that most resources available to them were “very helpful” or “helpful.” The ratings of the helpfulness of resources were similar for the 2006 and 2008 surveys.

Exhibit IX-4. Percent of E-Verify Users Reporting E-Verify Resources Are Helpful or Very Helpful



NOTE: Tests of significance were done to compare 2006 and 2008 E-Verify users, and there were no significant differences.

SOURCE: E-Verify Web Survey.

Although most employers were satisfied with the help desk, some employers expressed considerable dissatisfaction with the information they obtained from it. Among Web survey respondents, 88 percent of employers reported that obtaining technical help from the help desk was very helpful or helpful. Problems reported by employers included difficulty in reaching someone who could answer their questions, representatives who could not provide answers, answers that were inconsistent with E-Verify written or online information, and a lack of response to answers that required a return call from USCIS. Several employers in the onsite study said that the answers they received from the help line were not sufficient to meet their needs.¹⁷⁸ Examples of employer frustrations related to obtaining information from the help line include the following:

- “[G]etting a decent answer from the technical support team is nearly impossible...Answers are rarely if ever known by those answering the phones. Questioners are told they will be contacted. Sometimes they are. Sometimes they aren't. Sometimes the answers are helpful - sometimes not. Some e-mail responses are ignored entirely. Not answering questions posed is a disservice to both the employer and employee.”
- “When I called the help line with a specific question, I was left on hold at least 2 times for approximately 20 minutes each time.” The director of Human Resources was then routed to another help line representative who spoke only Spanish (which the caller did not speak). “Both times I needed assistance I was given to someone that could not help me.”

2.1.3.2. Employer Recommendations

Employers made the following suggestions for new or improved resources:

- More detailed explanation of the TNC process and time frame for contesting TNCs;
- Additional information or training on accurately completing the I-9 Form along with E-Verify;
- More information on various work documents and how to spot fraudulent documents;
- A document section on the Web site that would show photographs of various work documents with the numbers to enter circled or somehow demonstrated; and
- A “demo” section where new users could practice entering employees’ information and receiving results, especially TNCs.

2.1.4. User-Friendliness of the E-Verify System

2.1.4.1. Satisfaction Level

Most E-Verify employers thought that the system navigation and data entry for E-Verify were user-friendly. When asked how user-friendly the E-Verify system navigation and data entry were,

¹⁷⁸It is not clear whether these comments related to the technical and/or program help lines. Indeed, some of the employers in the onsite study did not realize that there were two separate help lines.

64 percent of Web survey employers said that they were very user-friendly, 33 percent said they were somewhat user-friendly, and only 3 percent said they were not very user-friendly or not at all user-friendly (Exhibit IX-5). These results are similar to what was reported in the Web survey in 2006, where the corresponding results were 70, 29, and 1 percent. Almost all Web survey employers disagreed or strongly disagreed that frequent technical help is required to use E-Verify (94 percent), a finding that closely matches the one for 2006 (97 percent). Among the 105 onsite study employers responding to questions about the user-friendliness of E-Verify, 49 employers reported being dissatisfied with user-friendliness, with several of the more dissatisfied employers specifically citing system unavailability as being an issue.

Exhibit IX-5. Employer Views of the User-Friendliness of E-Verify System Navigation and Data Entry

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SOURCE: E-Verify Web Survey.

Some employers in both the Web and onsite surveys said that data entry errors were a reason for their dissatisfaction with the user-friendliness of E-Verify. When the Web survey employers using E-Verify were asked about the E-Verify computer system, 29 percent of 2008 respondents indicated that it is easy to make errors when entering employee information into the system. Some employers said that it was easy to make data entry errors, specifically when entering information from employees with multiple last names. One Web survey respondent said they “...had issues when entering information for immigrants who are authorized to work in the U.S.” About a quarter of the onsite study employers reported that it was easy to make errors entering employee information and that system time outs¹⁷⁹ require previously entered information to be reentered.

Some employers reported difficulty with the process for having their passwords reset, even though this process has been simplified since the last evaluation. Even with a simplified online system for obtaining new passwords, 19 percent of Web survey 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. This result is no different from what was reported in 2006, when 19 percent of employers reported difficulty having their passwords reset. Seven onsite study employers recommended that the system require password changes less

¹⁷⁹ A system time out occurs if the user does not use the online system for 15 minutes or more; at that point the user’s session is automatically terminated.

frequently when asked for their recommendations to improve E-Verify. One of the employers responding to the Web survey said that if state legislation requiring E-Verify continues to expand, some employers may have difficulty maintaining multiple passwords.

2.1.4.2. Employer Recommendations

Employers made the following suggestions for improving the user-friendliness of the E-Verify system:

- Instead of requiring users to navigate through two screens to enter closure codes for cases that were not found work authorized, the system could automatically resolve the cases.
- Initially authorized cases could be immediately resolved rather than requiring an extra step for the employer to close the case.
- The system could 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). For example, one employer said, “the system would automatically send you an e-mail reminder of a pending case instead of you having to log-in and look yourself.”
- Cases properly closed for data entry errors could be removed from the system to avoid the extra work of scrolling through multiple cases for the same person.
- An after-hours phone line or a text e-mail system could be instituted that could provide users with their user names and passwords if the office is closed.¹⁸⁰
- More help could be located on the data entry screen to aid the user in finding the needed information on the documents provided by the employee.
- Data entry should be more user-friendly and consistent. Fields where Social Security numbers (SSNs) and/or alien numbers are entered should automatically format the information without user intervention.

2.1.5. Communication With SSA and USCIS

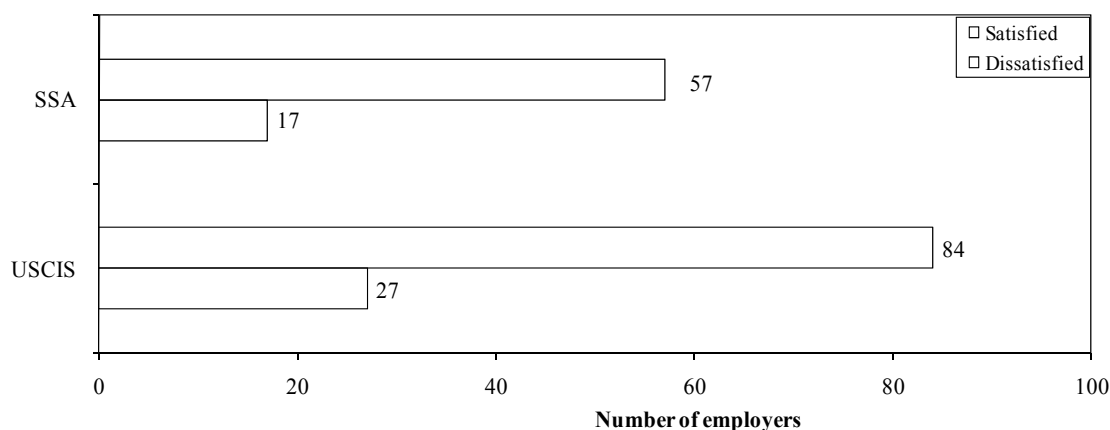
2.1.5.1. Satisfaction Level

Most onsite study employers were satisfied with the communication they had with SSA, although some reported communication problems. Of the 74 employers that commented on their communication with SSA, 57 were satisfied (Exhibit IX-6). These employers reported having no problems dealing with SSA, and one employer reported that any time they call SSA with a question, “they have found the personnel very helpful and knowledgeable.” The remaining 17 employers were dissatisfied with the communication they had with SSA. Some of these employers felt that SSA offices did not understand or

¹⁸⁰The system did have procedures for providing users with this information automatically at the time of the data collection; this comment implies that not all employers were aware of these functions.

even know about E-Verify, while a few others were frustrated that SSA could not provide an explanation as to why some cases took longer than 10 days. One employer reported that they have had employees quit when cases took longer than 10 days because they were aggravated with having to wait for a resolution from SSA. Other employers said that they would have liked the staff at SSA offices to be better informed about E-Verify and its procedures and better able to answer their questions about specific employee cases.¹⁸¹

Exhibit IX-6. Employer Satisfaction With Communication With SSA and USCIS



NOTE: For USCIS, eight of the 103 respondents reported being both satisfied and dissatisfied with different aspects of communication.

SOURCE: Onsite Interviews of Employers.

Although most employers were also satisfied with the communication they had with USCIS, some employers mentioned problems. Of the 103 onsite study employers commenting on their communication with USCIS, 84 reported they were satisfied, 27 said that they were dissatisfied, and eight were both satisfied and dissatisfied. Among the 84 satisfied employers, 60 reported that USCIS had communicated well with employers about changes to E-Verify, 20 said they were pleased with their communication with the help line, and four were generally satisfied with their communication with USCIS. Of the 27 dissatisfied employers, 15 were dissatisfied with the way changes were communicated, eight were dissatisfied with their communication with the help line, and four were generally dissatisfied with their communication with USCIS.

Some employers wanted clearer communication from both USCIS and SSA. There were 13 onsite study employers that volunteered the information that they wanted clearer communication from USCIS, specifically for staffing agencies (procedures are not spelled out clearly), the tutorial (unclear instructions), changes to the system (notice about changes was not prominent enough), and seasonal workers (whether or not they should be reentered into E-Verify when they return). Another two employers said that they would have liked the staff at SSA offices to be better informed about E-Verify and its procedures and better able to answer their questions about specific employee cases.

¹⁸¹SSA reports that at least part of the problem is that most of SSA's 1,300 field offices have never encountered an E-Verify case. They also report that they plan to provide refresher training for field offices during FY 2009–10 to heighten awareness of E-Verify among SSA Operations personnel.

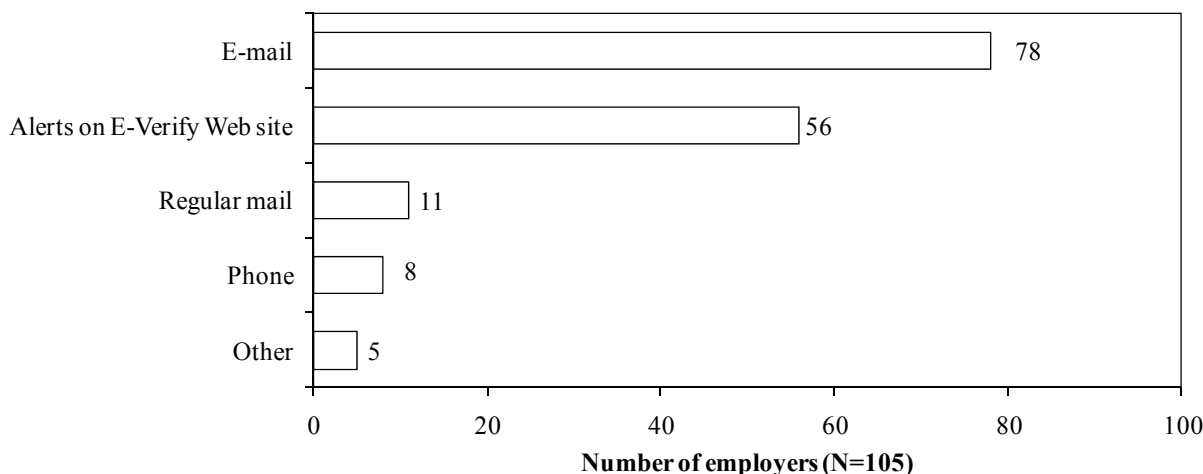
Some employers expressed dissatisfaction with how USCIS communicated the change in SSA procedures to them when starting EV-STAR. Many of the employers attending the stakeholder meeting held six weeks after the start of EV-STAR said that they had never heard of either EV-STAR or the change in SSA procedures implemented as part of EV-STAR. They considered this to be a communications problem. Of the 101 onsite study employers that began using E-Verify before EV-STAR was implemented, 53 were not aware of the changed SSA procedures approximately seven months after it had been implemented.

Perceived lack of communication and data sharing between USCIS and SSA were seen by some employers as creating problems. As explained by one employer, “The data for married people, naturalized citizens, and permanent residents is very inconsistent. The data held in the SSA and USCIS needs to be reconciled. We frequently receive ID cards and Social Security or SSN cards with different spellings, hyphenations or naming order that causes false nonconfirmation.” Some employers suggested that E-Verify should be more closely linked with the SSA system. Specifically, one employer said, “We would like to see the system somehow be able to tie into the SSA system, which may provide information if an SSN provided is currently being used at another place of employment/state. This should ‘red flag’ the SSN and should require the individual to satisfy SSA questions so that SSA can let the employer know if he/she can be employed at this time.”

SSA and USCIS are aware of some of the reasons behind this apparent lack of communication and sharing of data and are working to ameliorate the problems. For example, SSA and USCIS are looking into building an automated process for updating SSA’s NUMIDENT record and issuing replacement SSN cards to certain categories of foreign-born individuals, including naturalized individuals and those nonimmigrants who adjust to lawful permanent residence status. They are also working together with the Department of State to reconcile name discrepancies among the three agencies. SSA also notes that it would be helpful if USCIS advised employers and employees to be consistent when entering names on the Form I-9, E-Verify, and application for an SSN to the extent possible.

2.1.5.2. Employer Recommendations

When asked about mode of communication with E-Verify, most onsite study employers requested that E-Verify staff communicate with them by email either in addition to or instead of the system alerts. Of the 105 employers that responded with one or more preferences, 78 requested e-mail as the method of communication, 56 preferred alerts on the E-Verify Web site (as E-Verify currently communicates), 11 preferred regular mail, eight preferred phone calls, and five preferred some other method of communication, such as from the employer’s headquarters (which communicates directly with E-Verify) or through a newsletter (Exhibit IX-7). Most employers that preferred e-mail communication mentioned that they would like to be notified by e-mail when cases are updated and when cases need to be closed, in addition to when changes are made to the system. USCIS reports that they are in the process of developing an e-mail alert system that should be fully operational by the end of 2009.

Exhibit IX-7. Employer Preferences for Modes of Communication From E-Verify

NOTE: Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Employers.

Employers made the following additional suggestions for new or improved communication procedures, some of which are in the process of being implemented.

- More timely updates about employees who recently obtained citizenship to reduce the possibility of having erroneous TNCs. Specifically, one respondent said, “The system does not show passport photos and the INS and SSA should be linked (when employee becomes U.S. citizen it should transfer to SSA automatically).” Another said, “I had an applicant who has been a citizen for a year, but came up with a nonconfirmation. It said that she was not recognized as a citizen. She was blown away by the results and was worried that something had happened with her citizenship. When she went to the SSA office, they gave her a copy of her SSN card and said that her citizenship was fine. This whole mess made her extremely worried when everything was really ok.”
- Communicate online, through e-mail, or over the phone to both clarify questions and expedite their responses to TNCs.
- More timely communication regarding TNCs.
- An e-mail confirmation to inform them of the days remaining to resolve the TNC. For example, one employer said, “some sort of e-mail confirmation stating that the 10-day grace period has expired and the case needs to be closed” would be helpful.
- More frequent updates of E-Verify changes, possibly in the form of Webcasts or e-mail notifications.
- Provide E-Verify training for SSA staff.¹⁸²

¹⁸²SSA reports that additional staff training is planned.

- Simplify the language in the TNC notice and referral letters so that more employees can understand them.¹⁸³
- Add TNC notices and referral letters in additional languages.

2.1.6. Other Issues and Recommendations

2.1.6.1. Satisfaction Level

Most onsite study employers reported that providing assistance to employees who contest a TNC was not burdensome for them. There were 74 onsite study employers that said they were not at all burdened by having employees who contested and 13 employers that said they were somewhat burdened by this process. Among the 35 employers reporting on specific negative impacts of having employees contest, 22 said they had to give employees time off to contest, six said they lost staff while workers were contesting, four said that they paid employees for the time they were contesting, and 10 reported some other impact, such as finding workers to cover the shifts of the person who was contesting or spending time checking the case statuses in E-Verify.¹⁸⁴

Employers were more likely to find losing unauthorized workers a burden than the process of contesting TNCs. Of 64 onsite study employers that talked about the burden of losing unauthorized workers, 34 said that losing unauthorized workers was not at all burdensome, 24 said that it was somewhat burdensome, and six said that it was very burdensome. Some employers that felt that losing unauthorized workers was not at all burdensome were happy to know that they were employing only work-authorized individuals, while employers that felt that it was somewhat or very burdensome reported that they lost time and money on interviewing, hiring, and training unauthorized workers. Of 48 employers that commented on the specific type of impact of losing unauthorized workers, 41 reported additional hiring costs, 36 reported additional training costs, and 18 reported additional overtime costs (Exhibit IX-8).

Exhibit IX-8. Reasons That Losing Unauthorized Workers Was Burdensome for Some Employers



NOTE: Sum does not add to total number reporting because respondents could choose more than one reason.

SOURCE: Onsite Interviews of Employers.

¹⁸³SSA and USCIS report that they are working on making the language simpler.

¹⁸⁴Seven employers reported more than one impact of contesting.

Some employers expressed confusion on E-Verify procedures. Areas of confusion reported included the following:

- Several employers reported that there were either no instructions or insufficient instructions from the system on the fact that the stamped referral letter would not be coming back from SSA, leading to confusion about why employees were not returning their stamped referral letters from SSA to the Human Resources office, when EV-STAR was initially implemented.
- Several onsite study employers mentioned that they were sometimes confused about which numbers to enter into E-Verify from work documents.
- A number of employers were confused about how to decide what name(s) should be entered. One Web survey employer commented, “Some cultures use a multitude of surnames. Some new hires have two last names and when entering name data sometimes the employer is unsure if they are getting a TNC because the names do not agree, or because the person is not legally eligible to work, but because there is no way to try to enter a different name combination and see if an authorization is provided based on a different last name combination. Some new hires have hyphenated last names (such as Gomez-Herrera) and there is no way to enter such names accurately.”
- Another source of confusion is determining an employee's hire date and what should be entered into E-Verify.
- One employer said that the difference between a TNC and a Department of Homeland Security (DHS) Verification in Process was not clear.

2.1.6.2. Employer Recommendations

There were some additional recommendations made by employers that were not closely linked to the questions on satisfaction discussed above. These are loosely grouped into the following categories in this section:

- What types of cases should be submitted to E-Verify;
- Which employers should use E-Verify;
- Time deadlines for performing E-Verify tasks; and
- Other miscellaneous recommendations.

Many of the recommendations in this section are related to practices discussed in Chapter VIII.

2.1.6.2.1. What Types of Cases Should be Submitted to E-Verify?

2.1.6.2.1.1. Job Applicants

Most employers recommended that prescreening be permitted. This is the most frequently mentioned employer recommendation. When asked for their opinion about changing the E-Verify statute to allow the verification of job applicants, 66 percent of the E-Verify employers responding to the Web survey supported this change, 17 percent opposed the change, and 17 percent had no opinion. These results are similar to what was reported in the Web survey in 2006, where the corresponding results were 64, 22, and 14 percent.

There were also 26 onsite study employers that volunteered the information that they wanted the E-Verify system to be used by all employers to prescreen applicants before they are hired or start working. Among these onsite study employers, 12 were temporary help or staffing agencies. The reason most often cited for allowing employers to screen job applicants is that it would save the employers time and money in the hiring and training processes. Some employment and temporary help agencies reported that they feel pressure from clients to offer only work-authorized employees, which would require them to screen job applicants before they are placed. Another employer stated that allowing employers to screen job applicants would make E-Verify “more practical for the company.” An additional suggestion was that the employers provide job applicants with a consent form that informed them of the company’s use of E-Verify and, when signed by applicants, would allow the company to screen them before offering them a job.

2.1.6.2.1.2. Existing Employees

Many employers would also like to use the system for existing employees, i.e., employees hired before they signed up to participate in E-Verify. When asked for their opinion about changing the E-Verify statute to allow the verification of employees hired before E-Verify was started, 61 percent of the employers responding to this question on the Web survey supported the change, 18 percent opposed the change, and 21 percent had no opinion. In contrast, the corresponding percentages in 2006 were 50, 25, and 25 percent, respectively. Two onsite study employers volunteered the information that they would have liked to use the system for employees hired before they started using the system. Several Web survey respondents suggested permitting the reverification of employees whose work authorization expires while they are employed.

2.1.6.2.2. Which Employers Should Use E-Verify?

Several onsite study employers mentioned that they would like all employers to use E-Verify. Some onsite study employers volunteered that they wanted all employers in their industry, their state, or the entire country to use E-Verify. One employer, a staffing agency, said that they felt they were at a disadvantage compared to employers who were not using E-Verify because those employers “could pay unauthorized workers low wages and therefore keep their operation costs low.” One Web respondent also suggested using E-Verify to authorize contract staff as well as employees.

2.1.6.2.3. Time to Perform E-Verify Tasks

Several employers recommended that the requirement to enter employees’ information into the E-Verify system within three workdays be lengthened. There were 26 onsite study employers that

volunteered the information that they would like to see the requirement to enter employees' information within three workdays lengthened to one or two weeks. An additional two employers, both of which were staffing agencies, believed that three workdays was not enough time to enter employees' information when their agency had taken over the payroll services of another company and needed to verify the new employees' work authorization. These two employers also recommended lengthening the time to enter data to a week in this situation. Examples of why some employers say that the additional time is needed follow:

- “I would like to see the three day verification rule be changed to a week. Because I am the owner of the company, sometimes I am just too busy with my regular job and miss the deadline.”
- “I would like to see some improvement in the time frame within which data must be entered into the system after an employee is hired. Because of the transmission of employee records from California to Arizona, and because, as Controller of the company, I have many other demands on my time and attention that may compete with my responsibilities for E-Verify.”

Employers were split over the desirability of changing the number of days an employee has to contest. When asked for their recommendations to improve E-Verify, a few onsite study and Web survey respondents said that they recommended increasing the number of days an employee has to contest, while a few others would rather see a decrease in that number of days.

2.1.6.2.4. Miscellaneous

There was some interest in having a certificate showing completion of the tutorial and Mastery Test. Three onsite study employers responded that they would have liked to receive a certificate after they had passed the tutorial and Mastery Test. A staffing agency said that they could show such a certificate to potential clients to prove that they were authorized and trained to use E-Verify.

2.2. Financial Costs

The majority of participating E-Verify employers reported no direct costs for initial set-up of E-Verify. Seventy-four percent of Web survey employers that used E-Verify reported no direct set-up costs in the Web survey (Exhibit IX-9). The average (median) total cost reported by employers having direct set-up costs was \$100.¹⁸⁵ However, 10 percent of respondents said that they spent \$1,000 or more.

¹⁸⁵Because of the high costs reported by a small minority of employers, the mean costs were higher than the median costs.

Exhibit IX-9. Costs for Setting up E-Verify for Employers Reporting Costs, by Type of Cost for 2008 Users

Type of cost	Percent reporting cost	Cost		
		10th Percentile	Median	90th Percentile
All costs	17.4	\$50	\$100	\$1,000
Training	17.3	45	100	500
Filing cabinets or other office equipment	2.5	80	200	600
Other type of cost	12.4	35	130	3,300
No direct costs for set-up	73.8	NA	NA	NA

NA = not applicable.

NOTES: Percentiles are based on employers reporting specific type of cost. Sum does not add to 100 percent because employers could report more than one type of cost. Some cost categories were combined with other types of cost to avoid small sample sizes. The most common other set-up costs reported by employers were computer hardware, telephone line to access the Internet, Internet connection and access charges, remodeling or restructuring of the physical plant, and obtaining the services of a Designated Agent.

SOURCE: E-Verify Web Survey.

It does not appear that the costs of setting up the system were especially high for those employers that had set up the system but no longer used it. Of the employers that had signed up for E-Verify but had stopped using it, 71 percent reported no set-up costs, which is similar to the 74 percent of active E-Verify users reporting no direct set-up costs. The average (median) total cost reported by employers that stopped using E-Verify and had direct set-up costs was \$50—only half the average (median) total cost for active E-Verify users (\$100).

The most frequently mentioned specific set-up cost was for training. Of the E-Verify employers that responded to the Web survey, 17 percent reported set-up costs for training. Another 2 percent of employers reported purchasing filing cabinets and other office equipment and 12 percent reported other costs (including purchasing computer hardware, telephone lines to access the Internet, Internet connection and access charges, remodeling or restructuring of the physical plant, and obtaining the services of a Designated Agent).¹⁸⁶

The majority of participating E-Verify employers reported no annual direct costs to maintain E-Verify; however, some employers reported substantial costs. Among those employers responding to the Web survey, 77 percent reported no direct maintenance costs for E-Verify (Exhibit IX-10). The average (median) total cost reported by employers having annual direct costs was \$400.¹⁸⁷ However, 10 percent of respondents with maintenance costs said that they spent \$5,000 or more.

¹⁸⁶Some employers reported expenses in more than one of these categories.

¹⁸⁷Because of the high costs reported by a small number of employers, the mean costs were higher than the median costs.

Exhibit IX-10. Annual Costs for Maintaining E-Verify, by Type of Cost: 2008

Type of cost	Percent reporting cost	Cost		
		10th Percentile	Median	90th Percentile
All Costs	15.1	\$50	\$400	\$5,000
Computer maintenance	4.4	50	200	1,100
Telephone fees for Internet access	2.0	25	240	1,500
Internet access fees	4.2	25	360	1,200
Training of replacement staff	9.3	50	150	1,000
Wages for the verification specialist(s)	7.9	120	500	5,000
Costs for using a Designated Agent	1.5	100	1,000	5,000
Other Costs	6.6	10	400	5,000
No direct costs for maintenance	76.5	NA	NA	NA

NA = not applicable.

NOTES: Percentiles are based on employers reporting specific type of cost. Sum does not add to 100 percent because employers could report more than one type of cost. The most common other maintenance costs were labor time for verification and document handling, material costs for paper and document storage, and for larger employers, the continued maintenance of computer hardware and software.

SOURCE: E-Verify Web Survey.

The most frequently mentioned operating costs for E-Verify users were for training of replacement staff. Of the E-Verify employers responding to the Web survey, 9 percent reported costs for training of replacement staff and 8 percent reported costs for wages of verification specialists.

Employers reported few indirect costs in using E-Verify. Not all financial costs associated with setting up and maintaining a program can be easily quantified. Employers may also incur indirect costs for set-up, such as reassignment of workers, additional recruitment, and delayed production.¹⁸⁸ Approximately 94 percent of E-Verify users reported that the indirect set-up costs were either no burden or only a slight burden, and 95 percent of the employers said that indirect costs associated with maintaining the system were either no burden or only a slight burden. This is very similar to what was reported in the 2006 evaluation of the Web Basic Pilot when 97 percent of employers reported indirect set-up costs were no more than a slight burden and 97 percent reported the same for indirect maintenance costs.

2.3. How Well is E-Verify Meeting the Unique Needs of Different Types of Employers?

As discussed in the background section, a number of modifications have been made over time with the goal of better meeting the needs of employers with different characteristics. To better understand the unique needs of certain types of employers, the evaluation has examined overall employer satisfaction among different types of employers.

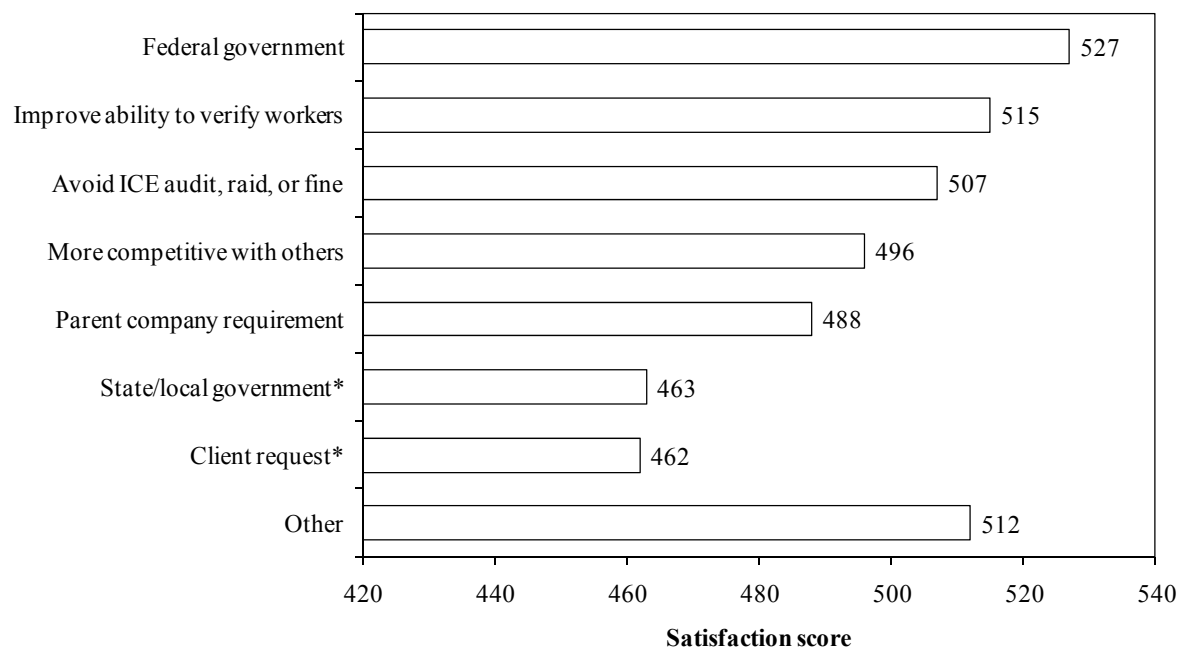
¹⁸⁸Delayed production occurs when employers have to slow production for some reason. For example, it could occur with E-Verify if employers fired someone because of a final nonconfirmation (FNC) and production slowed while the employer looked for a replacement.

The evaluation found no statistically significant differences in the level of employer satisfaction by industry, employer size, reported employer type (Designated Agent, temporary help, employment agencies, and other), or reported percentage of immigrants employed by the employer. Using a scale to measure overall satisfaction of employers in the Web survey with a mean score of 500 and a standard deviation of 100, no statistically significant relationships with satisfaction were found when employers were grouped as follows:

- **Industry:** the mean scores varied from 468 for employers engaged in agriculture to 515 for employers in the accommodation industries.¹⁸⁹
- **Employer size:** the mean scores varied from 492 for employers with 1,000 or more workers to 514 for employers with one to nine workers.
- **Reported employer type (Designated Agent, temporary help, employment agencies, and other):** the mean scores varied from 490 for temporary help agencies to 524 for staffing agencies.
- **Reported percent of immigrants employed by the employer:** the mean scores varied from 473 for those reporting 81 percent or more immigrant workers to 516 for employers reporting 41–80 percent immigrant workers.

Employers registering for E-Verify in order to improve their ability to verify that their workers are employment authorized are significantly more likely to be satisfied with E-Verify than are employers registering because they are required to do so by a state or local government or because of a client request. As seen in Exhibit IX-11, employers signing up for E-Verify to improve their ability to verify that their workers are work authorized have a mean satisfaction scale score of 515 compared to the score of 463 for employers required to register by their state or local government and the score of 462 for those signing up at a client request.

¹⁸⁹This scale was selected to make it similar to the SAT scale scores familiar to many users. Variables with no statistically significant differences between any two types of employer groups are not displayed here, but are included in the appendix tables. See Chapter II for additional information about the scaling methodology and the statistical tests used.

Exhibit IX-11. Satisfaction Scores of Employers, by Reason for Registering for E-Verify

*Statistically significant difference between employers reporting this reason for registration and employers reporting they registered to improve their ability to verify that their workers are work authorized at $p < 0.05$.

NOTES: Statistical significance is a function not only of the size of two means but also the number of cases in each category, because estimates based on small numbers of cases are quite unreliable. Satisfaction is measured using an item response theory scale score standardized to a mean of 500 and a standard deviation of 100.

SOURCE: E-Verify Web Survey: 2008.

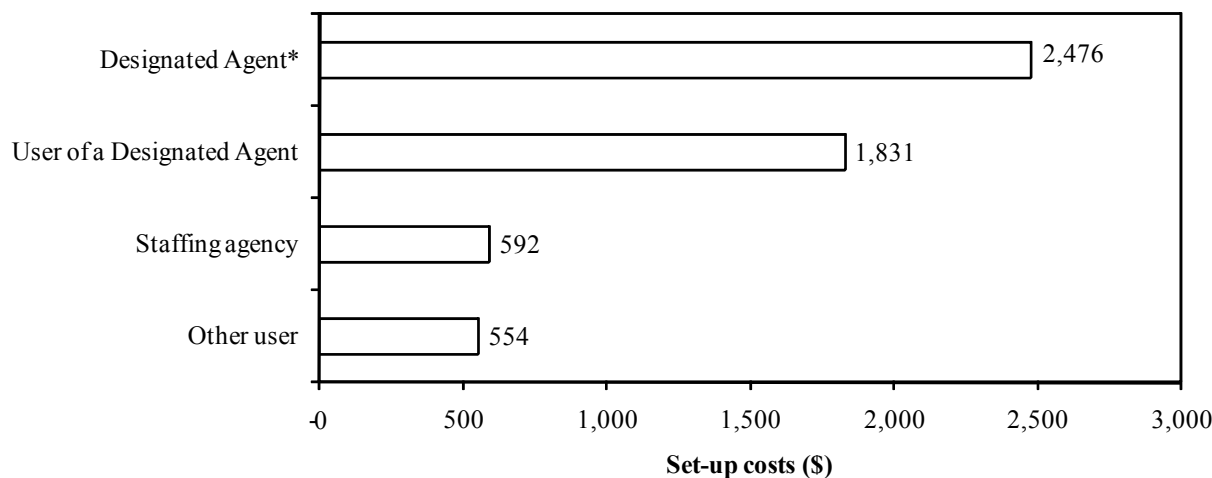
Most staffing and temporary help agencies reported in the onsite study that E-Verify met their unique needs. Of the 21 staffing agencies that discussed their unique needs in the onsite interviews, 14 believed that E-Verify met their needs well as a staffing agency. For example, one employer said that E-Verify “helped put the company on a different level with customers” and “promoted a legal workforce.” Of the 19 temporary help agencies that responded, 15 said that E-Verify met their needs well as a temporary help agency, stating that their clients appreciated that all placed employees were work authorized.¹⁹⁰ However, nine staffing agencies and six temporary help agencies (including two staffing agencies and three temporary help agencies that said E-Verify met their needs well) felt that E-Verify caused problems with their clients, stating that some clients were upset when they lost (either temporarily or permanently) workers that the staffing agency had placed or referred to them because of the E-Verify Program. A few temporary help agencies said that they have lost clients because the clients wanted to hire unauthorized workers and could not do so while the temporary help agency was using E-Verify. There was also one temporary help agency that felt that E-Verify did not meet their needs well, stating that “E-Verify is not temp-friendly” and that “temp agencies cycle through in a month what other companies might do in a year.”

¹⁹⁰It appears that these agencies were verifying work authorization before placing workers with clients, either before they were hired or after they were hired but before they were placed.

For employers reporting set-up and maintenance costs, neither set-up nor maintenance cost is significantly related to industry, employer size, region of the country, whether employer is a single or multiple-site company, whether verification was conducted in-house, definition of “new hire” used, or percentage of cases receiving TNCs in April through June 2008.

Designated Agents have above-average set-up costs. Not surprisingly, set-up costs for Designated Agents (\$2,500) tend to be high, in part because those Designated Agents that provide Web Services need to invest in developing software and having it certified by USCIS (Exhibit IX-12).¹⁹¹ Set-up costs for other types of users range from \$600 to \$1,800, with an average of \$626 for all employers.

Exhibit IX-12. Employer Set-Up Costs, by Type of Employer



*The difference between Designated Agents and other users was statistically significant at the .05 level.

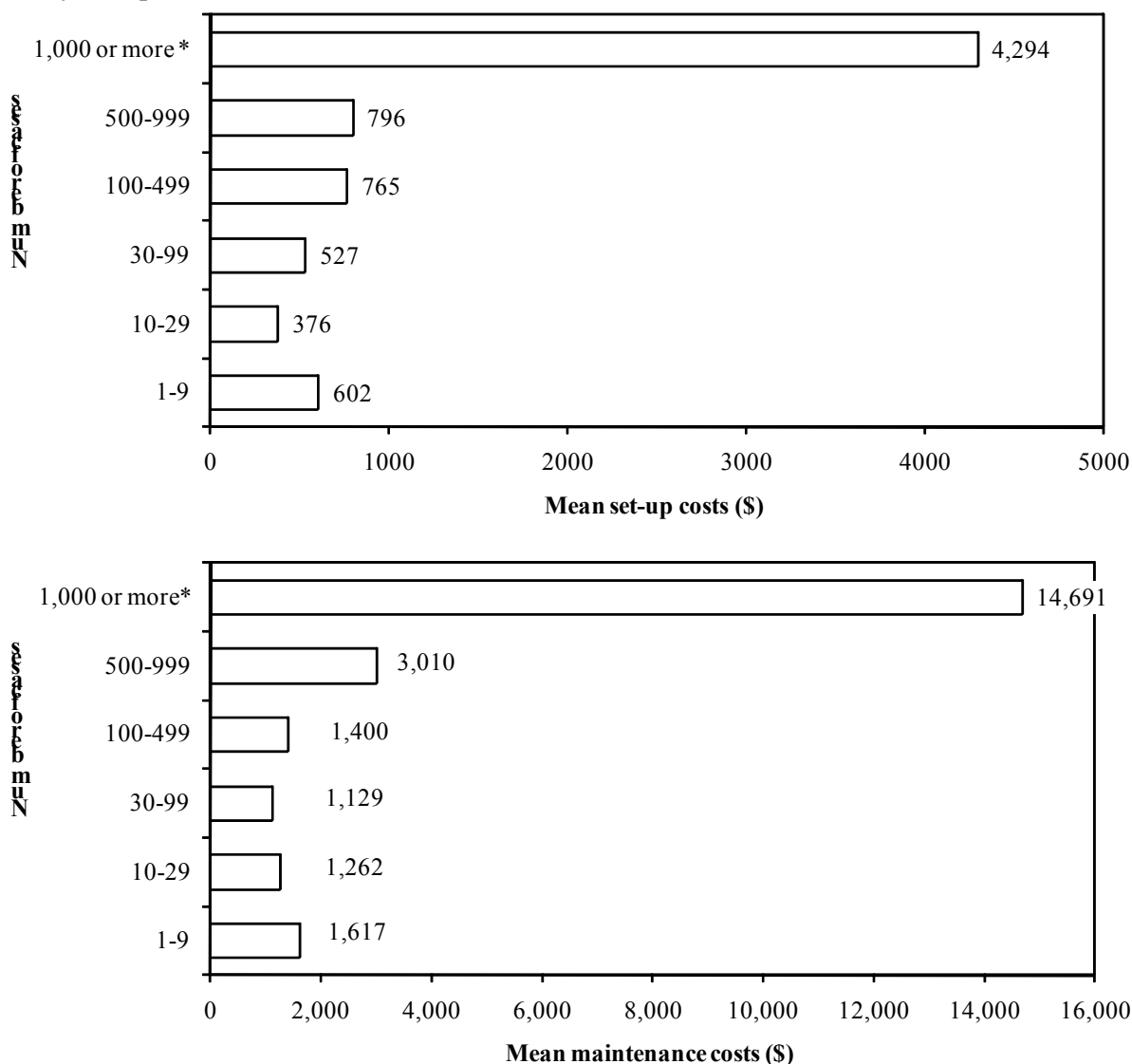
NOTE: Two categories (employment agency and temporary help agency) were combined into the staffing agency category to avoid small sample sizes.

SOURCE: E-Verify Web Survey: 2008.

As would be expected, employers with a large number of cases have above-average set-up and maintenance costs. Mean set-up costs for employers submitting 1,000 or more cases to E-Verify in September through November 2007 when the Web survey was conducted were \$4,300 compared to \$400 to \$800 for employers submitting fewer than 1,000 cases (Exhibit IX-13). The maintenance costs for employers with 1,000 or more cases were \$14,700 compared to \$1,100 to \$3,000 for employers submitting fewer than 1,000 cases.

¹⁹¹The average cost for the 11 Web Services providers in the sample was \$5,100 compared to \$1,600 for the 23 other Designated Agents in the sample.

Exhibit IX-13. Employer Set-Up and Maintenance Costs, by Number of Cases Submitted to E-Verify in September–November 2007



*Costs differ significantly at $p < 0.05$.

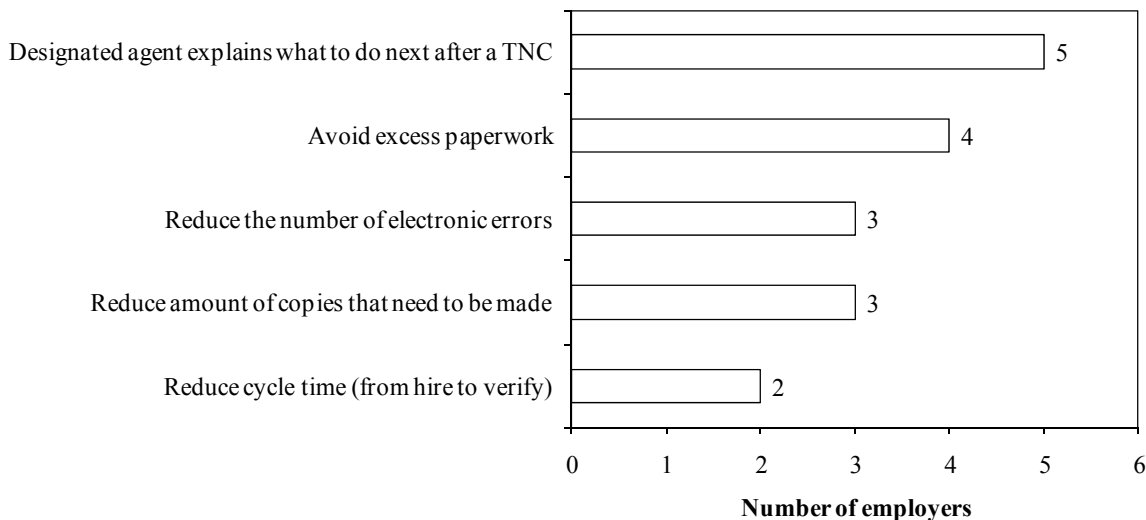
NOTE: Employers reporting no costs are excluded from this table.

SOURCE: E-Verify Web Survey: 2008.

Employers decided to use Designated Agents for a variety of reasons. The two reasons most frequently given were “wanting assistance with explaining what to do after a TNC was issued” and “avoiding excess paperwork.” Out of 11 employers that reported using Designated Agents, five switched to Designated Agents because they explain how to handle TNCs, four switched to avoid excess paperwork, three switched to reduce the number of electronic errors, and another three switched to reduce the amount of copies that need to be made (Exhibit IX-14). In addition, two switched for the purpose of

reducing their cycle time, i.e., the time it takes from the point the worker is hired to the time the case is finally resolved.¹⁹²

Exhibit IX-14. User-Reported Reasons for Deciding to Use a Designated Agent

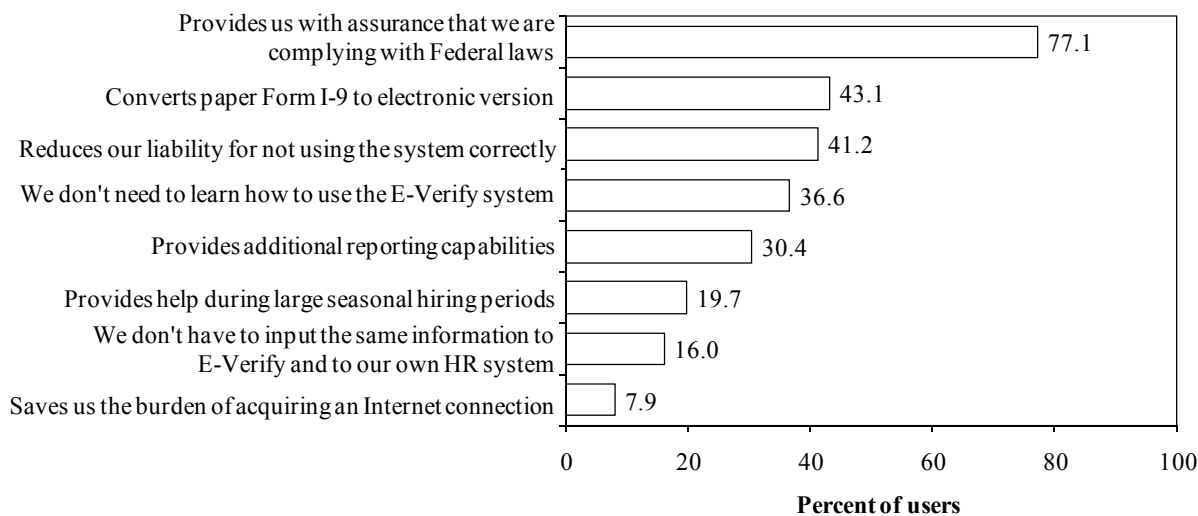


NOTE: Sum does not add to total number reporting because respondents could choose more than one reason.

SOURCE: E-Verify Web Survey: 2008.

The most commonly reported advantage of using Designated Agents for E-Verify is that they provide assurance that employers are complying with Federal laws. Among employers using Designated Agents, 77 percent reported on the Web survey that it provides assurance that they are complying with Federal laws (Exhibit IX-15). Another 43 percent of users considered some Designated Agents' conversion of the paper Form I-9 to an electronic version to be an advantage. In addition, 41 percent of Users of Designated Agents reported that their use is beneficial for reducing the employer's liability for not using the system correctly. In response to an open-ended question about suggestions for improving E-Verify, one User of Designated Agents mentioned "offering more Designated Agents for use by small employers. Maybe a listing available in each state for small business to pull from."

¹⁹²Since there is no reason to think that the time it takes SSA and/or USCIS to resolve a query is dependent upon whether it was run through a Designated Agent or by a company, it is reasonable to believe that this statement may refer to how long it takes before a case is entered into the system. It is also possible that Designated Agents are more careful in entering case information from the Form I-9 and, therefore, have a lower rate of TNCs than regular employers.

Exhibit IX-15. User-Reported Advantages of Using a Designated Agent

NOTE: Sum does not add to 100 percent because respondents could choose more than one advantage.

SOURCE: E-Verify Web Survey: 2008.

Designated Agents want USCIS to do a better job of informing them of changes in advance and to establish better communication with them. Several Designated Agents attended the stakeholders meeting in November 2007, a month after the implementation of the Photo Screening Tool and EV-STAR for general employers. Many of the Designated Agents and Web Services providers in attendance complained that they were not given adequate notice of the implementation of these programs to get ready for the changes; furthermore, the Photo Screening Tool was not available to Designated Agents or Web Services employers at that time.¹⁹³ They said that a one-month notice of a change is often inadequate. It was also clear that attendees at the stakeholder meeting were often not aware of information about E-Verify provided to employers through a broadcast notice on the E-Verify Web page, perhaps because the clerical staff that use the system and receive the broadcast messages do not necessarily know what needs to be communicated to their bosses or other units of the company.

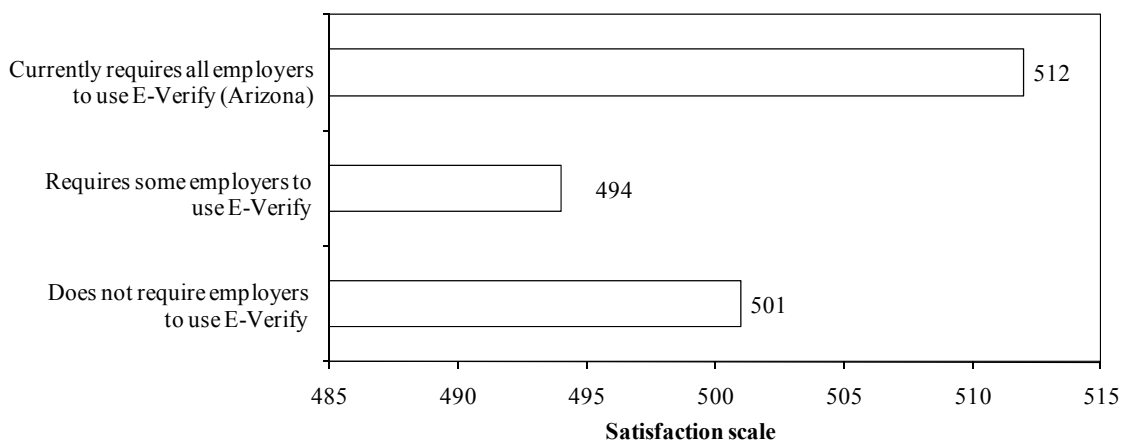
2.4. Impacts of Legislative and Program Changes on Employer Satisfaction and Costs

2.4.1. Legislative

Arizona employers were not less likely to be satisfied with E-Verify than employers in other states.

The evaluation team hypothesized that employers in Arizona would be less satisfied than employers in other State Legislation Groups because they were mandated to use the Program, but that does not appear to be the case (Exhibit IX-16). Arizona employers had a score of 512 on the satisfaction scale compared to approximately 500 for other employers. Although this difference is not statistically significant, it is the opposite of what was hypothesized.

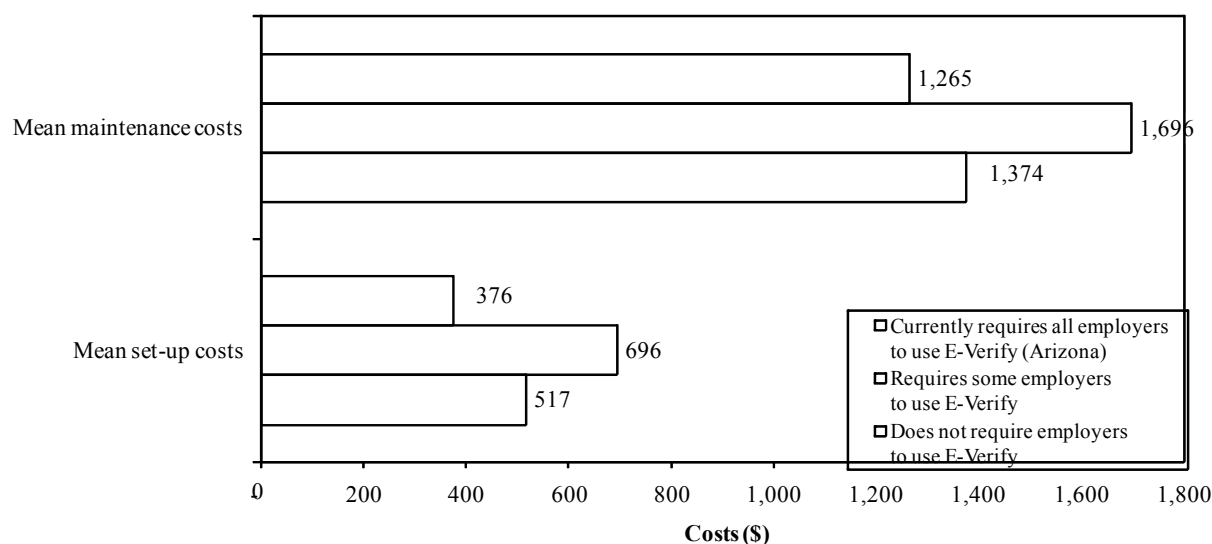
¹⁹³As of the time of this writing, Designated Agents and Web Services providers were still unable to access the Photo Screening Tool, and USCIS, because of privacy concerns with transferring the photographs, was unable to say whether they would ever be allowed to do so.

Exhibit IX-16. Mean Satisfaction Scale Scores, by State Legislation Group

NOTES: Satisfaction is measured using an item response theory scale score standardized to a mean of 500 and a standard deviation of 100. Tests of significance were done comparing the three State Legislation Groups and showed no significant differences at $p < .05$.

SOURCE: E-Verify Web Survey: 2008.

Although Arizona employers had costs that were somewhat below the average of all employers, the difference was not statistically significant. Employers in Arizona reported an average of \$400 for set-up costs and \$1,300 for annual maintenance costs compared to set-up costs of \$700 and \$1,700 for states in which E-Verify is not required for employers (Exhibit IX-17). States in which E-Verify is required for some employers, mean costs were \$500 for set-up and \$1,500 for maintenance. These differences were not statistically significant.

Exhibit IX-17. Employer Set-Up and Maintenance Costs, by State Legislation Group

SOURCE: E-Verify Web Survey: 2008.

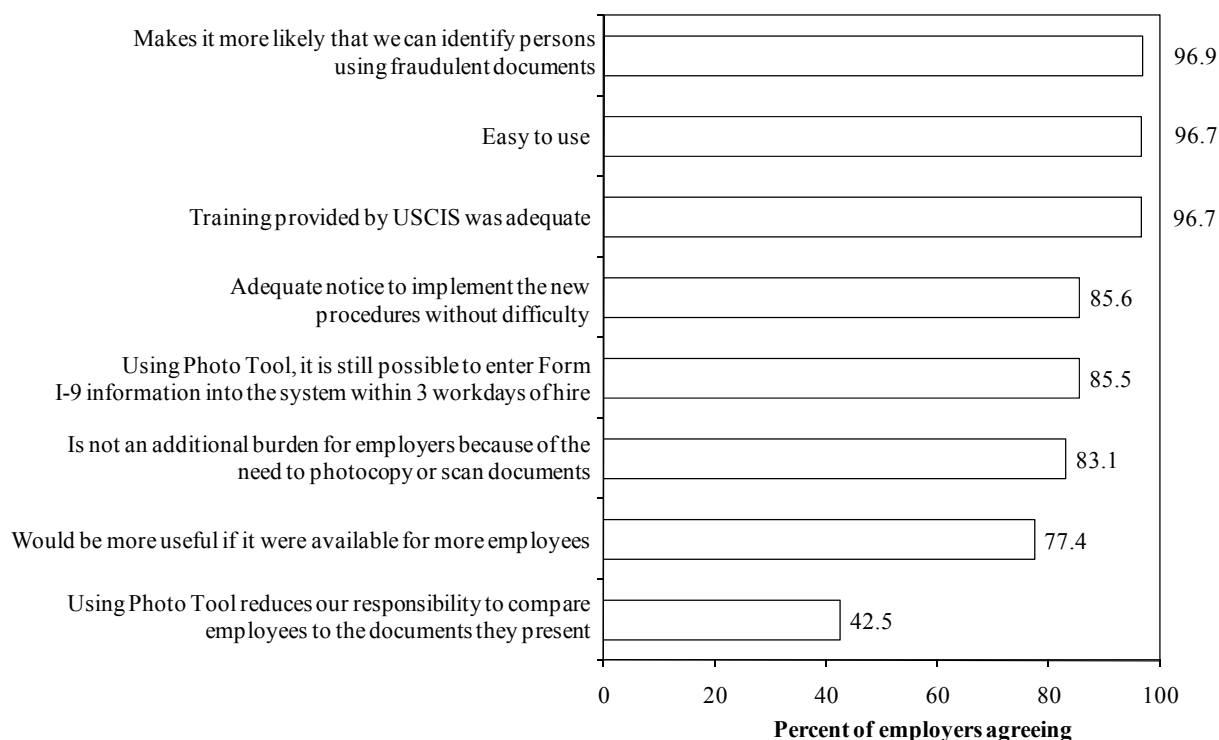
2.4.2. SSA and USCIS Pre-TNC Checks

As discussed in Chapter VI, the SSA and USCIS pre-TNC checks implemented in September 2007 have reduced erroneous TNC rates. Since notifying workers of TNCs and related tasks constitute a major part of the E-Verify burden for many employers, it is likely that this check has also reduced the burden of the Program for employers.

2.4.3. Photo Screening Tool

Most employers expressed considerable satisfaction with how the Photo Screening Tool was implemented and had no significant problems in using it. Among employers that had used the Photo Screening Tool (42 percent of Web survey employers), 97 percent reported that they agreed or strongly agreed with the statement, “The training provided by USCIS for the Photo Tool was adequate” (Exhibit IX-18), and 86 percent disagreed or strongly disagreed that “It was difficult to implement the Photo Tool procedures because there was inadequate notice that there would be new procedures.” Additionally, 97 percent agreed or strongly agreed that “The Photo Tool is easy to use.”

Exhibit IX-18. Responses of E-Verify Users to Questions Related to Satisfaction With the Photo Screening Tool: 2008



SOURCE: E-Verify Web Survey.

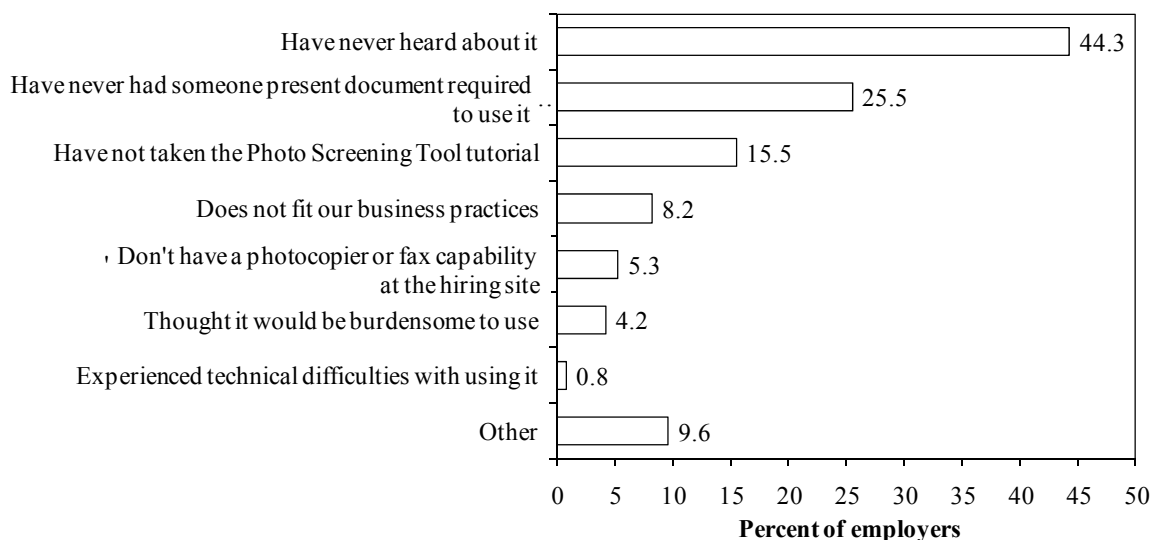
Among onsite study employers interviewed, 64 out of the 69 that discussed their views on the effect of the Photo Screening Tool said that it improved the verification process. Furthermore, 34 of the 37 employers that responded said that the Photo Screening Tool was effective in detecting fraudulent

documents. Only one employer reported that the Photo Screening Tool created a new burden for employers.

Though most onsite study employers had a favorable opinion of the Photo Screening Tool, many believed USCIS could improve it. In talking about the Photo Screening Tool, 37 employers mentioned improvements to it they would like to see. Several employers requested expansion of the Photo Screening Tool to include all documents with photographs. One employer commented that they were generally satisfied with the E-Verify process, though they think that “it will only be truly effective when the Photo Screening Tool is expanded to identify all applicants.” A few employers mentioned that they would like to be allowed to compare the photograph in the Photo Screening Tool to the actual employee rather than just comparing it to the photograph on the document, as required by E-Verify.

The USCIS Customer Service Office reported that there were problems in how the Photo Screening Tool was rolled out. The E-Verify Customer Service Office reported that they received a large number of calls in the two days following the rollout. Some of the specific questions included Designated Agents not being able to use the Photo Screening Tool, people wondering why they did not have pictures for citizens, and employers not understanding that they need to compare the Photo Screening Tool photograph with the document photograph rather than with the person presenting it. The number of calls dropped significantly as more information was released and employers became more familiar with the Photo Screening Tool.

Many employers not using the Photo Screening Tool claimed that they were not using it because they had never heard about it. Among the 45 percent of active employers in the Web survey not using the Photo Screening Tool, 44 percent indicated that they had not done so because they had never heard about it, 16 percent had never taken the Photo Screening Tool tutorial, and 26 percent had never had someone present the documents requiring its use (Exhibit IX-19). Another 10 percent reported another reason for not using it, such as they thought it would be burdensome, had experienced technical difficulties with using it, or did not have a photocopier or fax capability at the hiring site. Among the onsite study employers, 92 of 109 (84 percent) had used the Photo Screening Tool. The large difference in usage between employers that responded to the Web survey and those that provided onsite interviews is presumably related to the restriction of the onsite study employers to those that were large enough to have had four or more TNCs in a three-month period, which effectively excluded most smaller employers from the onsite study.

Exhibit IX-19. Employers' Reasons for Not Using the Photo Screening Tool

NOTE: Sum does not add to 100 percent because respondents could choose more than one response.

SOURCE: E-Verify Web Survey: 2008.

2.4.4. EV-STAR

Although EV-STAR is designed to automate communication between employers and SSA, initial implementation procedures created some problems. The implementation of EV-STAR in October 2007 should result in improved communication between SSA and employers in the long run, since it automates the communication process and makes it more similar to the USCIS process. However, initial confusion over the changed procedures for handling SSA TNCs discussed earlier and the extension of the resolution period for some workers may contribute to initial employer dissatisfaction.

Many of the onsite study employers expressed satisfaction with EV-STAR. Out of 45 onsite study employers that talked about their satisfaction with EV-STAR, 30 were generally satisfied with it, saying that they always received automatic responses from SSA and that it required less work on the part of the employer. However, 15 employers were dissatisfied with EV-STAR, reporting that they did not always receive automatic responses about SSA TNCs. One employer stated that after the change, it took “longer for SSA to respond than if the employee were to return the signed form himself.”

2.4.5. Naturalization Phase I

As discussed in Chapter VI, Naturalization Phase I significantly reduced the erroneous TNC rate for foreign-born citizens without any additional effort on the employer's part. It is, therefore, reasonable to assume that it has decreased employer burden related to the TNC process.

2.4.6. Naturalization Phase II

The evaluation did not collect data allowing an assessment of the impact of Naturalization Phase II on employers. It is possible that the change in procedures may create a slight burden for employers that are required to learn the procedures in order to explain the new process to naturalized citizens who decide

to contest a TNC. On the other hand, by facilitating the process of contesting erroneous TNCs, the procedures might increase slightly the number of their workers who decide it is worth contesting a TNC at least in the short run; however, since Naturalization Phase II does not result in SSA changing its records, the longer term reduction may well be less unless workers independently contact SSA to resolve any problems with their records or if E-Verify system procedures are changed so that the information is sent from USCIS to SSA. There is no reason to think that any of these impacts on employers would be large.

CHAPTER X. E-VERIFY FROM THE PERSPECTIVE OF WORKERS

1. BACKGROUND

This chapter explores the impacts of E-Verify on citizens and work-authorized noncitizens. Because the primary goal of the Program is to prevent the employment of non-work-authorized persons, the negative effects of E-Verify on unauthorized members of the labor force are not discussed in this chapter; however, information from them about employer practices is included.

The major issues discussed in this chapter are (1) protection of worker rights, including the right to due process and protection of privacy, (2) the financial and nonfinancial burdens of E-Verify for workers, and (3) verification-related discrimination. This section provides background information helpful in understanding each of these issues and in understanding the likely impact of recent programmatic changes on workers. The chapter also discusses the impact of recent legislative and program changes on workers.

Analyses of the effects of E-Verify on those workers with employment authorization are based on information from the onsite study, the Web survey of employers, and analyses of transaction data.¹⁹⁴

1.1. Protection of Worker Rights

The primary worker rights related to E-Verify are to:

- Be notified of their rights through posting the E-Verify poster where it is clearly visible to workers;
- Be notified of any Tentative Nonconfirmations (TNCs) received;
- Be provided an opportunity to contest any TNCs received; and
- Have their privacy rights protected during the E-Verify process.

1.2. Financial and Nonfinancial Burdens

Workers at E-Verify participating employers are the most knowledgeable respondents for determining the extent of any burdens E-Verify places on work-authorized members of the U.S. labor force. Worker responses to the onsite interviews, therefore, constitute the primary source of information about worker experiences. The cost information provided by workers related to their E-Verify verification is subject to significant limitations in addition to the general data limitations discussed in Chapter II. First, workers do not necessarily keep cost records, resulting in their having to rely on their memories in responding to questions. Second, workers may not be aware of all the costs they have incurred. For example, persons who have not been hired because they received TNCs when an employer prescreened them using E-Verify may never be told why they were not hired. Because the worker onsite visits done in previous evaluations are not directly comparable to those in the current evaluation, there is little opportunity to track worker burden over time except for those measures that can be derived from the Transaction Database.

¹⁹⁴Information about these data sources is contained in Chapter II.

1.3. Verification-Related Discrimination

One of the important provisions in the Memorandum of Understanding (MOU) explored in this chapter 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 E-Verify employers; it simply reiterates laws applicable to both E-Verify and non-E-Verify employers. This chapter focuses on the issue of whether E-Verify has had an impact on the level of discrimination against work-authorized foreign-born workers.

Employment discrimination can occur at all stages and in all aspects of employment, including recruitment, hiring, placement, compensation, training, evaluation, disciplinary action, treatment on the job, and dismissal. Since the E-Verify procedures primarily affect recruitment, hiring, and the initial post-hiring period, this section of the report discusses the effect of the E-Verify Program during these initial employment and pre-employment stages. Discrimination can be intentional or unintentional. In both types of discrimination, members of a protected group are treated less favorably than others. Intentional discrimination occurs if the employer knowingly treats members of the protected group less favorably than members of other groups (e.g., by refusing to hire anyone who is foreign born). Unintentional employment discrimination occurs if the unfavorable treatment results without the employer realizing that his actions may harm members of the protected group (e.g., since foreign-born workers are more likely to receive TNCs than are U.S.-born workers, not hiring anyone who receives a TNC constitutes unintentional discrimination).

This report discusses differences in the impacts of the E-Verify Program on work-authorized foreign-born workers and U.S.-born workers. The implicit assumption is that foreign-born workers are more likely than U.S.-born workers to be subject to discrimination based on one or more of the following characteristics that might lead employers to question whether the workers have employment authorization: citizenship, ethnic identity, spoken accent, and surname. This does not mean that all workers 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 workers are excluded from the protected groups. However, it is likely that there is a strong correlation between place of birth and being in one of the protected groups of interest. The evaluation team uses this approach because it is easier to measure whether the worker was of U.S. or foreign birth than to determine whether the worker has any of the other indicated characteristics.

One goal of automated employment verification, as envisioned by the framers of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (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 electronic employment programs on discrimination. The General Accountability Office (GAO—then known as the General Accounting Office) 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.¹⁹⁵ In this situation, some employers found it easier not to recruit and hire noncitizens and/or individuals who appeared to be foreign born. From this perspective, giving employers a better employment verification tool should make them more comfortable with their ability to verify workers’ employment eligibility and, therefore, make them more likely to recruit and hire individuals who appear to be foreign born.

¹⁹⁵General Accounting Office, 1990a.

A solid understanding of the impact of E-Verify on employers' willingness to hire foreign-born individuals would require a carefully controlled experiment using testers or resumes during the hiring process. To date, such an approach has not been considered feasible in the electronic employment verification program evaluations, for political and practical reasons. It is, therefore, necessary to rely upon employer self-reported behavior for information about this key question.

Advocates for foreign-born workers' rights have pointed out that the degree of harm engendered by electronic employment verification could be considerable, even if employers completely follow the procedures designed to protect worker 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 Social Security Administration (SSA) and/or U.S. Citizenship and Immigration Services (USCIS) records, which could result in missed time at work or other inconveniences. Further, some employment-authorized foreign-born workers may be more likely to quit their jobs rather than contact USCIS because they are afraid that such contact could create immigration problems for them or a family member, or because they believe it is easier to find another job elsewhere than to contest their cases with SSA or USCIS. Even greater harm to authorized workers is likely when employers fail to follow the E-Verify procedures designed to protect their rights. For example, employers may fail to hire or may fire someone who receives a TNC without providing an opportunity to contest the finding.

The impact of discrimination against foreign-born workers after hiring is a function of the burden on workers of receiving a TNC as well as the differences in likelihood of receiving an erroneous TNC between foreign-born persons authorized to work and workers born in the United States. The smaller the burden of resolving a TNC is, and the lower the erroneous TNC rate is, the less the resulting discrimination will be.¹⁹⁶

Ideally, the evaluation would compare work-authorized noncitizens, foreign-born citizens, and U.S.-born workers by calculating the percentage of each group receiving TNCs. However, there is not an easy way to determine which workers are, in fact, authorized to work since some unauthorized workers appear to be work authorized by presenting valid documents or documents with valid information about employment-authorized workers. This report, therefore, uses the erroneous TNC rate (i.e., the number of TNCs received by workers determined to be work authorized at some point in the verification process) as an imperfect indicator of the "true" rates for each of these groups, even though, as discussed in Chapter II, this rate underestimates the rates that would be obtained if the true work-authorization status were known for these workers.

1.4. Potential Impacts of Recent Program Changes

Recent program changes in E-Verify that, along with legislative changes, could potentially affect worker rights, the burdens and costs of the Program to persons with work authorization, and discrimination include:

- The Photo Screening Tool (September 2007);
- The SSA and USCIS pre-TNC checks (September 2007);
- EV-STAR (October 2007):

¹⁹⁶This chapter focuses on differences between protected groups and U.S.-born individuals. This information is closely related to general information on accuracy discussed in Chapter VI.

- Naturalization Phase I (May 2008); and
- Naturalization Phase II (May 2008).

2. FINDINGS

2.1. General Findings

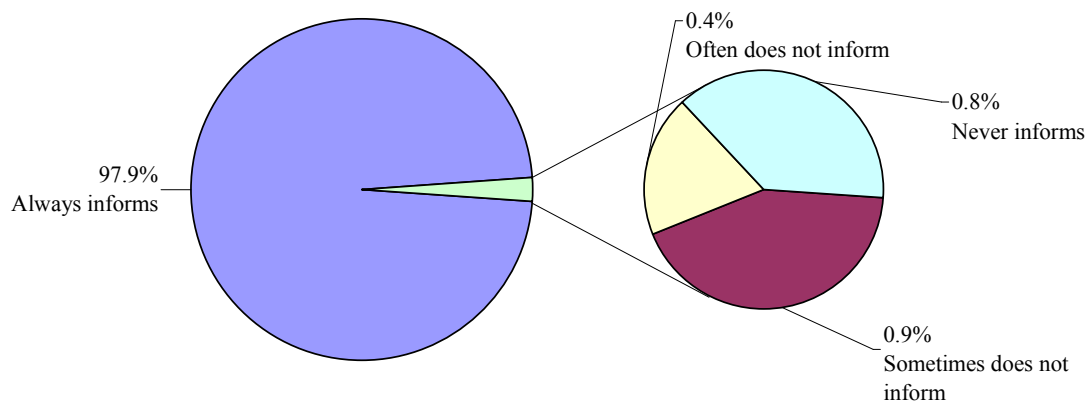
2.1.1. Protection of Worker Rights

Employers did not always notify job applicants of their participation in E-Verify. As discussed in Chapter VIII, the site visits revealed that many of the onsite study employers had not posted the notice of participation in E-Verify in a prominent place where job applicants could be expected to see it. Although some employers used alternate means of informing their workers of their participation in E-Verify or placed the notice where some workers could see it, a large number of workers reported being unaware of the employer's use of E-Verify. Of the 396 workers who commented on whether they were aware of the employer's use of E-Verify, 298 stated that they were unaware the employer was using a program to verify their work authorization prior to their job interview (or job application if there was no interview). These 298 workers represented 79 unique employers (34 employers had no workers who reported being aware of the Program and 45 employers had some workers who reported being aware and others who reported being unaware).

The result of noncompliance with the E-Verify requirement to inform workers of TNCs is that some workers are denied their due process rights. As discussed in Chapter VIII, 2 percent of employers in the Web survey reported that they do not always tell their employees about TNCs (Exhibit X-1). Similarly, only 4 of the 100 onsite study employers who commented on their notification procedures reported that they did not always notify employees of TNCs. However, of the 96 employers who said they always notified employees of TNCs, 41 had one or more workers who said that they had not been notified of a problem with their work documents (although 24 of these employers said that employees sometimes quit before the employer is able to notify them). Overall, out of the 403 workers who commented on whether they were notified of a TNC, 170 said they were not notified by their employer. The result of these employer practices is the denial of their workers' right to contest the findings.¹⁹⁷

¹⁹⁷Among the 93 employees receiving FNCs for whom we have information on whether the employee was still working for the employer, 44 were still working for the employers. There are three plausible reasons for this occurring: (1) the employee was not notified because the employer corrected a typographical error without informing the employee and the employer did not correctly close the original case as an invalid query; (2) as noted elsewhere, a small number of employers do not terminate the employee's work as required when the employee receives an FNC, and in this situation, the employer may feel there is little reason for informing the employee; and (3) the employee was properly notified but did not remember being informed.

Exhibit X-1. Percent of Web Survey Employers, by Whether They Report Informing Employees of TNCs



NOTE: Worker-reported and record review information indicates that employers underreport noncompliance with this requirement.

SOURCE: E-Verify Web Survey: 2008.

Many of the materials produced by SSA and USCIS for workers do not currently take into account the reading abilities of many TNC recipients, potentially limiting these workers' ability to obtain their due process rights. The only language besides English used in producing E-Verify materials for workers at the time the report was written was Spanish. Furthermore, the high literacy level of the documents limits understanding by persons with fairly limited reading and/or language skills.¹⁹⁸ Of the 126 workers that commented on their understanding of the TNC notice, 26 reported that they did not understand the content. Among these 26 workers, 10 specified that the terminology in the notice was too difficult to understand, and seven said that they did not understand the notice because it was not in the language they primarily spoke (six of them specified Spanish as their primary language, meaning that their employers were not using the Spanish TNC notice that is provided by the system). Of the 72 workers that reported on their understanding of the referral letter, five said that they did not understand the content. SSA reports that they have revised these letters within the past year, but that as the processes have become more complicated, so have the referral letters.

Sixty-two onsite study employers volunteered the information that they always provided the TNC notice in the applicant's language, and 48 employers said that they always provided the referral letter in the applicant's language. However, 14 employers sometimes or never provided the TNC letter in the worker's language, and five employers sometimes or never provided the referral letter in the worker's language. This lack of clear communication may result in many workers not understanding their due process rights. USCIS and SSA are aware of this problem and are working on lowering the reading level of the letters and providing the letters in more languages.

There is little increased risk of misuse of E-Verify information by Federal workers and contractors or external "hackers." Use of E-Verify increases the risk of improper disclosure or use at the Federal level only to the extent that it increases the number of SSA and USCIS workers and contractors that have access to systems information containing personally identifiable information. The security procedures that SSA and USCIS use to protect all of their databases continue to be in effect when their personnel and

¹⁹⁸See Appendices K and L for copies of notices in use at the time of this report.

contractors use E-Verify data. These security procedures limit access and safeguard worker and employer information provided by E-Verify users.¹⁹⁹ More specifically:

- **Federal privacy procedures.** Federal government safeguards protect access to SSA and USCIS databases by limiting their use to authorized SSA and USCIS personnel and contractors and further limiting how they can use the information. In addition, the Federal government processes queries only for employers that have signed an MOU. These employers are identified through establishment access and user identification codes.
- **Passwords.** Each person using the system is expected to have an individual user identification number and password. The passwords must be changed every 45 days. The employer is required to notify USCIS and remove old user identification numbers and passwords from the system when program users leave employment or no longer perform verifications as part of their job responsibilities.

One weakness of the system from a privacy perspective is that someone wishing to access it may pose as an employer and obtain access by signing an MOU. There are no safeguards in place to prevent this misuse by alleged employers; however, USCIS and SSA are exploring ways to implement such safeguards as the system expands. One possibility, under discussion, would be to validate the authenticity of Employer Identification Numbers (EINs) against an official list of such numbers; however, given the ease with which an EIN can be obtained, it is not clear that this action would provide sufficient insurance against the use of E-Verify by unauthorized users to warrant the expense of creating and operating such a system.

A second potential weakness is that persons who are not authorized E-Verify users may use the system without the employer's consent. Determining whether the registered users are, in fact, employed by the registered employer with a specific EIN and should have access to E-Verify would be even more difficult, given that Federal databases with information about the employer's staff are not available for use. The alternative of writing employers and having them provide written authentication of approved users as is done in SSA's Social Security Number Verification Service (SSNVS) would be costly and time-consuming.

A third potential privacy-related weakness of E-Verify is that authorized users may use it for purposes other than employment eligibility verification; however, no evidence has been found that this is happening. E-Verify is designed for use only when verifying whether workers are authorized to work in the United States. However, it could, at least in theory, be used for other purposes, such as providing input into whether a mortgage or credit applicant is likely to be a poor credit risk. Since mortgage and credit companies are employers, they have the right to access the system; however, they do not have the right to use it in processing mortgage or credit applications. The Transaction Database includes transactions from nine employers (less than 0.1 percent) out of a total of 38,000 employers nationally in the industries of commercial banking, credit card issuing, consumer lending, real estate credit, and mortgage and nonmortgage loan brokers, which represent 2 percent of employers nationally. These employers submitted 2,267 cases to E-Verify from June 2004 to June 2008. This does not confirm misuse of E-Verify by companies engaged in this type of work. Furthermore, there have not been any reported violations by registered employers either in the E-Verify Program or in the SSNVS program,

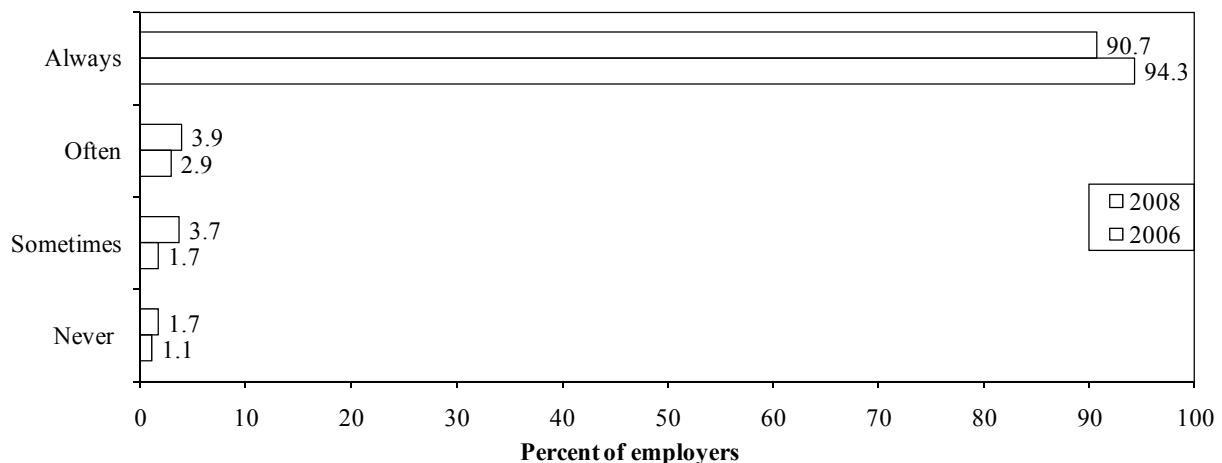
¹⁹⁹ As is clear from cases in which Federal databases have been stolen, Federal safeguards are not always adequate to ensure privacy and the Department of Homeland Security (DHS) has responded by increasing their security procedures surrounding data use. Furthermore, given that the data in the databases used by E-Verify are already available in other SSA and DHS databases, it is unlikely that the Program substantially increases the likelihood of misuse of the system by Federal workers and contractors.

which provides employers with an opportunity to verify that workers' names and Social Security numbers (SSNs) match SSA records.

Employers did not consistently convey information about E-Verify TNCs in a private setting.

Employers may violate workers' privacy by not being discreet in discussing verification problems with their employees. Almost all employers (94 percent of 2006 Web survey employers and 91 percent of 2008 Web survey employers) reported that they always inform employees of TNC findings in private (Exhibit X-2). Of the 81 onsite study employers who commented on privacy, 76 said that they notify their employees in private. Two employers sometimes notified employees in private and three employers never notified employees in private; these employers reported notifying employees in the reception/lobby area or in an open area with several desks. Among the 76 employers who said that they notified employees in private, 21 had one or more workers who reported being notified in an area that was not private. Of the 140 workers who commented on whether they were notified of the TNC in private, 107 reported that they had been notified in private. It should be noted that the need to discuss verification issues in private has not been specified in any employer training materials, making it more likely that employers would not be aware of the need to follow this procedure.

Exhibit X-2. Percent of Web Survey Employers, by How Often They Report Informing Employees of TNCs Privately



SOURCE: E-Verify Web Survey.

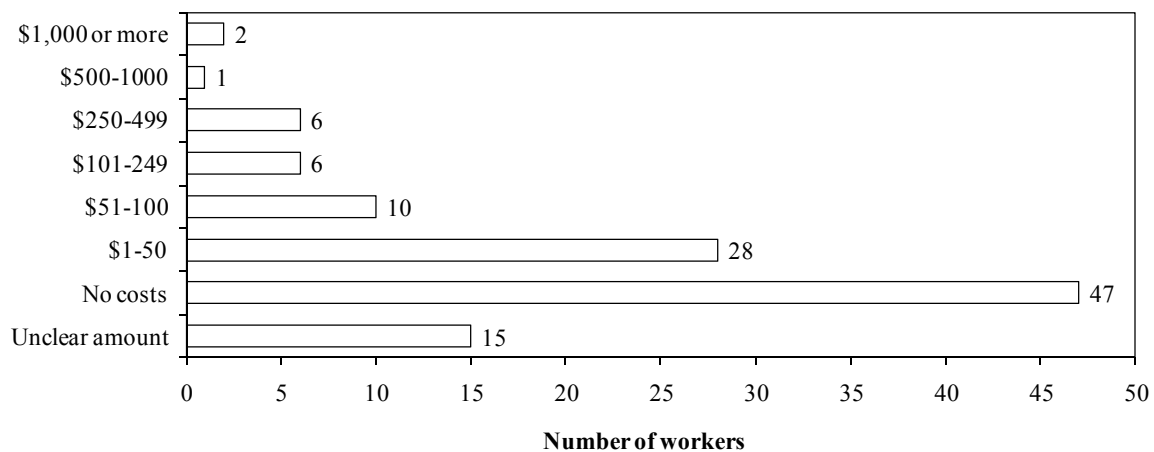
2.1.2. Financial and Nonfinancial Burdens

Employer noncompliance with E-Verify procedures has cost and burden implications for some U.S. citizens and work-authorized noncitizens. Types of noncompliance that have cost implications for workers include firing or not hiring workers receiving TNCs, delaying hiring of workers until they resolve their TNCs, restricting work assignments, denying or delaying workers' training, and reducing employees' pay during the contesting period. As discussed in Chapter VIII, employers typically report that they comply with E-Verify procedures designed to protect worker rights; however, information from the record reviews and onsite worker interviews indicate that employers may be significantly underreporting noncompliant behavior. For example, 98 percent of employers reported in the Web survey that they use E-Verify only for new employees. However, information from the record reviews indicated that approximately 26 of the 108 onsite study employers had submitted information for at least one job applicant to E-Verify and a sizable number of workers interviewed in the onsite interviews said that they had been job applicants at the time their work authorization was determined through E-Verify (of the 257

workers who reported being sure of their status at the time their work authorization status was determined, 114 said that they had been job applicants). Furthermore, failure to enter information into E-Verify carefully or the improper use of the Photo Screening Tool, such as comparing the photograph returned by E-Verify to the person instead of to the document, may increase the chances of a worker receiving an erroneous TNC, thereby potentially increasing workers' burden.

Many interviewed workers who resolved TNCs reported minimal financial costs associated with resolving the TNC finding; however, some workers reported costs of \$50 or more. Of the 115 workers who reported information about costs, 47 reported that there were no costs to contesting the TNC, 28 workers spent \$50 or less, and 25 workers spent more than \$50 (Exhibit X-3). Another 15 workers were not specific about the total amount of costs to resolve the TNC. The costs for workers reporting at least some costs ranged from \$1 (for a worker who had to pay for parking outside of an SSA office) to \$6,700 (for a worker who lost almost seven months of work and had to pay legal fees to get his paperwork corrected). It should also be noted that the worker responses to this question may underestimate the actual costs because in many cases of noncompliance, the worker is unaware of the employer's practice; for example, workers may be unaware of not being hired or having a delayed start date because of a TNC. Workers may also be unable to estimate the financial costs of such practices. On the other hand, some workers may be reporting expenses for getting an extension of their employment authorization documents as part of E-Verify expenses. This finding suggests there are negative consequences for at least some workers receiving TNCs, thus potentially contributing to a discriminatory impact since foreign-born workers are considerably more likely to receive TNCs than are U.S.-born workers.

Exhibit X-3. Total Cost to Workers to Resolve TNCs



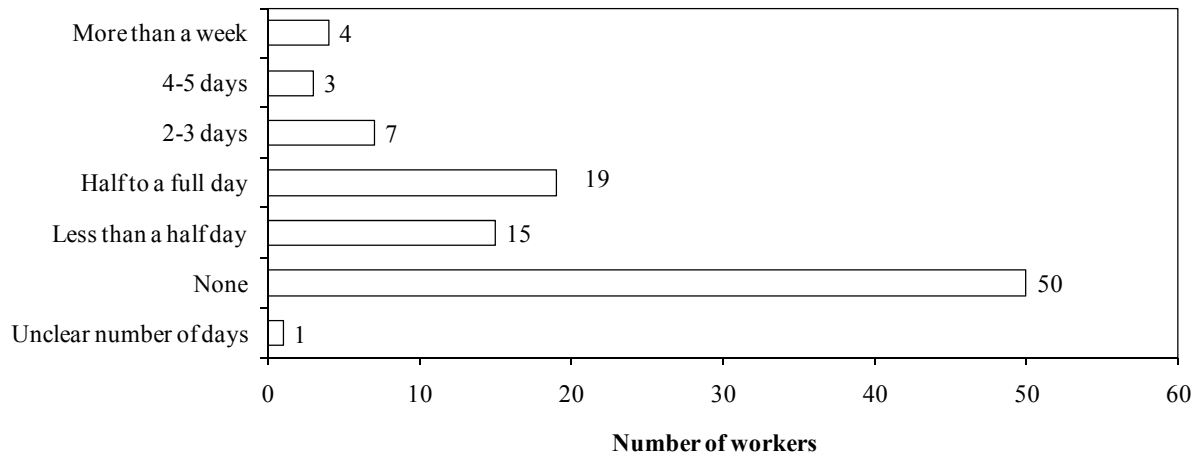
SOURCE: Onsite Interviews of Workers.

The types of costs reported by workers included:

- Lost wages, mostly due to taking time off to contest the TNC, reported by 29 workers;
- Transportation costs, usually \$10 or less, reported by 45 workers;
- Babysitting costs between \$5 and \$10, reported by one worker; and
- Paperwork or other costs, reported by seven workers.

In addition, 99 workers reported information about lost work (Exhibit X-4). Of these workers, 50 reported that they lost no days at work and 49 reported that they lost partial or complete days at work in order to resolve their TNC. Most of the 49 workers who reported lost work lost one day or less.²⁰⁰

Exhibit X-4. Days of Work Lost in Order to Resolve TNCs

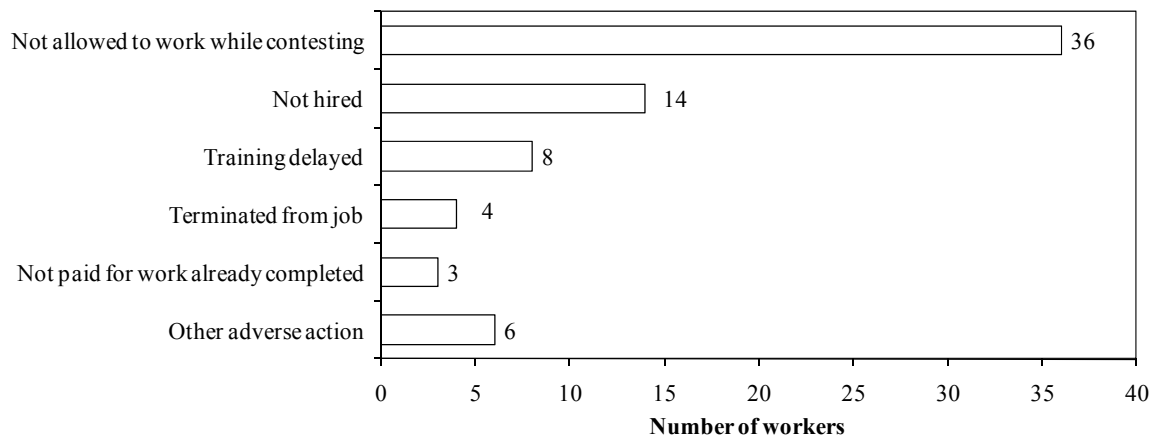


SOURCE: Onsite Interviews of Workers.

In addition to financial costs attributable to E-Verify procedures, some workers reported nonfinancial burdens. Examples of nonfinancial burdens for workers include training delays and being given less desirable assignments. Of the 161 workers that reported on adverse actions, 102 workers reported that no adverse actions were taken against them by employers as a result of their TNCs, while 59 workers reported that adverse actions were taken against them. Workers who had no adverse actions taken against them were allowed to keep working while they contested the TNC, their wages remained the same, and they received the same work assignments. Workers who had adverse actions taken against them reported not being hired by the employer, not being allowed to work while contesting the TNC, and experiencing a delay in training for the job²⁰¹ (Exhibit X-5).

²⁰⁰If the worker reported wages lost from lost work, the cost of lost wages is included in the above estimates for the total cost of contesting a TNC.

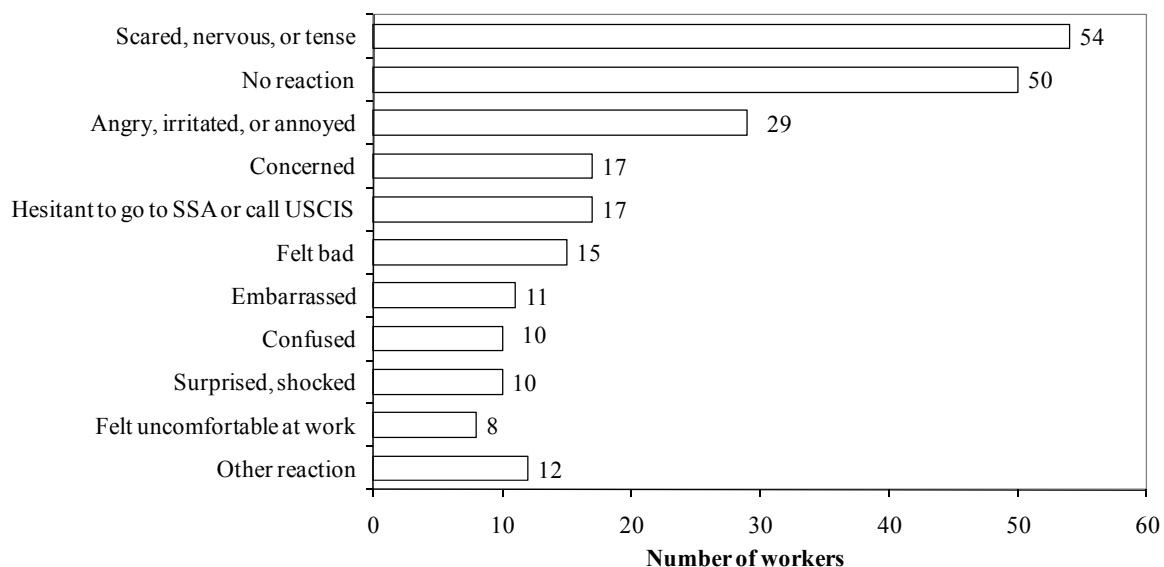
²⁰¹Of the 14 workers who reported the adverse action of not being hired by the employer, eight had applied at employment services/temporary agency.

Exhibit X-5. Types of Adverse Action Reported by Workers

NOTE: Workers could report more than one type of adverse action.

SOURCE: Onsite Interviews of Workers.

Workers experienced a variety of emotions, ranging from no reaction to being angry or scared upon being notified of TNCs. Of the 181 workers who commented on their reaction to receiving a TNC, 50 workers had no reaction to it; most of these workers reported that they either knew the problem could be resolved easily or already knew they were not authorized to work and/or had had similar experiences at other companies (Exhibit X-6). Of the remaining 131 workers, 54 reported that they were scared, nervous, or tense, and 29 workers were angry, irritated, or annoyed. Other reactions included being hesitant to contact either SSA or USCIS, feeling embarrassed or uncomfortable at work, and being confused.

Exhibit X-6. Workers' Reactions to Receiving TNCs

NOTE: Workers could be included in more than one category.

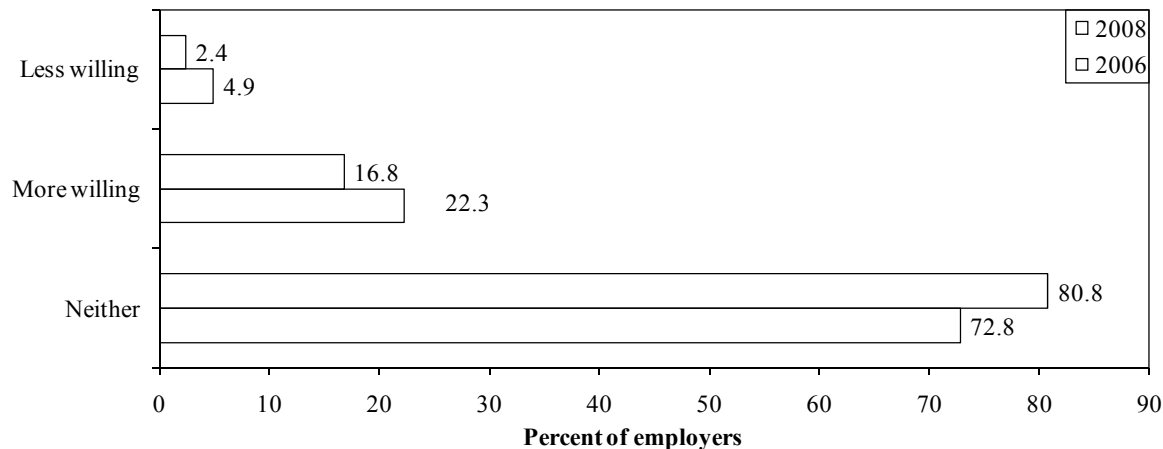
SOURCE: Onsite Interviews of Workers.

2.2. Discrimination

2.2.1. Willingness to Hire Foreign-Born Workers

Most users reported that E-Verify made them neither more nor less willing to hire foreign-born workers. However, when change was reported, it was almost always in the direction of making employers more willing to hire foreign-born workers. Approximately 81 percent of E-Verify users in 2008 reported that using E-Verify neither increased nor decreased their willingness to hire foreign-born workers (Exhibit X-7). Others said that the use of E-Verify is a change in process, not a change in hiring practices, and another 17 percent said that E-Verify makes the establishment more willing to hire foreign-born workers. Only 2 percent of E-Verify users reported a decreased willingness to hire foreign-born workers.²⁰² These results are similar to what was reported in the Web survey in 2006, where the corresponding percents were 73, 22, and 5 percent.

Exhibit X-7. Employers' Willingness to Hire Foreign-Born Workers



SOURCE: E-Verify Web Survey: 2008.

Since considerably more employers indicated an increased willingness to hire foreign-born workers than indicated a decreased willingness to hire such workers, it is reasonable to conclude that the net effect of the change is an increase in employers' willingness to hire foreign-born workers. This conclusion is consistent with the GAO premise that a better employment verification system is likely to make employers more comfortable in hiring foreign-born workers.

2.2.2. Erroneous TNC Rates

2.2.2.1. Noncitizens Compared to Citizens

There are two sources of information about the citizenship status of workers having cases submitted to E-Verify:

- The citizenship status that the worker attests to on the Form I-9; and

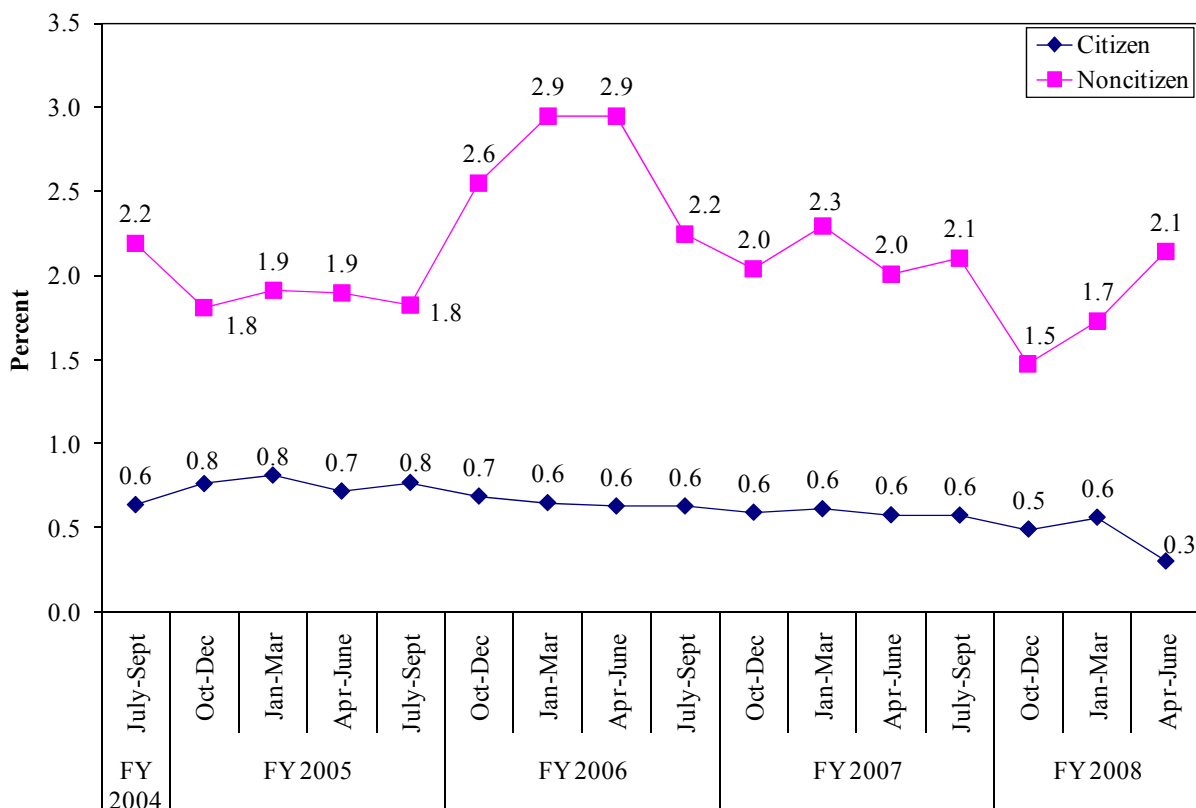
²⁰² Respondents indicating that they didn't know (12 percent of all respondents) were excluded from these calculations.

- The citizenship status in the SSA database as of the last time E-Verify was queried.

As discussed in Chapter II, both of these sources have limitations; this report, therefore, examines information from both sources.

Workers attesting to U.S. citizenship status on the Form I-9 are much less likely to receive erroneous TNCs than are workers attesting to being noncitizens. Not surprisingly, there are large differences between the erroneous TNC rates by Form I-9 citizenship status (Exhibit X-8). In April through June 2008, 0.3 percent of workers attesting to being U.S. citizens who were found to be work authorized had received a TNC prior to being found work authorized compared to 2.1 percent of noncitizens who were later found to be work authorized. Thus, the erroneous TNC rate for workers attesting to being noncitizens was approximately seven times the rate for citizens.

Exhibit X-8. Trends in Erroneous TNC Rates, by Form I-9 Citizenship Status: July 2004–June 2008



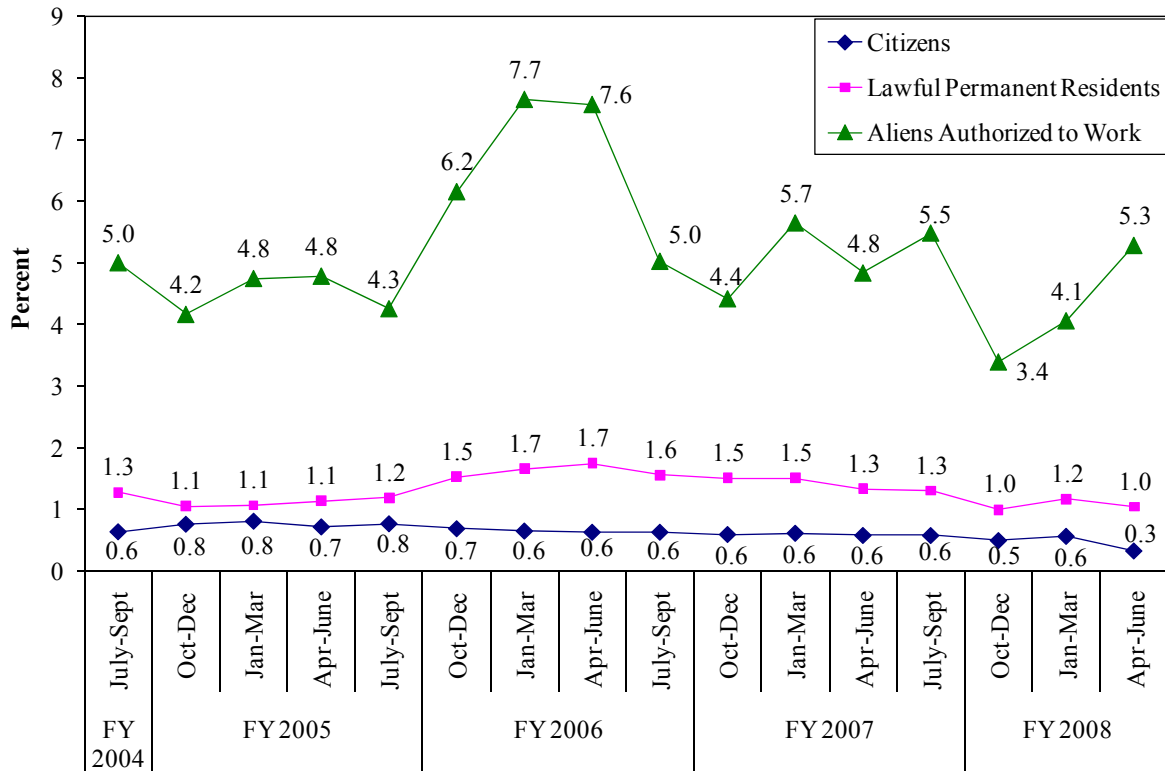
SOURCE: E-Verify Transaction Database.

At least some of the difference in the erroneous TNC rates between those attesting to being citizens and noncitizens occurs because noncitizens have their information verified against both the SSA and USCIS databases. Noncitizens have two opportunities to receive TNCs—one based on the SSA check whether the Form I-9 SSN is consistent with its information on name and date of birth and the other based on the USCIS check comparing the Form I-9 information for A-number against its information on name and date of birth, as well as its information on work authorization.²⁰³

²⁰³See *Findings of the Web Basic Pilot Evaluation*, September 2007 (<http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>) for a more detailed discussion of how the changed procedures for submitting cases for workers attesting to being noncitizens in October 2005 affected the error rates.

The erroneous TNC rate for workers attesting on their Form I-9s to having temporary authorization to work was considerably higher than the rate for either lawful permanent residents or U.S. citizens. In April through June 2008, the erroneous TNC rate for newly hired employees was 0.3 for employees attesting to being U.S. citizens compared to 1.0 for lawful permanent residents and 5.3 for those indicating that they were “other aliens authorized to work” (Exhibit X-9). Similar differences were found throughout the time periods examined.

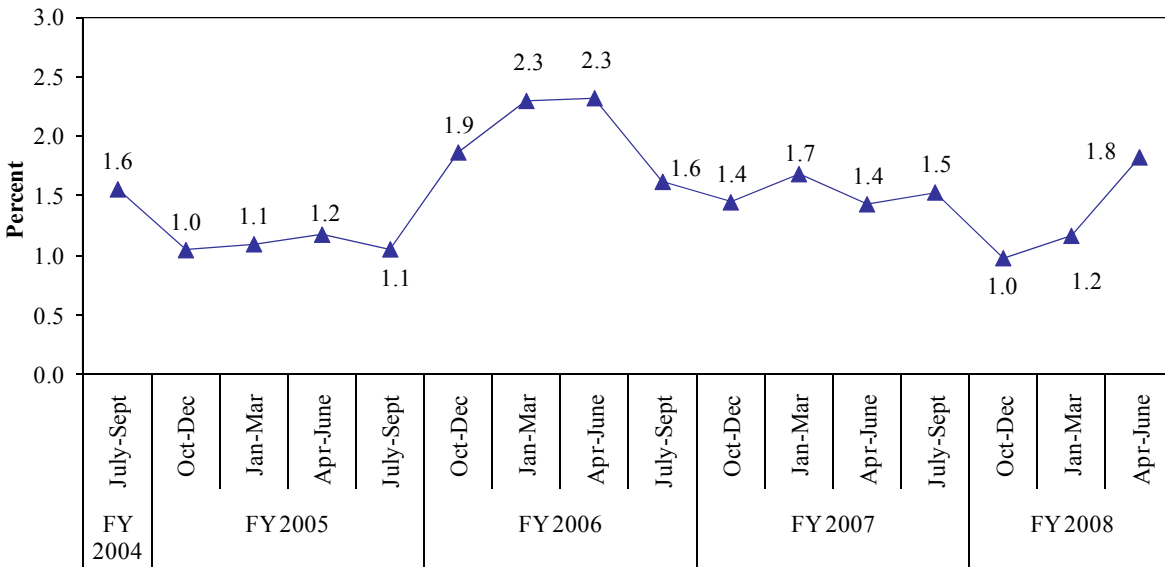
Exhibit X-9. Trends in Erroneous TNC Rates, by Form I-9 Work Status: July 2004–June 2008



SOURCE: E-Verify Transaction Database.

The gap between the citizen and noncitizen erroneous TNC rates has not exhibited a clear upward or downward trend. As seen in Exhibit X-10, the gap in erroneous TNC rates has fluctuated over time, from a low of 1.0 to a high of 2.3 percentage points. However, there is not an overall trend. For example, in July through September 2004, the gap was 1.6 percentage points—approximately the same as in July through September 2007 (1.5).

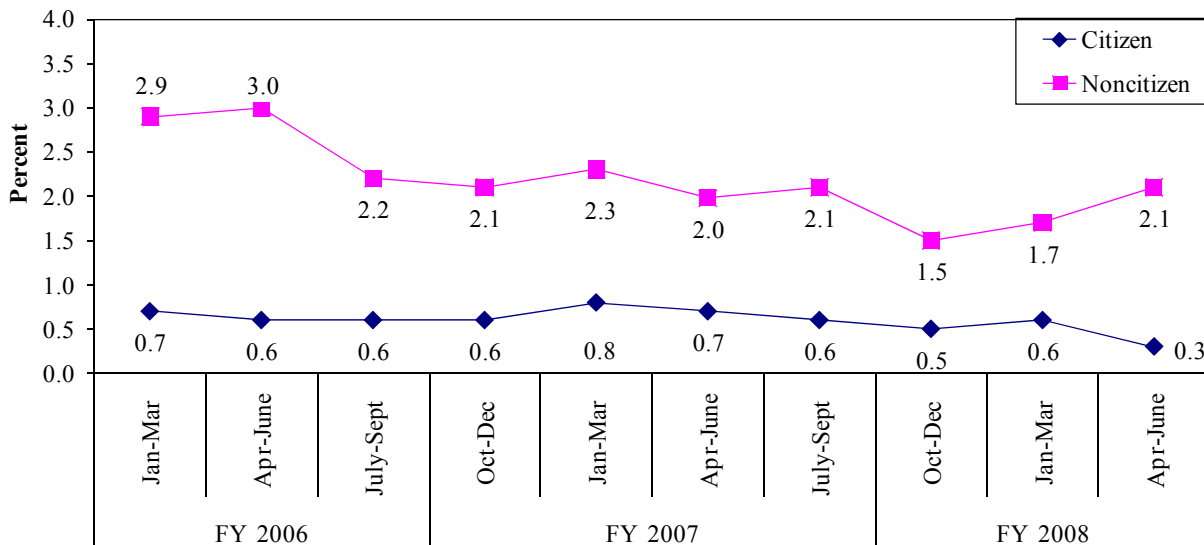
Exhibit X-10. Trend in Gap in Erroneous TNC Rates Between Workers Attesting to Be Citizens and Noncitizens: July 2004–June 2008



SOURCE: E-Verify Transaction Database.

The conclusions about differences between citizens and noncitizens based on SSA data are generally similar to those based on Form I-9 data for the same time period. Both sets of data indicate that noncitizens have substantially higher erroneous TNC rates than citizens (Exhibit X-11) and that the fluctuation in the gap between citizens and noncitizens makes it difficult to detect a long-term trend in the gap.

Exhibit X-11. Trend in Erroneous TNC Rates, by SSA Citizenship Status: January 2006–June 2008

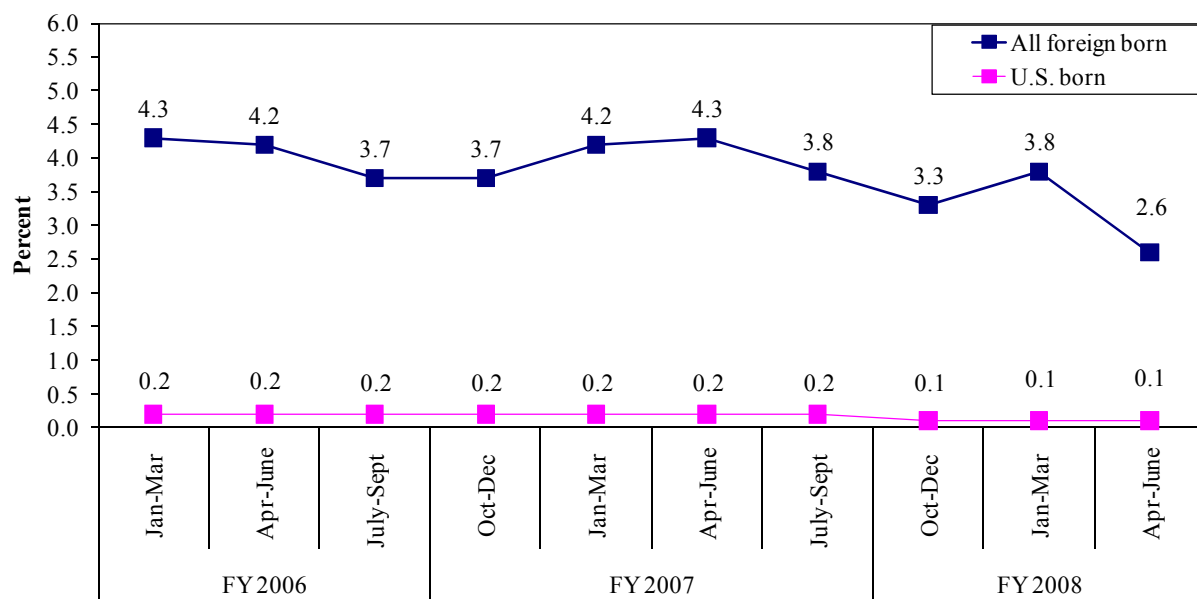


SOURCES: E-Verify Transaction Database and special tabulations from SSA.

2.2.2.2. All Foreign-Born Compared to U.S.-Born Workers

As anticipated by foreign-born rights advocates, employment-authorized foreign-born workers are more likely than U.S.-born workers to receive TNCs, thereby subjecting a greater percentage of work-authorized foreign-born workers to potential adverse actions arising from the E-Verify process. Essentially all of the U.S.-born workers (99.9 percent) found to be authorized by E-Verify between April and June 2008 were verified without a TNC. For all foreign-born workers, the comparable rate was 97.6 percent. As shown in Exhibit X-12, the corresponding erroneous TNC rate for workers who were eventually found to be work authorized was approximately 20 times higher for foreign-born workers than for U.S.-born workers (2.6 percent versus 0.1) in April through June 2008. One likely reason for the higher rates for foreign-born workers, in addition to those noted above for noncitizens, is that employers are more likely to make mistakes when entering foreign-sounding names than in entering names with which they may be more familiar, causing more nonmatches during the verification process for foreign-born workers. Additionally, despite instructions to the contrary, many foreign-born workers may list their date of birth in day-month order, resulting in nonmatches on that variable.

Exhibit X-12. Trend in Erroneous TNC Rates for U.S.-Born and Foreign-Born Workers: January 2006–June 2008



SOURCES: E-Verify Transaction Database and special tabulation provided by SSA.

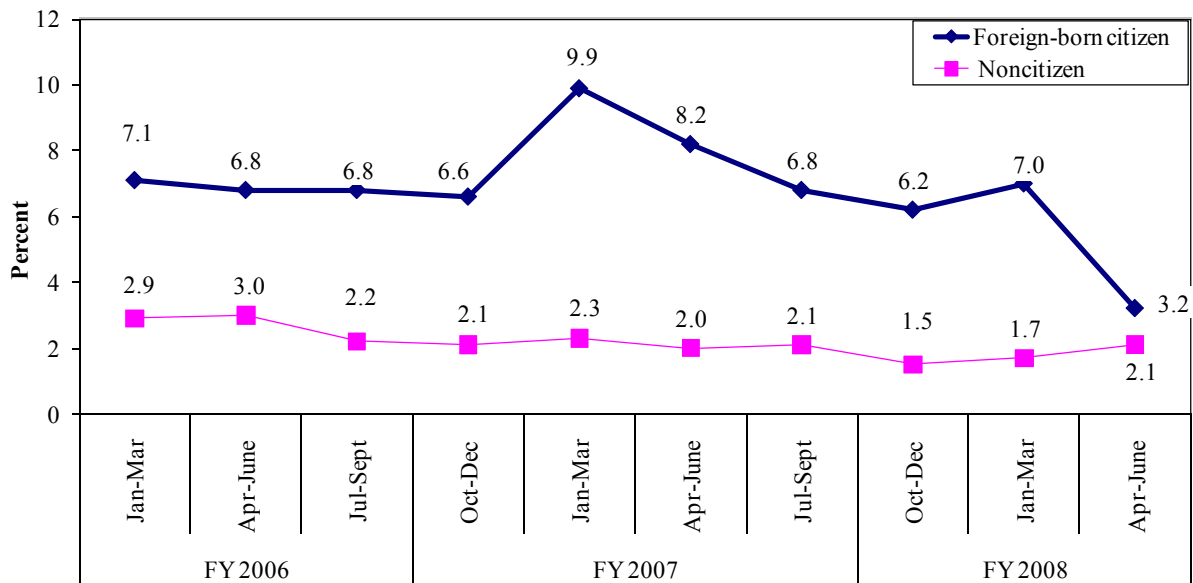
The U.S.-born and foreign-born gap in the erroneous TNC rate for workers has decreased over time. The gap in erroneous TNC rates for ever-authorized U.S.-born and foreign-born workers has been reduced from 4.1 percentage points in January through March 2006 to 2.4 percentage points in April to June 2008.²⁰⁴

²⁰⁴See Section 2.3.5 of this chapter for a discussion of the likely cause of this drop.

2.2.2.3. Foreign-Born Citizens and Noncitizens

The gap in the erroneous TNC rate for foreign-born workers who are now U.S. citizens and noncitizens is dramatically lower than in the past. The percentage of foreign-born citizens receiving TNCs was 3.2 percent in April through June 2008, 1.1 percentage points higher than the 2.1 percent erroneous TNC rate for noncitizens (Exhibit X-13). This is lower than the gaps for the preceding months, which ranged from 3.9 to 7.6 percentage points. As discussed in Chapter VI, a significant part of this change can be attributed to the Naturalization Phase I changes implemented in May 2008, which check Form I-9 information for those workers attesting to being citizens against USCIS databases on naturalized citizens when SSA cannot confirm that the workers are employment authorized. If the erroneous TNC rates had been based on post-Naturalization Phase I data only, the rates of foreign-born citizens and noncitizens would have been even closer.

Exhibit X-13. Trend in Erroneous TNC Rates for Foreign-Born Citizens and Noncitizens: January 2006–June 2008

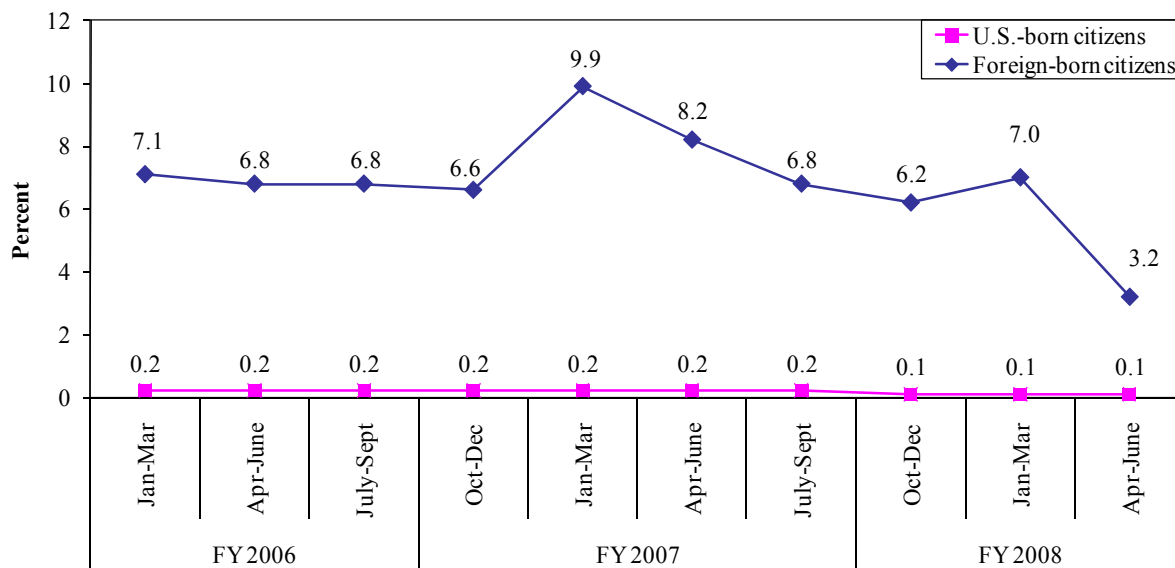


SOURCES: E-Verify Transaction Database and SSA data on birth/citizenship status.

2.2.2.4. U.S.-Born and Foreign-Born Citizens

Foreign-born citizens are much more likely than U.S.-born workers to receive erroneous TNCs; however, this gap has declined substantially recently. In April through June 2008, 3.2 percent of ever-authorized foreign-born citizens received TNCs prior to being found work authorized compared to 0.1 percent of ever-authorized U.S.-born workers—a gap of 3.1 percentage points (Exhibit X-14). This gap is much smaller than the prior gaps, which ranged from 6.1 to 9.7 percentage points. Again, the April through June 2008 gap would have been even smaller if Naturalization Phase I had been implemented at the beginning of the quarter instead of on May 5.

Exhibit X-14. Trend in Erroneous TNC Rates for U.S.-Born and Foreign-Born Citizens: January 2006–June 2008



SOURCES: E-Verify Transaction Database and SSA data on birth/citizenship status.

The discrepancy in the erroneous TNC rates of native-born and foreign-born citizens is attributable, at least in part, to differences in the way that the USCIS and SSA databases are structured. The E-Verify system check against the SSA database indicates whether the worker is shown as a U.S. citizen on SSA's records. The citizenship data in SSA's records are dependent on whether workers report changes in citizenship status to the agency. However, it is not necessarily expected that people will update their SSA records when their citizenship status changes, and USCIS does not automatically provide SSA with information about naturalization. SSA may, therefore, not have the updated information needed to verify the work-authorization status of some foreign-born citizens. Until the institution of the Naturalization Phase I changes in early May 2008, SSA issued a TNC when this occurred. Currently, if the submitted SSN, name, and date of birth are consistent with SSA records but SSA does not have up-to-date information permitting them to determine whether a worker attesting to being a U.S. citizen is employment authorized, the case is electronically forwarded to USCIS for comparison with databases of persons naturalized beginning in the mid-1990s for determination of whether they are naturalized citizens. However, because U.S. citizens provide only their SSNs in the Form I-9 process and USCIS tracks by A-number, which is not available for these cases, USCIS must rely on matching on the SSN when available in USCIS records, and otherwise by name and date of birth.²⁰⁵ Although this permits USCIS to confirm that many workers have naturalized, such confirmation is not always possible.

Even in the absence of further program changes, the erroneous TNC rate for foreign-born citizens will decrease over time. USCIS does not have searchable electronic information on most persons naturalized before the mid-1990s, but they now capture naturalization data, including SSN, electronically

²⁰⁵When the SSN is lacking for naturalized citizens, their USCIS records can be accessed only by A-number; however, former A-numbers are not requested from naturalized U.S. citizens on the Form I-9, which is the basis for the information used in electronic verification. This practice reflects a policy decision made when E-Verify was first designed to treat all citizens equally and not to reveal to employers which U.S. citizens are naturalized and which are native born. Furthermore, there is no requirement or expectation that naturalized citizens should know their former A-number.

for all cases. As existing workers retire and are replaced by workers who have more recently become citizens and as foreign-born U.S. citizen workers update their SSA records as a part of E-Verify or other programs, more SSA records will reflect the correct citizenship status and the erroneous TNC rate for naturalized citizens will decline. However, this process will take considerable time.

In the absence of further changes to USCIS and E-Verify procedures, the erroneous TNC rate for persons who derived citizenship status when one or both of their parents were naturalized will not decline. Certificates of citizenship are not requested and issued for most children who derive citizenship status when one or both of their parents become naturalized citizens,²⁰⁶ resulting in USCIS having no documentation of their citizenship status. Even when a certificate is issued, USCIS does not electronically record the issuance in any system that could be used to verify their U.S. citizenship status. At the time the report was being written, USCIS was working with other DHS components and the Department of State to institute a check of U.S. passport information to permit E-Verify to confirm the citizenship status of persons who derived citizenship if they present a U.S. passport in the I-9 process. However, USCIS currently has no plans to update its electronic records based on hardcopy documentation for persons who derived citizenship in the past, nor have plans been made to routinely collect and enter this information into a USCIS database for additional children who derive U.S. citizenship.

2.2.3. Case Processing Timeliness

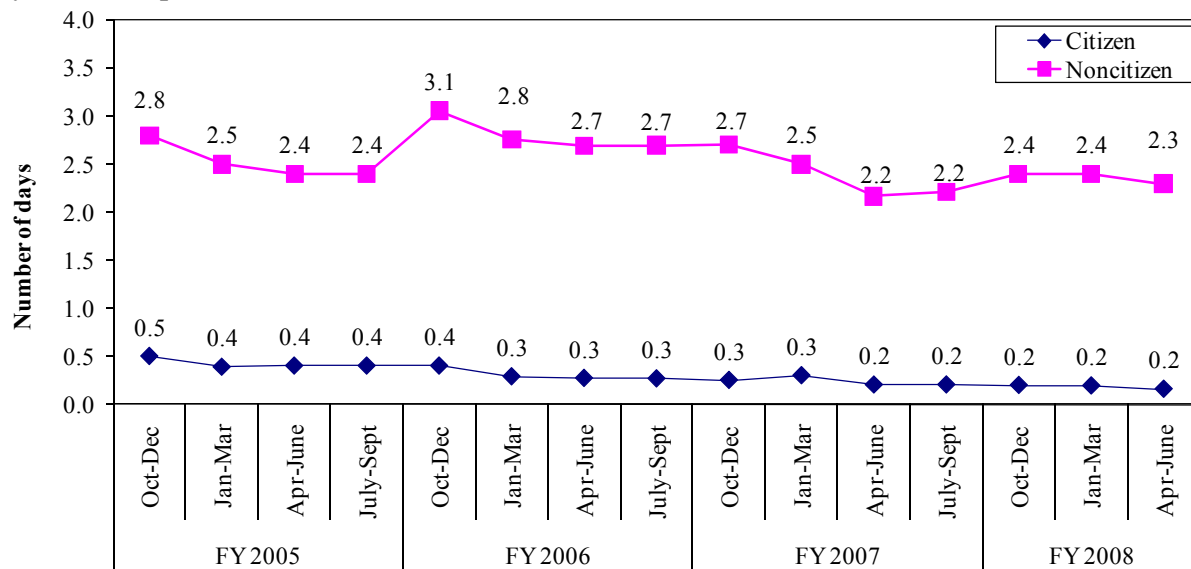
Although the erroneous TNC rate is the most obvious factor to consider in understanding the likely impact of E-Verify on discrimination, unintentional discrimination can also occur because of differences in the time it takes to process TNC cases. Since employers do not always comply with the E-Verify requirements not to take adverse actions while workers are contesting TNCs, any differences in processing times may contribute to unintentional discrimination. Because SSA could not provide the necessary individual data to compare foreign-born and U.S.-born citizens for the evaluation because of privacy restrictions, this section is restricted to examining timeliness by Form I-9 citizenship status.

The time between case initiation and final case resolution is significantly longer for noncitizens than citizens. In April through June 2008, the mean time for case resolution was 0.2 days for workers attesting to being citizens and 2.3 days for workers attesting to being work-authorized noncitizens (Exhibit X-15).

The gap in time from initiation date through final resolution date between citizens and noncitizens has declined slightly over time. In April through June 2008, the gap in time from initiated date to final resolution date was 2.1 days (0.2 days for citizens and 2.3 days for noncitizens) compared to 2.3 days in October through December 2004 (0.5 days for citizens and 2.8 days for noncitizens).

²⁰⁶ The “certificate of citizenship” is a separate and optional application that requires paying a fee. It is, therefore, common for new citizens not to request such certificates for their children who have derived citizenship. It is also common for persons with derived citizenship or their parents to apply for U.S. passports, which are cheaper and usually faster to receive than certificates of citizenship.

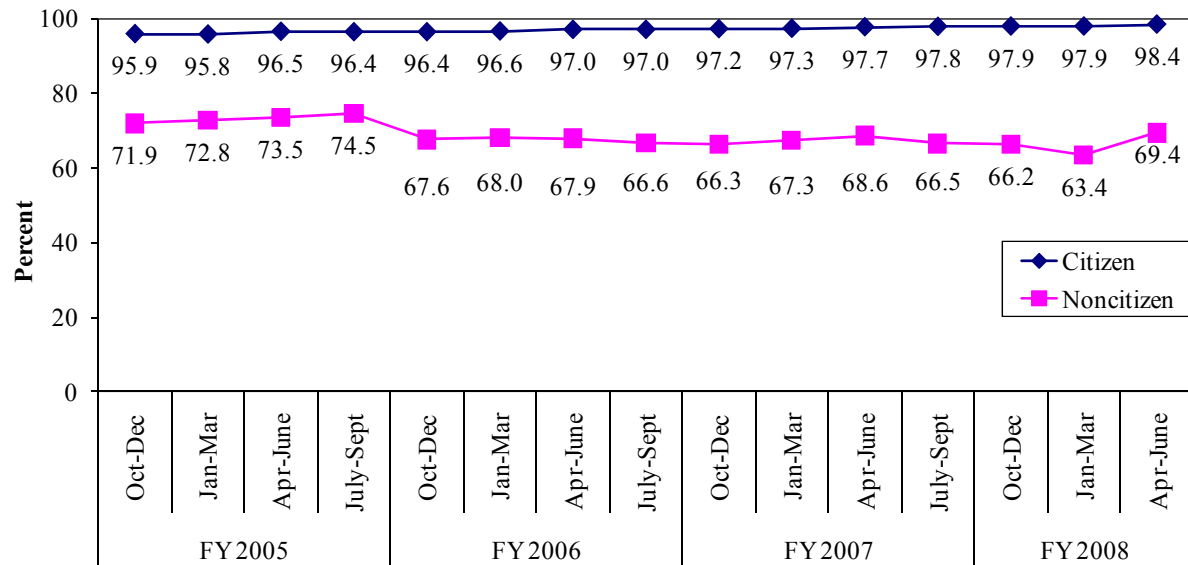
Exhibit X-15. Trend in the Number of Days Between Case Initiation and Final Case Resolution, by Citizenship Status: October 2004–June 2008



SOURCE: E-Verify Transaction Database.

The major reason that case processing for those attesting to being noncitizens takes longer on average than for citizens is that noncitizens are less likely than citizens to be verified instantly as work authorized. Approximately 98 percent of citizens were instantly verified as work authorized compared to 69 percent of noncitizens in April through June 2008 (Exhibit X-16). This difference is attributable to several factors, the most important of which is that workers attesting to being noncitizens are less likely to be found employment authorized initially than are workers attesting to being citizens. Another contributing factor is the nature of the databases checked by SSA and USCIS. Because noncitizens are much more likely to change citizenship (and immigration) status than are citizens, it is much more difficult to keep information up to date in DHS files. It should also be noted that noncitizens must be immediately verified as work authorized by both SSA and DHS checks to be classified as instantly verified, providing increased opportunity for not being instantly verified.

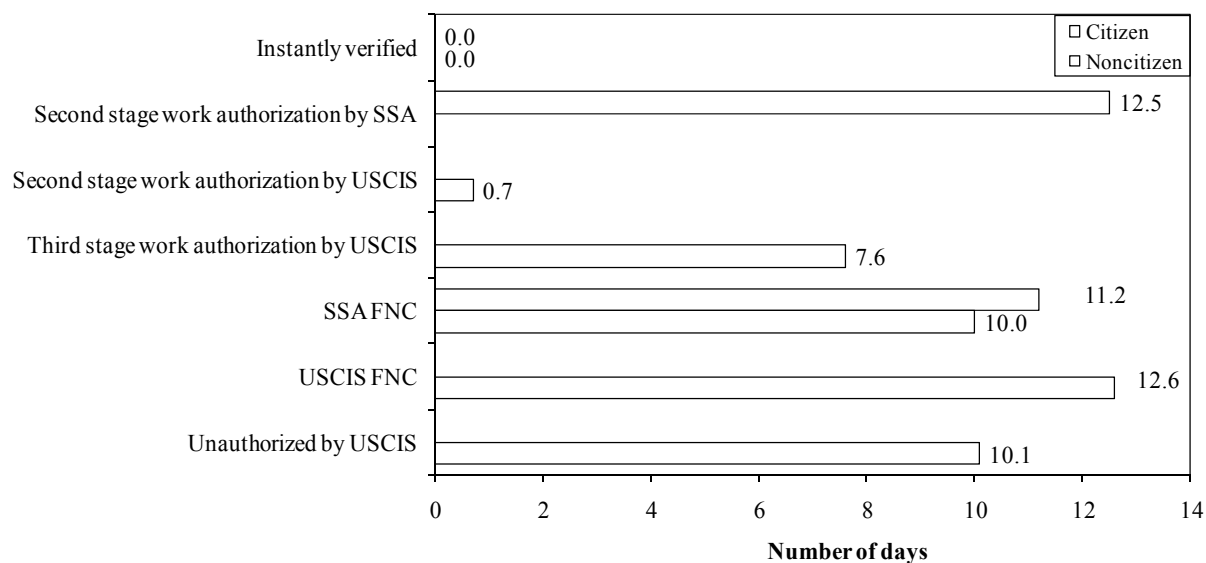
Exhibit X-16. Trends in the Percent of Cases Verified Instantly as Work Authorized, by Attested Citizenship Status: October 2004–June 2008



SOURCE: E-Verify Transaction Database.

For workers who contest TNCs, the number of days between case initiation and final resolution for citizens is longer than for noncitizens; SSA Final Nonconfirmation (FNC) cases are also longer for citizens. For cases that are found work authorized after a TNC, time from case initiation to final resolution is 12.5 days for citizens and 7.6 days for noncitizens. This difference may reflect in part the longer time required for citizens to request and receive documentation such as birth certificates from some states. For cases that receive SSA FNCs, the difference is 11.2 days for citizens and 10.0 days for noncitizens. Noncitizen cases receiving USCIS FNCs take 12.6 days (Exhibit X-17).

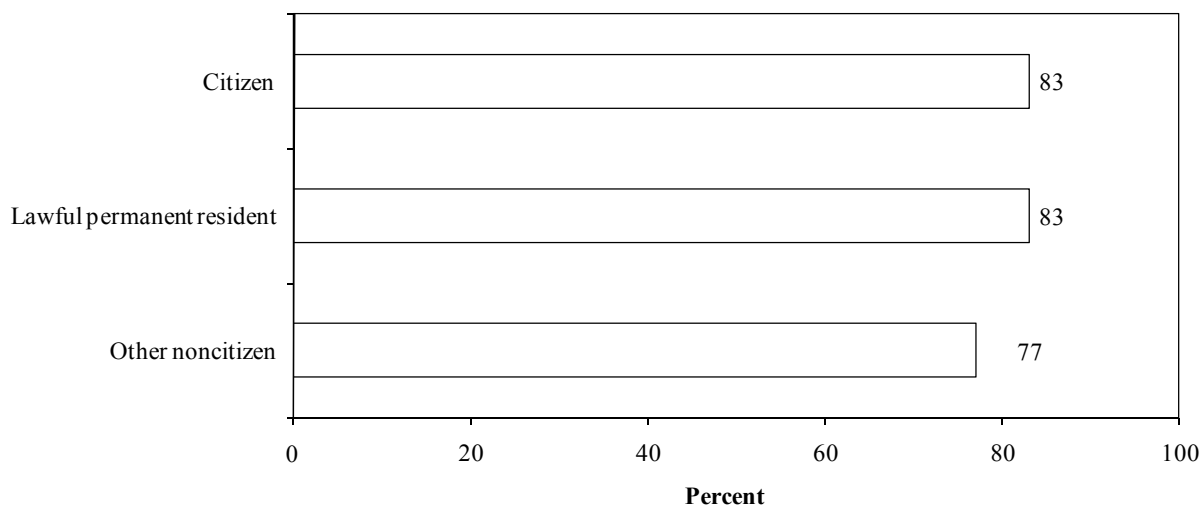
Exhibit X-17. Days From Case Initiation to Final Resolution, by Final Case Finding and Form I-9 Citizenship Status: April–June 2008



SOURCE: E-Verify Transaction Database.

There are not major differences in the time between hire date and case initiation date based on Form I-9 citizenship status. Employers enter most cases, both citizens and noncitizens, within three work days of the hire date that is entered into E-Verify. In April through June 2008, employers entered 83 percent of citizen cases, 83 percent of lawful permanent resident cases, and 77 percent of other noncitizen cases within this required time frame (Exhibit X-18).

Exhibit X-18. Percent of Cases Initiated Within Three Work Days of Hire Date, by Form I-9 Citizenship Status: April–June 2008



SOURCE: E-Verify Transaction Database.

2.3. Impacts of Recent Legislative and Program Changes

2.3.1. Legislative Changes

Mandating the use of E-Verify *may* increase the erroneous TNC rate, thereby increasing the burden on workers in those states. As discussed in Chapter VI, employers in states that require the use of E-Verify for all or some of their workers have higher erroneous TNC rates than employers in states with no requirement to use E-Verify (0.56 for Arizona compared to 0.50 percent for states that mandate E-Verify for some employers and 0.49 for other states). Since the erroneous TNC cases are the only cases that can lead to worker burden, it is reasonable to conclude that E-Verify is more burdensome, on average, for workers in Arizona than in states that do not mandate that all employers use E-Verify. However, there may be explanations for Arizona's high erroneous TNC rate (e.g., the large number of foreign-born workers in Arizona) that are not linked to the mandatory nature of E-Verify in that state. It is, therefore, necessary to be cautious in concluding that E-Verify is more burdensome when it is mandated.

2.3.2. Photo Screening Tool

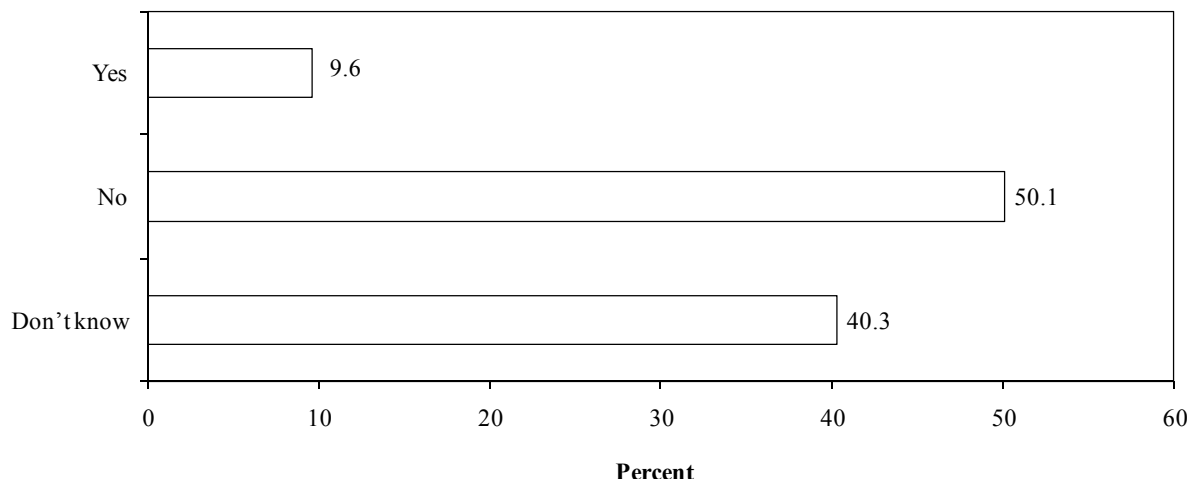
The Photo Screening Tool has the appearance of being discriminatory, since it is only used for noncitizens. Since only noncitizens were subject to checks with the Photo Screening Tool during the time that the data were being collected for this evaluation, any erroneous TNCs attributable, for example, to an employer error or a glitch in the system itself would be expected to increase costs and actions with discriminatory impacts against work-authorized noncitizens. It is also possible that the extra steps employers are required to take to use the Photo Screening Tool would make them more reluctant to hire noncitizens or that employers may not inform workers of their rights to contest when erroneous TNCs are received because of the Photo Screening Tool.²⁰⁷ However, very few workers receiving TNCs attributable to the Photo Screening Tool contested their TNCs (only one out of 154 cases receiving TNCs as a result of the Photo Screening Tool match in May 5 through June 30, 2008, was successfully contested). Since the majority of authorized workers contest other types of TNCs, it is reasonable to assume that almost all of the Photo Screening Tool TNCs were for unauthorized workers. It, therefore, appears that use of the Photo Screening Tool is not resulting in a substantial increase in the number of work-authorized noncitizens receiving TNCs; however, any procedure that can increase the probability of a TNC that is limited to noncitizens gives the appearance of being discriminatory.

Some employers are more likely to violate a worker's right (under Form I-9 procedures) to select among permissible I-9 documents because of the Photo Screening Tool. Current Form I-9 policy does not allow employers to ask for specific documents when verifying workers if the documents presented are among those allowed and appear to be valid and to relate to the individual²⁰⁸. Among employers responding to the Web survey, 10 percent reported that their establishments had been more likely to ask for immigration documents during the verification process since the start of the Photo Screening Tool and an additional 40 percent said they did not know whether they were more likely to do so (Exhibit X-19). Only one onsite study employer reported requiring workers to submit documents that could be used with the Photo Screening Tool and there was no evidence from worker interviews that workers were asked to submit types of documents that could be used with the Photo Screening Tool.

²⁰⁷ See Chapter IX for a discussion of the impact of the Photo Screening Tool on employers.

²⁰⁸ Users of E-Verify are expected to follow the same Form I-9 procedures as other employers except that the identity document must contain a photograph.

Exhibit X-19. Percent of Web Survey Employers Saying They Are More Likely to Request Immigration Documents During the Verification Process



SOURCE: E-Verify Web Survey: 2008.

The increase in the erroneous TNC rate because of the Photo Screening Tool appears to have led to no more than a very minimal increase in the burden of E-Verify for employment-authorized workers. As discussed in Chapter VI, in the absence of the Photo Screening Tool, the estimated erroneous TNC rate would have been approximately 0.48 percent, similar to the observed rate in April through June 2008. It is, therefore, reasonable to believe that any increase in worker burden for employment-authorized workers attributable to the current Photo Screening Tool is extremely low.

The Photo Screening Tool could potentially lead to privacy violations, because, as pointed out by some of the Federal interviewees, the Photo Screening Tool returns information to employers that they did not previously have. When workers use counterfeit documents with information about someone else during the Form I-9 process, the employer and possibly the worker would have an opportunity to determine what the actual cardholder looks like, which may be considered an invasion of the actual cardholder's privacy. There are currently plans to diminish the possible impacts of such a disclosure by making it more difficult to duplicate the image produced by the Photo Screening Tool.

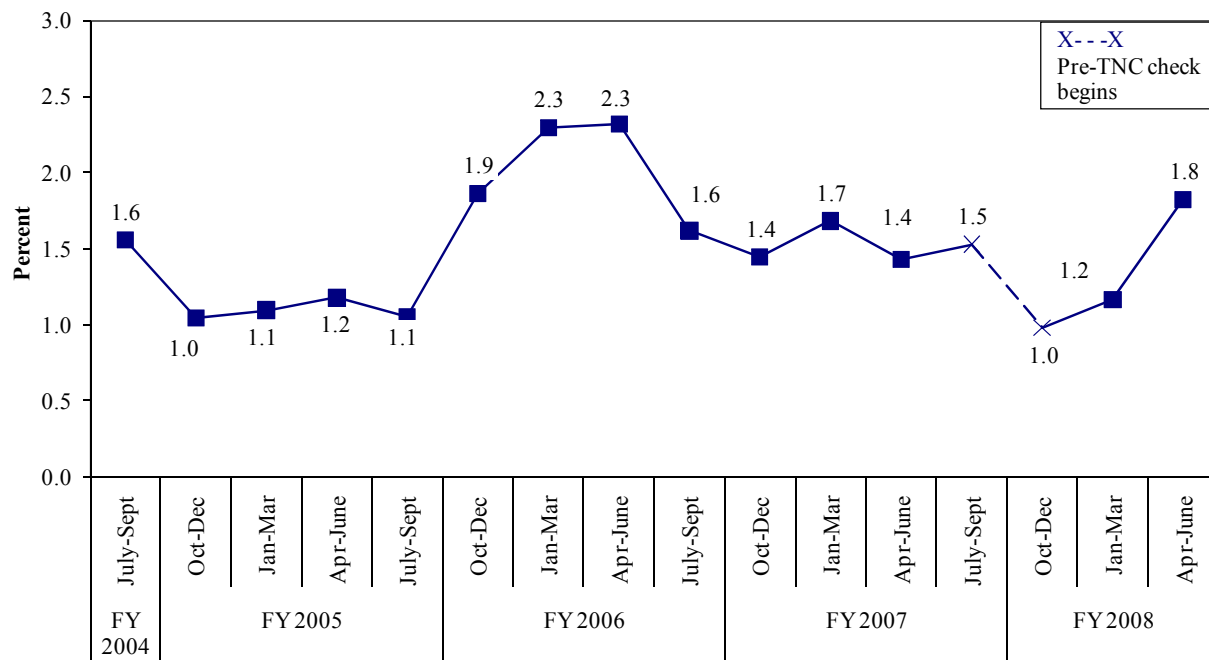
2.3.3. Pre-TNC check

The reduction in the erroneous TNC rate because of pre-TNC checks reduces the burden of E-Verify on workers. As discussed in Chapter VI, the pre-TNC checks apparently led to a decrease in the erroneous TNC rate from 0.7 percent in July through September 2007 to 0.6 percent in October through December 2007.²⁰⁹ This decrease reduced the burden of E-Verify on workers, since these erroneously issued TNCs are the primary way that the Program affects them. When employers do not comply with program procedures designed to protect worker rights in the contesting process, reducing the erroneous TNC rate also protects workers from violations of their rights.

²⁰⁹The pre-TNC checks were introduced in mid-September 2007 for most employers; however, they were instituted for a few pilot employers prior to that time.

The gap in erroneous TNC rates for citizens and noncitizens may have been reduced by the pre-TNC check. As seen in Exhibit X-20, the gap in the erroneous TNC rate between citizens and noncitizens declined from July through September 2007 and October through December 2007 from 1.5 to 1.0 percentage points. Although this is encouraging, there is sufficient variation in the gap over time due to seasonality and other programmatic changes that it is not clear how much of this drop can be attributed to the pre-TNC check.

Exhibit X-20. Trend in the Erroneous TNC Gap Between Workers Attesting to Being Citizens on the Form I-9 and Workers Attesting to Being Noncitizens



SOURCE: E-Verify Transaction Database: July 2004–June 2008.

2.3.4. EV-STAR

EV-STAR reduces the chance that a worker will be adversely affected by E-Verify because of communication problems between SSA and employers. Two features of EV-STAR are likely to reduce the chance of workers being adversely affected by E-Verify:

- EV-STAR automatically rechecks SSA's NUMIDENT data file immediately before issuing an FNC. This means that when SSA revises NUMIDENT without recording that the worker has been found work authorized under E-Verify, an erroneous FNC is avoided. There is no easy way to measure this impact, since under the pre-EV-STAR procedures some employers may have done this check by resubmitting cases themselves.
- If the SSA field office inputs the case as pending in EV-STAR, then E-Verify automatically informs employers that SSA cases are still in continuance after 10 days rather than relying on SSA staff to contact the employer, which did not always occur. This should reduce the number of cases in which employers erroneously assume that workers are not work authorized.

Since workers who visit SSA no longer need to bring a signed letter back from SSA for the employer, the revised process should eliminate the burden associated with this task; however, this burden is presumably

slight. Furthermore, the positive impact of this provision may have been diminished by the initial apparent employer confusion about the changed E-Verify procedures, resulting in some employers continuing to require workers to have their referral letters stamped by SSA.

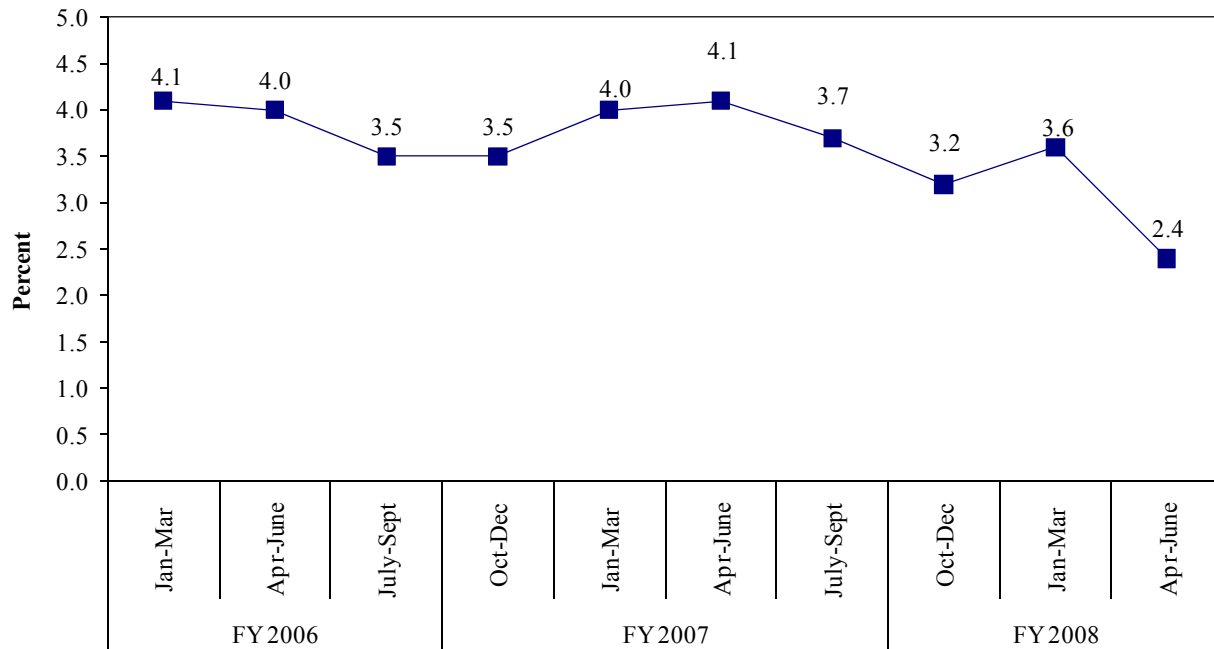
2.3.5. Naturalization Phase I

Phase I of the naturalization reforms resulted in a significant reduction in worker burden and unintentional discrimination against naturalized citizens. The additional automated database checking process for naturalized citizens that constituted Naturalization Phase I dramatically reduced the erroneous TNC rate for naturalized citizens. As discussed in Chapter VI, the erroneous TNC rate for foreign-born citizens dropped from 7.0 percent to 3.2 percent between January through March 2008 and April through June 2008 even though Naturalization Phase I did not take effect until May 5, 2008. The impact of the high erroneous TNC rate for naturalized citizens was reflected in the onsite study for this evaluation conducted prior to the implementation of Naturalization Phase I. Of the 126 workers in the onsite study who had resolved SSA TNCs, 62 had become naturalized citizens but had not updated their citizenship status with SSA. However, only 6 percent of the entire employed population are naturalized U.S. citizens.²¹⁰

Phase I of the naturalization reforms also resulted in a significant reduction in unintentional discrimination against all foreign-born workers who are employment authorized. The erroneous TNC gap between foreign-born and U.S.-born workers was 2.4 percentage points in April through June 2008 compared to 3.6 percent in the January through March 2008 quarter that immediately preceded implementation of Naturalization Phase I (Exhibit X-21). This gap would have been further decreased if Naturalization Phase I had been in existence earlier in the quarter.

Exhibit X-21. Trend in Erroneous TNC Gap Between U.S.-Born and Foreign-Born Workers: January 2006–June 2008

²¹⁰See Table 1.7 Employment Status of the Civilian Population 16 Years and Over by Sex and U.S. Citizenship Status: 2004 (Numbers in thousands. 1/ 2/) (<http://www.census.gov/population/socdemo/foreign/ppl-176/tab01-7.xls>).



SOURCE: E-Verify Transaction Database.

The reduced erroneous TNC rate attributable to Naturalization Phase I presumably decreased the potential for privacy violations. As discussed earlier in this chapter, employers do not always inform workers receiving TNCs about their TNCs in private. Therefore, reducing the erroneous TNC rate should reduce worker exposure to this risk.

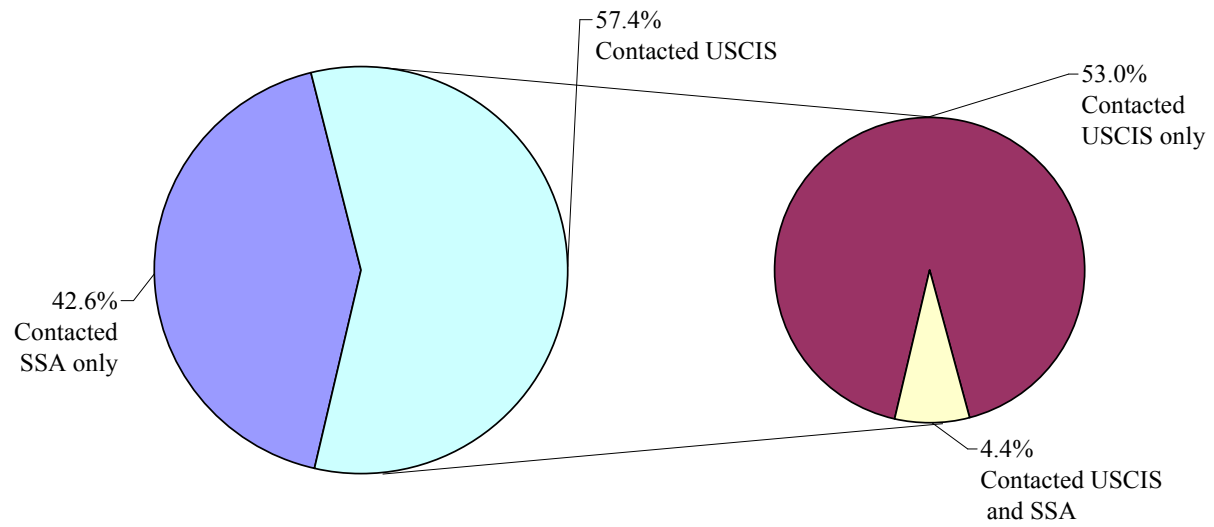
2.3.6. Naturalization Phase II

Naturalization Phase II has reduced the time and financial burdens of resolving TNCs for many naturalized citizens; however, the long-term savings may prove to be less than the initial savings. Naturalization Phase II, implemented in May 2008, allows naturalized citizens to resolve erroneous TNCs by contacting USCIS by phone rather than by making a trip to an SSA office. Approximately half (53 percent) of the eligible workers who contacted either agency took advantage of the option to contact USCIS (Exhibit X-22). The citizens who choose to contact USCIS instead of SSA will presumably have lower costs for resolving TNCs because of the differences in resolution procedures between USCIS and SSA. This would lead to a reduction in the discriminatory impacts of E-Verify on foreign-born citizens. However, since any discrepancies with SSA data will not have been corrected unless the worker chooses to do so independently, similar problems may occur if the worker moves to another participating employer.

Exhibit X-22. Extent to Which Naturalized Citizens Who Received TNCs Availed Themselves of the Opportunity to Contact USCIS Instead of SSA: May 5–June 30, 2008



E-VERIFY FROM THE PERSPECTIVE OF WORKERS



SOURCE: E-Verify Transaction Database.

CHAPTER XI. FEDERAL COSTS AND BURDENS

1. BACKGROUND

Decisions about the value of any program must be balanced against its financial and nonfinancial costs. Some of the earlier evaluation reports included extensive analyses of Federal costs in order to compare different versions of the pilot program and to give policymakers some idea of program costs under an expanded program; however, there is not currently a need to evaluate multiple electronic verification programs, and cost estimates of expanding the Program are now performed by the U.S. Citizenship and Immigration Services (USCIS) staff.²¹¹ Therefore, it was not cost-effective to do an in-depth examination of Federal costs in this evaluation; the discussion in this chapter is, therefore, cursory and limited to the impact of recent program and possible future changes on Federal per-case operating costs.

This chapter uses the following estimates of Federal per-case costs:

- Conducting USCIS secondary verifications is estimated as \$7 per case not instantly verified.
- Resolving Tentative Nonconfirmations (TNCs) by the Social Security Administration (SSA) is estimated by SSA to cost \$48 per contested case resolved by SSA.
- Resolving USCIS TNC cases is estimated as \$34 per case.²¹²

This chapter discusses costs related to the following topics:

- Increased use of E-Verify, including legislative changes that would make it mandatory for some or all employers;
- Increased accuracy;
- The Photo Screening Tool;
- The SSA and USCIS pre-TNC checks;
- EV-STAR;
- Naturalization Phase I; and
- Naturalization Phase II.

2. USAGE

The size and complexity of the E-Verify Program has increased rapidly over time, creating significant new workloads for Federal staff. Several Federal respondents pointed out that the rapid

²¹¹ Of course, this situation could change. For example, one legislative proposal (the New Employee Verification Act) would replace E-Verify with a system linked to the Database of New Hires, which is now used to find persons who are not paying child support. If this legislation were to be seriously considered, comparison of this new system with E-Verify would be critical.

²¹² Since USCIS did not have an updated per-case cost available for use in this report, previously estimated costs for FY 2008 are used in this chapter.

expansion in the program size has led to major increases in the size of and organizational complexity of E-Verify staff. The number of USCIS workers responsible for E-Verify increased from 59 in FY 2007 to 146 in FY 2008. The number of divisions with responsibility for operating the Program grew from five to 13. Federal respondents reported that the expansion created some problems, both because of the need for more complex coordination and because so many of the staff were new to the Program. As the Program has matured, USCIS reports that these problems have largely been overcome.

Documentation of software changes has not always been made promptly and completely. Although the operations contractor has been very cooperative with the evaluation team, it has not always updated software documentation promptly and completely after modifying it. This has resulted in the evaluation team misunderstanding how to measure key variables and having to redo a number of analyses.

The total Federal government cost for E-Verify has increased rapidly as the Program has grown. Financial costs associated with the expanding Program include system costs, hiring and training costs for new staff, and facility costs for housing new employees.²¹³

If the E-Verify Program grows because of increases in the number of employers mandated to use the Program, there will need to be some concomitant increase in the size of Federal staff with responsibility for the Program. SSA estimates that a mandatory national program would require them to hire 1,500 more field staff. Similarly, USCIS would likely need to increase the number of Immigration Status Verifiers (ISVs) to handle increased numbers of secondary verifications and contested TNCs. Although USCIS has increased staff as E-Verify has grown and has undertaken a number of contingency planning measures to prepare for the possibility of a mandatory program, USCIS staff report that their budgets through 2014 are based on the assumption that the Program will continue to be a rapidly expanding voluntary program.

Several Federal respondents cautioned against increasing the size of the E-Verify Program too rapidly. Several Federal respondents cautioned that large scale or mandatory expansion should be done on a phased-in basis to ensure that the Program is not overwhelmed with the need to hire, house, and train additional staff in a short period of time and the need to revise organizational structures and procedures developed for a smaller program.

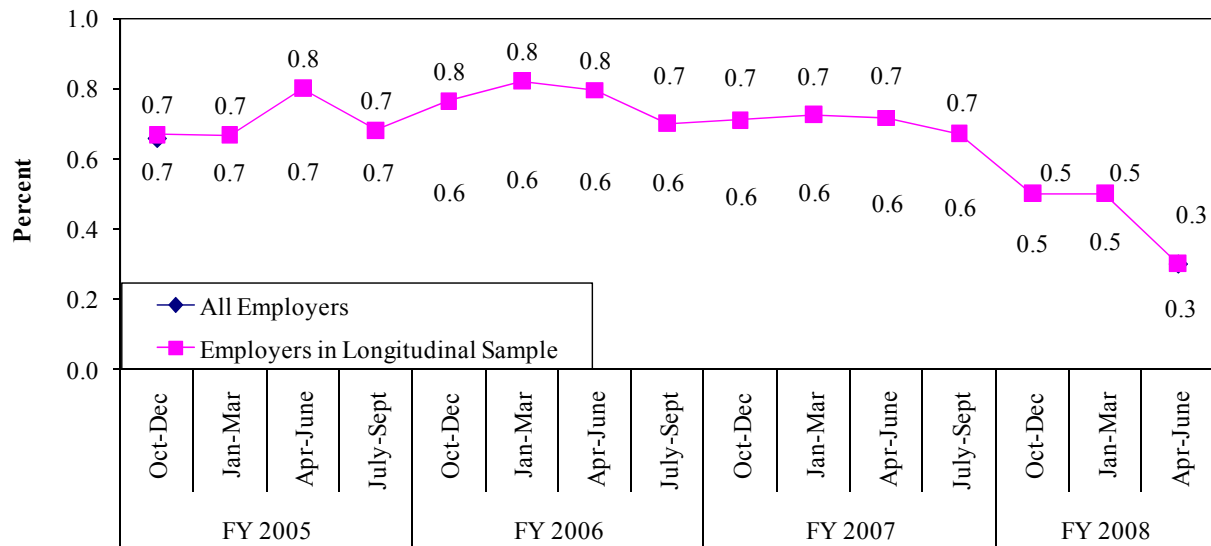
If E-Verify or a similar program were to become mandatory, a heavy investment in outreach and education would be necessary. If E-Verify were to become mandatory, E-Verify staff would need to reach out to a much larger group of employers and workers to make clear their rights and responsibilities under the Program.

²¹³ As noted in the Background section of this chapter, the evaluation has not estimated the total financial costs of the Program to the Federal government in this analysis, but it is clear that the cost increases have been substantial.

3. ACCURACY

SSA costs per case transmitted have decreased because the percentage of all cases requiring resolution of a TNC by SSA has declined. SSA's major ongoing cost for E-Verify is for resolving contested TNCs, which is currently done in person at SSA offices. As seen in Exhibit XI-1, the overall trend of the percentage of E-Verify cases requiring SSA to resolve contested TNCs has been trending downward over time at the same time that the Program has been expanding rapidly. In April through June 2005, 0.7 percent of all cases required SSA resolution of a TNC; by April through June 2008, it was down to 0.3 percent. If the percentage of cases requiring SSA to resolve a TNC in April through June 2008 had been the same as it was in April through June 2005, the estimated cost in April through June 2008 for resolving the additional 5,500 SSA TNCs resolved would have been a little more than twice as much as the actual cost (\$600,000 compared to \$262,000)—an annual operating cost savings of approximately \$1.4 million. Of course, since the Program has expanded over this time, the actual costs have increased.

Exhibit XI-1. Trends in Percent of Cases Needing SSA Resolution of TNCs

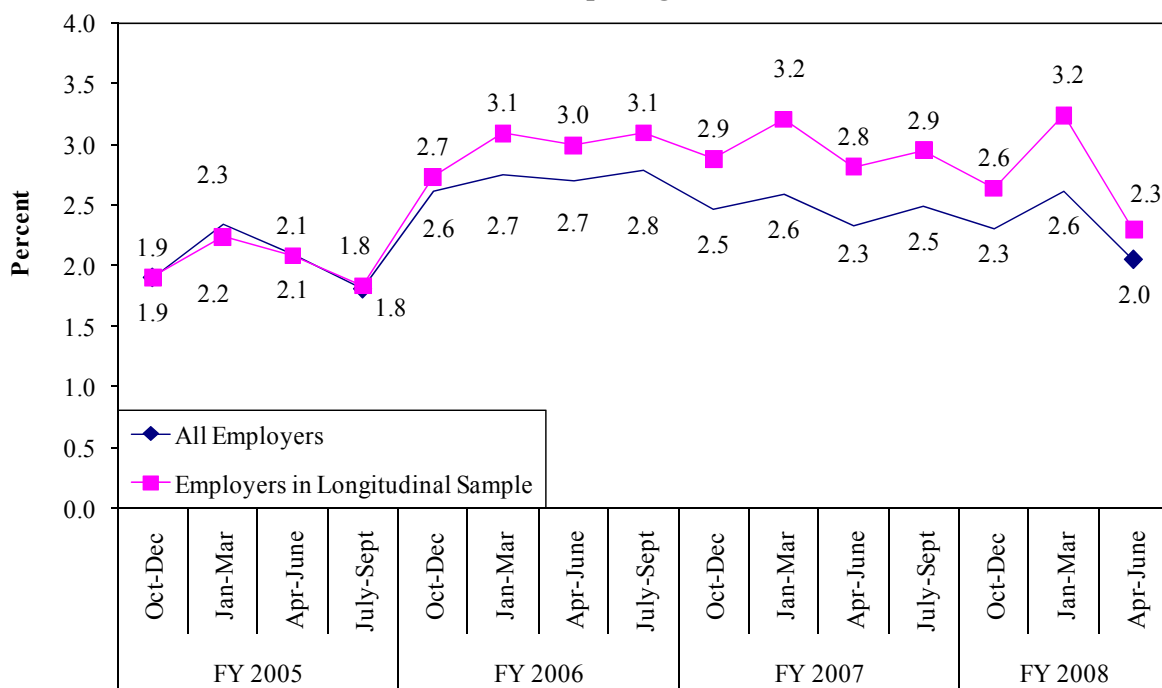


SOURCE: E-Verify Transaction Database: October 2004–June 2008.

The percentage of all cases requiring secondary review by a USCIS ISV has not changed appreciably. As seen in Exhibit XI-2, the overall trend in the percentage of E-Verify cases requiring USCIS to conduct a secondary review has not changed appreciably over time.²¹⁴ Thus, the total operating costs for resolving these cases has increased roughly proportionately to the overall increase in cases submitted to E-Verify and inflation. The estimated cost for April through June 2008 was \$248,000 compared to the estimated April through June 2005 cost for secondary reviews of \$32,000 in 2008 dollars.

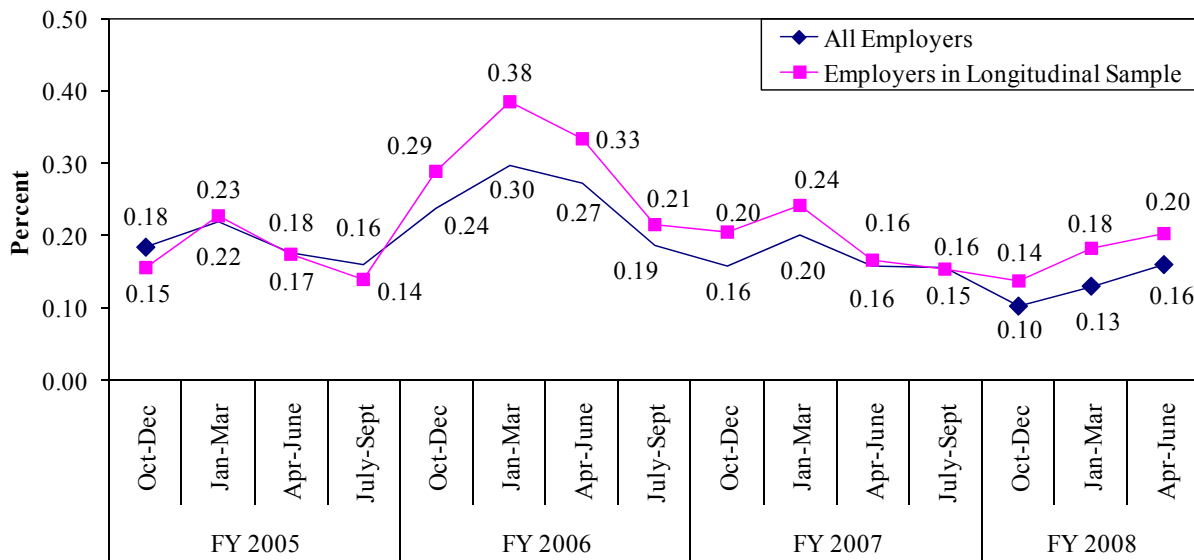
²¹⁴Note that the trend would have been downward if there had not been an October 2005 change in procedures that required all noncitizen cases to be verified by USCIS rather than having SSA confirm their status if SSA records indicated that the person had permanent work authorization.

Exhibit XI-2. Trends in Percent of All Cases Requiring USCIS to Conduct a Second-Level Review



SOURCE: E-Verify Transaction Database: October 2004–June 2008.

The percentage of all cases requiring resolution of a TNC by USCIS has not changed appreciably since April through June 2005. As seen in Exhibit XI-3, the overall trend in the percentage of E-Verify cases requiring USCIS to conduct a third-level review has not changed significantly over time. Thus, the total operating costs for resolving these cases has increased roughly proportionately to the overall increase in the number of cases submitted to E-Verify. The estimated cost for April through June 2008 was \$94,000 compared to the estimated April through June 2005 cost of \$13,000 expressed in 2008 dollars.

Exhibit XI-3. Trends in Percent of All Cases Requiring TNC Resolution by USCIS

NOTE: These percents are cases receiving third-level reviews, including workers found not work authorized as well as those found work authorized.

SOURCE: E-Verify Transaction Database: October 2004–June 2008.

USCIS has expanded the number of Department of Homeland Security databases that are incorporated into the Verification Information System (VIS) during the last 10 years, has taken a number of measures to expedite data entry into these systems, and contemplates adding more in the future. In the long run, these steps are likely to be cost-effective; however, these steps have had and will continue to have impacts on system costs during implementation due to the costs for new programming.

Eliminating the ISV review of noncitizen cases that are not instantly verified to determine whether cases can be resolved without the issuance of TNCs, as some have suggested, would increase Federal costs. The cost for resolving a TNC case is significantly greater than the cost for conducting a secondary verification (\$7 for the secondary review compared to \$34 for resolving the TNC at the third level). Since the secondary verification resulted in finding 55 percent of the cases reviewed to be work authorized in April through June 2008, stopping the secondary review would increase rather than decrease USCIS costs for operating E-Verify.

4. PHOTO SCREENING TOOL

The Photo Screening Tool increases Federal costs to the extent that the extra check increases the number of erroneous TNCs that are contested. As discussed in Chapter VI, there have been very few Photo Screening Tool TNCs contested and thus the process has had a negligible effect on USCIS costs.

However, the Federal government does incur some costs for processing requests from employers for help with the process and for reviewing cases in which the employer believes there is a nonmatch between the identity document proffered and the document photograph on the Federal database(s) queried. There are also system costs for adding the photographs to E-Verify. The evaluation does not have an estimate of these costs.

5. THE SSA AND USCIS PRE-TNC CHECKS

The pre-TNC checks implemented in September 2007 reduced Federal costs in comparison to what they would have been in the absence of these modifications. As discussed in Chapter VI, the pre-TNC check reduced the erroneous TNC rate, thus reducing the Federal costs both for USCIS secondary reviews and for resolving TNCs. The estimated cost savings for this change would be approximately \$48 for each contested SSA TNC case avoided, \$7 per case secondary review that does not need to be resolved by USCIS, and \$34 per case for every USCIS TNC case that does not need to be resolved.

6. EV-STAR

EV-STAR would not be expected to significantly affect ongoing operating costs. There is no reason to believe that EV-STAR would increase the cost of resolving SSA TNCs. However, it does require additional costs for training existing and new SSA field office staff.

7. NATURALIZATION PHASE I

Checking USCIS databases prior to issuing TNCs for persons attesting to being U.S. citizens has made a significant contribution to reducing Federal costs. Although there were clearly implementation costs associated with the Naturalization Phase I program modification, there are also long-term savings. The additional automated database checking process was seen in Chapter VI to have reduced the number of successfully contested SSA TNCs by approximately 3,300 between May 5 and June 30, 2008.²¹⁵ The estimated cost savings associated with resolving those cases was approximately \$160,000. Annualizing this cost provides an estimated savings of approximately \$1.0 million.

8. NATURALIZATION PHASE II

Permitting naturalized citizens to resolve TNCs regarding their citizenship status with USCIS rather than SSA has led to a slight decrease in costs for the Federal government. Since the estimated cost for resolving a TNC with USCIS is somewhat lower than for SSA, there was an estimated Federal savings from this modification in May 5 through June 30, 2008, of approximately \$14 per case resolved by USCIS rather than SSA for a total savings of \$5,000 for the 355 cases resolved by USCIS. This savings was offset by the increased costs for the 32 cases that were referred to SSA after contacting USCIS that required both agencies to review the case, estimated as approximately \$1,100. The annualized savings from Naturalization Phase II were approximately \$25,000. It should also be noted that under current procedures, naturalized citizens resolving erroneous TNCs with USCIS may continue to have incorrect SSA records that may result in SSA costs at a later time to resolve the discrepancy.²¹⁶ Thus, the impact of Naturalization Phase II on Federal costs is small compared to the other changes examined in this report.

²¹⁵See Chapter VI for a discussion of how this 3,300 was computed.

²¹⁶This additional cost could be averted by SSA modifying its records for naturalized citizens at the point that USCIS verifies that they are indeed naturalized citizens.

PART 4. CONCLUSIONS AND RECOMMENDATIONS

Part 4 consists of two chapters.

- Chapter XII presents the report **conclusions**. Its organization differs from that of the report itself in order to bring together related findings from the separate chapters. It is meant to complement the Executive Summary, which provides a more straightforward summary of the report.
- Chapter XIII presents the evaluation team's **recommendations** for the E-Verify Program in light of the findings.

CHAPTER XII. CONCLUSIONS

This chapter highlights the major findings in the report from a somewhat different perspective than the preceding chapters.²¹⁷ The first section provides an overview of the major E-Verify strengths and ongoing challenges facing the Program. The second section focuses on the impacts of recent changes to E-Verify. By bringing together related information from different sections about these changes, this chapter is meant to clarify issues, such as the impacts of the Photo Screening Tool, that are covered in multiple chapters.

1. E-VERIFY STRENGTHS AND ONGOING CHALLENGES

1.1. Preventing Unauthorized Employment

1.1.1. Strengths

E-Verify has been proven to be effective in meeting its primary goal of reducing unauthorized employment among participating employers. The evaluation estimates that approximately half of the cases submitted for workers without employment authorization correctly received either Final Nonconfirmations (FNCs) or unauthorized findings, i.e., they were not found work authorized in April through June 2008. In most cases, employers take the appropriate action of terminating the employment of these workers or, for employers screening job applicants, employers do not hire workers identified by E-Verify as having an FNC or unauthorized finding. Furthermore, some workers without employment authorization may avoid employers using E-Verify, thereby limiting their employment options. Thus, E-Verify has been successful in reducing the level of unauthorized employment among employers using it.

1.1.2. Challenges

E-Verify, as currently formulated, finds many unauthorized workers committing identity fraud to be work authorized. If a worker presents documents that appear valid and contain information about a real work-authorized person, E-Verify is unlikely to detect the identity fraud. As a result, it is estimated that approximately half of unauthorized workers with cases submitted to E-Verify receive an inaccurate finding of being work authorized.

1.2. Usage

1.2.1. Strengths

E-Verify has been growing rapidly since its inception. One general measure of a program's success is how rapidly it is growing. E-Verify has proven to be highly successful by this measure. In April through June 2005, 217,000 cases were submitted to E-Verify. By April through June 2008, this number had grown to 1.7 million—an eight-fold increase in three years.

²¹⁷ Readers interested in a summary of the report are referred to the Executive Summary.

1.2.2. Challenges

Most U.S. workers are not processed through E-Verify. The evaluation team estimated that no more than 12 percent of new hires were processed through E-Verify in April through June 2008. This limited usage means that most jobs are offered by employers that do not use E-Verify.

1.3. Timeliness

1.3.1. Strengths

Case processing timeliness has been improving. The mean number of days from case initiation to final resolution has declined from 0.9 days in October through December 2004 to 0.4 days in April through June 2008. One major reason for the decrease in time from case initiation to final resolution is that the percentage of all cases instantly verified as work authorized increased steadily between the start of the Program and June 2008. A second likely reason is that changes in the secondary review process were instituted to speed up that process.

Most workers receiving Tentative Nonconfirmations (TNCs) received their TNC notices promptly. Among the 352 record review cases that included a signed TNC notice, 320 were signed by the worker within a week of the issuance of the TNC. Among the 191 record review cases with a referral date and a signed TNC notice indicating that the worker wanted to contest the TNC, 183 were referred to the Social Security Administration (SSA) or the U.S. Citizenship and Immigration Services (USCIS) within a week of the date the worker signed the TNC notice.

Most workers contesting SSA TNCs do so shortly after they are referred to SSA. Workers receiving TNCs who wish to contest have eight Federal workdays to contact USCIS or SSA. Almost half of workers contesting SSA TNCs since the start of EV-STAR in October 2007 did so within one day of the referral date input into E-Verify by their employers; however, 6 percent took 11 or more days to contact SSA.

1.3.2. Challenges

Although employers usually obtain prompt responses from E-Verify when entering cases, there are times when the system is down. During the year prior to the end of the data collection for this study, July 2007 through June 2008, the E-Verify systems contractor documented 13 incidents of the system being unavailable due to systems-related problems, ranging from a few minutes to several hours. The system is also closed to data entry for approximately six hours each Sunday night for routine maintenance. In addition, there are approximately 30 hours a week that the SSA system is unavailable at night, which means that employers inputting queries during night shifts do not always receive instantaneous responses to their queries.

Employers do not always follow the requirement to promptly terminate employment when E-Verify is not able to confirm that an employee is work authorized. Although most Web survey respondents (87 percent) who had employees who received FNC or unauthorized findings reported terminating that employment within a week of receiving the FNC or unauthorized finding, 5 percent reported having taken more than one week to terminate the employment, and 8 percent reported that they had never terminated the employment of any of these employees.

1.4. Accuracy

1.4.1. Strengths

The accuracy of the USCIS database, as measured by the erroneous TNC rate for workers ever found authorized, continues to improve. The overall erroneous TNC rate declined from 0.9 percent to 0.5 percent between April through June 2005 and April through June 2008.

Employers believe that E-Verify is accurate. A large majority of employers (92 percent) using E-Verify reported that it is a highly accurate system for verifying work authorization.

1.4.2. Challenges

There is a continuing need for improvement in the accuracy of E-Verify for subgroups of workers. Although the estimated total inaccuracy rate of 4.1 percent (with a range of 2.3 to 5.7 percent) is not very different from the accuracy of many other Federal systems, the inaccuracy rates for some subgroups are higher than may be desirable. For example, due to its inability to detect identity fraud, E-Verify remains unable to identify approximately half of workers without employment authorization. Also, although much improved since the last evaluation, the erroneous TNC rate for foreign-born citizens (3.2 percent) remains well above the rate for U.S.-born workers (0.1 percent). This is largely due to out-of-date SSA and USCIS database information on the citizenship status of many foreign-born citizens.

1.5. Employer Compliance

1.5.1. Strengths

Employers were more likely to report in the Web survey that all staff actively using the E-Verify system had completed the tutorial in 2008 than had reported this in 2006. In 2008, 90 percent of Web survey respondents reported that all verification staff had completed the tutorial compared to 84 percent in 2006, presumably decreasing employer noncompliance attributable to employers' misunderstanding the Program's procedures.

The transaction data were consistent with the claim that employers generally do not single out either citizens or noncitizens for verification. Of the approximately 8,600 employers that had submitted cases for at least 100 workers between July 2004 and June 2008, 0.1 percent did not submit cases for any workers attesting to being citizens and 4.2 percent did not submit any noncitizen cases. These numbers are small enough that it is reasonable to believe that few, if any, of these employers are selectively submitting cases for either citizens or noncitizens among their new hires.

1.5.2. Challenges

Some employers are not complying with E-Verify procedures. Some employers do not consistently adhere to such E-Verify requirements as entering Form I-9 information within three workdays, not prescreening, failing to hire workers without providing them with the right to contest the finding, or promptly terminating the employment of workers receiving FNCs. For example, according to the record review information, at least 27 of the 108 onsite study employers had submitted at least one case for a job applicant. Additionally, based on information from worker interviews, there appears to be significant underreporting of noncompliance by employers. For example, of the 42 onsite study employers that said they did not screen job applicants as a general practice, 35 had one or more employees who reported that their work-authorization status was determined when they were job applicants. Although some of the worker reports of prescreening may be inaccurate because of confusion about the job being referred to,

the definition of hire date, or some other reason, it seems reasonable to believe that many of these were cases in which the employer did, in fact, prescreen at least some workers but did not report such behavior in an interview.

One reason for employer noncompliance was that employers were not always aware of their responsibilities under E-Verify. For example, of the 12 onsite study employers that reported prescreening some or all of their job applicants, eight did not appear to understand that prescreening is not allowed by the E-Verify Program.

1.6. Employer Burden and Satisfaction

1.6.1. Strengths

Employers were generally satisfied with E-Verify and indicated that it was not burdensome. Most Web survey employers (95 percent) reported that E-Verify is an effective tool, and a large majority of them (80 percent) disagreed or strongly disagreed that it is impossible to fulfill all the employer obligations required by the E-Verify process. In addition, of the 104 onsite study employers discussing their overall satisfaction with E-Verify, 99 reported being generally satisfied.

1.6.2. Challenges

Perceived employer burden does prevent some employers from using E-Verify. Approximately one-quarter of employers that had signed up for E-Verify and had either never used the Program or stopped using it cited employer burden as a reason for their nonuse.

Some employers were dissatisfied with aspects of E-Verify and/or made recommendations about possible improvements to E-Verify. One of the more frequently mentioned dissatisfactions with the E-Verify Program was communication between SSA, USCIS, and employers. Another frequently mentioned employer recommendation for improvement was to allow employers to screen job applicants.

Employer satisfaction appeared to be somewhat lower in 2008 than in 2006. In 2008, 80 percent of Web survey respondents disagreed or strongly disagreed that it is impossible to fulfill all the employer obligations required by the E-Verify process, significantly lower than in 2006 when 95 percent disagreed or strongly disagreed with this statement. This may relate in part to the fact that some states have made E-Verify mandatory for some or all of their employers, moving it from the totally voluntary program it was in 2006.

1.7. Worker Rights, Worker Burden, and Discrimination

1.7.1. Strengths

Almost half of interviewed workers who discussed their costs for resolving TNCs reported that they had no costs. Of the 115 workers who reported information about costs, 47 reported that there were no costs to contesting the TNC. This finding would tend to reduce any discriminatory impact of TNCs since work-authorized foreign-born persons more frequently receive erroneous TNCs than do U.S.-born persons.²¹⁸

²¹⁸ As explained in Section 1.3 of Chapter X, discrimination does not require that an action is intended to harm a group of protected individuals; it can also occur unintentionally.

E-Verify apparently reduces discrimination against foreign-born workers in the hiring process.

Although 81 percent of users reported that E-Verify made them neither more nor less willing to hire immigrants, when change was reported, it was almost always in the direction of making employers more willing to hire immigrants (17 percent) compared to those who were less willing (2 percent).

The gap between the erroneous TNC rates for U.S.-born and foreign-born workers has decreased substantially. The gap in erroneous TNC rates between foreign-born and U.S.-born workers decreased from 4.0 percent in April through June 2006 to 2.4 percent in April through June 2008.

1.7.2. Challenges

Employers do not consistently comply with E-Verify requirements designed to protect worker rights. Some employers fail to inform employees or job applicants of their TNCs or take adverse actions against them such as curtailing their training during the time they contest TNCs, thereby denying them their rights under E-Verify to due process. Among the 161 workers who discussed whether adverse actions had been taken against them by employers as a result of their TNCs, 59 workers reported that adverse actions (such as hiring delays, training delays, and not being paid for work completed while contesting TNCs) had been taken against them.

Some workers reported costs of more than \$50 to resolve TNCs. Among the 53 workers reporting costs greater than zero for resolving TNCs, 25 workers spent more than \$50.

E-Verify contributes to post-hiring discrimination against foreign-born workers, since foreign-born workers with employment authorization are more likely to incorrectly receive TNCs. The percentage of foreign-born workers ever found to be work authorized by E-Verify who received a TNC prior to having their work authorization verified in April through June 2008 was 2.6 percent, compared to 0.1 percent of workers who are U.S. born. This means that foreign-born workers with employment authorization were over 20 times more likely than U.S.-born workers to incur the burden associated with resolving TNCs. Although the process for resolving TNCs is usually neither costly nor burdensome, some workers with employment authorization are dismissed or not hired because of TNCs without an opportunity to avail themselves of their right to resolve their TNCs with SSA or USCIS.

Persons attesting to being work-authorized noncitizens on the Form I-9, especially those who are not lawful permanent residents, are more likely than those attesting to being U.S. citizens to receive erroneous TNCs. Between April and June 2008, the erroneous TNC rate for workers attesting to being U.S. citizens was 0.3 percent, compared to 1.0 percent attesting to being lawful permanent residents and 5.3 for workers attesting to being other noncitizens with authorization to work.

1.8. Privacy and Security

1.8.1. Strengths

SSA and USCIS have taken care to protect the privacy of the workers with information submitted to E-Verify. SSA and USCIS have a number of policies in place to ensure the security of all of their databases, including E-Verify. In addition, the Federal government processes queries only for employers that have signed an MOU. These employers are identified through establishment access and user identification codes. Each person using the system is also expected to have an individual user identification number and password that must be changed regularly. Additionally, employers have access to only the cases they submit.

1.8.2. Challenges

Concern has been raised about the potential for individuals other than authorized E-Verify users at legitimate employers to use E-Verify to obtain information about the employment-authorization status of individuals. There are currently no safeguards in place to ensure that entities enrolling in E-Verify are legitimate employers that will only use the system for determining the employment-authorization status of workers; however, there are no reported cases of either nonlegitimate employers enrolling in the Program or employers using it to verify for purposes other than determining employment-authorization status. USCIS and SSA are exploring ways to implement safeguards against this type of abuse as the system expands.

Employers did not consistently inform employees of TNC findings in private. Although almost all employers (94 percent of 2006 Web survey employers and 91 percent of 2008 Web survey employers) reported that they always inform employees of TNC findings in private, 33 of 140 workers in the 2008 onsite study reported being notified in an area that was not private.

1.9. General Improvements

1.9.1. Strengths

USCIS staff report that they have undertaken a number of efforts to improve E-Verify. In response to earlier evaluations and other factors, USCIS had made ongoing changes to the Program to address identified shortcomings and to improve program performance. Reported efforts to improve E-Verify include adding data sources that can be checked automatically, making the system and forms more user-friendly through clearer guidance and improvements to the tutorials, exploring ways to make E-Verify more secure, and working toward full implementation of a monitoring and compliance capability. These efforts have also included enhancing outreach efforts to employers and, to a lesser extent, workers, including presentations by USCIS, Webinars for employers, advertising campaigns, and establishment of a phone center to provide program information to the public.

1.9.2. Challenges

There is room for improvement in the communication between E-Verify users and both SSA and USCIS. Of the 74 onsite study employers that commented on their communication with SSA, 17 employers were dissatisfied. Some of these employers reported that SSA offices did not understand or even know about E-Verify, while a few others were frustrated that SSA could not provide an explanation as to why some cases took longer than 10 days. Of the 103 onsite study employers commenting on their communication with USCIS, 27 said they were dissatisfied with the communication. Of the 27 dissatisfied employers, 15 were dissatisfied with the way changes were communicated, eight were dissatisfied with their communication with the helpline, and four were generally dissatisfied with their communication with USCIS.

2. IMPACTS OF RECENT LEGISLATIVE AND PROGRAM CHANGES

2.1. State Legislative Changes

Arizona is the only state that had implemented legislation that required the use of E-Verify by all employers in the state during the time period examined in this report. However, several other states had enacted legislation requiring some employers to register for the Program. Because of the small number of

states involved, it is difficult to differentiate the effects of legislative changes from other differences among these states. However, based on the limited analysis of available data, it appears that the effects of legislative changes were as follows:

- **Increased use of E-Verify.** In Arizona, the number of employers transmitting cases to E-Verify had a 50-fold increase between January through March 2007, when their mandatory participation law first took effect, and April through June 2008. During the same time period, the remaining states increased their usage by two- or three-fold. A difference this large is unlikely to be attributable to factors other than the legislation.
- **Arizona employers had an average compliance score below that of employers in other states.**²¹⁹ Comparing Arizona employers responding to the Web survey with other survey respondents based on a general measure of compliance with E-Verify procedures on a measure that has a mean of 500 and a standard deviation of 100²²⁰ indicated that Arizona employers were slightly less compliant than other employers (474 compared to 510 for other employers). It is possible that this is because employers required to use E-Verify are less compliant than other employers. However, it may be due to factors other than the State Legislation Group differences, such as differences in the demographic characteristics of employers in Arizona compared to the rest of the country or the disproportionately high number of employers newly enrolled in E-Verify in Arizona.
- **Employers in Arizona were more timely than other states in case submission and referring workers to SSA or USCIS.** The average time from hire date to case initiation in April through June 2008 for Arizona (4.8 calendar days) was markedly shorter than the 8.2 days for states requiring some employers to use E-Verify and 9.8 days for other employers. The average time from TNC issuance to referral for Arizona (3.6 calendar days) in April through June 2008 was also shorter than the 4.0 days for employers in states requiring some but not all employers to enroll and 4.3 in other states.
- **No detectable effects on employer satisfaction were noted between Arizona and other employers.**

2.2. Program Changes

2.2.1. Photo Screening Tool

Most employers expressed considerable satisfaction with how the Photo Screening Tool was implemented and reported no significant problems in using it. Among employers that had used the Photo Screening Tool, 97 percent agreed or strongly agreed that “The Photo Tool is easy to use.” However, there was widespread confusion among employers about how to use it. For example, 59 percent of employers reported in the Web survey that they compared the picture from the Photo Screening Tool with the worker (instead of or in addition to comparing it with the document), which is not consistent with E-Verify procedures.

Despite employer satisfaction with the Photo Screening Tool, its effects on the E-Verify Program were mixed:

²¹⁹This difference is statistically significant at the .05 level using a one-tail test, but not using a two-tail test.

²²⁰See Chapter II for additional information on the Compliance Scale.

- Since the current Photo Screening Tool can only be used for those workers submitting certain immigration documents, it clearly increases at least the appearance of unintentional discrimination against noncitizens.
- The effectiveness of the Photo Screening Tool is significantly limited by the fact that it is not available for most workers with cases submitted to E-Verify—it was available for 4 percent of cases submitted in May 5 through June 30, 2008. Furthermore, at the time this report was written, it appeared unlikely that the Photo Screening Tool would be expanded to a significantly larger group of cases in the foreseeable future.
- The Photo Screening Tool slightly increased the ability of E-Verify to identify workers without employment authorization. The estimated percentage detected in April through June 2008 would have been 45.8 percent without the Photo Screening Tool compared to the 46.0 percent estimated effectiveness with the Photo Screening Tool. On the other hand, the Photo Screening Tool led to an extremely minor increase in the inaccuracy rate for workers with employment authorization, since employers may incorrectly determine that the document photo does not correctly match the photo displayed by the Photo Screening Tool.
- The Photo Screening Tool has very slightly decreased the percentage of cases that are verified instantly as work authorized, thereby slightly reducing timeliness.
- The Photo Screening Tool has contributed to employer noncompliance in the sense that it creates additional rules that the employer must follow. Compliance with these rules at least initially has been poor, presumably because the rules are new and relate only to certain workers, and employers do not fully understand the process.

2.2.2. Pre-TNC Checks

The pre-TNC checks appear to have been successful in reducing the erroneous TNC rate. This change, implemented in mid-September 2007, instructs employers to recheck their data input when the initial automated check indicates that the worker is about to receive an SSA TNC or the case is about to be sent for a secondary verification review and possible TNC for cases sent to USCIS. The erroneous TNC rate for all workers ever found work authorized declined from 0.72 to 0.58 (a decline of 0.14 percent) between July through September 2007 and October through December 2007. The observed decline in the erroneous TNC rate was larger than the declines observed between these same two periods in the two preceding years. It also seems plausible that the pre-TNC check explains the decline in data input errors leading to TNCs that were reported by employers in the Web survey (from 52 percent in 2006 to 42 percent in 2008) reporting having had such errors.

The pre-TNC checks may have led to a slight improvement in the percentage of E-Verify cases instantly verified as work authorized. The percentage of cases instantly verified as work authorized increased 0.2 percentage points (from 94.3 to 94.5) between July through September 2007 (the quarter before the TNC check was implemented²²¹) and October through December 2007 (the first quarter after the change was made). Although this was less than the increase of 0.5 percentage points (92.9 to 93.4) between July through September 2006 and October through December 2006, it was well above the

²²¹ The pre-TNC checks were introduced in mid-September 2007 near the end of the quarter.

decrease of 0.8 percentage points (92.7 to 91.9) between July through September 2005 and October through December 2005.

2.2.3. EV-STAR

In the long run, EV-STAR should make a positive contribution to E-Verify because it reduces employer burden and provides better follow-through of cases sent for SSA secondary verification. It has increased SSA's ability to track E-Verify cases and has decreased the percentage of cases receiving erroneous SSA FNCs when SSA is not able to promptly verify the work authorization of individuals who must provide SSA with documents that may take a long time to obtain, such as some birth certificates. The pre-FNC check instituted in conjunction with EV-STAR that compares the E-Verify data for SSA TNC cases not reported to be successfully resolved in EV-STAR also detects some cases that might have previously defaulted to FNCs. However, the implementation of EV-STAR created considerable initial confusion on the part of some employers that did not understand the changed procedures.

Employers had mixed views on the impact of EV-STAR on SSA response time. Some employers commented that the change in SSA procedures that occurred when EV-STAR was implemented has had a positive impact on SSA response time. However, other employers reported dissatisfaction with changed procedures because the change has made the process more time-consuming. It is possible that this dissatisfaction was at least partially attributable to initial employer confusion about the changed procedures.

2.2.4. Naturalization Phase I

The institution of Naturalization Phase I led to a dramatic reduction in the erroneous TNC rate for foreign-born citizens; however, it also led to a small reduction in the effectiveness of E-Verify in identifying workers without employment authorization. Naturalization Phase I was designed to reduce erroneous TNC findings for naturalized citizens by checking USCIS data files with information about naturalized citizens when SSA can confirm the identity but not the employment-authorization status of workers attesting to be U.S. citizens. The erroneous TNC rate for foreign-born citizens dropped from 7.0 percent to 3.2 percent between January through March 2008 and April through June 2008, even though Naturalization Phase I did not take effect until May 5, 2008, while the rate stayed constant for U.S.-born workers.

An unintended consequence of Naturalization Phase I was an increase in the percentage of workers without employment authorization who were found work authorized. Based on the model developed for the evaluation, it is estimated that approximately 1,400 of the 6,100 cases found work authorized by the Naturalization Phase I check were cases for workers without employment authorization who had stolen or were borrowing the identity of naturalized citizens (i.e., they were committing identity fraud). These cases represent approximately 2.3 percent of the cases for workers without employment authorization submitted to E-Verify between the start of Naturalization Phase I on May 5, 2008, and June 30, 2008, with a plausible range of 0.4 percent to 4.0 percent. Thus, the implementation of Naturalization Phase I decreased the effectiveness of E-Verify in identifying non-employment-authorized workers by approximately 2 percentage points. If Naturalization Phase I had not been in effect, the estimated effectiveness rate for workers without employment authorization would have been approximately 48 percent instead of the estimated 46 percent.

2.2.5. Naturalization Phase II

Approximately half of eligible workers took advantage of the opportunity established by Naturalization Phase II to contact USCIS instead of SSA to resolve erroneous TNCs. Since USCIS is

much less likely than SSA to require an in-person visit, this should facilitate resolution of TNCs in the short run and should slightly decrease the Federal costs of resolving TNCs since USCIS per case costs are lower than those of SSA. However, it may not be a time-saver in the long run, since contesting a TNC with USCIS does not currently allow SSA records to be updated unless the worker takes action independently, thus potentially resulting in recurring TNCs in the future as these persons change jobs and work for other employers participating in E-Verify.

CHAPTER XIII. RECOMMENDATIONS FOR IMPROVING E-VERIFY

This chapter presents recommended changes to the E-Verify Program based on the evaluation. Some of these recommendations were presented in previous evaluations; others have been implemented since data collection for the report was completed or are currently in the process of being implemented. Such changes are noted but not fully discussed. The report recommendations are grouped into the following broad categories:

- Increasing the effectiveness of E-Verify in reducing unauthorized employment;
- Decreasing violations of worker rights and discrimination against foreign-born workers with employment authorization;
- Improving operating efficiency and user-friendliness; and
- Conducting additional research.

Many of the recommendations in this report are to test and evaluate pilot programs. These pilot tests have two goals: (1) weigh the advantages and disadvantages of expanding the pilot program to all (or all appropriate) E-Verify employers; and (2) to the extent feasible, recommend ways to ameliorate the disadvantages identified.

1. INCREASING THE EFFECTIVENESS OF E-VERIFY IN REDUCING UNAUTHORIZED EMPLOYMENT

This report has demonstrated that although E-Verify has reduced unauthorized employment among employers using the system, there are also significant limitations to its ability to prevent unauthorized employment because of the prevalence of identity fraud. This section discusses a number of ways that E-Verify could be modified to increase its effectiveness in reducing unauthorized employment.

1.1. Testing and Evaluating a Pilot Program That Requires Workers to Be Found Employment Authorized Prior to Starting Work

A pilot program requiring E-Verify users to verify that workers are employment authorized prior to allowing them to start work should be tested and evaluated. The primary goals of the testing and evaluation would be to determine the relative advantages and disadvantages of requiring employers to confirm that potential employees are work authorized prior to the start of work, including determining whether it is possible to develop proper safeguards to minimize or avoid potential negative impacts such as increased discrimination and increased employer burden. Although legislative changes would be necessary to implement prework screening for all employers enrolled in E-Verify, the administration could presumably implement a pilot program using the demonstration project authority to test alternative verification systems allowed in the Immigration Reform and Control Act of 1986.

There are a number of potential advantages to not allowing workers to start a job prior to being verified as employment authorized:

- It would prevent workers without employment authorization from “job hopping” by working during the time it takes the employer to enter information into E-Verify; notify the worker of a Tentative Nonconfirmation (TNC); wait for the end of the 10 Federal workdays during which workers are allowed to resolve TNCs if they indicated they would contest; and terminate the worker’s employment. At the end of this time, which could easily last three to four weeks under current E-Verify procedures, workers are free to start over again with different employers.
- It would be expected to increase employer satisfaction with E-Verify, since many employers, including employers not now using E-Verify, find that the current procedures are burdensome due to the costs associated with hiring and training employees who must subsequently have their employment terminated.
- It would make E-Verify checking procedures consistent with other Federal and state laws that require background checks prior to starting certain jobs (<http://www.privacyrights.org/fs/fs16-bck.htm#4>).
- Employment-authorized workers who quit an existing job to accept a job with an E-Verify employer would not be faced with a situation in which the use of E-Verify results in their losing the new job shortly after they start work.²²²
- Monitoring and compliance efforts that might otherwise be spent on identifying employers that prescreen could be spent on other program violations, such as identifying employers that fail to follow procedures related to notifying workers of their rights under E-Verify.

Potential problems with the proposed pilot program are as follows:

- Employers may be less likely to inform workers of TNCs than is the case under the existing procedures. The main reason prescreening was forbidden in the original legislation was the concern that employers may fail to hire workers who receive TNCs without informing them of their right to contest, resulting in discrimination against employment-authorized foreign-born workers who are relatively more likely to have high erroneous TNC rates. (The erroneous TNC rate is defined as the percentage of workers ever found authorized by E-Verify who receive TNCs prior to being found work authorized.)

Although some employers are currently prescreening workers without providing them with an opportunity to resolve their TNCs, many other employers that prescreen workers follow E-Verify procedures for notifying workers of TNCs and their right to contest the finding. At the same time, some employers that do not prescreen do not properly notify employees of TNCs. Thus, the relationship between prescreening and informing workers of their right to contest are not as closely linked as appeared to be the case prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) authorizing E-Verify. One purpose of the evaluation of a pilot program would, therefore, be to determine

²²²This situation is most likely to arise if the E-Verify employer terminates employees without providing them with an opportunity to contest. However, even when employers follow proper E-Verify procedures, the contesting process is likely to be more stressful if the employee faces termination from a job instead of simply not being able to move to a new job.

what impact the revised pilot procedures have on the likelihood of employers' providing proper notice of TNCs compared with the current E-Verify Program.

- Those employment-authorized workers who would work during the contesting period under the current E-Verify procedures could potentially lose pay and possibly access to benefits and training, especially if these TNCs take some time to resolve. However, the extent of these losses is probably less than the original framers of the E-Verify would have envisioned because most workers who now resolve TNCs do so the same day that they receive the TNC, minimizing the loss of pay, benefits, and training.

It is, therefore, not clear what the relative size of worker losses under the pilot program would be compared to the current Program. This would, of course, constitute a major component of the evaluation of the pilot program.

- In some situations, requiring verification of work authorization prior to the start of work may be burdensome for employers. This could occur if an employer has an immediate need for help (e.g., a restaurant owner that needs a dishwasher or a hospital that needs emergency room personnel). It is especially likely to be a problem when E-Verify is not used at the hiring site, since time must be allowed for records to be transferred from the site to the place where E-Verify is used (such as when E-Verify cases are submitted by staff at a company's headquarters). The revised E-Verify procedures may, therefore, make some employers reluctant to hire foreign-born workers or others that they believe may get TNCs. The evaluation of the pilot program should, therefore, include an examination of this issue, including discussion with Federal officials responsible for programs requiring background checks.
- To the extent that employers screen workers prior to hiring them, the proposed pilot would increase the number of cases transmitted to E-Verify, and the number of TNC cases that the Social Security Administration (SSA) and U.S. Citizenship and Immigration Services (USCIS) need to resolve would increase, thereby increasing employer and Federal costs to implement and operate the revised program.

1.2. Testing and Evaluating a Pilot Program Using Analyses of the Transaction Database to Detect Identity Fraud and Requiring Expedited Reviews of Cases Identified

USCIS and SSA should develop sophisticated algorithms for identifying cases likely to be fraudulent and use this information in the verification process.

Factors likely to indicate fraud discussed in this report include the following:

- **Social Security numbers (SSNs) that are likely to indicate identity theft.** The likelihood of an SSN belonging to someone committing identity theft clearly rises with the frequency that it appears in the transaction data. There are additional factors (such as employer location and industry) that should be taken into account in defining SSNs likely to be associated with identity theft. For example, a smaller number of duplicates might be considered suspicious if the SSN were used in multiple geographically distant locations and industries. Similarly, for industries with high turnover rates, it might be advisable to use a larger number of duplicates or a shorter time frame. The USCIS Monitoring and Compliance unit is presently examining these data for monitoring purposes. This work could be used as a starting point for identifying SSNs likely to be being used fraudulently for other purposes.

- **Cases in which persons attesting to be noncitizens provide an SSN and identifying information belonging to someone born in the United States.** This report indicates that the percentage of TNCs that are successfully contested is quite low for persons attesting to being noncitizens but providing information on the Form I-9 belonging to someone born in the United States. Since the percentage of successfully contested TNCs within a group can be viewed as an indicator of the percentage of employment-authorized workers in the group, it seems likely that identity fraud is high among these workers.
- **Cases in which an SSN has previously had a Final Nonconfirmation (FNC) or unauthorized finding.** When an SSN is used that was previously associated with an FNC or unauthorized finding case, there is presumably a relatively high probability that the TNC recipient is not work authorized.
- **Cases in which an SSN and associated information belong to a person whose SSA record indicates that the person is deceased.**

USCIS and SSA should implement a pilot program for an expedited TNC process when it is highly likely that the worker is presenting fraudulent documentation as a potential alternative to prework verification. Expediting the resolution of cases highly likely to be fraudulent would decrease the amount of time such workers are employed while they claim to be resolving their TNCs. If such a program modification is implemented after the pilot period, SSA and USCIS should be encouraged to implement it incrementally so that the initial definition suggesting fraud is very limited, and then expand it if the modification appears to be effective without leading to an unacceptable erroneous TNC rate.

The algorithms developed to identify likely fraud should also be used to identify employers with high rates of workers who appear to be using fraudulent documents in order that corrective action can be taken. USCIS is currently developing algorithms to identify employers that appear to be submitting high numbers of cases for unauthorized workers and has also been developing procedures for determining the appropriate corrective action(s) to be taken.

1.3. Using Biometrics and/or Expanding the Photo Screening Tool

USCIS should discontinue the use of the Photo Screening Tool until progress can be made on expanding it to include a broader range of documents, including documents that are less tamper-proof and counterfeit-resistant than are the documents currently in the Photo Screening Tool. Although the Photo Screening Tool is popular with employers, there are potential disadvantages to its use. At the time of the evaluation, the Photo Screening Tool included only photographs for individuals presenting USCIS-issued Employment Authorization Documents (EADs) and green cards. The restriction of the Photo Screening Tool to these documents used by noncitizens is, on the face of it, discriminatory. Furthermore, as long as these are the only documents available in the Photo Screening Tool, the Tool will have no more than a minor impact on the ability of E-Verify to detect identity fraud, since such documents activate the Photo Screening Tool in only 4 percent of all cases and because these documents are relatively tamper-proof and counterfeit-resistant, presumably making them unattractive for counterfeiting and alteration.

More than one year after the initial implementation of the Photo Screening Tool, there has been no obvious progress toward incorporating driver's licenses or other new documents into the Photo Screening Tool. Furthermore, significant hurdles exist because many state laws prohibit sharing this type of information. Additionally, there are issues about who would resolve photo mismatches (SSA and

USCIS or the issuing agency). Arranging for sharing information with 54 entities, even through a single source such as the American Association of Motor Vehicle Administrators (AAMVA), would be challenging.

It is also inevitable that as the existence of the Photo Screening Tool becomes better known, more unauthorized workers will turn to using borrowed or stolen valid documents with pictures that resemble them or types of fraudulent documents not subject to scrutiny by the Photo Screening Tool, thereby reducing the usefulness of the Photo Screening Tool to detect and deter unauthorized employment until it is available for a broader range of documents..

There should be continued exploration, including development of a pilot program, of how fingerprints and/or other biometric checks can be incorporated into the E-Verify system while protecting workers against discrimination, ensuring privacy, and avoiding undue burden on employers and the Federal government. The accuracy of biometrics continues to improve and their use continues to expand; it is, therefore, likely that a biometric system (e.g., fingerprints) to detect identity fraud will become practical at some point. The feasibility of incorporating some form of biometric verification into E-Verify should, therefore, continue to be explored. This incorporation could be done either by having the employer verify the biometric indicator on the document with the person or by comparing the biometric indicator with stored records. If comparison was made to a fingerprint embedded into the driver's license, it would avoid some of the problems, such as obtaining cooperation from other entities to add their information to the database, encountered in expanding the Photo Screening Tool. Since fingerprints are now on some driver's licenses and on other documents used in E-Verify, a pilot program could be tested and evaluated. Implementing a pilot program would require addressing such practical issues as the cost and availability of fingerprint readers, especially to small employers and employers in remote or unusual locations.

In considering the use of biometric indicators, USCIS and SSA should attempt to coordinate their efforts with other agencies, groups, and programs interested in detecting identity fraud, since the cost-effectiveness of a coordinated approach is likely to be greater than that for a stand-alone system. Included among the groups that should be consulted are the Department of Justice, which "prosecutes cases of identity theft and fraud under a variety of federal statutes,"²²³ the Office of Inspector General (OIG) at the U.S. Department of Education, which "conducts audits, investigations, and inspections of education programs and operations" and operates the OIG Fraud Hotline,²²⁴ and the Federal Trade Commission, which is charged with consumer protection and maintains a website designed to be a "one-stop national resource to learn about the crime of identity theft."²²⁵

1.4. Expanding E-Verify Usage

Continued outreach is needed to make nonparticipating employers aware of the Program, its benefits, and its requirements. Since the effectiveness of E-Verify in deterring unauthorized employment is closely related to the size of the Program, outreach efforts should be continued and expanded.

²²³ <http://www.usdoj.gov/criminal/fraud/websites/idtheft.html#whatdoing> indicates that their "Federal prosecutors work with federal investigative agencies such as the Federal Bureau of Investigation, the United States Secret Service, and the United States Postal Inspection Service to prosecute identity theft and fraud cases."

²²⁴ <http://www.ed.gov/about/offices/list/oig/misused/index.html>.

²²⁵ <http://www.ftc.gov/bcp/edu/microsites/idtheft/>.

1.5. Other Recommendations Related to Reducing Unauthorized Employment

USCIS should implement and enforce a strong monitoring and compliance program. The evaluation has documented employer violations of E-Verify procedures that reduce the effectiveness of E-Verify, such as not terminating employees receiving unauthorized or FNC findings. Although some of these problems can be best addressed through improved education and training, it is also necessary to have a way of identifying and acting upon serious program violations that occur for reasons other than a lack of knowledge. Recognizing this need, USCIS has established monitoring and compliance units; however, at the time this report was being written this program has not yet become robust because of barriers to implementation due to privacy concerns. USCIS needs to resolve this impasse, especially if E-Verify becomes mandatory nationwide, since this report suggests that employers required to join the Program are more likely to look for ways around the program requirements than are those who participate voluntarily. Without a strong monitoring and compliance effort, employer noncompliance with program procedures is likely to continue and increase, diluting the ability of the Program to meet its goals.

USCIS should continue working on the development and implementation of guidelines that provide specific timeframes for notifying employees of TNCs and for terminating employees who receive FNCs or unauthorized findings. Without specific timeframes for notifying employees of TNC findings and terminating employees with FNCs, employers may allow the verification process to become protracted and make it difficult, if not impossible, to enforce violations of these provisions. As a result, unauthorized workers could work for extended periods, thereby reducing the effectiveness of the Program.

2. DECREASING VIOLATIONS OF WORKER RIGHTS AND DISCRIMINATION AGAINST FOREIGN-BORN WORKERS WITH EMPLOYMENT AUTHORIZATION

2.1. Decreasing the Inaccuracy Rate for Foreign-Born Workers With Employment Authorization

SSA and USCIS should continue efforts to reduce the high erroneous TNC rate for foreign-born workers with employment authorization. Although SSA and USCIS have made much progress in reducing the high erroneous TNC rate for foreign-born U.S. citizens and have plans to implement additional measures, more work remains to be done to reduce further the inaccuracy rates for foreign-born citizens and employment-authorized noncitizens. In April through June 2008, the erroneous TNC rate for foreign-born U.S. citizens was 3.2 percent and the rate for noncitizens was 2.1 percent, compared to an erroneous TNC rate of 0.1 percent for U.S.-born workers. In addition to creating burdens for foreign-born employment-authorized workers who receive TNCs, the erroneous TNC rate differences may result in unintentional discrimination against foreign-born workers with employment authorization.

The goal of inaccuracy rate reduction for any group of employment-authorized workers cannot realistically be set at 0.0. Because human error, such as employer input errors and brief delays in updating SSA and Department of Homeland Security (DHS) records, is not completely avoidable, a goal of a 0.0 inaccuracy rate is not attainable. Furthermore, in cases in which the work-authorization status is difficult to determine, reducing the inaccuracy rate for authorized workers would be likely to increase the inaccuracy rate for unauthorized workers. For example, it appears that although Naturalization Phase I was very effective in reducing inaccuracies for foreign-born citizens, it has also resulted in some workers without employment authorization being found employment authorized through identity fraud.

It is also not realistic to set a goal that the gap in inaccuracy rates between U.S.-born and foreign-born workers will be 0.0. The possibility for inaccuracy in determining work-authorization status is necessarily greater for foreign-born workers, especially those workers who either change their visa category status or have a temporary work-authorization status that needs to be extended periodically if they wish to continue to be employed. The need for changing records in these cases to reflect the change in workers' status creates additional opportunity for occasional inaccuracies or delays that are not encountered among U.S.-born citizens.

Additional measures that should be undertaken to reduce the inaccuracy rate for foreign-born workers include the following:

- **SSA should conduct additional outreach activities to encourage naturalized citizens, persons with derived citizenship, and lawful permanent residents to update their SSA records accordingly.** In addition to publicity campaigns, other outreach efforts may be warranted. For example, in some areas SSA staff attend naturalization ceremonies to encourage and assist new citizens in updating their citizenship status in SSA records at that time—a practice that could be broadened. In locations where SSA staff cannot attend naturalization ceremonies, SSA could provide a handout for USCIS to distribute, instructing new citizens on the need to correct their SSA records and how to do so. SSA could also consider using their annual mailings summarizing individuals' SSA account status to include a statement that they should go to an SSA office to notify SSA after a change in name or citizenship status.²²⁶ SSA will, of course, need to plan for the workload implications of asking substantial numbers of individuals to correct their records and may need to seek appropriations for this purpose, since this would increase workload for SSA field offices, at least in the short run.
- **In addition to the highly successful Naturalization Phase I program, USCIS and SSA should arrange for a one-time electronic transmittal of information for naturalized citizens.** This information should not be restricted to individuals for whom USCIS has SSNs, since SSA is often able to uniquely identify persons on its database from other information (i.e., name, date of birth, and country of birth). This information could be flagged, however, to indicate that it resulted from a data match in case a discrepancy is later found.
- **USCIS should ensure that all applicants for U.S. citizenship include their SSN on the naturalization application form and that this be a mandatory field for data entry.** In the future, USCIS should update their electronic records for applicants for citizenship and electronically send the SSN, name, date of birth, and new citizenship status to SSA at the time that U.S. citizenship is acquired to allow SSA to update their records automatically.
- **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.** USCIS should collect and input information about children who derive citizenship when their parents become naturalized citizens to ensure their records will be up to date, regardless of whether their parents apply for Certificates of Citizenship. This information should routinely be transmitted to SSA.
- **USCIS should ensure information about the current work-authorization status of noncitizens with a temporary humanitarian status is up to date and included in individual**

²²⁶SSA might also wish to consider providing workers with the name and citizenship information that is on their records; however, such a step should only be done after careful consideration of whether such procedures would increase opportunities for identity fraud if someone other than the named individual were to obtain these forms.

records in USCIS databases. USCIS examines Temporary Protected Status determinations annually and frequently extends the time that persons from designated countries are considered to have this legal status and thereby be employment authorized. On some occasions these changes are made through a Federal Register notice rather than through updating individual employment authorization records and documents. Incorporating information about extensions in individual records would reduce the inaccuracy rates for these individuals, since it is likely that most employers are aware of these changes. USCIS reports that they are considering implementing automated checks of Temporary Protected Status determinations.

- **USCIS and SSA should use algorithms that are as similar as possible to match noncitizen worker Form I-9 information with their databases.** Noncitizen cases are subject to more stringent matching criteria than citizen cases because they must match both SSA and USCIS databases before a determination of work authorization can be made. Given that the two databases use different numerical identifiers (the SSN and the A-number), there is currently no easy way to eliminate this “double jeopardy” situation. However, the USCIS and/or SSA matching routines involving name and date of birth should be modified to make them as consistent as possible. This change should probably be made by USCIS rather than SSA, because SSA’s routines have been better tested in other programs and over a much longer period than have those of USCIS.
- **USCIS should continue other efforts to ensure the data used in E-Verify are accurate and up to date.** USCIS should continue efforts to ensure that the E-Verify Program has access to all DHS electronic databases and hardcopy records²²⁷ that provide up-to-date information needed to determine the work-authorization status of noncitizens, naturalized citizens, and persons who derived U.S. citizenship when their parents became naturalized citizens. As part of its modernization and transformation efforts, USCIS should place emphasis on scanning, digitizing, and storing in electronic, searchable databases hardcopy files that contain information that will further improve the ability of E-Verify to verify the employment-authorization status of workers. Efforts should also be made to add SSNs to all digitized records to increase the probability that USCIS can match worker records with SSA database and Form I-9 information.

2.2. Enhancing Training and Resources

USCIS should continue recent work to make E-Verify training and resources more user-friendly. For example:

- **The language used in the tutorial and in the system itself should make the process and definitions less confusing for employers.** For example, the following terms, based on information from the onsite interviews, appear to confuse employers:²²⁸ “new hire,” “DHS Verification in Process,” “Case in Continuance,” and “Self-terminated.”
- **When questions are answered incorrectly, the tutorial should provide and explain the correct response to ensure that the user understands the material.** By providing and

²²⁷Such systems may be external to USCIS. For instance, Customs and Border Protection (CBP) collects arrival data for many groups of noncitizens who are work authorized incident to their nonimmigrant status. Similarly, Immigration and Customs Enforcement (ICE) maintains data on academic students and exchange visitors who may be authorized to work.

²²⁸When employers misunderstand and misuse these terms, the results shown in the Transaction Database become inaccurate, which has a negative impact on the usefulness of Transaction Database reports for management and monitoring purposes.

explaining the correct responses to questions with wrong responses, the tutorial will be able to provide additional targeted training when needed.

- **Training modules for staff other than system users and administrators should be developed to help prevent violations of procedures for which they are responsible.** Most importantly, managers and supervisors need to be aware of their potential responsibilities under the E-Verify Program to perform such functions as notifying and explaining TNCs to workers and need to be made aware that they may not take verification-related adverse actions against workers while the workers are resolving TNCs.
- **Periodic retesting and, if needed, refresher training should be used to ensure that material has not been forgotten.** Refresher training will remind employer staff of content that they may have forgotten, update them on recent changes to the Program in case they have missed previous announcements, and discourage the practice observed during onsite visits of assuming another user's name and password to avoid the tutorial and Mastery Test.
- **The tutorial or resource section should include examples of how to use the system to verify workers under a variety of scenarios.** Employers would benefit from seeing how more complicated cases are supposed to be handled from the point of data entry all the way through the referral process and case closure.²²⁹
- **Employers should be encouraged to complete the entire verification process with a set of test cases provided by USCIS for this purpose.** While some employers use test cases now, not all of them are aware of the possibility and staff involved in monitoring and evaluating the Program may have difficulty in identifying which cases are test cases for employers that make up their own test cases.
- **The system should be able to provide real-time online guidance to employers on E-Verify program requirements.** It is especially important that there be real-time online guidance on the TNC process, since some employers may encounter these cases infrequently and may not correctly recall how to handle TNCs.

Users should receive clear instructions on whom to call for help. The toll-free help desk number appears only on the system home page, not on pages where users are likely to need assistance. Many employers call their local SSA office for help with E-Verify and frequently find that the local staff are unfamiliar with the Program. The Office of Special Counsel for Immigration-Related Unfair Employment Practices in the U.S. Department of Justice also reports having received telephone calls from employers and workers that should have been handled by the E-Verify technical or program help desks.

Well-trained customer-service and help desk representatives are needed to ensure that callers receive correct information. A number of employers expressed dissatisfaction with the information they received from the government. Indeed, anecdotal information from the stakeholder meeting suggests that an employer may be told contradictory things by different representatives.

Complete ongoing efforts to review and revise all worker materials to make sure they are suitable for use with workers who may have limited English skills. SSA and USCIS are currently translating the notices into languages other than English and Spanish and are examining the level of the language

²²⁹ Employers would also like more training related to identifying fraudulent documents; this training might be included in the tutorial and/or through E-Verify resource materials, even though it is related to the basic Form I-9 process rather than being specific to E-Verify.

used with the goal of simplifying materials. These should prove to be helpful measures to ensure worker understanding of what they need to do and why.

2.3. Increasing Government Outreach to Protect Workers' Rights

USCIS should expand its program to inform workers of their rights and responsibilities. USCIS and the Civil Rights and Civil Liberties Division of DHS have made outreach efforts to inform workers of their rights under E-Verify. However, an expanded effort is needed since employers do not consistently inform workers of their rights. This recommendation will become increasingly important and increasingly cost-effective as the Program expands to cover more workers, especially if requiring verification prior to the start of work is implemented.

USCIS should also increase its outreach to employers using E-Verify as the Program expands. Employer noncompliance with E-Verify procedures designed to protect the rights of workers and avoid discrimination is a significant problem. Although some of the problem is due to employers' knowingly violating procedural requirements, lack of employer knowledge is also a problem. Outreach and training has to extend beyond those program users currently required to complete the tutorial to include managers and supervisors responsible for managing other aspects of the Program, such as notifying workers of TNCs and scheduling job training.

USCIS must make employer responsibilities as clear as possible. When USCIS policy is not clear about what E-Verify program requirements are, it is difficult for USCIS to explain the requirements to employers or workers. A good example of this lack of clarity is the definition of "new hire." Until relatively recently, there was not consensus at USCIS on the definition, even though the legislation underlying E-Verify stipulates that the Program can only be used with "new hires." Furthermore, once a decision was made, although the tutorial was updated, there was little effort to inform current users of the correct definition.

A mechanism needs to be established so that workers can confirm that their SSA and/or USCIS records that are accessed by E-Verify are correct and up to date in the same way that individuals can now access their credit ratings and other confidential information. Establishing a mechanism to allow workers to review their government records may not be easy, since it will be necessary to guard against improper access to worker information and is likely to have significant costs to the Federal government. However, as the E-Verify Program expands, especially if verification prior to the start of work is required, it becomes increasingly important for workers to be able to verify that their records are correct before seeking a new job. As is true for other complex procedures, initial attempts to establish such procedures should be started and evaluated on a pilot basis. It might be reasonable, for example, to start with a widely advertised program in Phoenix or alternate locations in Arizona.

Monitoring employer violations of E-Verify procedures and enforcement efforts discussed above must include both violations that affect worker rights and discrimination as well as those that affect the effectiveness of E-Verify in reducing unauthorized employment. The evaluation has documented employer violations of E-Verify procedures that result in workers' being denied their rights under E-Verify and/or result in discrimination. For example, employers do not always inform workers who receive TNCs of the fact that they have received TNCs or employers may take adverse actions (such as reducing pay or not providing the same training that other workers hired at the same time have received) while workers are contesting a TNC. These violations must be pursued as well as those related to unauthorized employment.

3. IMPROVING OPERATING EFFICIENCY AND USER-FRIENDLINESS

3.1. Modifying Deadlines

Extend the time frame for entering information for new employees to five workdays after hire if verification prior to the start of work is not implemented. Some employers face difficulty in verifying workers within three days of hire, especially when verification for several sites is centralized. If verification prior to the start of work is required, there may be no need to set an explicit deadline for entering information for job applicants beyond specifying procedures that are not discriminatory, e.g., it would be logical to specify that all applicants for a given job be screened at the same stage during the hiring process (i.e., initial application, before the job offer, after the offer, after acceptance).

Consider shortening the time that workers have to first contact SSA or USCIS to start the contesting process if E-Verify is not modified to require verification prior to work. Most workers who contest TNCs contact SSA or USCIS in well under 8 Federal workdays, so that a shorter time frame would not inconvenience most workers. However, decreasing the time allowed would decrease the burden of the Program on employers that incur expenses in training unauthorized workers during the contesting period and would improve the effectiveness of E-Verify in reducing unauthorized employment. To ensure that there is not undue hardship placed upon workers in unusual circumstances, there will be a need to allow extensions if such a program change were to be instituted. This program change should be implemented on a pilot basis, perhaps along with the recommended pilot to require verification prior to the start of work, so that the relative advantages of both alternatives to the current system can be considered.

3.2. Expansion of E-Verify

One means of increasing the percentage of employers using E-Verify shortly after enrollment would be to ensure that employers have sufficient information about E-Verify to determine whether E-Verify meets their needs prior to enrollment. One program change under consideration that is likely to increase the percentage of employers transmitting cases within three months of signing a Memorandum of Understanding (MOU) is making the tutorial available over the Web without requiring employers to register for the Program first. If more information about the way the Program works were available to employers prior to their enrolling in E-Verify, it would be reasonable to expect that some of the employers that enroll in the Program and then decide not to use it (e.g., because they decide it is too burdensome or does not fit their hiring model) would be able to make that decision without enrolling. Moreover, other employers concerned about the burden of E-Verify may look at the tutorial and sign up, deciding it is less burdensome than they had feared.

Employers should be permitted to use E-Verify when they conduct the Form I-9 reverification required for noncitizens who have presented immigration documents with expiration dates on their original Form I-9. If reverification is permitted, it would be reasonable to use the same procedures for providing and resolving TNC cases as are currently used for new employees.

Attempts to significantly expand the use of E-Verify should provide for phasing in its use by employers. Most Federal legislation proposed to date has provided for a phasing-in process to allow the Federal government adequate time to hire and train the new staff required to run such a program, to educate employers and employees on the new requirements, and to allow employers time to make any needed adjustments to their operating procedures and staffing. The most practical way to do this is to base the phase-in on employer size, starting with the largest employers that not only employ a high percentage of the labor force but are also most likely to have the computer equipment, personnel, and expertise to

implement an electronic verification program. In advance of expanding the start of E-Verify to small employers, USCIS should take steps to ensure that they will be able to meet the program requirements through either Designated Agents or alternate mechanisms.

3.3. Adoption of an Alternate Electronic Verification Program

Caution should be exercised in considering alternative electronic verification programs to the current E-Verify Program. E-Verify and its predecessor pilot programs have been successfully evolving for over a decade in response to program experiences and the results of independent evaluation studies. During this time, both USCIS and SSA have been building the infrastructure (such as staff and systems) necessary to operate the Program. Although it is, of course, possible that an alternate program would represent an improvement over the current Program, care should be taken to ensure that the challenges of any new program will not be greater than those of the current Program. If it is decided that an alternative program may be an improvement over the current Program, it is important to evaluate the new program on a pilot basis prior to full implementation. Experience with E-Verify has shown that hastily made changes can lead to unanticipated problems.

3.4. System Issues

3.4.1. Making E-Verify More User-Friendly

The tutorial should include a general overview of what the E-Verify Program is designed to do and how it works. In particular, employers do not understand why TNCs are issued, and, as a result, some employers simply ignore the findings. The tutorial should provide multiple scenarios for why TNCs might be issued and also explain what happens at SSA and USCIS when those cases are referred.

To minimize duplicate data entry by employers, efforts should be continued to integrate employers' human resources systems and the E-Verify system. Greater integration of the E-Verify Program and employers' human resources systems would enable employers to "personalize" the system so that the system returns directly match their records and so they can produce customized system reports. Such integration allows users to enter data once to meet the needs of both the employer and the E-Verify Program. Employers would also like to be able to export reports from E-Verify into Microsoft Excel, Microsoft Word, and Adobe Acrobat. Efforts to integrate the E-Verify system and human resources systems should take into account the option to use an electronic Form I-9 currently available to employers.

The E-Verify system should be modified to permit entry of information about case resolution that becomes available after issuance of an FNC. Although there is currently no formal process for reopening cases that have become FNCs,²³⁰ an informal process has developed where a USCIS employee calls to tell the employer that the discrepancy has been resolved and that the worker is employment authorized. However, there is currently no way to update the Transaction Database to indicate that the outcome has been changed, resulting in discrepancies that could create problems for employment-authorized workers or their employers if monitoring or enforcement actions indicate that employment should have been terminated. If a field is added to the system for this purpose, it would also make sense to provide the employer with an automated notification of the changed finding.

²³⁰USCIS is currently considering implementing a process to accommodate more formal requests for reconsideration of FNC findings.

Navigation through the verification screens should be further simplified. For example, users should be able to print the Verification Result screen rather than opening up a case detail page, and they should be able to return to the verification screens from the case detail page without using the back button on their Web browsers.

The process that employers use to resolve cases should be further streamlined. For instance, the number of steps the employer must take to close employment-authorized cases should be reduced. If a worker is employment authorized at the initial query, the employer must click on the Resolve Case button on the Verification Result screen. The case resolution is entered on a separate screen, and the Resolve Case button must be clicked again. It should be feasible to offer the employer a choice on the Verification Result screen to “resolve case as work authorized” or “institute additional checking procedures,” and for the system to automatically enter the closure code if the first alternative is selected.

The system should retain previously entered information if the employer’s connection “times out.” It is not unusual for employers to be interrupted while in the middle of inputting information about a case. For security reasons, it is important to continue the practice of having the system time out; however, other systems that the evaluation team is aware of retain the information already input so that employers can continue from where they left off their data entry when they return and log in to the system again.

Additional edit checks should be considered. When the Web survey employers using E-Verify were asked about the E-Verify computer system, 29 percent of 2008 respondents indicated that it is easy to make errors when entering worker information into the system. Additional edit checks might help reduce but cannot eliminate all data input errors. For example, data input software would not correct for inputting some errors in dates (e.g., (0508) rather than (0805))²³¹ or number transpositions in the entry of the SSN. While most of the TNC findings were not the result of data entry errors, there are a considerable number of TNCs that were due to mistakes when entering the Form I-9 information into the E-Verify system. It is possible that additional edit checks could further decrease inaccuracies. For example, instead of inputting dates, the employer could click the relevant dates on a calendar as is done in many other Web applications.

Tutorial information needed only by data input staff that are not highly computer literate should be provided as a separate module. Some employers have commented that the tutorial focuses too much on basic computer skills (where to click to advance the screens) when the employers really need to know how the process works and why it is important to follow the prescribed steps. By using a modular approach to the tutorial, the length of time needed to complete the tutorial for many employers could be shortened.

The system should be subjected to additional formal usability testing²³² with employers to identify other aspects of the system that employers might find cumbersome or confusing and to verify that changes implemented are, in fact, understandable and efficient from the user’s perspective. Usability testing conducted by professionals specializing in this type of work should be done with the current system and whenever new or updated employer and worker materials are developed to ensure that E-Verify is clear to the target audience.

²³¹However, changes to formatting on the Form I-9 might help reduce errors in dates.

²³²Formal usability testing includes procedures for observing and interviewing users to examine issues such as whether they are having difficulty understanding instructions or finding needed information. It is done in addition to testing the software to ensure that it does what it is designed to do, which, of course, is currently done.

3.4.2. Improve Usability of Transaction Database for Evaluation and Monitoring

Continue and implement recent efforts to modify the automated cleaning of the Transaction Database to obtain more meaningful reports for management information purposes. The E-Verify systems contractor is currently working with the evaluation contractor to modify the data cleaning process for data to be used for reports designed to examine case outcomes.²³³ This effort should produce reports that are consistent with the evaluation reports, avoiding potential confusion over data and creating reports that are more accurate for certain types of analysis.

Documentation of the E-Verify system needs to be clear; special care should be made to ensure that any changes made since the previous version of the system documentation was issued are clear in the documentation. Evaluation staff members have sometimes had difficulty understanding the E-Verify system contractor's Transaction Database documentation and, because of misunderstandings, have sometimes failed to update the software they use to reflect recent changes in variables and codes in a timely fashion. The importance of this recommendation will be even greater after the monitoring and compliance units start using the data more frequently and also need to understand the details of the transaction data.

More information related to worker and employer actions related to TNCs should be collected to inform future evaluations and monitoring efforts. Employers currently provide some information about workers' responses to TNCs by indicating whether they are referring the case to SSA or USCIS. The system does not directly capture whether workers said that they want to contest. Right now this information is inferred from the referral field; however, it is not possible to identify cases in which the workers told their employers that they would contest but their employers failed to initiate referral through the system. This information would be useful for monitoring and evaluation purposes and may help remind employers of what should be happening after a TNC is received.

Revise the questions about employer characteristics that are completed by the employer when registering. Based on comparisons of Web survey and employer registration information, the data employers provide at registration about industry and size is often inaccurate. Such changes could be part of the registration re-engineering process currently underway at USCIS.

It would be helpful to revise the closure codes, as USCIS is currently planning to do. The goal of these revisions would be to reduce employer confusion about the meaning of the codes and to provide additional information for future monitoring and evaluation efforts. This effort should be coordinated with the recommendation to collect additional information about case referral. In explaining the new codes, USCIS should also explain when and how cases should be closed in error and resubmitted as a new case. For example, it is not clear whether an employer should try to reenter a case under a name the worker previously used (such as a maiden name) if the worker receives a TNC.

²³³ Although these cases should not normally be included in management reports designed to measure system efficiency, they should be retained and used for two purposes. First, this information could be of use in monitoring employers (e.g., high rates of cases closed in error might indicate that employers are "fishing" for ways to verify workers or are inadequately checking cases before submitting them to E-Verify). Second, some workload reports should reflect the number of transmissions rather than the actual number of cases; these include reports used for estimating system costs (which are based on transmissions) and also USCIS workload reports, since the error may not be identified in time to avert the Immigration Status Verifiers' work on cases needing secondary verification.

3.5. Federal Verification Process

USCIS should continue work on automating all aspects of its verification process to reduce the amount of work necessary at the secondary stage. Improvements should minimize the need for Immigration Status Verifiers (ISVs) to manually check databases other than the Verification Information System to determine if the person with information submitted to E-Verify should be found to be employment authorized without issuing a TNC. The ultimate goal should be to have a sufficiently accurate automated system that manual checking at the secondary stage could be eliminated. However, USCIS should not suspend use of these procedures as long as the second-level review results in a substantial decrease in the erroneous TNC rate, which is now the case.

SSA should consider ways to reduce the worker burden associated with the requirement for in-person contact to resolve TNCs.²³⁴ Currently, workers receiving SSA TNCs are required to visit an SSA office to resolve TNCs. This can be a burden on workers, especially when the SSA office is located a considerable distance away. Possible changes to this procedure include the following:

- Workers should be allowed to use fax and telephone to resolve TNCs, to the extent possible. Although the evaluation team recognizes that SSA often needs to scrutinize documents to determine their authenticity, there are some situations in which this may not be necessary. For example, cases involving employer input errors not caught by the employer or worker might be resolved without seeing the original documents. Also, more frequent initial contact by telephone may help ensure that the worker does not have to travel to SSA a second time to bring additional documents.
- It may be helpful for SSA field office staff to travel to some remote locations to handle TNCs, perhaps on a weekly basis.

USCIS should decide whether Designated Agents should be certified and, if so, how. Certification of Designated Agents would presumably decrease the possibility of misuse of E-Verify by these service providers and would provide a benefit to employers that wish to use a Designated Agent but are unsure how to select one. Small employers in particular, especially if their numbers continue to grow, are likely to need help in identifying reputable Designated Agents. One reason for consideration of this option is that many Designated Agents are making claims such as “_____, an E-Verify federally approved Designated Agent,” “_____ is one of only a handful of federally approved E-Verify Designated Web Services Agents,” or “_____ is a federally authorized designated E-Verify Agent.” Claims such as these are easily interpreted as meaning that the service provider has undergone some kind of certification or screening process, which is not the case.²³⁵ Moreover, certification could require demonstration of knowledge and service provision that would provide greater assurance that the process was properly completed and to provide a means of decertifying those Designated Agents who are deemed to not comply with program standards.²³⁶

An e-mail system to alert employers to upcoming and recently implemented changes to E-Verify is needed. The employer staff submitting E-Verify cases on a day-to-day basis are often clerical workers who are not involved in setting the company’s operational policies. Therefore, information that appears on the E-Verify screens may never be seen by company decision-makers. It is, therefore, important that

²³⁴SSA has set a precedent for doing this by modifying its procedures for enrolling persons in Medicare by phone or the Internet.

²³⁵The only review of Designated Agents currently conducted is a review to ensure that the files produced by Web Services providers are in a format that is consistent with the E-Verify system.

²³⁶A corollary would be school certification for enrolling students in the Student & Exchange Visitor Information System (SEVIS) Program.

information about program changes be sent to higher level staff as well. Furthermore, in companies that hire infrequently, users may not see the current broadcast announcements on the E-Verify home page and thus would miss important news about program changes. USCIS reports that they will be implementing such an e-mail system in 2009.

It is also important that outreach to inform Web Services providers about changes being made is done sufficiently in advance of implementing new procedures that it permits them to modify their software for employers to use in conjunction with E-Verify. It takes time for Web Services providers to develop new software to make their software consistent with major changes. It would be reasonable to give them information about major upcoming changes while USCIS is working on implementation, so that the Web Services employers can be prepared.

4. CONDUCTING ADDITIONAL RESEARCH

USCIS has funded a number of research efforts that have either started or will be started in the near future. These include a survey of employers that have not enrolled in E-Verify, an in-depth case study in Arizona aimed at identifying issues that are likely to arise in a mandatory E-Verify Program, and a 2010 Web survey of employers using E-Verify to determine changes since the 2008 study as well as to evaluate changes made to the Program since the 2008 study.

The following recommendations relate to future research:

- **Major procedural changes to the E-Verify Program should be carefully reviewed and subjected to independent evaluation, based on existing data and/or a pilot program, prior to implementation.** Some pilot testing of the Photo Screening Tool was done by USCIS without assistance from an independent evaluator. However, the pilot test was based on a small number of volunteer employers and did not identify a number of problems that arose after implementation, such as the difficulty in adapting its use for Designated Agents because such employers had not participated in the pilot.
- **Independent general E-Verify evaluation activities need to be continued.** In addition to evaluating specific procedural changes, it is important to conduct more general independent evaluations to measure the progress of USCIS and SSA in implementing the E-Verify Program and to determine the Program's effectiveness in meeting the goals set for it, given that the E-Verify Program is rapidly evolving and that not all consequences of modifying it can be anticipated.
- **Examination of why there are marked seasonal trends in some of the indicators used in this report.** Time constraints prevented analyses of the seasonal fluctuations noted in this report. Analyses of the reasons for the underlying trends and smoothing techniques would provide additional information about factors affecting the key variables used in measuring the effectiveness of the E-Verify Program.
- **Multivariate analyses of transaction data** should be done to determine whether employer characteristics explain or are confounding the conclusions in this report. For example, it is possible that differences in the percentage of small employers between Arizona and other states explains why Arizona employers are more timely in submitting cases to E-Verify. Time constraints precluded doing much multivariate work for this report.

GLOSSARY

Alien. Any person who is not a citizen or a national of the United States. Because the term is found objectionable by some people, it is not generally used in this report.

Alien number. A unique identification number DHS assigns to aliens (noncitizens) when any one of several DHS actions occurs that results in the creation of a file on or issuance of secure documentation for the person. Such actions include admission as a permanent resident, asylee, or refugee and issuance of an Employment Authorization Document.

Authorized worker. An individual who is allowed to work legally in the United States. (Also see employment authorized).

Automatically. In this report, the term is used to describe processes that are completed without human intervention. It is sometimes used elsewhere to mean authorized after an Immigrant Status Verifier (ISV) review without issuing a Tentative Nonconfirmation.

Basic Pilot Program. The first of three pilot projects for employment verification mandated by Congress in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Basic Pilot Program is now referred to as E-Verify.

Biometrics. Biological identifiers, such as fingerprints and retinal scans, that can be used to establish identity with a high degree of certainty.

Breeder documents. Documents used to obtain other documents. For example, a birth certificate is a breeder document for a driver's license.

Case. A case consists of one or more Transaction Database records associated with a specific employer and worker for a particular hiring event.

Case resolution. Determination of the final case outcome (instantly work authorized, received a Final Nonconfirmation from SSA, etc.).

Citizen. A person owing loyalty to the protection of a particular nation state, usually by virtue of birth or naturalization. Generally used in the report to mean a U.S. citizen.

Compliance scale. A scale developed for this evaluation to measure employer compliance with E-Verify procedures, based on employer responses to Web survey questions. The mean of the scale is set at 500 and the standard deviation at 100.

Contest. The option available to workers receiving Tentative Nonconfirmations (TNCs) who disagree with the finding to contact SSA or USCIS to resolve the problem in their records that led to the TNC.

Data entry error. An entry incorrectly keyed into an employment verification database by an employer.

Database. An electronic catalogue of information.

Designated Agent. The type of E-Verify access that an employer designates when registering that allows a service provider to act on behalf of client companies to verify the employment eligibility of their newly

hired employees using E-Verify. It allows the service provider to individually track their clients' reporting, billing, and compliance needs, as well as to submit cases for its own new hires.

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.

Dissimilarity Index. The mean of the absolute differences between E-Verify and the nation on a particular characteristic. This index is used to indicate how dissimilar E-Verify employers and the workers for whom they submit cases are from the entire U.S. population of employers or workers. It ranges from 0 to 100.

Effectiveness rate. The percentage of workers without employment authorization who were correctly not found to be employment authorized. This rate is equal to 100 percent minus the estimated inaccuracy rate expressed as a percent for unauthorized workers (or 1.00 minus the inaccuracy rate expressed as a proportion).

Employment authorized. The designation that a worker 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. (Also see authorized worker.)

Employment verification. Process of verifying authorization to work in the United States.

Erroneous Tentative Nonconfirmation rate. The percentage of workers found to be employment authorized at any point in the verification process who received a Tentative Nonconfirmation (TNC) prior to receiving an employment-authorized finding.

Establishment. A single location where an employer's business is conducted. (Also see firm.)

E-Verify. E-Verify is the name currently used in referring to the Basic Pilot Program initially authorized in 1996. The Program electronically verifies the employment-authorization status of newly hired workers based on Form I-9 information input by employers.

E-Verify users. Employers that are actually using the E-Verify system.

EV-STAR (E-Verify SSA Tentative Nonconfirmation Automated Response System). Implemented in October 2007, an automated tracking process for referring and contesting Tentative Nonconfirmations (TNCs) at SSA to more closely mirror the USCIS TNC tracking process.

Final inaccuracy rate. An inaccuracy rate based on the final finding of the system after the case is contested or has become a Final Nonconfirmation (FNC) because the case was not contested.

Final Nonconfirmation (FNC). A result on the Transaction Database indicating that the worker's employment authorization was not established because the worker or the employer did not take the necessary action to resolve a Tentative Nonconfirmation (TNC). This result is only issued by the E-Verify system after the employer has been notified of a TNC response and the time the worker has for contesting the finding has elapsed.

Firm. A corporate entity that conducts business at one or more sites.

Foreign national. An individual who is a citizen of a country other than the United States.

Foreign born. An individual who was born outside of the United States. American citizens can be foreign born, either because they were born abroad to at least one U.S. citizen parent or because they were naturalized or derived U.S. citizenship through their parents.

Form I-9. The USCIS form employers must use to verify the identity and employment-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. (See Appendix E for an example of this form.)

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.

Gap between [group1] and [group 2]. The difference between group 1 and group 2 on the variable of interest.

Hire date. According to the USCIS Web site, “The earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete the Form I-9. The employer must initiate the query no later than the end of three business days after the new hire’s actual start date.”

Illegal alien. A noncitizen who has not been lawfully admitted to the United States or who has, after a lawful admission, violated the terms of his/her lawful admission, usually by working or staying longer than authorized. (Also see 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 the then INS conduct and evaluate three pilot electronic employment verification programs, including the Basic Pilot Program now called E-Verify.

Immigrant. A noncitizen who has been granted lawful permanent residence in the United States. Immigrants either obtain immigrant visas at consular offices overseas or, if a visa number is immediately available or unnecessary, adjust status at USCIS offices in the United States. (Also see lawful permanent resident.)

Immigration Status Verifiers (ISVs). The group of USCIS field office staff that verify immigration status for benefit and licensing agencies and E-Verify employers. One of their functions is to verify the status of individuals receiving a Tentative Nonconfirmation from USCIS. They are now called Management Program Assistants. The more descriptive term is used in the report for clarity.

Inadvertent discrimination. See unintentional discrimination.

Inaccuracy rate for authorized workers. The percentage of cases for workers with employment authorization who are not correctly found to be employment authorized. This rate can refer to either the initial inaccuracy rate based on the employment-authorization finding of the system prior to the case being contested or to the final inaccuracy rate calculated after any contesting is completed. If not otherwise specified, the rates in this report refer to the initial rates. This is often referred to as an error rate in research literature.

Inaccuracy rate for unauthorized workers. The percentage of workers without employment authorization who were incorrectly found to be employment authorized. This is often referred to as an error rate in research literature.

Indicator. An indirect measure of a variable of interest used when a more direct measure is unavailable.

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 workers, additional recruitment, and delayed production.

Initial inaccuracy rate. An inaccuracy rate based on the employment-authorization finding of the system prior to the case being contested or becoming a Final Nonconfirmation because the case was not contested.

Insecure documents. Documents that can easily be altered or counterfeited.

Instantly verified. This report uses this term to indicate that the worker is verified almost immediately as work authorized based on the automatic E-Verify checks without the need for human intervention.

Lawful permanent resident (LPR). A noncitizen who has been admitted as a legal permanent resident of the United States. A green card holder. (Also see immigrant.)

Mean number of days between [action 1] and [action 2]. The mean number of days between two events, such as hiring and entry of information into the E-Verify database. If not otherwise noted, these are calendar days.

Mean number of days between case initiation and case resolution. The mean number of calendar days between when the employer transmits a case to the E-Verify database and final case resolution.

Memorandum of Understanding (MOU). A signed document in which an employer choosing to participate in E-Verify agrees to abide by the provisions of E-Verify and that specifies USCIS and SSA's provision of certain materials and services. (See Appendix D.)

Naturalization Phase I. Implemented in May 2008, this change added an automated DHS database-checking process for workers attesting to be U.S. citizens when SSA records are consistent with the information submitted on Social Security number, name, and date of birth, but cannot confirm that workers entered into the system are U.S. citizens. This automated check compares the employer-submitted information with USCIS citizenship databases to determine whether the information submitted belongs to a naturalized citizen.

Naturalization Phase II. Implemented in May 2008, this change provides a special referral letter for workers attesting to being U.S. citizens when their SSA records are consistent with the information submitted on Social Security number, name, and date of birth, but neither SSA nor USCIS records can confirm that they are U.S. citizens. The letter provides them with an opportunity to voluntarily contact USCIS by phone or fax to resolve the problem by providing their former Alien or "A" number rather than going in person to an SSA field office.

New hire. According to USCIS, for E-Verify purposes a new hire is a person who has been offered and accepted a job offer. (Also see hire date.)

No show. A result on the Transaction Database indicating that a worker referred to SSA or USCIS to resolve a Tentative Nonconfirmation (TNC) did not contact the appropriate agency to resolve the TNC within the allotted timeframe.

Nonimmigrant. A noncitizen admitted to the United States with a nonimmigrant visa or under the nonimmigrant visa waiver program for a specified temporary purpose and time period. Common examples are tourists, students, temporary workers, and foreign government officials.

Notice of Tentative Nonconfirmation. The printed form a pilot employer provides notifying a worker that a Tentative Nonconfirmation (TNC) has been issued by the verification system and informing the worker of his/her rights and responsibilities with respect to resolving the TNC. The worker must sign the form, indicating whether he/she wishes to contest the finding. (See Appendix K.)

Numerical Identification File (NUMIDENT). The SSA database containing information on all persons issued Social Security numbers (SSNs). E-Verify automatically checks the NUMIDENT database to confirm the accuracy of the worker's reported SSN, name, date of birth, and, in some cases, citizenship status.

Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). An 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.

Photo Screening Tool (Photo Tool). The Photo Screening Tool permits employers to compare photographs on employee documents with digital photographs stored in government systems to detect existing valid documents that have a new photograph substituted on the original document or that are counterfeit documents created with valid information but a new photograph. The only documents currently available on the Photo Screening Tool are Permanent Resident ("green") cards and Employment Authorization Documents (EADs).

Pre-FNC check. Tentative Nonconfirmation (TNC) cases without SSA action through EV-STAR are automatically resubmitted to E-Verify to determine if the case is work authorized prior to the issuance of a Final Nonconfirmation (FNC). This procedure avoids FNCs that would previously have occurred if employers failed to correctly resubmit cases after workers had visited SSA to resolve their TNCs. (Also see EV-STAR.)

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 and the statute authorizing the Basic Pilot/E-Verify.

Pre-TNC checks. SSA pre-Tentative Nonconfirmation (pre-TNC) check and USCIS pre-TNC checks that were implemented in September 2007. For SSA, this process consists of asking employers to review their input and correct any detected errors prior to the issuance of a TNC. For USCIS, employers are asked to review their input prior to the case going to the secondary verification process in which Immigration Status Verifiers manually check additional DHS databases when the initial automated check does not confirm that the employee is work authorized.

Primary query. The first step of the computerized employment verification process. The employer enters information from the worker's completed Form I-9 and transmits it to E-Verify for matching against the SSA database and, if necessary, DHS databases.

Probability of selection. The probability of a unit being selected into a sample. For example, if all E-Verify employers are included in the sample, the probability of selection is 1; if half are included, the probability of selection is 0.5.

Query. The action of keying information and accessing the verification database to verify employment eligibility. A single employment case may involve multiple queries. (Also see case.)

Referral notice. The official notice an employer provides to a worker who wishes to contest a Tentative Nonconfirmation finding in the verification process. It explains what procedures the worker must take to resolve his/her case. (See Appendix L.)

Sampling frame. The list from which a sample is selected. For example, in the onsite employer study, the sampling frame was all E-Verify establishments that were actively using E-Verify and met other specified criteria.

Sanctions (of employers). A prohibition in Section 274A of the Immigration and Nationality Act that makes it unlawful to knowingly hire or continue to employ workers who are not authorized to work in the United States. Employers who knowingly hire workers who are not employment authorized are subject to fines and possibly imprisonment.

Satisfaction scale. A scale developed for this evaluation to measure employer satisfaction based on employer responses to Web survey questions. The mean of the scale is set at 500 and the standard deviation at 100.

Secondary verification. The second stage of employment verification at USCIS under E-Verify. An Immigration Status Verifier reviews the case to determine the availability of additional information relevant to a worker's employment-authorization status. This step is required if there is a mismatch between the DHS database and the worker information entered by the employer. For SSA, the second stage requires the worker to visit an SSA office to correct an inaccuracy in his/her records and is, thus, equivalent to the third verification stage for USCIS.

Secure documents. Documents that have special security features such as bar codes, holograms, embedded images, biometric identifiers, laminates, or other features that make them difficult to counterfeit or alter. Such documents are typically issued through processes that are also secure.

Stakeholders. Individuals and organizations with an interest in a program or issue.

Standard Industrial Codes (SIC). A standard set of codes developed by the Federal government to classify industries.

Start-up cost. The costs incurred by a business or the Federal government to initiate and implement a new program.

State Legislation Groups. For analysis purposes, states are grouped based on the type of E-Verify legislation on March 31, 2008, into: (1) had implemented legislation requiring all employers to participate in E-Verify (Arizona was the only state in this category); (2) had implemented legislation requiring some

employers (for example, state agencies and their contractors) to participate in E-Verify; and (3) had not enacted legislation requiring participation in E-Verify.

Target population. The individuals or groups of interest to a study. For the Web survey, the target population was all employers that signed a Memorandum of Understanding to use E-Verify that met certain criteria.

Temporary Protected Status (TPS). A status given to noncitizens to temporarily stay and work in the United States based on a designation by the Secretary of Homeland Security that their country is subject to ongoing armed conflict, the aftermath of a natural disaster, or other extraordinary temporary condition such that their return would pose a serious threat to their personal safety.

Tentative Nonconfirmation (TNC) (of work authorization). The initial response from E-Verify when a worker's employment authorization cannot be immediately confirmed. There are many possible reasons that a worker may receive a TNC, ranging from employer keying errors to a worker's lack of employment authorization.

Total inaccuracy rate. The percentage of cases with an incorrect finding. Note that this inaccuracy rate is not the sum of the inaccuracy rate for authorized workers and the inaccuracy rate for unauthorized workers but the sum of these two types of inaccuracies divided by the total number of cases submitted to E-Verify.. This is often referred to as an error rate in research literature.

Transaction Database. The administrative database that captures all E-Verify transactions by employers, SSA, and USCIS.

U.S. citizen. An individual who is born in the United States or attains U.S. citizenship by being born abroad to at least one U.S citizen parent, by being naturalized, or by deriving citizenship following his/her parents' naturalization.

Unauthorized employment. Employment of workers without work authorization. (Also see unauthorized worker.)

Unauthorized finding. An E-Verify finding that is issued by USCIS for workers that contest a Tentative Nonconfirmation and are found to be not authorized to work in the United States.

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. This category includes unauthorized workers who are in the country legally (e.g., visitors) but do not have authorization to work in the United States. (Also see undocumented immigrant.)

Underground economy. Economic activity that is unrecorded in official gross domestic product figures. It includes illegal and criminal activities such as gambling and drug dealing, as well as income that goes unreported to avoid taxation.

Undocumented immigrant. A noncitizen who does not have permission to enter or reside in the United States. (Also see illegal alien.)

Unintentional discrimination. Discrimination against a protected group that occurs as a result of someone's actions without an intent to discriminate. For example, since foreign-born workers with employment authorization are more likely to receive erroneous Tentative Nonconfirmations (TNCs) than

U.S.-born workers, adverse actions of an employer, such as refusing to employ workers receiving TNCs, disproportionately hurts foreign-born workers and is considered unintentional discrimination.

User of Designated Agent. The type of E-Verify access that employers designate when registering, if they plan to have a Designated Agent conduct part of the E-Verify process (typically the system query) on their behalf.

Verification. A process by which a case is entered into E-Verify for determination of work-authorization status.

Verification Information System (VIS). The USCIS information system used by the E-Verify Program, which includes data from primary DHS databases with new information on noncitizen status.

Verification Number. The Verification Number is a unique number generated automatically by E-Verify when a case is first entered into E-Verify; it is used to identify the case in any future actions.

Verification transaction record. A record in the E-Verify Transaction Database capturing employer-entered information to determine a worker's employment authorization.

Web Services provider. The type of E-Verify access that an employer designates when registering if the employer plans to submit Form I-9 information by extracting information from their existing Human Resources or payroll system or an electronic Form I-9 and transmitting that data to SSA and USCIS to determine employment authorization using E-Verify. This access method requires the company to develop or purchase software to interface between their system and E-Verify. The compatibility of the software the Web Services provider wishes to use must be reviewed by the USCIS contractor responsible for system operations prior to use to ensure it is compatible with the E-Verify Program interface.

Work-authorization model. A model formulated for this study to estimate the true work status of groups of workers with specified interim or final case findings. (See Appendix B.)

APPENDIX A

STEPS FOR CLEANING THE TRANSACTION DATABASE

APPENDIX A.

STEPS FOR CLEANING THE TRANSACTION DATABASE

This appendix describes the approaches used to clean the E-Verify Transaction Database. The main purpose of the cleaning is to identify and delete as many transactions as possible that were entered in error or that are duplicated. It is not always easy to determine which transactions should be removed. For example, the duplicate Social Security numbers (SSNs) for several employers were examined to see if it was reasonable to assume that when two SSNs were transmitted close together in time, they were related to a single case rather than multiple hiring of the same person or of different persons fraudulently using the same SSNs.

To improve the cleaning process, the evaluation team intensively reviewed the cleaning steps described in the last report, examined the records on the initial file to determine whether the rules make sense in terms of what is on the database, and modified the rules as necessary. The most significant modification was to calculate the sequence of various verification events. Although it is not possible to develop a perfect measure that will place all cases in accurate sequential order, the evaluation team believes that applying this measure results in a database that more accurately reflects what is happening to individuals being screened by the E-Verify Program and correctly identifies the cases to be retained.

This process is divided into four sets of actions: (1) preliminary steps, (2) SSN checks, (3) alien number (A-number) checks, and (4) name checks. Each is examined in turn. The flowcharts illustrating the steps are provided following the narrative.

1. PRELIMINARY STEPS

Prior to examining the transaction record, the EV-STAR data were merged with the initial Transaction Database. The preliminary steps involved identifying and deleting the cases that are clearly invalid transactions. The potential sources of invalid transactions included in the initial database were cases closed as invalid queries, records that appear to be identical for a particular case (referred to here as system duplicates), test cases, and cases transmitted using the PC system that preceded the Web Basic Pilot. Exhibit A-1 summarizes the preliminary steps. Of the almost 4.1 million records on the initial Transaction Database from March 2008 through July 2008, 156,269 cases (3.8 percent) were deleted because the employer closed the case with a closure code of "IQ," indicating it was an Invalid Query. Another 32,640 cases (0.8 percent) were deleted because they appeared to be system duplicates; that is, all of the case information and the initiated date were the same.

Following the preliminary checks, records were examined to determine if they were multiple records transmitted for a single case and, if so, to determine the cause of the duplication and take the necessary corrective action. To be considered two records for a single case, the records had to be transmitted by the same employer, been transmitted within 30 days of one another, and match on one or more of the checks described below (i.e., the SSN check, the A-number check, or the name check). Determining the reason for multiple records for a given case is, however, not straightforward. For instance, there is not an easy way to distinguish between individuals who are rehired by the same employer and employers hiring multiple persons fraudulently using a specific SSN. The evaluation team, therefore, developed and applied a set of rules to use in classifying duplicate records for a case.

2. SOCIAL SECURITY NUMBER CHECKS

Exhibit A-2 indicates the sequence of checks run on the cases with duplicate SSNs. The first check was to identify whether it seems likely that the employer should have closed the case as an Invalid Query but failed to do so. For example, when an employer submits two nonidentical records on the same day for the same SSN that differ from one another on basic identifying information such as last name, the evaluation team assumes that the case with the earlier event measure should have been closed.²³⁷ This step led to the deletion of 35,829 records.

Cases were assumed to be resubmittals of cases that had been referred to SSA when two records for an employer had the same SSN and hire date, the case with the lower verification number was an SSA Tentative Nonconfirmation, and the event measure of the lower case number was not more recent than the case with the higher case number. This step led to deletion of 8,069 cases; prior to deletion of a case with these duplicate records, information from the record with the lowest verification number was used to complete the fields describing the initial disposition of the case.

Cases were assumed to be mistaken resubmittals of authorized cases when the duplicate SSN cases from the employer received a system response of authorized and there were less than 30 days between their initiated and hire dates. Approximately 45,099 cases were deleted based on this rule.

3. ALIEN NUMBER CHECKS

Of the 465,877 cases with A-numbers, 800 had A-numbers that were clearly made up (e.g., a number consisting only 9s); these were not subject to cleaning based on A-numbers because they most likely were numbers entered by employers when the correct A-number was not available.²³⁸ Cases with the remaining A-numbers were examined during a process that was similar to that used for the duplicate SSNs except that it was A-numbers that were checked for possible duplicates. Since the SSN check preceded the A-number check, and since all cases have SSNs and only noncitizen cases have A-numbers, it is not surprising that the duplicate A-number checks resulted in the deletion of fewer cases than the duplicate SSN number checks. Based on the cleaning rules (Exhibit A-3), 887 records were deleted because they should have been closed as Invalid Queries. Another 306 records were deleted as probable resubmissions, and an additional 31 records were deleted because they appeared to be work-authorized cases that had been mistakenly resubmitted.

4. NAME CHECKS

To perform name checks, all the name fields were changed to upper case and all special characters were deleted to ensure all records had the same name formats, and a matching variable was constructed from the name and birth date of the case. This cleaning routine was primarily designed to identify duplicate records that would not have been identified in the SSN and A-number checks because, for example, the employer realized that an incorrect SSN or A-number had been transmitted and he/she resubmitted the corrected information without closing the original case as an Invalid Query. Based on the checks (Exhibit A-4), 5,600 records were deleted as cases that should have been coded as Invalid Queries. In addition, 932 cases were deleted because they appeared to be resubmissions, and 470 records were deleted as mistaken resubmissions.

²³⁷ The event measure indicates where the case was in the verification process.

²³⁸ When no A-number was available for a case with an I-94 number, the I-94 number was used instead of the A-number.

5. TOTAL CASES CLEANED

A total of 290,665 records (7 percent) were removed during the cleaning process (Exhibit A-5). Of the removed cases, 188,909 (65 percent) were deleted at the preliminary step, 88,997 (31 percent) were removed during SSN checks, and an additional 3 percent were removed during A-number (1,224 cases) or name (7,002 cases) checks. Another 4,533 records (2 percent) were deleted without determination of the likely reason for multiple records being submitted.

Exhibit A-1. Preliminary Data Cleaning Steps: March–July 2008 Transaction Database

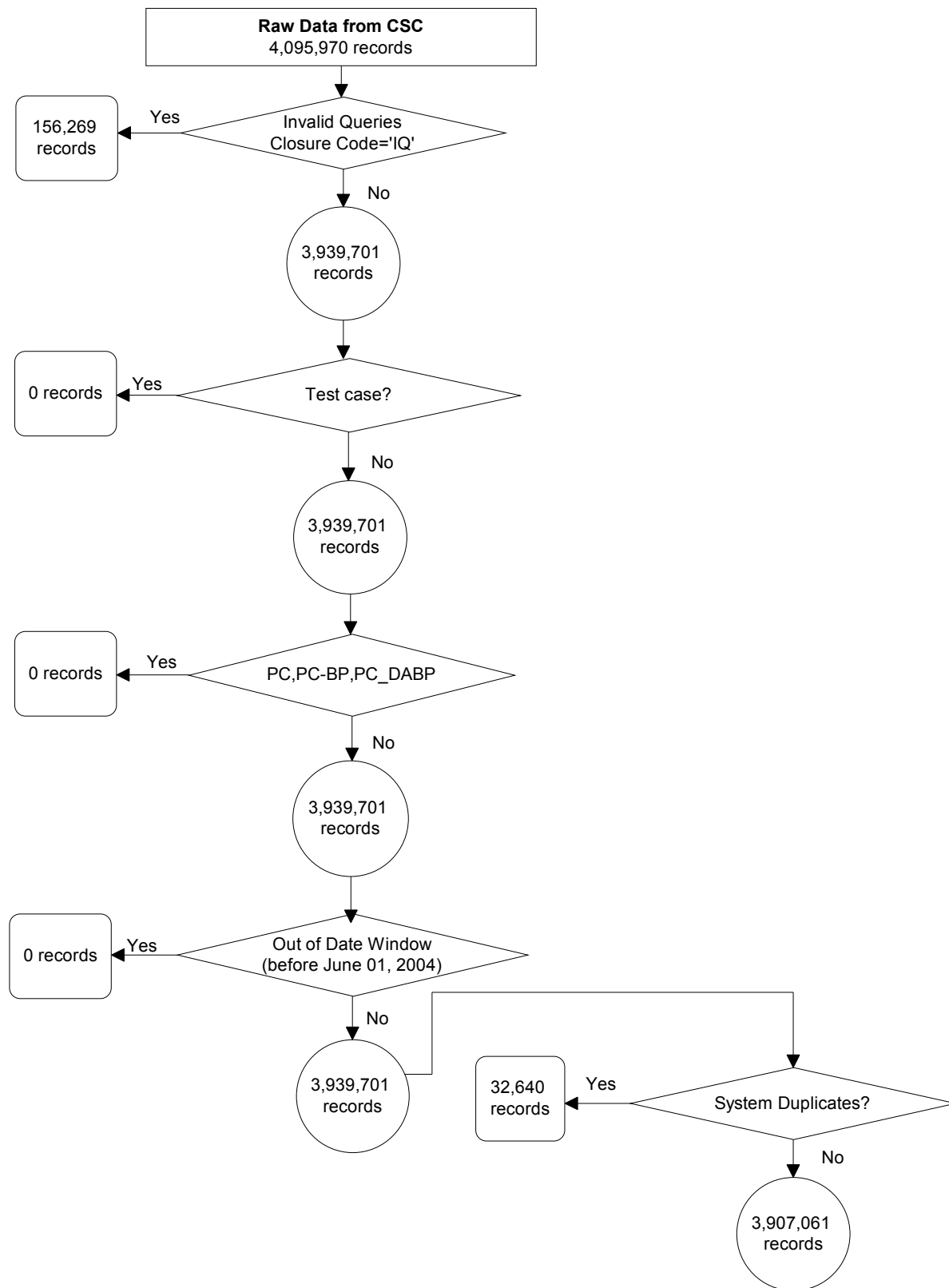


Exhibit A-2. Steps for Cleaning Based on SSNs: March–July 2008 Transaction Database

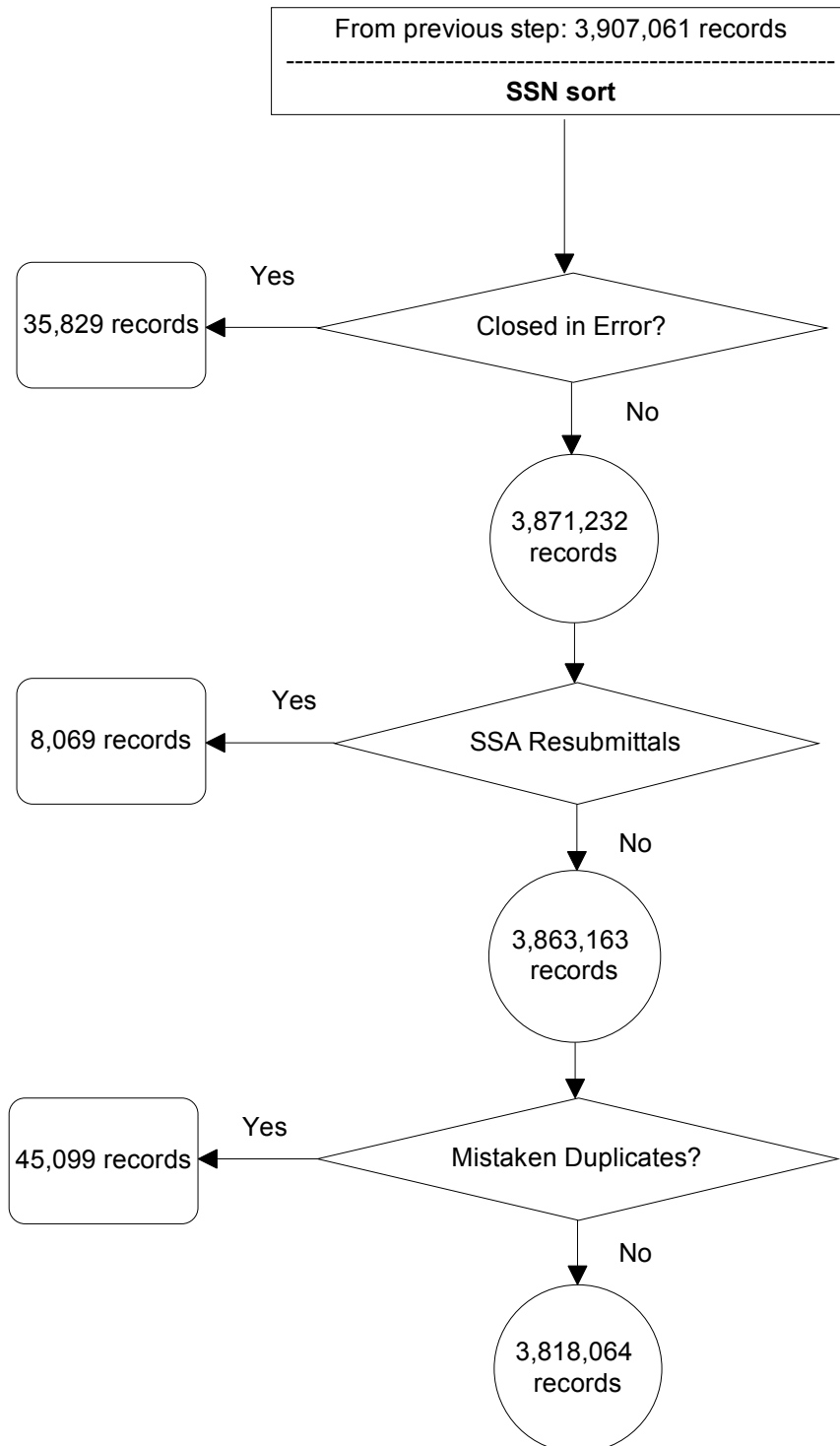


Exhibit A-3. Steps for Cleaning Based on Alien or I-94 Number: March–July 2008 Transaction Database

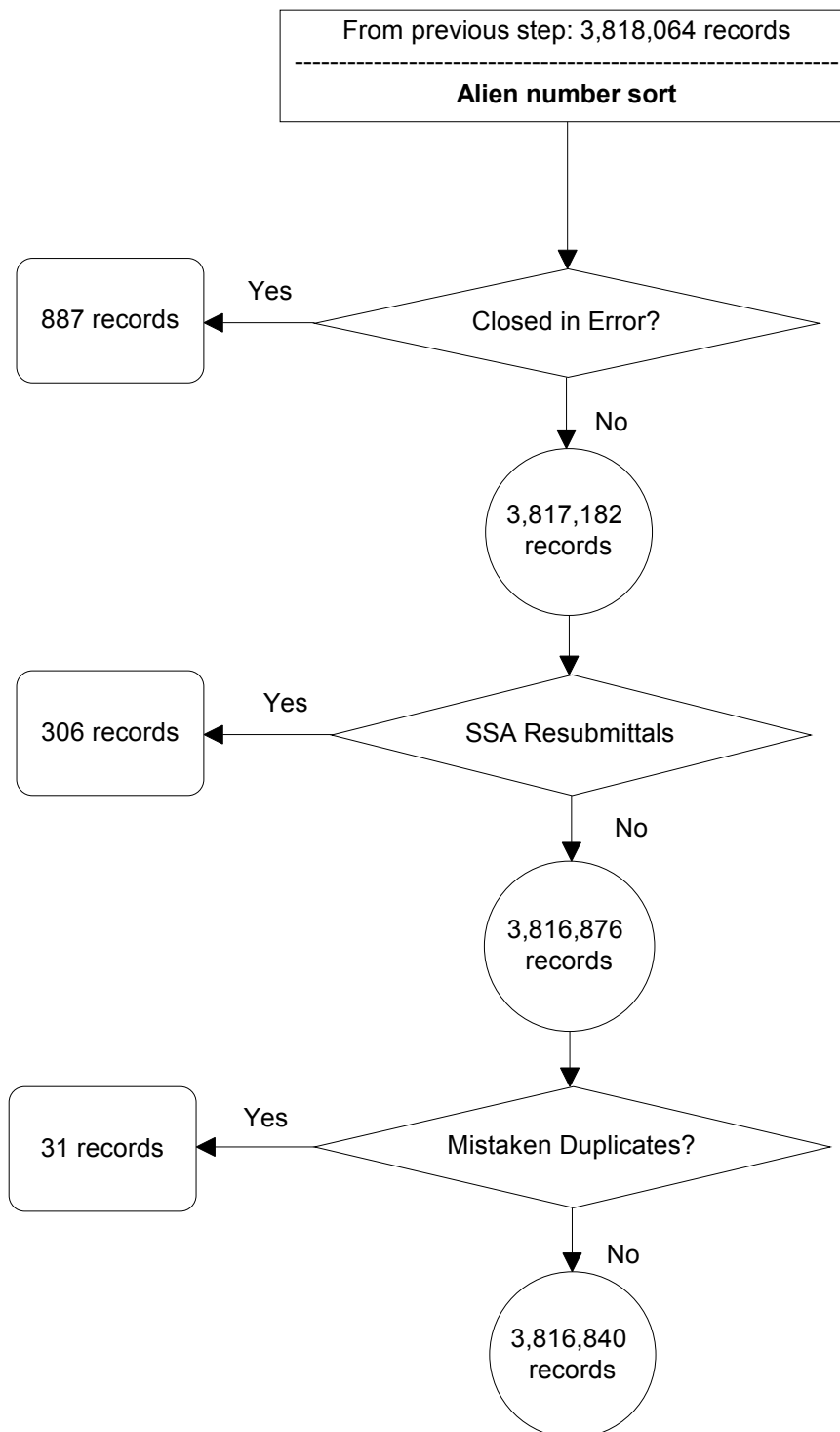


Exhibit A-4. Steps for Cleaning Based on Name and Date of Birth: March–July 2008 Transaction Database

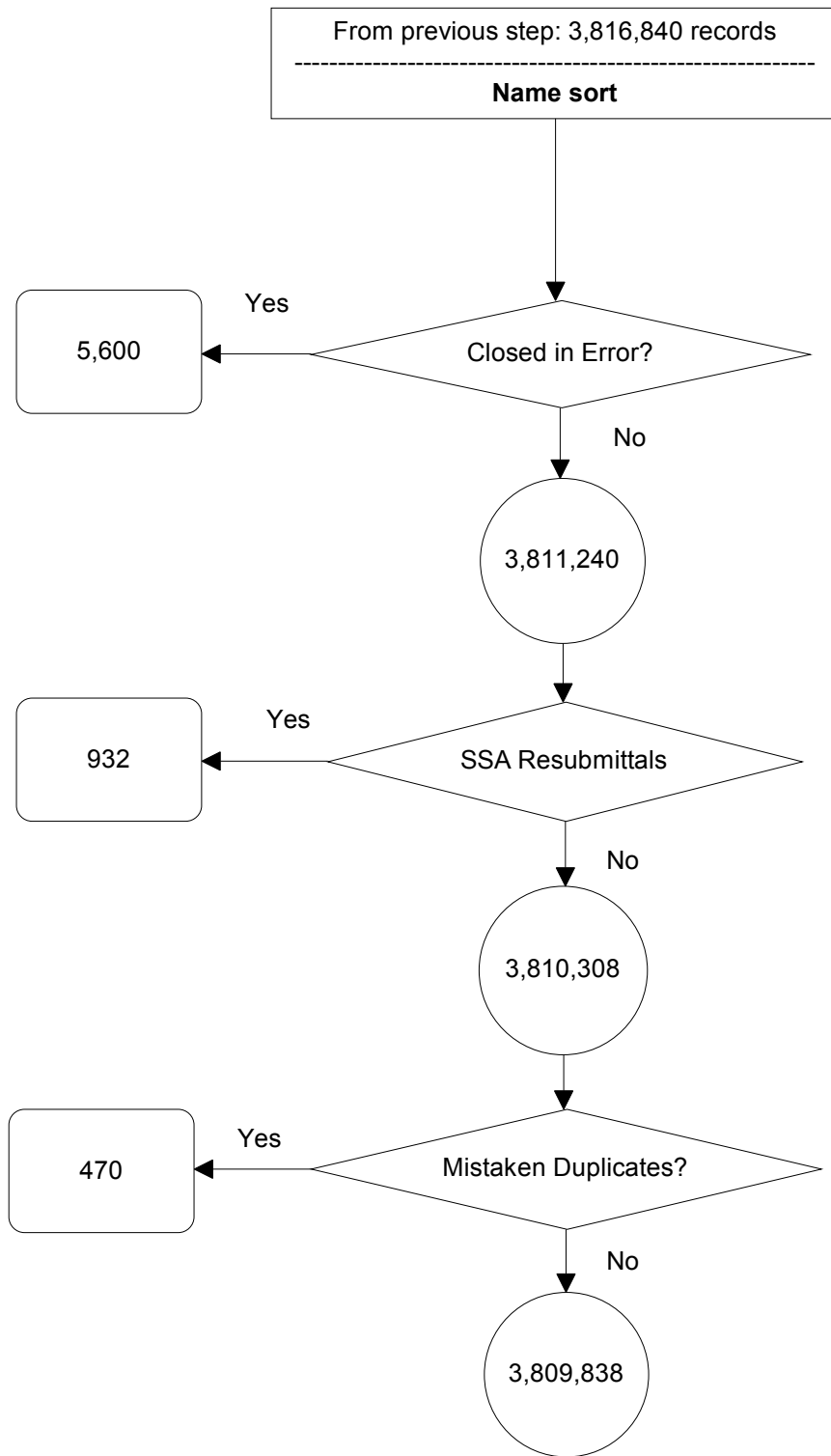
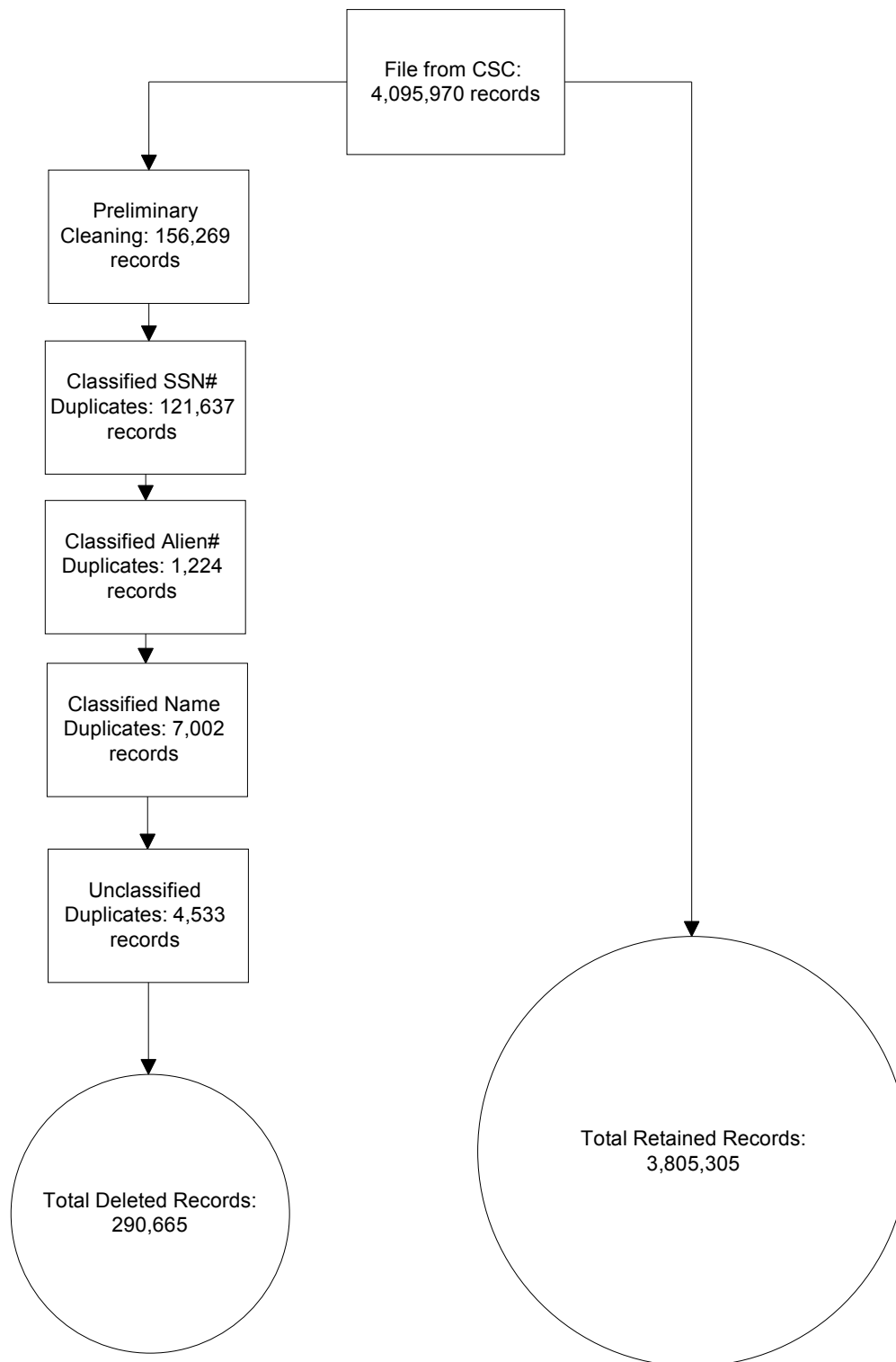


Exhibit A-5. Summary of Database Cleaning Steps: March–July 2008 Transaction Database



APPENDIX B

METHODOLOGY USED FOR MODEL-BASED ESTIMATES OF INACCURACY RATES

APPENDIX B. METHODOLOGY USED FOR MODEL-BASED ESTIMATES OF INACCURACY RATES

1. BACKGROUND

This appendix is designed to provide technical information for readers who want a more in-depth understanding of how the model-based inaccuracy rate estimates used in the report were made. It is designed to supplement information provided in Chapter II about the inaccuracy rate calculations. The notation used in this report is presented in Exhibit B-1 for reference purposes.

Exhibit B-1. Overview of statistical notation used in report

First suffix (source of statistic):

p = Pew Hispanic Foundation²³⁹
. = Evaluation data

Second suffix (demographic indicator):

s = state
i = industry
. = nation

First capitalized letter (type of statistic):

N = number
P = percent
E = inaccuracy rate
F = effectiveness rate

Superscript (authorization status of population referred to):

a = authorized
u = unauthorized
t = total (i.e., both authorized and unauthorized workers are included)

Second capital letter

R = received TNC
W = work-authorized finding without TNC
. = total (i.e., both TNC recipients and nonrecipients are included)

Third capitalized letter (whether informed of TNC)

I = informed
N = not informed
. = total (both informed and non-informed workers included)

Fourth capitalized letter (whether contest TNC)

C = Contest
D = Didn't contest
. = total (both workers who contested and those who did not are included)

²³⁹Jeffrey S. Passel, Senior Demographer, Pew Hispanic Center, and D'Vera Cohn, Senior Writer, Pew Research Center, A Portrait of Unauthorized Immigrants in the United States, 4.14.2009 (<http://pewhispanic.org/reports/report.php?ReportID=107>).

Exhibit B-1. Overview of statistical notation used in report (continued)

Fifth capitalized letter (E-Verify finding)

A = found work authorized

F = received FNC

U = found unauthorized

X = not found authorized (i.e., either received either an FNC or an unauthorized finding)

. = total (both workers who contested and those who did not are included)

Other conventions

- Italics are used to identify which variable(s) are used as the numerator in calculating percents
- Leading and trailing “.”s are deleted from the notation for simplicity (e.g., N^a refers to the total number of authorized cases and is short for .. N^a)
- When a step is a natural consequence of the preceding step, the last step is often omitted for simplicity (e.g., N^a RID refers to the total number of authorized cases for workers who have been informed of a TNC without contesting it and is short for .. N^a RIDF, since all cases not contested are Final Nonconfirmation cases).

As explained in Chapter II, evaluation of several of the E-Verify Program’s key goals requires estimation of the following inaccuracy rates that are not amenable to direct measurement:

The **inaccuracy rate for authorized workers** (E^a) is the percentage of workers with employment authorization who are not found by E-Verify to be employment authorized (in other words, they either received FNCs or unauthorized findings), i.e.:

$$(1) E^a = (N^a \dots X) / N^a$$

The **inaccuracy rate for unauthorized workers** (E^u) is the percentage of workers without employment authorization who are found to be employment authorized, i.e.:

$$(2) E^u = (N^u \dots A) / N^u$$

The **total inaccuracy rate** (E^t) is the percentage of workers with cases submitted to E-Verify who received a finding that is not consistent with their true employment-authorization status, i.e.:

$$(3) E^t = [(N^u \dots A) + (N^a \dots X)] / N^t$$

Note that E^t is not equal to the sum of the two inaccuracy rates above because the disproportionately large number of workers with employment authorization in the labor force results in the total inaccuracy rate being much closer to the inaccuracy rate for employment-authorized workers.

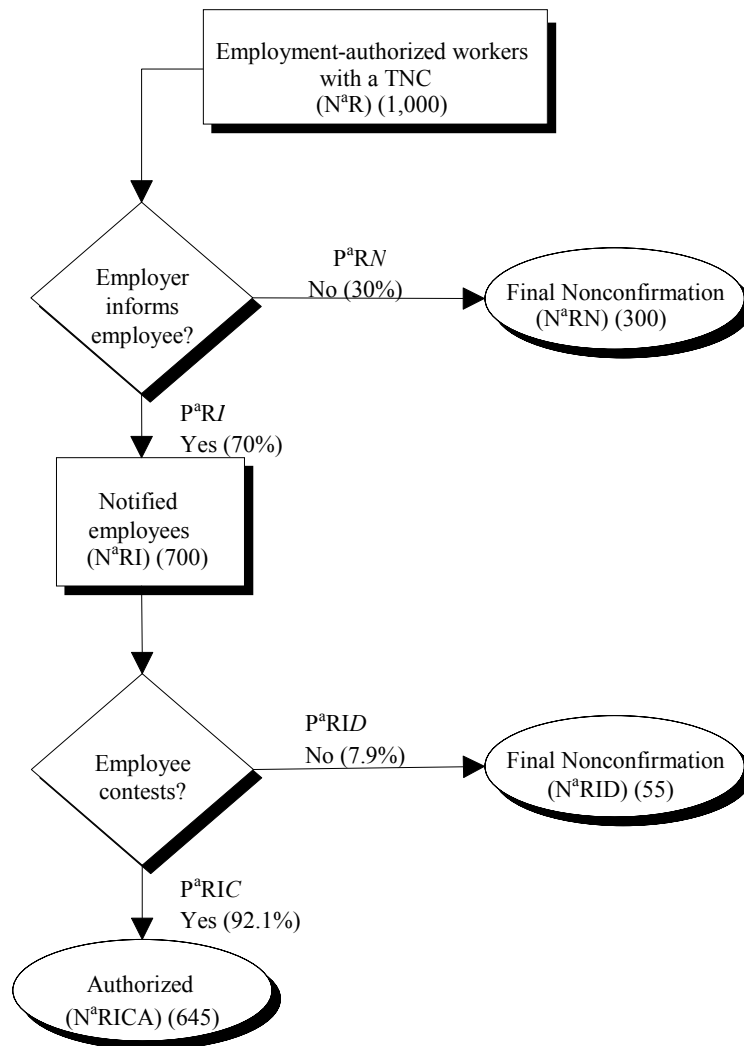
Section 2 of this appendix explains how the inaccuracy rate for authorized workers (E^a) is estimated, and Section 3 explains how the inaccuracy rate for unauthorized workers (E^u) is estimated. The final section, 4, discusses the estimation of the total inaccuracy rate (E^t) and the effectiveness rate (F).

2. ESTIMATING THE INACCURACY RATE FOR AUTHORIZED WORKERS

2.1. The percentage of employment-authorized workers informed of their TNCs

Exhibit B-2 illustrates the flow of cases for employment-authorized workers who receive TNCs (N^aR), using the terminology in Exhibit B-1 and assuming that $N^aR = 1,000$.²⁴⁰

Exhibit B-2. Illustration of E-Verify Process for Employment-Authorized Workers Who Receive TNCs



²⁴⁰As discussed later in this section, the model actually estimates the total number authorized from the total number of authorized workers successfully contesting TNCs, since the latter is what is known. However, it is simpler to understand the flow if the starting point is the number of employment-authorized workers.

Starting with the number of employment-authorized workers receiving TNCs (N^aR) which is assumed to be given for illustrative purposes, the flow can be summarized using the notation in Exhibits B-1 and B-2 as follows:

$$(4) N^aRN = P^aRN * N^aR$$

$$(5) N^aRI = P^aRI * N^aR$$

where N^aRN is the number of employment-authorized workers who received a TNC and were not informed of it; P^aRN is the percentage of employment-authorized workers who received a TNC but were not informed of it; N^aRI is the number of employment-authorized workers who received a TNC and were informed of it; and P^aRI is the percentage of employment-authorized workers who received a TNC and were informed of it.

In the example in Exhibit B-2, the user has set P^aRI to .7, which means that $P^aRN = 1 - .7$ or .3. Inserting the assumed values into equations (2) and (3):

$$(6) N^aRN = .3 * N^aR$$

$$(7) N^aRI = .7 * N^aR$$

Since N^aR is known and is 1,000 in this hypothetical example, the desired values for N^aRN and N^aRI can be calculated:

$$(8) N^aRN = .3 * 1,000 = 300$$

$$(9) N^aRI = .7 * 1,000 = 700$$

Similarly,

$$(10) N^aRID = N^aRI * P^aRID$$

$$(11) N^aRICA = N^aRIC = N^aRI * P^aRIC$$

N^aRN is estimated as 300 in the illustration above and $N^aRI = 700$. Therefore, to obtain estimates for N^aRID and N^aRIC , it is necessary to obtain estimates for P^aRID and P^aRIC .

In earlier versions of the model used in past reports, the user set the value for P^aRIC . However, in the revised model it is calculated based on interviews of workers believed to be employment authorized who received FNCs and the user-estimated percentage of workers informed of their TNCs. The information from the worker interviews was used to estimate a parameter (k), which is defined as the ratio of the number of employment-authorized workers receiving FNCs because they did not contest after being informed of their TNCs (N^aRID) to the number of employment-authorized workers receiving FNCs because they were not informed of their TNCs (N^aRN), i.e.:

$$k = N^aRID / N^aRN$$

Although the workers interviewed in the onsite study overrepresent employment-authorized workers, it is not unreasonable to believe that k can be estimated from the workers whom the interviewers believe are employment authorized. This ratio is .183, and in the illustration:

$$(12) .183 = N^aRID/N^aRN \text{ and } N^aRID = .183 * N^aRN$$

Since N^aRN was estimated above to be 300, $N^aRID = .183 * 300 = 55$

N^aRIC can then be calculated by subtracting the number of informed workers who do not contest (N^aRID) from the total number of workers informed (N^aRI), i.e.:

$$(13) N^aRIC = N^aRI - N^aRID = 700 - 55 = 645$$

The corresponding probabilities can then be calculated from these numbers, i.e.:

$$(14) P^aRID = N^aRID/N^aRI = 55/700 = 7.9\%$$

$$\text{And } P^aRIC = 1 - .079 = 92.1\%$$

The inaccuracy rate for authorized workers (E^a) can now be calculated as the number of employment-authorized cases that are not found employment authorized ($N^a...X$) divided by the number of cases that are, in fact, employment authorized (N^a), i.e.:

$$(15) E^a = (N^a...X)/N^a$$

Since all contested and resolved cases are assumed to have correct findings, it is assumed that there are no employment-authorized cases found unauthorized, i.e.:

$$N^aRICU = 0 \text{ and equation (15) can be rewritten as}$$

$$(16) E^a = (N^a...F)/N^a$$

where ($N^a...F$) is the number of FNCs

$$(17) N^a...F = N^aRID + N^aRN = 55 + 300 = 355$$

If for illustrative purposes we assume that the number of authorized persons was estimated to be 100,000:

$$(18) E^a = (N^a...F)/N^a = 355/100,000 = 0.36 \text{ percent in this hypothetical example.}$$

In the example, to simplify the discussion, it was assumed that the number of authorized workers who received TNCs (N^aR) was known (1,000) and N^aRICA was to be estimated. However, in actuality, it is N^aRICA that is known because the assumption that the all resolved TNCs were correct means that $N^aRICA = N^tRICA$, which is simply the number of successfully contested TNCs. To make the estimates starting with N^aRICA , it is necessary to calculate the values “backwards,” e.g.:

Since $N^aRICA = N^aRI * P^aRIC$ in equation (11), by solving for N^aRI :

$$(19) N^aRI = N^aRICA/P^aRIC = 645/.921 = 700$$

The remaining estimates can be made in an analogous way.

2.2. Selecting values for the percentage of employment-authorized workers receiving TNCs who are informed of their TNCs

As discussed in the preceding section, estimating the percentage of employment-authorized workers among all workers with E-Verify cases (P^a) requires the user to estimate the percentage of employment-authorized workers informed that they have received a TNC (P^aRI). This section discusses how the value estimates used in estimating P^aRI in this report were selected.

The selection for a point estimate for P^aRI is based on the following empirical information:²⁴¹

- On the employer survey, 98 percent of employers reported that they always informed their employees of TNCs.
- Among the 100 onsite study employers that discussed their employee notification processes, 96 said that they always notified employees of TNCs. Of the 101 onsite study employers that discussed whether they provide their employees with the written TNC notice, 100 employers said that they always provide employees with the written TNC notice, and 86 percent of Web survey respondents said that they always provide written notification of TNC findings.
- There were 82 onsite study employers out of the 100 that discussed their notification process that reported that they explained the meaning of the TNC notice to workers. However, of these 82 employers, 37 had one or more employees who reported that they did not receive an explanation.
- Among the records reviewed that should have contained a TNC notice, 52 percent were missing the appropriate notice.

The estimate of the percentage of workers who received TNCs would be 98 percent if one relied solely on the first piece of information, and would be 52 percent if one relied solely on the last piece of information. However, it is clear from the employee interviews that 98 percent is an overestimate, which is not unexpected since employers would be expected to be biased toward reporting that they are complying with the E-Verify requirements. It is also reasonable to believe that some TNC notices are given to workers but not correctly filed. Based on the totality of the above information, the evaluation assumes that the true percentage is between 60 percent and 80 percent, with 70 percent being a reasonable point estimate.

3. ESTIMATING THE INACCURACY RATE FOR UNAUTHORIZED WORKERS

Estimating the percentage of the Transaction Database cases for workers without employment authorization requires estimating the number of unauthorized workers among the cases in the Transaction Database.

The number of unauthorized workers among the Transaction Database cases (N^u) can be viewed as having three components—the number of unauthorized workers found to be unauthorized ($N^u \dots U$), the number receiving FNCs ($N^u \dots F$), and the number found work authorized ($N^u \dots A$), i.e.:

$$(20) N^u = (N^u \dots U) + (N^u \dots F) + (N^u \dots A)$$

²⁴¹ See Chapter VI for additional information about these findings.

Since the model assumes that findings for all contested cases are correct, the number of unauthorized cases found to be unauthorized ($N^u \dots U$) can be treated as known (i.e., 0). The number of unauthorized workers receiving FNCs can be easily estimated once the number of employment-authorized workers receiving FNCs is estimated as discussed in Section B of this appendix, since workers are assumed to be either authorized or unauthorized and because the total number of Final Nonconfirmations ($N^t \dots F$) is known:

$$(21) (N^t \dots F) = (N^u \dots F) + (N^a \dots F)$$

and

$$(22) (N^u \dots F) = (N^t \dots F) - (N^a \dots F)$$

To estimate the inaccuracy rate for unauthorized workers (E^u), which is equal to $(N^u \dots A) / N^u$ by definition, it is only necessary to estimate either $(N^u \dots A)$ or (N^u) , since equation (2) can be used to estimate either one of these values if the other can be estimated.

The evaluation team has made an effort to estimate (P^u); however, it is important to recognize that without direct evidence of the true employment-authorization status of the workers with cases submitted to E-Verify, any estimate of P^u will be very imprecise.

As discussed in Chapter II, the starting point of the estimate of percentage of unauthorized workers with Transaction Database cases was the Pew Foundation estimate of the percentage of unauthorized workers in the national labor force in March 2008 as 5.4 percent.²⁴² Adjustments were made to this starting rate based on known differences between Transaction Database cases and all cases in the nation on state and industry. The standardization process for state and industry calculates the number of unauthorized workers within each state or industry by taking the number of Transaction Database cases within a state or industry and multiplying them by the percentage of unauthorized workers within the state or industry. These estimates are contained in Exhibits B-2 and B-3.

Exhibit B-3. Distributions of National Labor Force, Transaction Database Cases, and Percent Unauthorized, by State

State	Pew estimates			Transaction Database cases	
	Total number of workers ($_{ps}N^t$) (000)	Estimated number not authorized ($_{ps}N^u$) (000)	Percent of workers estimated to be unauthorized ($_{ps}P^u$)	Total cases ($_{s}N^t$)	Estimated number of cases not authorized ($_{s}N^u$)
	154,772	8,300	5.4	1,729,838	
Alaska	361	5	1.4	1,876	26
Alabama	2,169	80	3.7	14,848	548
Arkansas	1,413	40	2.8	29,596	838
Arizona	3,103	300	9.7	250,175	24,187
California	18,824	1,850	9.8	175,058	17,204
Colorado	2,770	150	5.4	57,504	3,114
Connecticut	1,893	80	4.2	7,871	333
District of Columbia	329	25	7.6	6,091	463

²⁴²Jeffrey S. Passel, Senior Demographer, Pew Hispanic Center, and D'Vera Cohn, Senior Writer, Pew Research Center, A Portrait of Unauthorized Immigrants in the United States, 4.14.2009 (<http://pewhispanic.org/reports/report.php?ReportID=107>).

State	Pew estimates			Transaction Database cases	
	Total number of workers ($_{ps}N^t$) (000)	Estimated number not authorized ($_{ps}N^u$) (000)	Percent of workers estimated to be unauthorized ($_{ps}P^u$)	Total cases ($_{s}N^t$)	Estimated number of cases not authorized ($_{s}N^u$)
Delaware	457	20	4.4	5,287	231

Exhibit B-3. Distributions of National Labor Force, Transaction Database Cases, and Percent Unauthorized, by State—continued

State	Pew estimates			Transaction Database cases	
	Total number of workers ($_{ps}N^t$) (000)	Estimated number not authorized ($_{ps}N^u$) (000)	Percent of workers estimated to be unauthorized ($_{ps}P^u$)	Total cases ($_{s}N^t$)	Estimated number of cases not authorized ($_{s}N^u$)
Florida	9,231	750	8.1	43,858	3,563
Georgia	5,009	325	6.5	77,334	5,018
Hawaii	666	25	3.8	1,933	73
Iowa	1,684	35	2.1	19,013	395
Idaho	744	25	3.4	7,785	262
Illinois	6,805	325	4.8	35,294	1,686
Indiana	3,217	75	2.3	33,561	782
Kansas	1,480	40	2.7	18,181	491
Kentucky	1,991	25	1.3	21,912	275
Louisiana	1,939	60	3.1	8,190	253
Massachusetts	3,335	140	4.2	17,027	715
Maryland	2,977	200	6.7	47,367	3,182
Maine	710	5	0.7	1,794	13
Michigan	5,004	65	1.3	14,061	183
Minnesota	2,953	70	2.4	33,495	794
Missouri	2,993	25	0.8	137,269	1,147
Mississippi	1,417	25	1.8	14,906	263
Montana	507	5	1.0	1,219	12
North Carolina	4,682	250	5.3	66,080	3,528
North Dakota	365	5	1.4	1,466	20
Nebraska	1,006	30	3.0	18,581	554
New Hampshire	766	15	2.0	2,694	53
New Jersey	4,588	425	9.3	21,661	2,007
New Mexico	929	40	4.3	4,869	210
Nevada	1,370	170	12.4	14,690	1,823
New York	9,673	650	6.7	23,740	1,595
Ohio	5,900	65	1.1	46,691	514
Oklahoma	1,714	40	2.3	39,584	924
Oregon	1,933	100	5.2	9,475	490
Pennsylvania	6,336	100	1.6	29,916	472
Rhode Island	561	20	3.6	3,573	127
South Carolina	2,210	50	2.3	33,439	757
South Dakota	455	5	1.1	1,338	15
Tennessee	3,055	110	3.6	43,126	1,553
Texas	11,748	925	7.9	194,511	15,315
Utah	1,379	80	5.8	16,998	986
Virginia	4,117	210	5.1	38,043	1,940
Vermont	343	5	1.5	1,313	19
Washington	3,464	120	3.5	15,047	521

State	Pew estimates			Transaction Database cases	
	Total number of workers (_{ps} N ^t) (000)	Estimated number not authorized (_{ps} N ^u) (000)	Percent of workers estimated to be unauthorized (_{ps} P ^u)	Total cases (_s N ^t)	Estimated number of cases not authorized (_s N ^u)
Wisconsin	3,081	55	1.8	16,847	301
West Virginia	822	5	0.6	1,560	9
Wyoming	292	5	1.7	2,091	36
Total number	154,772	8,300		1,729,838	99,820
Total percent			5.4		5.8%

NOTE: Sum does not add to total because of rounding.

SOURCES: E-Verify Transaction Database: April–June 2008; Pew Hispanic Center, op cit.

Exhibit B-4. Distributions of National Labor Force, Transaction Database Cases, and Percent Unauthorized, by Broad Industry Category

Civilian Labor Force Category	Pew Estimates of the National Workforce			Transaction Database cases	
	Total number of workers ($p_i N^t$) (000)	Estimated number not authorized ($p_i N^u$) (000)	Percent of workers estimated to be unauthorized ($p_i P^u$)	Total cases ($i N^t$)	Estimated number of cases not authorized ($i N^u$)
Agriculture	2,339	314	13.4	24,538	3,294
Mining	754	18	2.4	5,486	131
Construction	12,407	1,749	14.1	80,053	11,285
Manufacturing	16,911	1,104	6.5	129,037	8,424
Wholesale and retail trade	21,894	946	4.3	78,107	3,375
Transportation and utilities	8,289	289	3.5	33,477	1,167
Information	3,678	73	2.0	145,494	2,888
Financial activities	10,522	226	2.1	29,004	623
Professional and business services	16,889	1,099	6.5	308,948	20,104
Education and health services	32,371	507	1.6	127,688	2,000
Leisure and hospitality	13,881	1,381	9.9	107,840	10,729
Employment services (same as other services)			7.6	524,038	39,788
Other services	7,257	551	7.6	64,476	4,895
Public administration	6,941	-	0.0	72,757	-
Total	154,133	8,257	5.4	1,730,943 (N^t)	108,703 (N^u)
Percent unauthorized workers (P^u) = N^u/N^t					6.3%

SOURCES: E-Verify Transaction Database: April–June 2008; Pew Hispanic Center, op cit.

Using the nomenclature in B-1, the formula for the percent unauthorized among Transaction Database cases based solely on the standardization on state is:

$$(23) P^u = \sum ({}_s N^u * {}_{ps} P^u)$$

Where P^u is the standardized rate based on the Transaction Database distribution and the Pew estimates of the percentage of each state's labor force who are unauthorized. Based on the information in Exhibit B-3, it is seen that the adjusted rate is 5.8 percent compared to 5.4 percent of the unadjusted rate for an increase of 0.4 percent after rounding. The standardization for industry shown in Exhibit B-4 is done in an analogous way and indicates an adjusted rate of 6.3 percent versus 5.4 percent for the unadjusted rate for a net difference of 0.9 percent.

Ideally, standardization would be done within state/industry cells; however, there are no available estimates of the percentage of unauthorized workers by industry within states. Lacking this, it is assumed that the effects of these two standardizations are additive, i.e., the estimate of the adjusted percentage is given by adding the Pew estimate of total percentage of unauthorized workers in the labor force ${}_p P^u = 5.4$, the difference between the original Pew estimate and the adjusted estimate controlling for state, and the difference between the original Pew estimate and the adjusted estimate controlling for industry. This standardization total is, therefore:

$$(24) 5.4 + 0.4 + 0.9 = 6.7 \text{ percent.}$$

Although the standardization for state should be reasonably accurate, the standardization for industry is not as accurate as desirable, because there are undoubtedly significant differences between the classification of industry for the nation (based on reports of workers in the March 2008 Current Population Survey (CPS)) and for the E-Verify population (based on employer reports when employers registered for the E-Verify Program). Most importantly, 30 percent of the E-Verify cases are from employment agencies; however, many of these workers are being verified for other types of industries and are presumably being classified in the Pew data based on their actual industry classification.

The estimate of 6.7 percent of E-Verify cases that are for unauthorized workers does not take into account a number of factors that might lead to the 6.7 percent being an underestimate or an overestimate. The following factors point to the estimate being an **overestimate**:

- Workers without employment authorization are more likely than other workers to be employed in the informal labor market (it is estimated that between 25 percent and 50 percent of unauthorized workers are in the informal labor market),²⁴³ presumably employers in the informal labor market are not likely to enroll in E-Verify.²⁴⁴ Based on this factor alone, it is reasonable to estimate that instead of 6.7 percent, the estimate should be between 3.4 ($.5 * 6.7$) and 5.0 ($(1-.25) * 6.7$) percent of workers entered into E-Verify were unauthorized.
- Workers without employment authorization may avoid employers using E-Verify. Based on the information presented in Chapter VII, this is probably not a major factor.

The following factor points to the estimate being an **underestimate**:

- Since the 5.4 percent rate of unauthorized workers in the labor force is based on CPS data reported by individuals, and the Transaction Database reflects the number of “new hires,” it would be highly desirable to control for job mobility since unauthorized workers tend to be more mobile than authorized workers. The difference can be explained, at least in part, by unauthorized workers having lower levels of formal education than workers with employment authorization and therefore tend to be disproportionately employed in occupations and industries with high turnover rates and in seasonal and unattractive jobs. In other cases, it is likely that some unauthorized workers are more likely to move to avoid being located by authorities who might deport them. According to the Pew report, the geographic mobility rate for immigrants between 2007 and 2008 was 18 percent for unauthorized immigrants compared to 11 percent for U.S.-born residents, i.e., approximately 60 percent more unauthorized immigrants than U.S.-born workers moved during the year. Although geographic mobility is not synonymous with job mobility, it is reasonable to assume they are strongly correlated. If it were assumed that the corresponding job mobility was also 60 percent higher than the Pew estimate of the labor force unauthorized to work (5.4 percent), the estimated percentage of unauthorized workers among new hires would be approximately 8.6 percent.²⁴⁵ If the state standardization was also made, the estimated rate would be 9.0 percent.²⁴⁶ If both this adjustment for mobility and the adjustment for participation in the informal market were made,

²⁴³ Immigration Policy Center, *The Economics of Immigration Reform: What Legalizing Undocumented Immigrants Would Mean for the U.S. Economy*, April 2009 (<http://www.immigrationpolicy.org/images/File/factcheck/EconomicsofCIRFullDoc.pdf>).

²⁴⁴ It is less clear what the enrollment rate would be for employers in the formal labor market that employ part of their work force “under the table.”

²⁴⁵ The evaluation team has not been able to locate a source that directly estimates job mobility among unauthorized workers.

²⁴⁶ Since one reason for the high mobility of unauthorized workers is industrial differences between authorized and unauthorized workers, it does not make sense to standardize on industry in addition to mobility.

the range for the estimate of percentage of cases in E-Verify for unauthorized workers would be from 4.5 percent to 6.8 percent.

- The estimate of the percentage unauthorized in the national labor force is most likely underestimated.²⁴⁷

Based on the information presented here, the total range for the percentage of transmissions for unauthorized workers could be from 3.4 to 9.0 percent. However, it is reasonable to assume that, to some extent, the above factors cancel one another out. For the purpose of this evaluation, the evaluation team used a point estimate of 6.2 and a plausible range of to 4.7 to 7.5.

This estimated range for the percentage of transmissions for unauthorized workers is broad, reflecting not only the factors discussed above but also other uncertainties about the original 6.7 percent estimate. For example, there is considerable variation in the percentage of workers within different occupations who are unauthorized; however, the Transaction Database does not have the occupational information needed to calculate a rate standardized on occupation.²⁴⁸

4. ESTIMATING THE TOTAL INACCURACY RATE AND THE EFFECTIVENESS RATE

Once the number of inaccurate cases for authorized workers and the number of inaccurate cases for unauthorized workers are estimated, the total inaccuracy rate is easily calculated:

$$(25) E^t = [(N^u \dots A) + (N^a \dots X)] / N^t$$

Where N^t is the total number of cases in the Transaction Database.

The effectiveness rate (F) is defined as the percentage of unauthorized workers found to be unauthorized. Since all unauthorized workers must be found to be either authorized or not found to be authorized, it is obvious that:

$$(26) N^u = (N^u \dots X) + (N^u \dots A)$$

and that

$$(27) N^u \dots X = N^u - (N^u \dots A)$$

or

$$(28) F = 1.0 - E^u$$

²⁴⁷Informal correspondence with Michael Hoefer, Director of Office of Immigration Statistics, U.S. Department of Homeland Security, May 2009.

²⁴⁸Occupational differences in the percentage unauthorized appear to be even more extreme than the industrial distributions. For example, 27 percent of construction laborers (an occupation) are estimated to be unauthorized compared to 14 percent of workers classified as being in the construction industry (Pew, op cit.).

