

**GAO**

Testimony

Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives

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# EMPLOYMENT VERIFICATION

## Challenges Exist in Implementing a Mandatory Electronic Employment Verification System

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Homeland Security and Justice Issues





Highlights of [GAO-08-729T](#), a testimony before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives

## Why GAO Did This Study

In 1996, the former U.S. Immigration and Naturalization Service, now within the Department of Homeland Security (DHS), and the Social Security Administration (SSA) began operating a voluntary pilot program, recently named the E-Verify program, to provide participating employers with a means for electronically verifying employees' work eligibility. Legislation has been introduced in Congress to require all employers to electronically verify the work authorization status of their employees. In this testimony GAO provides observations on the E-Verify system's capacity and costs, options for reducing delays and improving efficiency in the verification process, ability to detect fraudulent documents and identity theft, and vulnerability to employer fraud and misuse. This testimony is based on GAO's products issued from August 2005 through June 2007 and updated information obtained from DHS and SSA in April 2008. We analyzed data on employer use, E-Verify guidance, and other reports on the employment verification process, as well as legislative proposals and regulations.

## What GAO Recommends

In 2005, we recommended that DHS include an assessment of the feasibility and costs of addressing program weaknesses, such as inability to detect identity fraud, in a planned evaluation of the program. DHS implemented this recommendation. This testimony contains no new recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-729T](#). For more information, contact Richard M. Stana at (202) 512-8777 or [stanar@gao.gov](mailto:stanar@gao.gov).

## EMPLOYMENT VERIFICATION

### Challenges Exist in Implementing a Mandatory Electronic Employment Verification System

#### What GAO Found

A mandatory E-Verify program would necessitate an increased capacity at both U.S. Citizenship and Immigration Services (USCIS) and SSA to accommodate the estimated 7.4 million employers in the United States. According to USCIS, as of April 2008, more than 61,000 employers have registered for E-Verify, and about half are active users. Although DHS has not prepared official cost figures, USCIS officials estimated that a mandatory E-Verify program could cost a total of about \$765 million for fiscal years 2009 through 2012 if only newly hired employees are queried through the program and about \$838 million over the same 4-year period if both newly hired and current employees are queried. USCIS has estimated that it would need additional staff for a mandatory E-Verify program, but was not yet able to provide estimates for its staffing needs. SSA has estimated that implementation of a mandatory E-Verify program would cost a total of about \$281 million and require hiring 700 new employees for a total of 2,325 additional workyears for fiscal years 2009 through 2013.

USCIS and SSA are exploring options to reduce delays and improve efficiency in the E-Verify process. The majority of E-Verify queries entered by employers—about 92 percent—confirm within seconds that the employee is work-authorized. About 7 percent of the queries cannot be immediately confirmed as work authorized by SSA, and about 1 percent cannot be immediately confirmed as work authorized by USCIS because employees' information queried through the system does not match information in SSA or DHS databases. The majority of SSA erroneous tentative nonconfirmations occur because employees' citizenship or other information, such as name changes, is not up to date in the SSA database, generally because individuals do not request that SSA make these updates. USCIS and SSA are planning to implement initiatives to help address these weaknesses and reduce delays.

E-Verify may help employers detect fraudulent documents thereby reducing such fraud, but it cannot yet fully address identity fraud issues, for example when employees present genuine documents that may be stolen. USCIS has added a photograph screening tool to E-Verify through which an employer verifies the authenticity of certain documents, such as an employment authorization document, by matching the photograph on the document with the photograph in DHS databases. USCIS is exploring options to expand this tool to include other forms of documentation, such as passports, with databases that store photographic information, but these efforts are in the planning stages and require decisions about data sharing and privacy issues.

E-Verify is vulnerable to acts of employer fraud and misuse, such as employers limiting employees' pay during the E-Verify process. USCIS has established a branch to review employers' use of E-Verify. In addition, information suggesting employers' fraud or misuse can be useful to U.S. Immigration and Customs Enforcement (ICE) in targeting worksite enforcement resources. USCIS and ICE are negotiating a memorandum of understanding to define roles and responsibilities for sharing information.

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Chairman McNulty, Ranking Member Johnson, and Members of the Subcommittee:

I appreciate the opportunity to be here today to participate in this hearing on electronic employment verification. As we and others have reported in the past, the opportunity for employment is one of the most powerful magnets attracting unauthorized immigrants to the United States. To help address this issue, in 1986 Congress passed the Immigration Reform and Control Act (IRCA), which made it illegal for individuals and entities to knowingly hire, continue to employ, or recruit or refer for a fee unauthorized workers.<sup>1</sup> The act established a two-pronged approach for helping to limit the employment of unauthorized workers: (1) an employment verification process through which employers verify all newly hired employees' work eligibility and (2) a sanctions program for fining employers who do not comply with the act.<sup>2</sup>

Following the passage of IRCA, the U.S. Commission on Immigration Reform and various immigration experts indicated a number of problems with the implementation of immigration policies and concluded that deterring illegal immigration requires, among other things, strategies involving a more reliable employment eligibility verification process that focuses on disrupting the ability of illegal immigrants to gain employment. In particular, the commission report and other studies found that the single most important step that could be taken to reduce unlawful migration is the development of a more effective system for verifying work authorization. In the over 20 years since passage of IRCA, the employment eligibility verification process has remained largely unchanged. Legislation has been introduced in Congress to reform immigration laws and strengthen electronic employment verification. Some of this legislation includes proposals that would require employers to use a mandatory, functional electronic employment verification program for verifying the

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<sup>1</sup>8 U.S.C. §1324a(a).

<sup>2</sup>IRCA provided for sanctions against employers who do not follow the employment verification (Form I-9) process. Employers who fail to properly complete, retain, or present for inspection a Form I-9 may face civil or administrative fines ranging from \$110 to \$1,100 for each employee for whom the form was not properly completed, retained, or presented. Employers who knowingly hire or continue to employ unauthorized aliens may be fined from \$275 to \$11,000 for each employee, depending on whether the violation is a first or subsequent offense. Employers who engage in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens are subject to criminal penalties consisting of fines up to \$3,000 per unauthorized employee and up to 6 months imprisonment for the entire pattern or practice.

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work authorization of all newly hired employees. Some of these proposals would also require employers to use an electronic employment verification program to verify the work authorization status of existing employees. In addition, some proposals would provide sanctions for employers who do not use electronic verification to verify the work authorization status of employees equivalent to sanctions for employers who do not comply with the employment verification process established by IRCA.

Currently, U.S. Citizenship and Immigration Services (USCIS), a component within the Department of Homeland Security (DHS), in conjunction with the Social Security Administration (SSA), operates a voluntary electronic employment verification program, called E-Verify. While participation in this program remains voluntary, some states are moving to require all employers in the state to verify newly hired employees using E-Verify. For example, as of January 1, 2008, the “Legal Arizona Workers Act” requires all employers in Arizona to verify the employment eligibility of newly hired employees through the E-Verify program. This act also provides civil penalties, including the possible suspension or permanent revocation of all Arizona business licenses, for employers who are found to intentionally or knowingly employ an unauthorized alien. In 2008, Mississippi passed the “Mississippi Employment Protection Act,” under which the state will phase in mandatory newly hired employee eligibility verification with E-Verify for all employers between July 1, 2008, and July 1, 2011. Other states, including Idaho, Minnesota, Rhode Island, and Oklahoma require employers in certain sectors, such as government employers and contractors, to verify their employees’ work authorization status.

My testimony today is an update of our prior work regarding employment verification and worksite enforcement. Specifically, I will discuss our observations on the E-Verify program’s capacity and costs, options for reducing delays and improving efficiency in the verification process, ability to detect fraudulent documents and identity theft, and vulnerability to employer fraud and misuse.

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In preparing this testimony, we reviewed our past work on employment verification and worksite enforcement efforts.<sup>3</sup> In April 2008, we updated information from our past work. Specifically, we analyzed updated information provided by U.S. Immigration and Customs Enforcement (ICE), USCIS, and SSA officials on the E-Verify program and challenges their agencies may face if an electronic employment verification program were made mandatory. We examined legislative proposals, regulations, guidance, and other studies on the employment verification process. We also analyzed a report on the results of an independent evaluation of the E-Verify program, then known as the Basic Pilot program, issued by Westat Corporation, a contractor evaluating the program, in September 2007.<sup>4</sup> We reviewed the scope and methodology used by Westat in conducting the evaluation and, based on this review, found that the report findings were sufficiently reliable to provide a general indication of the types of ways in which employers have used the program. Furthermore, we received updated data on employer use of the current electronic employment eligibility verification system. We reviewed these data for accuracy and completeness and determined that these data were sufficiently reliable for the purposes of our review. We conducted these performance audits and our 2008 update in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Summary

A mandatory E-Verify program would necessitate an increased capacity at both USCIS and SSA to accommodate the estimated 7.4 million employers in the United States.<sup>5</sup> As of April 2008, more than 61,000 employers have registered for E-Verify, about half of whom have been active users. Under a mandatory E-Verify program, USCIS has estimated that annual employer

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<sup>3</sup>GAO, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, GAO-05-813 (Washington, D.C.: Aug. 31, 2005) and GAO, *Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Verification System*, GAO-07-924T (Washington, D.C.: June 7, 2007).

<sup>4</sup>Westat, *Findings of the Web Basic Pilot Evaluation* (Washington, D.C.: September 2007).

<sup>5</sup>In 2005, the most recent year for which data are available, there were approximately 7.4 million employer establishments in the United States.

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queries of newly hired employees would be an average of 63 million. USCIS has tested the E-Verify computer system and found that the system could process up to 240 million queries per year with the purchase of five additional servers. A mandatory E-Verify program would require additional USCIS and SSA resources to operate the program, including conducting monitoring and compliance and status verification activities. Although DHS has not prepared official cost figures, USCIS officials estimated that a mandatory E-Verify program could cost a total of about \$765 million for fiscal years 2009 through 2012 if only newly hired employees are queried through the program and about \$838 million over the same 4-year period if both newly hired and current employees are queried. USCIS has estimated that it would need additional staff for a mandatory E-Verify program, but was not yet able to provide estimates for its staffing needs. Currently, USCIS has 121 E-Verify staff nationwide and, according to the agency, would increase its staffing level based on a formula that considers monitoring and compliance and status verification staffing needs as the number of employers using E-Verify increases. SSA has estimated that expansion of a mandatory E-Verify program would cost a total of about \$281 million for fiscal years 2009 through 2013 and require hiring 700 new employees for a total of 2,325 additional workyears over the same 5-year period.

USCIS and SSA are exploring options to reduce delays and improve efficiency in the E-Verify process. According to USCIS, under the current voluntary program the majority of E-Verify queries entered by employers—about 92 percent—confirm within seconds that the employee is authorized to work. About 7 percent of the queries cannot be immediately confirmed as work authorized by SSA, and about 1 percent cannot be immediately confirmed as work authorized by USCIS because the employee information queried through the program does not match information in SSA or DHS databases.<sup>6</sup> With regard to SSA tentative nonconfirmations, USCIS and SSA officials told us that the majority of erroneous tentative nonconfirmations occur because employees' citizenship or other information, such as name changes, is not up to date in the SSA database, generally because individuals have not contacted SSA to update their information when changes occurred. USCIS and SSA are

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<sup>6</sup>In general, in cases when the E-Verify system cannot confirm an employee's work authorization status through the initial automatic check, the system issues the employer either an SSA or a DHS tentative nonconfirmation of the employee's work authorization status, which requires the employee to resolve any data inaccuracies if he or she is able or chooses to do so.

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planning to implement various initiatives to help address these weaknesses and reduce delays in the verification process. For example, in May 2008 USCIS plans to implement an initiative to modify the electronic verification process so that employees whose naturalized citizenship status cannot be confirmed by SSA will be also checked against DHS databases, helping to reduce the number of naturalized citizens who would need to visit an SSA office to resolve a tentative nonconfirmation and improving efficiency in the verification process.

E-Verify may help employers detect fraudulent documents, thereby reducing such fraud, but it cannot yet fully address identity fraud issues, for example, when employees present borrowed or stolen genuine documents. USCIS has taken steps to improve E-Verify's ability to help reduce fraud. For example, USCIS has added a photograph screening tool to E-Verify through which an employer verifies the authenticity of certain DHS-issued identity documents, such as an employment authorization document, by matching the photograph on the card or document with the photograph stored in DHS databases. USCIS is exploring options for expanding this tool to include other forms of documentation with related databases that store photographic information, such as passports issued by the Department of State and driver's licenses issued by states. These efforts are in the planning stages and require policy decisions regarding data-sharing processes and consideration of privacy issues.

E-Verify is also vulnerable to acts of employer fraud and misuse, such as employers limiting work assignments or pay while employees undergo the verification process, that can adversely affect employees queried through the E-Verify program. USCIS has taken actions to help address employer fraud and misuse by, for example, establishing a Monitoring and Compliance branch to review employers' use of the E-Verify program. USCIS is working to staff this office and implement monitoring and compliance activities. However, these implementation efforts are in the early stages, and it is too early to tell whether these efforts will fully ensure that all employers are properly using E-Verify and following requirements under a mandatory program. In addition, information suggesting employer fraud or misuse of the system could be useful to other DHS components in targeting worksite enforcement resources and promoting employer compliance with employment laws. Under the current voluntary program, case referrals and requests for information between ICE and USCIS have been infrequent and informal. ICE and USCIS are negotiating a memorandum of understanding (MOU) to define roles, responsibilities, and mechanisms for sharing E-Verify data, and USCIS is developing a system for tracking case referrals made to ICE.

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## Background

In 1986, IRCA established the employment verification process based on employers' review of documents presented by employees to prove identity and work eligibility. On the Form I-9, employees must attest that they are U.S. citizens, lawfully admitted permanent residents, or aliens authorized to work in the United States. Employers must then certify that they have reviewed the documents presented by their employees to establish identity and work eligibility and that the documents appear genuine and relate to the individual presenting them. In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent. Employers are required to retain the Form I-9 and provide it, upon request, to officers of the Departments of Homeland Security and Labor and the Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices for inspection.<sup>7</sup> Employers generally are deemed in compliance with IRCA if they have followed the Form I-9 process, including when an unauthorized alien presents fraudulent documents that appear genuine. Following the passage of IRCA in 1986, employees could present 29 different documents to establish their identity and/or work eligibility. In a 1997 interim rule, the former U.S. Immigration and Naturalization Service (INS) reduced the number of acceptable work eligibility documents from 29 to 27.<sup>8</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)<sup>9</sup> of 1996 required the former INS and SSA to operate three voluntary pilot programs to test electronic means for employers to verify an employee's eligibility to work, one of which was the Basic Pilot Program.<sup>10</sup> The Basic Pilot Program was designed to test whether pilot verification procedures could improve the existing employment

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<sup>7</sup>Employers are required to retain the Form I-9 for 3 years after the date the person begins work or 1 year after the person's employment is terminated, whichever is later.

<sup>8</sup>Eight of these documents establish both identity and employment eligibility (e.g., U.S. passport or permanent resident card); 12 documents establish identity only (e.g., driver's license); and 7 documents establish employment eligibility only (e.g., Social Security card).

<sup>9</sup> Pub. L. No. 104-208, div. C, §§ 401-404, 110 Stat. 3009-546, 3009-655-65.

<sup>10</sup>The other two pilot programs mandated by IIRIRA—the Citizen Attestation Verification Pilot Program and the Machine-Readable Document Pilot Program—were discontinued in 2003 due to technical difficulties and unintended consequences identified in evaluations of the programs. See Institute for Survey Research and Westat, *Findings of the Citizen Attestation Verification Pilot Program Evaluation* (Washington, D.C.: April 2003) and Institute for Survey Research and Westat, *Findings of the Machine-Readable Document Pilot Program Evaluation* (Washington, D.C.: May 2003).

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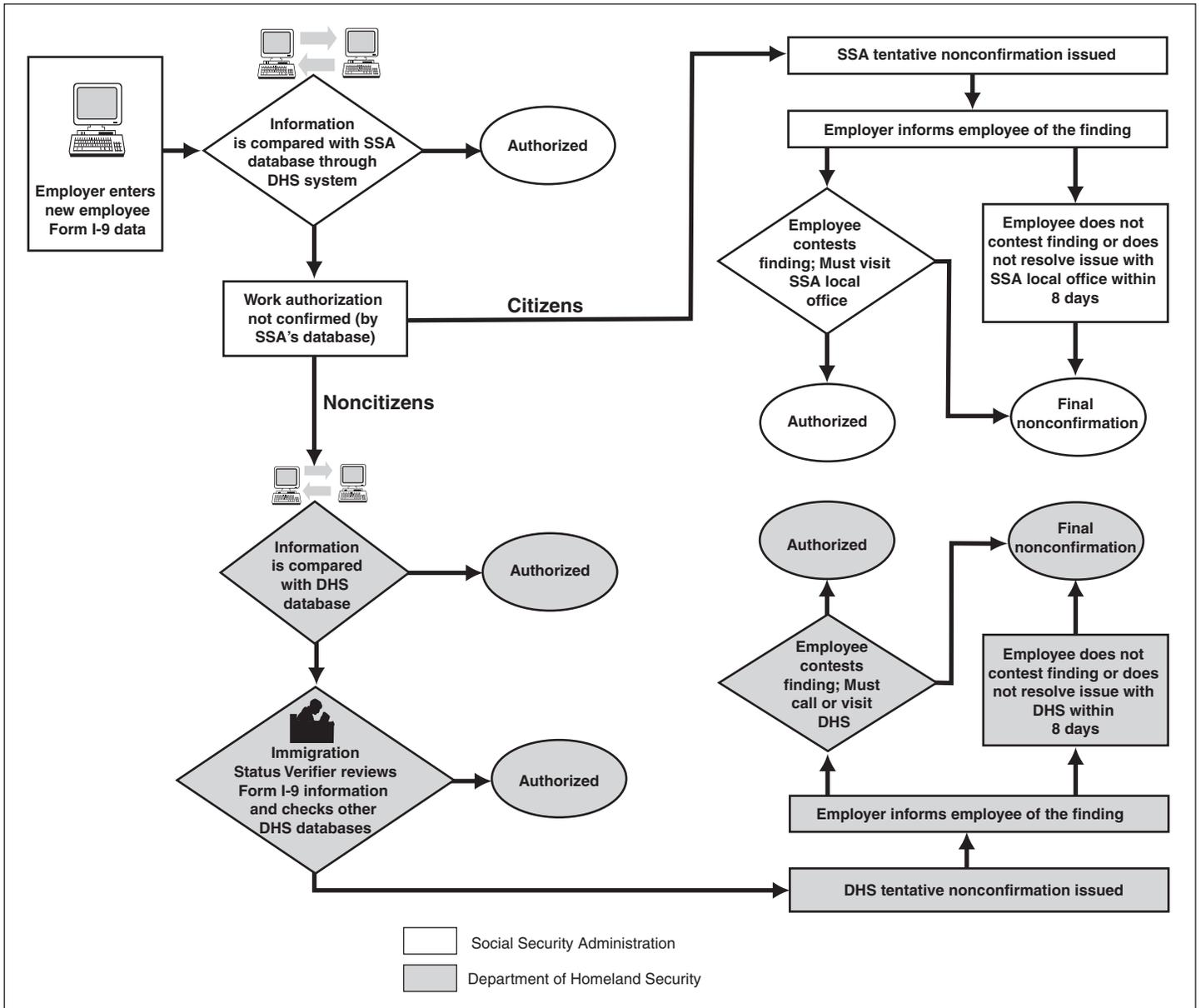
verification process by reducing (1) false claims of U.S. citizenship and document fraud, (2) discrimination against employees, (3) violations of civil liberties and privacy, and (4) the burden on employers to verify employees' work eligibility.

In 2007, USCIS renamed the Basic Pilot Program the Employment Eligibility Verification program and later in the year changed the name to E-Verify. E-Verify provides participating employers with an electronic method to verify their employees' work eligibility. Regardless of whether employers participate voluntarily in E-Verify, they are still required to complete Forms I-9 for all newly hired employees in accordance with IRCA. After completing the forms, those employers participating in the program query E-Verify's automated system by entering employee information provided on the forms, such as name and social security number, into the E-Verify Web site within 3 days of the employee's start date. The program then electronically matches that information against information in SSA's Numident database and, if necessary, DHS databases to determine whether the employee is eligible to work.<sup>11</sup> E-Verify electronically notifies employers whether their employees' work authorization was confirmed. Those queries that the DHS automated check cannot confirm are referred to USCIS staff, called immigration status verifiers, who check employee information against information in other DHS databases. The E-Verify program process is shown in figure 1.

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<sup>11</sup> Through a process known as enumeration, SSA assigns a unique social security number to each individual who meets the requirements for one. Social security numbers are issued to most U.S. citizens at birth. They are also available to noncitizens lawfully admitted to the United States with permission to work. Numident contains demographic information on every social security number holder.

Figure 1: E-Verify Program Verification Process



Source: GAO analysis based on USCIS information.

In cases when E-Verify cannot confirm an employee's work authorization status either through the automatic check or the check by an immigration

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status verifier, the system issues the employer a tentative nonconfirmation of the employee's work authorization status. In this case, the employers must notify the affected employees of the finding, and the employees have the right to contest their tentative nonconfirmations by contacting SSA or USCIS to resolve any inaccuracies in their records within 8 federal working days. During this time, employers may not take any adverse actions against those employees, such as limiting their work assignments or pay. After 8 days, employers are required to either immediately terminate the employment, or notify DHS of the continued employment, of workers who do not successfully contest the tentative nonconfirmation and those whom the program finds are not work-authorized.<sup>12</sup>

The E-Verify program uses the same system as USCIS's Systematic Alien Verification for Entitlements Program, which provides a variety of verification services for federal, state, and local government agencies. USCIS estimates that more than 150,000 federal, state, and local agency users verify immigration status through the Systematic Alien Verification for Entitlements Program. SSA also operates the Web-based Social Security Number Verification Service, which employers can use to assure that employees' names and social security numbers match SSA's records. This service, designed to ensure accurate employer wage reporting, is offered free of charge. Employer use is voluntary, and approximately 12,000 employers requested more than 25.7 million verifications in 2005, according to the SSA Office of the Inspector General.<sup>13</sup>

USCIS contracted for an independent evaluation of the E-Verify program. Westat, the organization that conducted the evaluation, issued a report on its evaluation findings in September 2007. According to this report, the Westat evaluation examined how well the federal government implemented modifications made to the original Basic Pilot Program and the extent to which the program met its goals to (1) reduce employment of unauthorized workers, (2) reduce discrimination, (3) protect employee civil liberties and privacy, and (4) prevent undue burden on employers. Based on its findings, Westat made recommendations to USCIS and SSA intended to help improve the program.

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<sup>12</sup> According to the E-Verify User Manual, a participating employer can notify DHS that it is not terminating an employee whose employment was not authorized by E-Verify or who did not contest a tentative nonconfirmation.

<sup>13</sup> Social Security Administration Office of the Inspector General, *Monitoring the Use of Employee Verification Program*, A-03-06-36122 (Washington, D.C.: Sept. 26, 2006).

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## Mandatory E-Verify Will Require an Increase in Capacity at USCIS and SSA

Mandatory electronic employment verification would substantially increase the number of employers using the E-Verify program, which would place greater demands on USCIS and SSA resources. As of April 2008, more than 61,000 employers have registered to use the program, about 28,000 of whom were active users, according to USCIS.<sup>14</sup> USCIS has estimated that approximately 4,000 employers are registering per month. In fiscal year 2007, USCIS processed about 3.2 million employer queries and for the first 6 months of fiscal year 2008, processed about 2.6 million queries. If participation in the E-Verify program were made mandatory, the program would have to accommodate all of the estimated 7.4 million employers in the United States. USCIS has projected that employers would submit an average of 63 million queries on newly hired employees per year under a mandatory E-Verify program.<sup>15</sup> USCIS officials stated that they have tested the capacity of the E-Verify computer system to handle about four times the projected load of queries that would occur if E-Verify participation were made mandatory for all employers. These tests showed that the E-Verify system can process up to 240 million queries per year, with the purchase of 5 additional servers, exceeding USCIS's projection of an average of 63 million queries per year under a mandatory E-Verify program.<sup>16</sup>

USCIS has developed cost and staffing estimates for operating a mandatory E-Verify program. Although DHS has not prepared official cost figures, USCIS officials estimated that a mandatory E-Verify program could cost a total of about \$765 million for fiscal years 2009 through 2012 if only newly hired employees are queried through the program and about \$838 million over the same 4-year period if both newly hired and current

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<sup>14</sup>Active users are those employers who have run at least one query in fiscal year 2008.

<sup>15</sup>USCIS used employment data from the Bureau of Labor Statistics to develop these query projections. According to these statistics, employers hire an average of 9 new employees per year. The total number of employers is 7.4 million, based on these statistics, which amounts to approximately 63 million employment verifications per year.

<sup>16</sup>USCIS officials told us that under the current voluntary E-Verify program, which uses one server, the program has been tested to handle about 40 million queries per year. In addition, under the current voluntary program, the program has been tested to handle about 45,000 employer registrations per day and, with two additional servers, could handle up to 145,000 employer registrations per day.

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employees are queried.<sup>17</sup> Mandatory implementation of E-Verify would also require additional USCIS staff to administer the program, but USCIS was not yet able to provide estimates for its staffing needs. Under the voluntary program, USCIS operated E-Verify with 12 headquarters staff members in 2005, which has now grown to about 121 full-time employees nationwide, with 21 staff members for monitoring and compliance and 11 for status verification operations. According to USCIS, the agency would increase its staffing level based on a formula that considers monitoring and compliance and status verification staffing needs as the number of employers using E-Verify increases.

A mandatory E-Verify program would also require an increase in SSA's resource and staffing requirements. SSA has estimated that implementation of a mandatory E-Verify program would cost a total of about \$281 million for fiscal years 2009 through 2013 and require hiring 700 new employees for a total of 2,325 additional workyears over the same 5-year period.<sup>18</sup> According to SSA, these estimates represent costs if the current E-Verify system is expanded, and any changes to the current process could have significant additional costs to the agency. The estimates include costs for start-up, such as system upgrades, training for current SSA employees, and training, space, and workstations for new employees, and ongoing activities, such as field office visits and system maintenance. SSA's estimates assume that under a mandatory expansion of the current E-Verify program, for every 100 E-Verify queries, about 1.4

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<sup>17</sup>The 4-year phased-in implementation proposal used by USCIS in making this estimate assumes that the federal employers with over 250 employees would be required to use E-Verify the first year. Mandatory use of E-Verify would be required for all employers with more than 100 employees in the second year, employers with more than 30 employees in the third year, and all remaining employers in the fourth year.

<sup>18</sup>In developing these estimates, SSA assumed that the federal government, federal contractors, and employers with over 250 employees would be required to use E-Verify the first year. Mandatory use of E-Verify would be required for all employers with more than 100 employees in the second year, employers with more than 30 employees in the third year, and all remaining employers in the fourth year. SSA assumed that employers must ensure that their current employees have been verified through E-Verify within 4 years. SSA also assumed that the first group of employers will have to begin verifying newly hired employees by the end of fiscal year 2009. Moreover, in developing the estimate SSA assumed that there will be a gradual increase in verification requests from fiscal years 2009 through 2012, peaking at 110 million in fiscal year 2012, before settling off at a consistent volume of 60 million verification requests each year, with some employers participating voluntarily in E-Verify to verify new and current employees before they are required to do so.

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individuals will contact SSA regarding a tentative nonconfirmation.<sup>19</sup> According to SSA officials, the cost of mandatory E-Verify would be driven by the increased workload of its field office staff due to resolving SSA tentative nonconfirmations, as well as some of the computer systems improvements and upgrades that SSA would need to implement to address the capacity of a federal mandatory program. Moreover, the final number of new full-time staff required would depend on both the legislative requirements for implementing mandatory E-Verify and the effectiveness of efforts USCIS has underway to decrease the need for individuals to visit SSA field offices. SSA officials told us that SSA would need time and a phased-in approach for implementation of a mandatory E-Verify program in order to handle the increased workload for SSA field offices.

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## USCIS and SSA Are Implementing Plans to Reduce Delays and Improve Efficiency in the E-Verify Process

In prior work, we reported that secondary verifications lengthen the time needed to complete the employment verification process. The majority of E-Verify queries entered by employers—about 92 percent—confirm the employee is authorized to work within seconds. About 7 percent of queries are not confirmed by the initial automated check and result in SSA tentative nonconfirmations, while about 1 percent result in DHS tentative nonconfirmations.<sup>20</sup> With regard to the SSA tentative nonconfirmations, USCIS officials told us that the majority of erroneous tentative nonconfirmations occur because employees' citizenship status or other information, such as name changes, is not up to date in the SSA database, generally because individuals have not notified SSA of information

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<sup>19</sup>According to SSA, the vast majority of individuals visit an SSA field office, and a small percentage contact SSA's 1-800 number. SSA officials told us that in fiscal year 2007, for every 100 E-Verify queries, 1.7 individuals contacted SSA, on average, about 1.5 times, or a total of 2.6 contacts per 100 queries. Based on planned changes to the E-Verify process, SSA currently estimates that for every 100 queries submitted to E-Verify in fiscal year 2008, 1.4 individuals will contact SSA, on average about 1.5 times each, for a total of 2.1 contacts per 100 queries. This 1.4 estimate accounts for planned modifications to the E-Verify program through which (1) individuals whose naturalized citizenship status cannot be confirmed by SSA will also be queried against DHS's databases; and (2) individuals who receive a tentative nonconfirmation because their citizenship status does not match SSA's records can contact USCIS via a 1-800 number to resolve the tentative nonconfirmation rather than having to visit an SSA field office to do so.

<sup>20</sup>These data on the results of initial E-Verify queries may not serve as a basis for projecting the number of queries that will be automatically confirmed or receive a tentative nonconfirmation under a mandatory E-Verify program. According to USCIS, there are preliminary indications that because of system improvements, the percentage of initial queries that are automatically confirmed as work authorized is increasing, and the percentage of initial queries that result in tentative nonconfirmations is decreasing.

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changes that occurred. SSA updates its records to reflect changes in individuals' information, such as citizenship status or name, when individuals request that SSA make such updates. USCIS officials stated that, for example, when aliens become naturalized citizens, their citizenship status, updated in DHS databases, is not automatically updated in the SSA database. When these individuals' information is queried through E-Verify, a tentative nonconfirmation would be issued because under the current E-Verify process, those queries would only check against SSA's database; they would not automatically check against DHS's databases. Therefore, these individuals would have to go to an SSA field office to correct their records in SSA's database.

USCIS and SSA are planning to implement initiatives to help address SSA tentative nonconfirmations, particularly those issued for naturalized citizens, with a goal of reducing the need for employees to visit SSA field offices. For example, in May 2008, USCIS plans to launch an initiative to modify the electronic verification process so that employees whose naturalized citizenship status cannot be confirmed by SSA will also be checked against DHS's databases.<sup>21</sup> A query that could not be confirmed by SSA would be automatically checked against DHS's databases. If the employee's information matched information in DHS's databases and the databases showed that the person was a naturalized U.S. citizen, E-Verify would confirm the employee as work authorized. USCIS and SSA intend for this modification to enable USCIS to check naturalization status before an SSA tentative nonconfirmation is issued as a result of the naturalized citizen's information not matching citizenship information in SSA's database. According to USCIS, this should help eliminate the need for the employee who is a naturalized citizen to travel to an SSA field office before being confirmed as work authorized. USCIS has projected that as it implements this modification, the number of tentative nonconfirmations should also be reduced. It remains to be seen by how much the number of tentative nonconfirmations will be reduced as a result of this modification. Furthermore, in May 2008 USCIS plans to modify the E-Verify process so that naturalized citizens who receive a citizenship-related mismatch will

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<sup>21</sup>As of May 2008, USCIS will use the following databases to confirm employee work authorization: DHS Central Index System; Computer Linked Automated Information Management System 3; Interagency Border Inspection System I-94 data; Image Storage and Retrieval System; SSA Numerical Identification File; Interagency Border Inspection System Real Time Arrival; and the Computer Linked Automated Information Management System 4 and the Reengineered Naturalization Automated Casework System, which will be added in May 2008.

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be able to call DHS directly to resolve this mismatch rather than having to visit an SSA field office in-person to resolve the mismatch. In addition USCIS and SSA are exploring options for updating SSA records with naturalization information from DHS records. Although this could help to further reduce the number of SSA tentative nonconfirmations, USCIS and SSA are still in the planning stages, and implementation of this initiative may require significant policy and technical considerations, such as how to link records in SSA and DHS databases that are stored according to different identifiers.<sup>22</sup>

USCIS and SSA are also implementing additional options to reduce delays and improve the efficiency of the verification process. USCIS stated that it is adding databases to the E-Verify program, increasing the number of databases against which queries of employees' information are checked. For example, USCIS stated that it is incorporating real-time arrival data for noncitizens from the Inter-Agency Border Inspection System (IBIS) database, which tracks individuals, to help reduce the number of tentative nonconfirmations issued for newly arrived noncitizens queried through E-Verify.<sup>23</sup> SSA has also coordinated with USCIS to develop an automated notification capability, known as the Employment Verification SSA Tentative Nonconfirmation Automated Response (EV-STAR) system. This system, available in all SSA field offices, became operational in October 2007 and allows SSA field office staff to view the same information that is provided to employers through E-Verify. In addition, SSA field office staff can notify the employer of the status of and any actions taken on the employee's record to resolve the tentative nonconfirmation and, through EV-STAR, this information is directly updated in E-Verify.<sup>24</sup> USCIS and SSA officials stated that EV-STAR has helped to reduce the burden on SSA,

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<sup>22</sup>In general, SSA records are stored according to social security numbers, while DHS records are stored according to alien numbers, known as A-numbers.

<sup>23</sup>E-Verify is using IBIS data to verify the work authorization of non-citizens whose data are not found in the DHS Central Index System. The Central Index System contains information on the status of applicants/petitioners seeking immigration benefits to include, among others, lawful permanent residents, naturalized citizens, U.S. border crossers, and aliens who illegally entered the United States.

<sup>24</sup>Prior to the establishment of EV-STAR, employers were not automatically notified through the E-Verify system after an SSA-issued tentative nonconfirmation was resolved. Rather, after resolving the tentative nonconfirmation, the employee had to present the tentative nonconfirmation notification, containing SSA's notice of resolution of the tentative nonconfirmation, to the employer and the employer then had to access E-Verify to resolve the tentative nonconfirmation in the system.

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employers, and employees in resolving SSA tentative nonconfirmations. These efforts may help improve the efficiency of the verification process. However, they will not entirely eliminate the need for some individuals to visit SSA field offices to update their records, as USCIS and SSA efforts do not address all types of changes that may occur in individuals' information and result in the issuance of tentative nonconfirmations, such as individuals' name changes.

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## USCIS has Identified Areas where E-Verify is Vulnerable to Fraud, but Proposed Actions Do Not Address All Types of Fraud and Raise Privacy Concerns

In our prior work, we reported that E-Verify enhances the ability of participating employers to reliably verify their employees' work eligibility.<sup>25</sup> The program also assists participating employers with identification of false documents used to attempt to obtain employment. When newly hired employees present false information, E-Verify will not confirm the employees' work eligibility because their information, such as a false name or social security number, would not match SSA and DHS databases. However, the current E-Verify program cannot help employers detect forms of identity fraud, such as cases in which an individual presents genuine documents that are borrowed or stolen because the system will verify an employee when the information entered matches DHS and SSA records, even if the information belongs to another person.

USCIS has taken steps to reduce fraud associated with the use of genuine documents in which the original photograph is substituted for another. A photograph screening tool was incorporated into E-Verify in September 2007 and is accessible for most employers registered to use E-Verify.<sup>26</sup> According to USCIS officials, the photograph screening tool is intended to allow an employer to verify the authenticity of a lawful permanent resident card ("green card") or an employment authorization document, both of which contain photographs of the document holder. As a part of the E-Verify program, the photograph screening tool is used in cases when an employee presents a green card or employment authorization document to prove his or her work eligibility. The employer then inputs the card number into E-Verify, and the system then retrieves a copy of the employee's photograph that is stored in DHS databases through the

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<sup>25</sup>GAO-05-813.

<sup>26</sup>As of April 2008, E-Verify employers who use a designated agent (another company or individual who runs queries on behalf of the company) or Web services (an access method that allows employers to use their own software to access E-Verify) cannot access the Photo Screening Tool.

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photograph screening tool. The employer is then supposed to match the photograph shown on the computer screen with the photograph on the original or photocopy of the employee's lawful permanent resident card or employment authorization document and make a determination as to whether the photographs match.<sup>27</sup> In completing the Form I-9, the employer is required to review the documents presented by an employee to prove identity and work eligibility and to certify that the documents appear genuine and relate to the individual presenting them. According to USCIS, for about 5 percent of employee queries that are run through E-Verify, employees present a green card or employment authorization document as identification.<sup>28</sup>

The use of the photograph screening tool is currently limited because newly hired employees who are queried through the E-Verify system and present documentation other than green cards or employment authorization documents to verify work eligibility—about 95 percent of E-Verify queries—are not subject to the tool. Expansion of the photograph screening tool would require incorporating other forms of documentation with related databases that store photographic information, such as passports issued by the Department of State and driver's licenses issued by states. Efforts to expand the tool have been initiated, but are still in the early planning stages. For example, according to USCIS officials, USCIS and the Department of State have begun exploring ways to include visa and U.S. passport documents in the tool, but these agencies have not yet reached agreement regarding the use of these documents. The Department of State is working with DHS to determine the business processes and system requirements of linking passport and visa databases to E-Verify. Additionally, USCIS is negotiating with state motor vehicle associations to incorporate driver's license photographs into E-Verify, and is seeking state motor vehicle agencies that are willing to participate in an image-sharing pilot program. As of April 2008, no motor vehicle agencies have yet officially agreed to participate in the pilot program.

As USCIS works to address fraud through data sharing with other agencies, privacy issues—particularly in regards to sharing employee

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<sup>27</sup>Employers are supposed to notify USCIS of their determination of whether the photographs matched, or if they could not make a determination, through the E-Verify system. If an employer determines that the photographs do not match, a tentative nonconfirmation is issued.

<sup>28</sup>This number excludes queries submitted by a designated agent or through Web services.

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information with employers—may be a challenge. In its 2007 evaluation of E-Verify, Westat reported that some employers joining the Web Basic Pilot were not appropriately handling their employees' personal information. For example, some employers did not privately inform employees that queries of the employees' information through E-Verify resulted in tentative nonconfirmations. The report also pointed out that anyone wanting access to the system could pose as an employer and obtain access by signing a MOU with the E-Verify program. USCIS officials told us that taking actions to ensure that employers are legitimate when they register for E-Verify is a long term goal for the program. However, according to USCIS officials, implementing such controls to verify employer authenticity may require access to information from other agencies, such as Internal Revenue Service-issued employer identification numbers, to which USCIS currently does not have access. Additionally, some states and agencies have raised the issue of employee privacy. Representatives of motor vehicle agencies have expressed concerns in regards to the potential threats to customer privacy should their digital images be accessible to employers. USCIS is working to address these privacy concerns. However, it remains to be seen whether USCIS will be able to fully address all privacy concerns related to data and photograph sharing and use among agencies and employers.

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## While USCIS Created a Monitoring and Compliance Branch, Work Remains to Staff the Branch, Develop Tools, and Finalize Enforcement Protocols

E-Verify is vulnerable to acts of employer fraud, such as when the employer enters the same identity information to authorize multiple workers. Moreover, although Westat has found that most participating employers comply with E-Verify program procedures, some employers have not complied or have misused the program, which may adversely affect employees. The findings from the Westat report showed that while changes to the E-Verify program appear to have increased employer compliance with program procedures compared to the previous version of the program, employer noncompliance still occurred. For example, Westat reported that some employers used E-Verify to screen job applicants before they were hired, an activity that is prohibited under E-Verify procedures. Additionally, some employers took prohibited adverse actions against employees—such as restricting work assignments, reducing pay, or requiring employees to work longer hours or in poor conditions—while they were contesting tentative nonconfirmations. Finally, Westat found that some employers did not always promptly terminate employees after receiving confirmation that the employees were not authorized to work in the United States. USCIS reported that it is working to address these issues by, for example, conducting education and outreach activities about the E-Verify program.

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In 2005, we reported that E-Verify provided a variety of reports that could help USCIS determine whether employers followed program requirements intended to safeguard employees—such as informing employees of tentative nonconfirmation results and referring employees contesting tentative nonconfirmations to SSA or DHS—but that USCIS lacked sufficient staff to review employers’ use of the program. Since then, USCIS has added staff to its Verification Office, created a Monitoring and Compliance branch to review employers’ use of the E-Verify system, and identified planned activities for the branch.<sup>29</sup> As of April 2008, the Monitoring and Compliance branch had 21 staff and planned to hire 32 additional staff in fiscal years 2008 and 2009. Additionally, by January 2009, USCIS plans to establish a regional verification office with 135 staff members to conduct status verification and monitoring and compliance activities.<sup>30</sup>

With regard to compliance and monitoring activities, USCIS has identified 53 employer and employee behaviors of noncompliance and monitors the program for some of these behaviors. These behaviors include, among others,

- the use of counterfeit documents or substituted identities;
- use of the E-Verify system that does not follow procedures identified in the MOU between employers and DHS, such as failures to complete training or perform verifications within specific time frames;
- misuse of E-Verify to discriminate and/or adversely affect employees such as verifying existing employees, prescreening, firing employees who received tentative nonconfirmations, or not firing unauthorized employees; and
- detecting instances where privacy information is compromised, such as by sharing of passwords or nonemployer access of the system.

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<sup>29</sup>The mission of USCIS’s Monitoring and Compliance branch is to: (1) prevent fraud, discrimination, or illegal use of E-Verify; (2) educate employers and provide assistance with compliance procedures; (3) follow up with employers on misuse of the system; and (4) monitor E-Verify system usage and refer identified instances of fraud, discrimination, or illegal use of the system to enforcement authorities such as ICE or the Department of Justice’s Office of Special Counsel.

<sup>30</sup>According to USCIS officials, as participation in the E-Verify program grows, the agency will need 3 additional field monitoring officers and 25 additional field compliance officers for every 100,000 employers.

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Using some of these behaviors, among other things, to monitor employers' use of E-Verify, USCIS plans to interact with employers who might not be complying with program procedures in four main ways: (1) sending letters or e-mails to advise employers of misuse of the system and to provide appropriate remedies, (2) follow-up phone calls when employers fail to respond to the initial letters or e-mails, (3) audits through which USCIS requests documents and information be sent to the agency from potentially noncompliant employers, and (4) site visits for in-person interviews and document inspection when desk audits reveal cause for further investigation. Under the current voluntary program, USCIS plans to contact about 6 percent of participating employers regarding employer noncompliance. USCIS estimates that under a mandatory E-Verify program, the percentage of employers the agency would contact regarding employer noncompliance would decrease to about 1 to 3 percent. If, as a result of its monitoring activities, USCIS found that it needed to contact more than 3 percent of employers, USCIS officials stated that the agency plans to modify its approach for addressing employers' noncompliance. As of April 2008, USCIS plans to allocate its monitoring and compliance efforts as follows: 45 percent of its activities would involve sending letters and e-mails to employers; 45 percent would involve follow-up phone calls; 9 percent would involve desk audits; and 1 percent would involve site visits. As part of a mandatory program, USCIS would modify this distribution of monitoring activities by, for example, using letters, e-mails, and phone calls for a larger percentage of interactions with employers. However, USCIS is still in the early stages of implementing its monitoring and compliance activities. Therefore, it is too early to tell whether these activities will ensure that all employers fully follow program requirements and properly use E-Verify under a mandatory program, especially since such controls cannot be expected to provide absolute assurance.

The Monitoring and Compliance branch could help ICE better target its worksite enforcement efforts by providing information that indicates cases of employers' egregious misuse of the system. Although ICE has no direct role in monitoring employer use of E-Verify and does not have access to program information that is maintained by USCIS unless it requests such information from USCIS, ICE officials told us that program data could indicate cases in which employers or employees may be fraudulently using the system and therefore should help the agency better target its worksite enforcement resources toward those employers. ICE officials noted that, in a few cases, they have requested and received E-Verify data from USCIS on specific employers who participate in the program and are under ICE investigation. For example, USCIS told us that by monitoring use of the E-Verify program to date, staff were able to identify instances of fraudulent

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use of social security numbers and referred such egregious examples of fraud to ICE. However, USCIS and ICE officials told us that case referrals or requests for information between the two agencies have been infrequent, and information on the resolution of these referrals is not formally maintained by ICE. USCIS expects to complete and implement a compliance tracking system to track referrals to and responses to requests from ICE on compliance cases in fiscal year 2009. USCIS and ICE are also negotiating an MOU to define roles, responsibilities, and mechanisms for sharing and using E-Verify information. Outstanding issues that need to be resolved for the MOU include the type of information that USCIS will provide to ICE through the referral process and the purposes for which ICE will use this information. While the MOU between USCIS and ICE is incomplete, ICE officials anticipate that, if the E-Verify program is made mandatory, they would receive an increased number of referrals for investigation from USCIS. Therefore, ICE officials told us that they plan to require additional resources to follow-up on USCIS referrals. ICE also hopes to be able to use elements of the E-Verify program to detect and track large-scale instances of employer or employee fraud.

This concludes my prepared statement. I would be pleased to answer any questions you and the Subcommittee Members may have.

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## GAO Contact and Staff Acknowledgments

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Other key contributors to this statement were Burns Chamberlain, Frances Cook, Josh A. Diosomito, Rebecca Gambler, Danielle Pakdaman, Evi Rezmovic, Julie E. Silvers, and Adam Vogt.

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