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SUMMARY

Since the passage of the Immigration Reform and Control Act (IRCA) in 1986, policymakers have sought to reduce the employment opportunities that are the primary draw for illegal immigration. However, employers have not had a widely accessible, reliable system for establishing an individual's identity and eligibility to work.

Various attempts have been made over the years to create a system that provides employers with verification of an employee's eligibility to work, each with different strengths and weaknesses. New proposals have been developed recently and new technologies have become available that were not available at the time of IRCA's passage. The successes and failures of the efforts undertaken to date can inform proposals for future employment authorization and verification initiatives.

Eligible to Work? Experiments in Verifying Work Authorization

Kevin Jernegan

For decades, US policymakers have understood that the prospect of employment in the United States furnishes a powerful draw to unauthorized immigrants, yet the employer sanctions provisions of the 1986 Immigration Reform and Control Act (IRCA) have been ineffective because the act failed to provide a reliable method for employers to ascertain whether prospective employees were eligible to work in the United States.

In 1996, Congress charged the Immigration and Naturalization Service (INS) and the Social Security Administration (SSA) with designing and implementing three separate employment verification pilot programs to strengthen the sanctions regime. This study evaluates these three pilots and the current Basic Pilot system, and assesses the potential contribution of employment authorization verification models toward realizing the goal of reducing the unauthorized employment of immigrants.

History

IRCA's authors anticipated that employer sanctions provisions ran the risk of increasing discrimination against those workers with a foreign appearance, and that employers had unreliable tools for employment verification. Thus, the legislation mandated a series of assessments to be conducted by

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the Government Accountability Office (GAO, formerly known as the General Accounting Office). One such study, completed in 1990, found that the new employer sanctions generated unintended negative consequences, chief among them employer confusion, discriminatory employer practices, and the proliferation of fraudulent documents. Employers often experienced difficulty identifying which documents met the I-9's requirements and avoided the confusion by passing over legitimately work-authorized applicants. GAO found that 10 percent of employers surveyed adopted one or more forms of unlawful discriminatory practices, that persons having a foreign appearance were three times likelier to receive unfavorable treatment from employers, and that Anglo applicants were 52 percent likelier to receive a job offer. An additional 9 percent of surveyed employers ceased hiring noncitizen applicants altogether.[1]

Moreover, the underlying goal of reducing unauthorized employment was often thwarted by the proliferation of fraudulent documents, which compromised employers' ability to detect unauthorized workers. The ready availability of fraudulent documents also undermined the government's ability to enforce IRCA's sanctions upon employers, as it became essentially impossible to prove that employers had *knowingly* hired unauthorized workers.

These challenges strongly suggested the need for a status verification system that employers could consult before hiring workers. In its 1994 interim report to Congress, the Commission on Immigration Reform concluded that the single most important step to reduce unlawful migration would be the development of a more effective system for verifying work authorization. The commission recommended creating a national registry system whereby the employment authorization of all newly hired workers could be electronically verified against records compiled from SSA and INS.[2]

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) charged the former INS and SSA with developing three verification pilot programs over a four-year period. They were the Basic Pilot, the Citizen Attestation Verification Pilot (CAVP), and the Machine-Readable Document Pilot (MRDP). The pilots were implemented in selected states with sizable immigrant populations. Participation by employers in the programs was voluntary. IIRIRA also required that the pilot programs be evaluated by independent organizations. Westat, an independent research corporation, and the Institute for Survey Research at Temple University were selected to conduct the assessments.

The IIRIRA Pilots

Basic Pilot

The first of the three pilots was the Basic Pilot, and the subsequent programs were variations on the Basic Pilot. The Basic Pilot was introduced in 1997 in the five states with the largest populations of unauthorized immigrants: California, Florida, Illinois, New York, and Texas. Under the program, participating employers review and record I-9 documents for all newly hired employees in the normal fashion, and

then submit the information for verification against US government databases.

Verification proceeded in four stages.

- Employee information was checked first against SSA's primary database, the Numerical Identification File (NUMIDENT). NUMIDENT consists of data accumulated from applications filed with SSA for initial or replacement Social Security Numbers (SSNs). If NUMIDENT was unable to produce a confirmation, a tentative nonconfirmation finding was reported to the submitting employer. The notification to the employer indicated that the information would next be submitted to the INS for verification and that the employer should take no action against the prospective employee at that time. The prospective employee had the option of contesting the tentative nonconfirmation with SSA by providing additional documentation and/or clarification.
- The submission was next checked against the INS Alien Status Verification Index (ASVI), a database originally created for the Systematic Alien Verification for Entitlements (SAVE) program mandated by IRCA to verify noncitizen eligibility for state and federal benefit and licensing programs. To protect privacy rights, the database was composed of select fields extracted from the INS Central Index System (CIS) and the Nonimmigrant Information System (NIIS), which were updated on a daily basis. CIS and NIIS were the two primary INS databases. They contain detailed information collected from applications filed with INS for immigration benefits including visa petitions and change of status applications.
- In the event that ASVI failed to confirm work authorization, the submission was then passed to an INS Immigration Status Verifier (ISV), who would manually review the information against INS' internal records and either confirm authorization or issue a second tentative nonconfirmation finding, again with instructions that the employer take no action until a final determination on the prospective employee's employment authorization was reached.
- The prospective employee was given the opportunity to present additional evidence establishing his or her employment authorization. If he or she failed to establish work authorization, a final nonconfirmation determination was issued and the employer was obligated to terminate the worker's employment.

The independent assessment of the Basic Pilot found that it was effective in curbing unauthorized employment, but the precise degree to which it achieved this end is difficult to ascertain. The Westat/Temple evaluation found that less than one-tenth of 1 percent of submissions was ultimately found to be employment-unauthorized.[3] However, only 87 percent of submissions were found to be employment-authorized, while 13 percent failed to contest their tentative nonconfirmation findings and were reported as "no shows" with no definitive finding of work eligibility. Through statistical modeling, the Westat/Temple team speculated that as much as 10 percent of total submissions may have been unauthorized workers prevented from gaining employment in the United States, but the exact proportion depends on the actual work eligibility of these unconfirmed cases.[4]

The evaluation also showed that while SSA was able to generate rapid automated confirmations for US citizens, inadequacies in the SSA and INS databases produced time consuming and costly delays in verifying the work authorization of legitimately work-authorized noncitizens. Approximately one-third of these applicants experienced delays that often resulted in their being passed over by employers in favor of applicants whose work authorization could be more speedily ascertained.[5]

Citizen Attestation Verification Pilot (CAVP)

The CAVP program was the second of the three pilot programs to be tested. It differed from the other pilots in that it required electronic verification exclusively for noncitizen employees, while employees self-attesting to US citizenship were required only to submit an identity document. Unlike the other two pilots, the CAVP did not utilize SSA databases for verification of employment authorization, but relied solely upon the records of the former INS. The pilot ran in five states: Arizona, Maryland, Massachusetts, Michigan, and Virginia.

The CAVP program was found to be lacking in several important respects. Although it succeeded in minimizing employer inconvenience, it was inherently discriminatory toward noncitizens, who were uniquely subjected to the additional verification requirement and the burdens associated with tentative nonconfirmation results. The evaluation performed by Westat and the Institute for Survey Research found that 17 percent of legitimately work-authorized applicants received tentative nonconfirmation results from this verification process, a number made higher by the exclusion of the SSA data from the verification process. In addition, employers frequently failed to observe the due process protections written into the pilot, hiring other applicants whose employment eligibility was not in question rather than waiting for a final finding on eligibility.[6]

CAVP's efficacy in terms of reducing unauthorized employment and the use of document fraud was also marginal. By allowing those who attested to US citizenship to avoid the verification process, it produced an increase in fraudulent attestations of US citizenship. Once an applicant claimed to be a US citizen, any identity document, secure or otherwise, could be provided to meet the program's requirements, thereby increasing the use of counterfeit documents.

Machine-Readable Document Pilot (MRDP)

The MRDP was the third IIRIRA pilot. It sought to address deficiencies in the Basic Pilot and the CAVP. Under MRDP, employers installed software and a card reader to check the employment eligibility of every new employee. Checks were run first through SSA and then, if necessary, through INS records. The goal of the MRDP was to create a universal, automated system that eliminated the discrimination inherent in the CAPV, reduced inconvenience to employers, helped protect the privacy of applicants, and reduced errors resulting from mistakes in data entry. It was also hoped that it would deter document fraud, as it would presumably be more difficult to counterfeit machine-readable documents than ordinary documents.

The promise of the MRDP was difficult to assess as its scope was limited to Iowa, the only state at the time whose identity documents contained the necessary fields for matching against SSA data (i.e., name, date

of birth, and Social Security Number (SSN)) magnetically encoded on a machine-readable identity document. Even within that limited context, changes in Iowa's state-issued identity documents introduced shortly after the pilot went into effect conflicted with the technical requirements of the card readers, and participating employers frequently grew frustrated and abandoned their use.

The use of SSA data under the MRDP reduced the chances of receiving a tentative nonconfirmation result, yet problems with employer discrimination remained in that US citizens, the majority of whom have possessed SSNs since childhood, were assured of swift approval, whereas noncitizens newly admitted to the country were far less likely to be included in the first-stage database. Approximately 11 percent of work-authorized immigrants received tentative nonconfirmations.[7]

The Current System

The weaknesses uncovered in the three pilot programs by the independent evaluations led Congress to adopt the Basic Pilot as the prototype program to be expanded, while the CAVP and MRDP pilots were allowed to sunset in 2003. The Basic Pilot Program Extension and Expansion Act of 2003 authorized expansion of the Basic Pilot to include all fifty states as of December 2004.[8]

The Basic Pilot as it now stands has changed little from its original form. Participation remains voluntary and includes 3,625 different employers and 22,168 employer sites.[9] This represents an increase of 1,637 employers, or 42 percent, since the Basic Pilot was expanded in 2004. The majority of participating employers are located in the original five pilot states of California, Florida, Illinois, New York, and Texas. However, since the expansion, new employers have registered in all fifty states, with sizable numbers of newly registered employers in Colorado, New Jersey, South Carolina, Virginia, and Pennsylvania (see Appendix 2). Sixty percent of participating employers are engaged in five economic sectors: administrative support services, clothing and clothing accessories, food services, accommodations, and gas stations (see Appendix 3).

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Employers wishing to participate in the Pilot must complete a *Memorandum of Understanding*, indicating their acceptance of its terms of participation, before a login name and password are issued. In the earliest phases of the Basic Pilot, employers telephoned INS for verbal confirmation of an applicant's eligibility. The system which followed utilized a personal computer, specially designed software, and a dial-up modem connection to transmit applicant information electronically to the Basic Pilot. In July 2004, a web-based pilot was launched. It allows participating employers to use standard web-browsing software to visit an internet website and input the information (see Figure 1). As of June 2005, direct dial-up access to the Basic Pilot was discontinued and all users are now required to use the web-based Pilot.

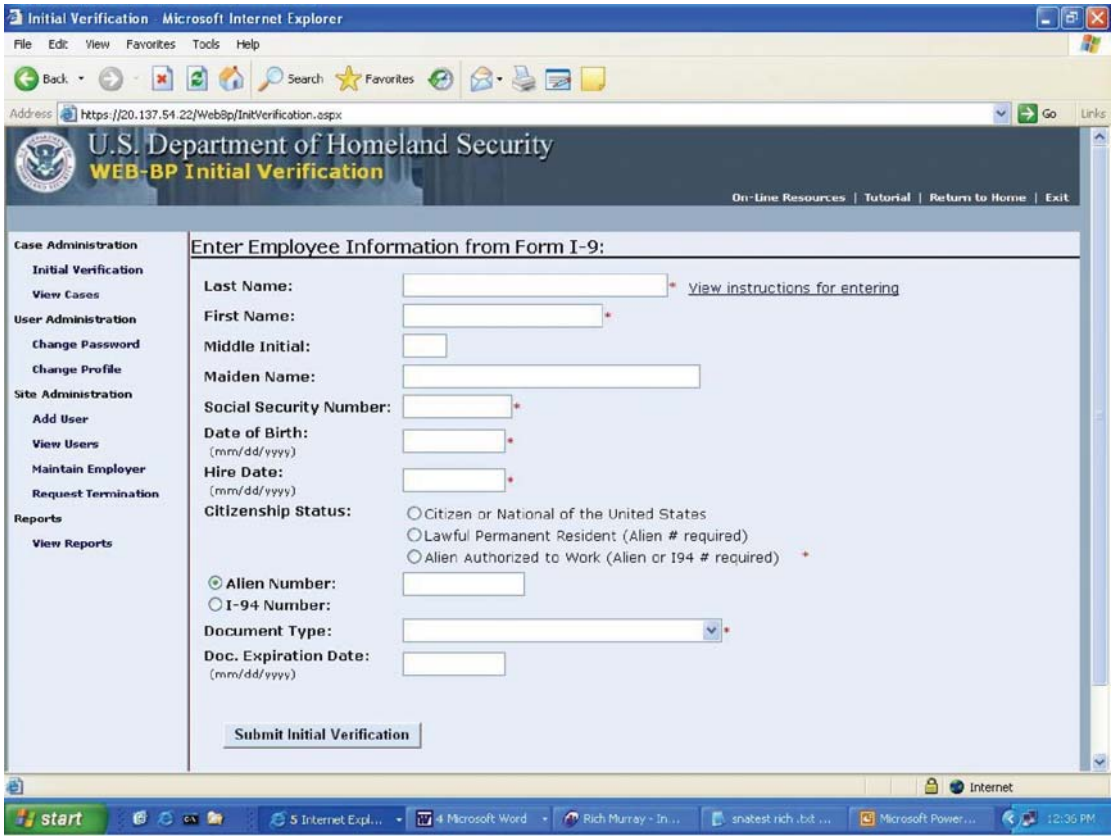
If the first check against the SSA NUMIDENT database is able to confirm the work

authorization of the applicant, the Basic Pilot issues an immediate electronic confirmation finding (see Figure 2) and the employer is approved to hire the worker without further action.

For submissions that are not immediately confirmed by SSA, a tentative nonconfirmation finding is generated (see Figure 3). If the applicant believes the nonconfirmation finding has been reached in error, she or he may initiate a referral to SSA for further review. If the applicant is a noncitizen, the rejected case will automatically be forwarded to US Citizenship and Immigration Services (USCIS) to be checked against the Customer Processing System (CPS), a modernized version of the ASVI database which replaced it in February 2004. Like ASVI, CPS is comprised of select data fields extracted from the CIS and NIIS databases in order to protect the noncitizen's privacy. CPS is updated daily by the CIS and NIIS databases.

In the event that the CPS database fails to generate an automated approval, the case is referred to an ISV who manually checks various databases within DHS and either

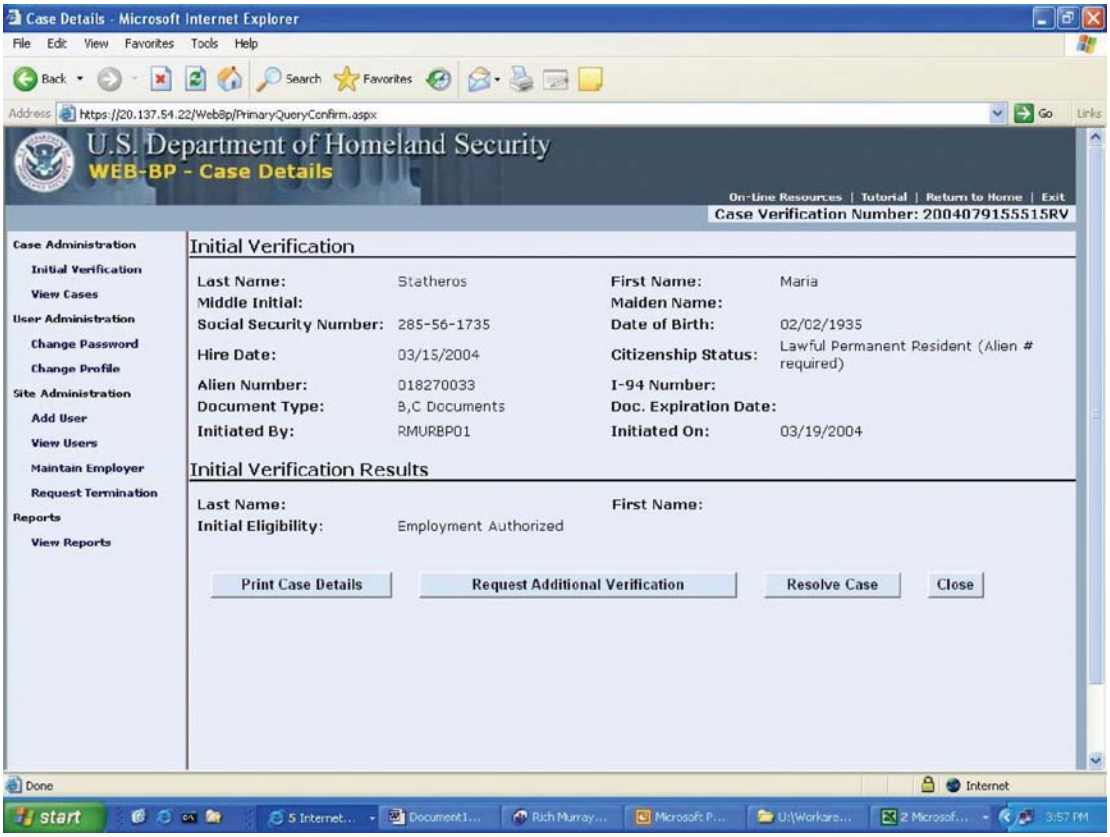
Figure 1. Basic Pilot Input Screen



confirms authorization or issues a second tentative nonconfirmation finding. The applicant, or the employer on behalf of the applicant, is again afforded the opportunity to contest the tentative nonconfirmation finding. If no appeal is offered to the nonconfirmation finding within two weeks, a final nonconfirmation finding is issued, and termination of employment is required.

Of the 756,947 submissions to the Basic Pilot made in fiscal year 2004, only 208, or 0.12 percent, were definitively found **not** to be employment-authorized. Ten percent, or 74,567 submissions, were referred to DHS following a tentative nonconfirmation finding at SSA, of which 70 percent, or 52,101, were immediately found to be employment-authorized through the automated check. The remaining 22,466 applications were sent to ISVs, who were able to confirm the employment authorization of 8,028 applications. The remaining 14,438 unresolved cases received tentative nonconfirmation notices. Employers and/or applicants resubmitted 6,450 with additional documentation or clar-

Figure 2. Basic Pilot Confirmation Screen



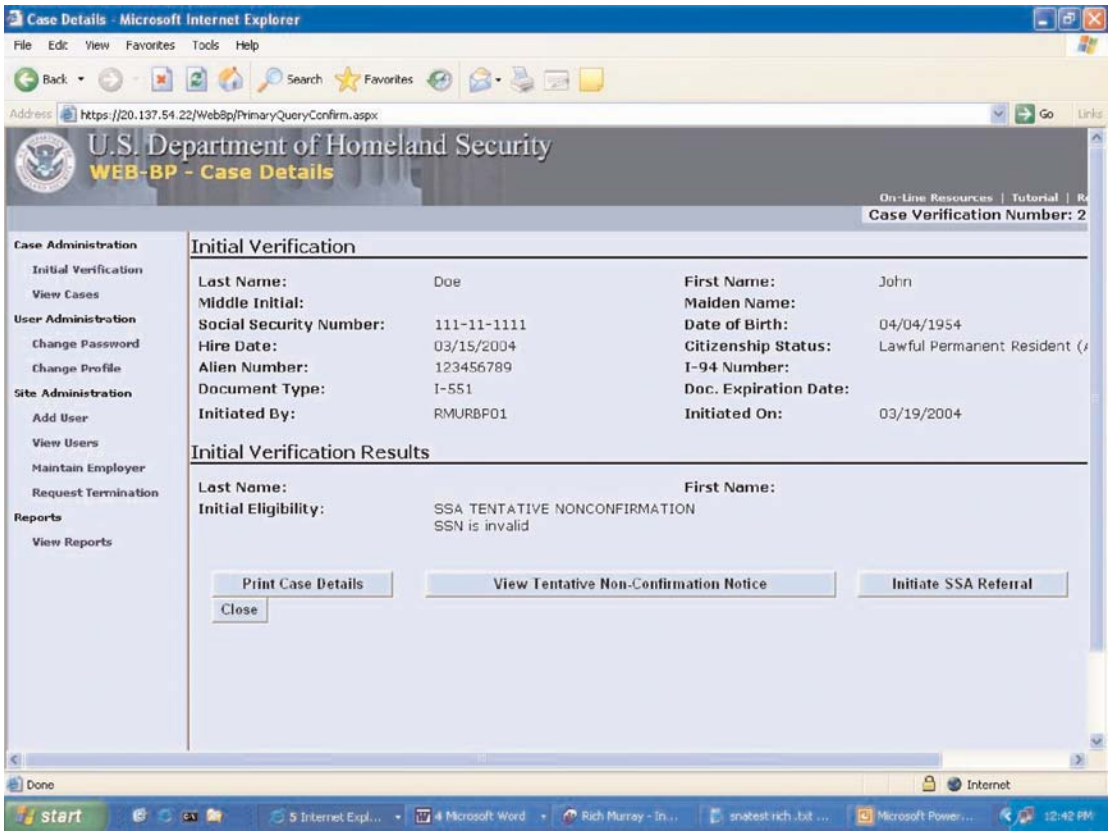
ification, allowing for the verification of 1,720 more submissions (see Appendix 1).[10] Figure 4 summarizes the entire Basic Pilot process.

Cost Issues

The most recent analysis of the operational costs of the Basic Pilot comes from the independent assessment conducted by Westat and Temple published in 2002. More current figures are obscured by the restructuring of the former INS into its successor agencies under DHS.

A start-up appropriation of $10 million annually for 1997, 1998, and 1999 was originally granted to the SAVE program to implement the Basic Pilot. Since that appropriation expired, annual operating expenses for the Basic Pilot have been covered by funds generated from filing fees for immigration petitions and applications. As

Figure 3. Basic Pilot Nonconfirmation Screen

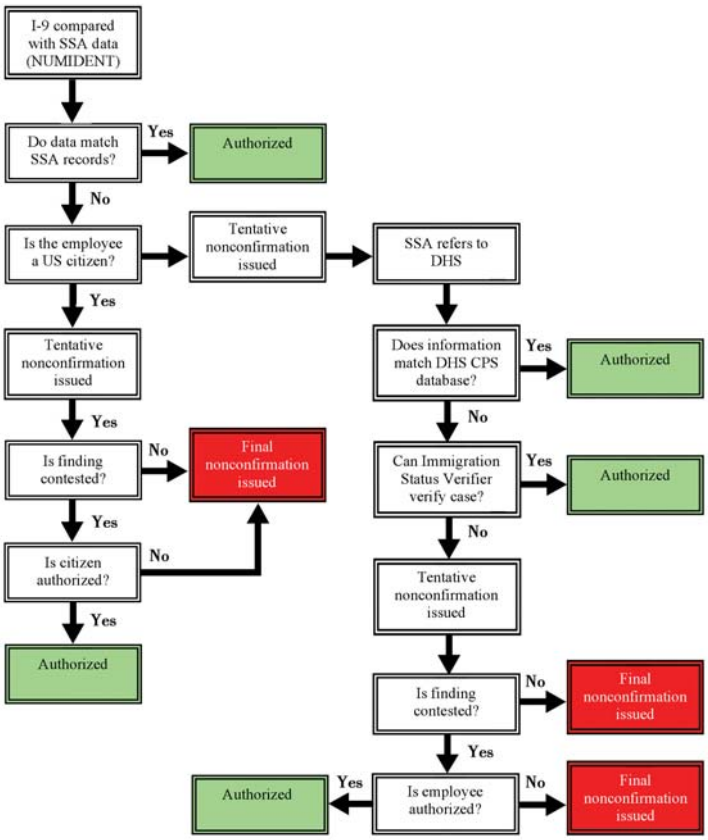


the Pilot has expanded, the lack of reliable budgetary support has grown more problematic. In previous years, SAVE has reimbursed SSA for the costs it has incurred in administering its portion of the Basic Pilot. Recently, however, SAVE has had to inform SSA that it will no longer be able to reimburse SSA for its costs. SAVE is seeking appropriated funds from Congress to cover the costs of the expanding Basic Pilot.[11]

The cost estimates to the federal government associated with the Basic Pilot program's start-up and operations for the years 1997 through 2000 total $9.7 million. Of that total, $2.3 million went to one-time start-up costs, which do not depend upon the size of the Basic Pilot's enrollment.

The cost of the Basic Pilot has been relatively low, because of the small scale of the program. With only 3,500 participating employ-

Figure 4. Basic Pilot Program Flowchart



With only 3,500 participating employers nationwide, the volume of verifications processed through the Basic Pilot has been negligible relative to the nation's total hiring activity.

ers nationwide, the volume of verifications processed through the Basic Pilot has been negligible relative to the nation's total hiring activity. The Basic Pilot presently employs no more than five full-time staff members in Washington, DC. Because it operates as a sub-program under the auspices of the SAVE program, expenses incurred by the Basic Pilot are frequently co-mingled with those of the SAVE program and the Basic Pilot is able to utilize resources allocated for SAVE under separate funding.

For instance, the recent development of the web-based pilot was a cost shared with the SAVE program, which now also utilizes a web-based format. Similarly, funding for ISVs, for whom the Basic Pilot program is one of the largest consumers, is covered by USCIS; it does not come from the Basic Pilot's operating budget. The costs cited here therefore do not include resources available to the Basic Pilot program but that are underwritten by other activities within USCIS, and so do not reflect the full cost of administering the Pilot.

The issue of cost is closely connected with the developing efficiency of the Basic Pilot. Submissions approved through the automated process cost mere pennies to process;[12] nonconfirmations which require the involvement of ISVs cost USCIS on average $6 per application to process.[13] With 30 percent of the cases referred to DHS requiring the participation of ISVs to resolve, that figure will account for a substantial portion of the program's cost should it ever be expanded to include all employers absent corresponding improvements in DHS database processes.

Additional costs to be considered include those incurred by employers. The Temple/Westat evaluation team surveyed participating employers about the costs they incurred. Responses were highly variable, ranging from as little as a few hundred dollars to as much as $5,000. The median cost per employer was $777. Ninety-two percent of participating employers responded that they spent less than $2,500 as a result of their participation in the Basic Pilot.[14] The major share of reported expenses was for dedicated computer hardware and telephone lines needed to run the Basic Pilot before the introduction of the web-based Pilot. The only other significant expense reported by employers was for training.

These costs have been substantially alleviated with the web-based program: all user training is less demanding and the only hardware required is a computer with an internet connection, something the majority of businesses now possess.

Database Issues and Improvements

Although the Basic Pilot has demonstrated an ability to reduce unauthorized employment, persistent problems hinder its efficacy and validate criticisms that it is discriminatory. The three major problems with the Basic Pilot identified by the independent evaluations are: high tentative nonconfirmation rates for foreign-born workers, marginal employer compliance, and unattractiveness to employers. The INS and its successor

Table 1. Estimates of Basic Pilot Costs to the Federal Government (in thousands)

Start-up Costs		*Total Costs*
Basic Pilot software and system development		$265
Basic Pilot Integrated software and system development		$545
Development of computer-based tutorials		$175
Development of Basic Pilot manuals and pilot notices		$50
Publicity campaign (ads in newspapers, radio time)		$500
SSA implementation costs		$500
Computer equipment – Headquarters and Los Angeles Status Verifiers		$275
Total		$2,310
Operating Costs	*Annual Costs*	*Total Costs*
INS Headquarters salaries	$1,117	$3,630
INS field personnel	$923	$3,000
SSA salaries for district office staff, phone, and travel	$121	$392
Verification query costs	$66	$160
Production of computer disks, manuals, and pilot notices	$25	$60
Systems operation and maintenance	$10	$24
Total	$2,262	$7,266
Grand Total		$9,576

Source: Institute for Survey Research, Temple University and Westat, Findings of the Basic Pilot Program Evaluation, June 2002.

agency USCIS have sought to address these problems in the evolving procedures of the Basic Pilot.[15]

Efforts to redress the problems identified by the independent evaluations have focused primarily on technical improvements to increase efficiency and accuracy. Whether technical refinements alone are sufficient to resolve the weaknesses in the Basic Pilot identified by the independent evaluations remains open to debate.

High Nonconfirmation Rates

The main criticism of the Basic Pilot concerns the high rate of tentative nonconfirmation for noncitizens. Once a prospective employee receives a tentative nonconfirmation finding, further resources must be expended to resolve the problem. Delay fuels frustration with the system and increases the likelihood of employers passing over potentially work-authorized candidates. Since foreign-born workers, especially recently arrived foreign-born workers, have

had less time for their records to be integrated into US databases, they are far more likely than US citizens to be rejected by the automated system. They consequently end up bearing the greatest share of hardships from delays and mistakes, thus legitimizing complaints that the system is inherently discriminatory toward them.

Social Security Administration:
For US citizens, virtually all of whom have had Social Security numbers for many years, the initial check through the SSA NUMIDENT database has consistently generated immediate automated approvals in excess of 99 percent of cases.[16] For work-authorized noncitizens, however, only 37.2 percent of applicants received immediate confirmations through the initial SSA check in 1999. As a result of quality control improvements implemented by SSA, automated approvals by SSA increased to 48.8 percent as of June 2004.[17] While a notable improvement, a majority of noncitizen applications still receive tentative nonconfirmation results from SSA and have to be forwarded to USCIS.

As the rate of SSA nonconfirmation results remains persistently high for noncitizens, it seems reasonable to concentrate reform efforts on SSA's portion of the Basic Pilot. Indeed, many authorities in the field have concentrated their attention on the potential role to be played by SSA, including the Commission on Immigration Reform.[18] The Secure American and Orderly Immigration Act (S 1033) introduced in the US Senate on May 12, 2005 by Senators McCain and Kennedy, likewise places primary emphasis on the role of SSA.[19]

However, there are a number of important limitations on SSA's capabilities with respect to verifying alien employment eligibility.

- Determining which of the numerous categories of immigrants and nonimmigrants and their derivative family members are employment-authorized can be a legally complex determination requiring training that SSA officers presently lack.
- SSA records are not continuously updated on changes of immigration status as are those of USCIS. The SSA NUMIDENT database therefore represents the applicant's status at the time of application or re-issuance, the only times when an applicant is required to provide documentation of his or her legal status.[20] If an immigrant's status expires or changes from one which is work-authorized to one which is not, or vice versa, such changes are not reflected in the SSA database.
- As the Social Security card (SSC) was not originally designed to serve as an identity document, it is not a secure document and is highly vulnerable to counterfeiting and tampering. Indeed, templates of the SSC may be downloaded from the internet, altered on one's computer, and printed on a color printer.[21] The 1996 Illegal Immigration Reform and Immigrant Responsibility Act required SSA to produce estimates of the costs associated with making the SSC secure.[22] The Social Security Administration estimated the cost of re-issuing secure cards to all 277 million SSC holders would range from $3.9 to $9.2 billion, depending upon the technology selected, and would involve 73,000 work years.[23]

- The identity data contained in SSA records are only as reliable as the evidence on which the data are based. The documents that an applicant for a Social Security card must present to establish age, identity, and citizenship, often no more than a birth certificate and an immigration document such as the I-94 Arrival-Departure Record, are relatively easy to alter, counterfeit, or obtain fraudulently. Such readily obtainable documents are commonly referred to as "breeder documents," because they can be used to obtain other documents used to establish identity. For example, a birth certificate can be used to obtain a driver's license, which, in turn, can be used to establish identity.[24]
- Following the September 11, 2001 terrorist attacks, concern regarding the vulnerability of the SSC to fraud produced a change in SSA's policies governing SSC issuance, a shift which also has implications for the usefulness of the SSC for eligibility verification. Historically, SSA issued SSCs to applicants based solely upon a visual inspection of the applicant's documents. In 2002, SSA implemented a new requirement that SSNs may not be issued to noncitizen applicants unless their status and employment authorization is first confirmed by the USCIS SAVE system. Consequently, for immigrants who applied for SSCs after 2002, it is the quality of USCIS records that is the limiting factor in determining whether they can be confirmed by the Basic Pilot.

These limitations call into question SSA's independent capacity to verify employment authorization for foreign-born workers, the population in whose employment lawmakers are most interested. Arguably, the greater contribution SSA makes to the Basic Pilot, and one that it performs admirably, is ensuring that the system does not pose an undue inconvenience for US citizens. If SSA is to serve as the primary vehicle for verifying alien employment eligibility, it will need a direct connection to USCIS data in the form of a database similar to CPS, which receives updated information on a daily basis. It would also require substantial funding to bring the SSC up to date in terms of modern security precautions.

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US Citizenship and Immigration Services: Once a case is rejected by SSA and forwarded to USCIS, the rate of automated approval again remains a matter of concern. In 1999, the rate of automated approval by the ASVI database was at 58 percent, with the remaining 42 percent requiring labor intensive and costly manual verification. By 2003, improvements had increased the percent of automated approvals from the new CPS database to 82.6 percent.[25] This dramatic improvement is primarily attributable to reductions in data entry lagtimes and errors.

Delays in data entry are a main contributor to the low rate of automated approval for newly admitted immigrants. Information regarding an immigrant's lawful entry into the United States is recorded in different ways. For non-immigrants (some of whom

are work-authorized) as well as asylees and refugees, lawful admission is reported on the I-94 form which must then be manually entered into USCIS databases. For arriving immigrants, admissions data from the immigrant visa is collected at the port of entry and sent to the USCIS service center in Texas or California, where it is manually keyed into the database. Delays in data entry have historically been as long as six months, during which time the prospective noncitizen worker has been unable to receive a confirmation from the Basic Pilot.

One of the main targets of reform by USCIS has been improving data entry times. As of June 2004, USCIS reported that they had reduced the data entry backlog to the point where information on a newly admitted immigrant should be in the system within two weeks of the alien's date of arrival, and in many cases, in less than a week.[26] Ports of entry are now required to express mail I-94 forms for newly admitted aliens within 24 hours of the alien's arrival. From the time the I-94 arrives, the data entry contractor has a maximum of 72 hours to enter the information.[27]

Another major improvement in achieving timeliness is scanning technology and electronic transmission of entry information at the ports of entry. However, this technology is only available at the larger ports of entry. I-94s from smaller ports are still shipped by express mail to the data entry contractor, adding a day or two to the process.

Manual data entry errors are a second contributor to poor database integrity and high nonconfirmation rates. The potential for error exists at every point at which a human being records information. These may include consular officers overseas in the issuance of a visa, USCIS officers entering data while processing petitions at the service centers and field offices, inspection officers at the ports of entry registering arrival data, clerks entering data from I-94s, SSA officers processing applications for SSCs, and state employees issuing drivers' licenses or identity documents.

- In 1998, SSA initiated quality control measures to reduce data entry errors in their databases. As a result, accuracy increased, but only from 91 to 93 percent error-free by 2001.[28]
- According to their June 2004 report to Congress, USCIS has also undertaken efforts to improve the quality of their records, implementing stricter quality control standards and creating mechanisms for the correction of errors in systems from which the data used in the CPS are extracted. Corrections are uploaded to the CPS on a daily basis.
- ISVs also contribute to data entry errors, as they have typically had to input the applicant's information (i.e., name, date of birth, A number, etc.) individually into each of the databases at their disposal, multiplying the opportunities for typographical errors. To address this problem, USCIS has introduced an Integrated Common Interface browser, which allows Status Verifiers to enter an applicant's information once on a single screen and query multiple databases without having to repeatedly re-enter the applicant's information.
- Employer data entry mistakes represent another source of error. Employers often detect their own errors and will re-submit to make sure they have checked thoroughly.

However, doing so creates multiple submissions, which poses a potential problem for USCIS. At present, there is no automated way of eliminating duplicate submissions, although USCIS can check to see how many submissions an employer has prepared for a specific A number.

- These problems are aggravated by the fact that there is often reticence on the part of the immigrants themselves to "rock the boat" by alerting officers to mistakes in their applications, such as a name misspelling or an inaccurately recorded date of birth. Unfortunately, once arrival in the United States has been recorded, the only mechanism for correcting errors is to file a form I-102 Application for Replacement Arrival Document with USCIS. Processing of I-102s is generally given low priority and delays of several months are typical in processing these applications.

Database Limitations

The information establishing an alien's eligibility to work comes from a variety of sources. In the case of the SSA NUMIDENT database, information is gathered from one source only: approved applications for SSNs. If an alien does not have a valid SSN, NUMIDENT will possess no record of the alien, who may nevertheless be lawfully present and employment-authorized. Conversely, possession of an SSN does not necessarily authorize one to work.

Although SSA has grown more careful about issuance of SSNs in recent years, it has historically been relatively easy to obtain one. Moreover, NUMIDENT has never attached an expiration date to SSNs. So, for instance, an alien who enters the United States under a temporary work visa and is consequently work-authorized will be eligible to receive an SSN, yet the underlying employment authorization may expire within a few years.

DHS databases are more complete, but entail inputs from a broader range of sources. Information taken from the underlying petition for an immigrant or nonimmigrant visa, usually filed with a USCIS service center, but in some instances through a US embassy overseas, constitutes one source of information. Information gathered by consular officers from visa applications constitutes another source. Change of status applications processed through the USCIS service centers represent yet another source. Finally, inspection and admission data gathered by the US Customs and Border Protection (CBP) inspection officers at the ports or entry furnish still another source of data. Bringing all of these data sources together is an ongoing challenge.

In order for either the SSA NUMIDENT or USCIS CPS databases to generate an automated confirmation, each of the applicant information fields provided must correspond with those contained in the databases.[29] This is potentially problematic in instances where the first and last names are not always clear, as in Arabic names, or where certain names are extremely common, such as Vietnamese names, or where names must be transliterated from different alphabets, such as Russian or Chinese names. Minor differences in spelling or name order can produce nonconfirmation results.

Similarly, dates of birth can be misread depending upon the date format used, again potentially producing a nonconfirmation result. Dates of birth may also be somewhat

unreliable depending upon the immigrant's country of origin, and are often reduced to January 1 when the immigrant doesn't know the precise date. This is most commonly an issue in Africa, where formal birth records are frequently unavailable. In order to prevent the possibility of premature eligibility for Social Security benefits, SSA field offices change January 1 dates of birth to July 2, thus creating a discrepancy between the SSA record and the USCIS record.[30]

Persistent Problems

Discrimination

Despite improvements, the rates of tentative nonconfirmation for work-authorized noncitizens remain substantially higher than for citizens. So long as noncitizens experience problems vastly in excess of those experienced by citizens, the Basic Pilot will remain the object of legitimate criticism that it discriminates against noncitizen workers. But this is a practical problem as opposed to a fundamental design flaw: the only reason noncitizen workers experience greater difficulties than citizens is because USCIS databases are less reliable than SSA databases. Theoretically, there is no reason why USCIS records cannot be made as complete and accurate as SSA records, given time and adequate resources.

One of the weak links at which employer discrimination may occur is when a tentative nonconfirmation finding is issued. The employer may erroneously conclude that the prospective employee is unauthorized to work and prematurely pass over the applicant in favor of someone whose employment authorization is beyond question. Thus far, efforts to combat this problem have focused on educating employers not to conclude that an applicant is unauthorized based upon a single tentative nonconfirmation finding. However, this approach requires an extremely large and mixed body of employers to adopt a uniform set of practices, an impractical expectation given the absence of monitoring or enforcing compliance.

A partial remedy is to reduce the number of opportunities to discriminate by reducing the number of tentative nonconfirmation notifications. At present, SSA sends a tentative nonconfirmation finding whenever unable to confirm the authorization of a submission. However, of the 10 to 15 percent of cases which SSA refers to DHS, 70 percent are immediately confirmable by DHS as legitimately work-authorized and an additional 10 percent can be confirmed within 24 to 48 hours by ISVs.[31] In other words, 80 percent of noncitizen workers whose prospective employers receive tentative nonconfirmation findings from the SSA are, in fact, legitimately employment-authorized immigrants whose status is readily confirmable within a short period of time. In light of those figures, noncitizen applications not confirmed by the SSA could be automatically forwarded to DHS without notifying the employer and thus creating an opportunity for the employer to misinterpret the significance of the initial nonconfirmation finding.

Employer Noncompliance

Employer noncompliance takes two forms: confusion over procedures and noncompliance with procedures perceived as burdensome. To reduce the first, evaluators have suggested improving training materials and simplifying the verification process as much

as possible. The new web-based Pilot includes an online tutorial which participants must take in order to gain access to the system. To reduce inadvertent data entry errors by employers, the independent evaluation conducted by Westat and Temple suggested that the input fields could include pop-up correction prompts when, for instance, too few numbers are entered for a SSN or A number.[32] This has not been implemented.[33]

The problem of noncompliance could also be addressed by User Audit Reports, which would allow program administrators to identify employers with unusual results, such as uncommonly low rates of referral to SSA or DHS, or unusually high rates of "no shows" among referred employees. Those employers who appear to be having problems could be contacted and provided with additional guidance or instruction. In instances where persistent patterns suggest noncompliance, participants could be targeted for onsite audits. This practice has not been implemented on any appreciable scale.[34] For the Basic Pilot to achieve its goals, some form of employer monitoring and enforcement will be needed.

Still, achieving employer accountability is problematic in a program in which participation is voluntary: the more aggressively USCIS attempts to enforce rules on the proper use of the program, the greater the burden on employers and the less attractive participation in the Basic Pilot becomes.

New Problems

A shortcoming of growing concern in the wake of the September 11, 2001 terrorist attacks on the United States is that the Basic Pilot is vulnerable to identity theft. By checking documents against external databases, the Basic Pilot ensures that fabricated documents will not be approved. However, it does nothing to prevent unauthorized workers from using valid SSNs and/or A numbers either stolen from, or sold by, work-authorized persons. Since the SSC is not an identity document and bears no photograph, it is impossible for either the employer or SSA to know whether the person presenting the card is in fact the person to whom the card was issued. This leaves open the possibility of using a valid SSN belonging to someone else and purchasing a fraudulent identity document bearing the name of the SSN holder. SSNs may often be found on the internet or through mass marketing agencies, along with the personal information associated with the SSN.

Achieving employer accountability is problematic in a program in which participation is voluntary: the more aggressively USCIS attempts to enforce rules on the proper use of the program, the greater the burden on employers and the less attractive participation in the Basic Pilot becomes.

According to SSA, identity theft is a growing problem and there is presently no mechanism in place to counter it.[35] The only point at which such identity theft could be detected would be if the Internal Revenue Service noticed multiple W-2 submissions from the same employee. There is no mechanism for doing this at IRS, nor is IRS exploring this issue.

The logical response to the problem of identity theft, as well as the use of fraudulent documents, is to improve the security of documentation to the point that employers can

be certain that the person who presents a document is in fact the person to whom the document was issued. Achieving that goal suggests the need for documents that are both physically more secure, in terms of anti-fraud and anti-counterfeiting devices, and also contain some form of biometric identification to confirm the bearer's identity.

Steps to improve document security were included as part of the 2004 Intelligence Reform Act and the 2005 Real ID Act, and additional efforts to tighten document security are included as parts of omnibus immigration bills under consideration by the 109th Congress. In addition, the US Visitor and Immigrant Status Indicator Technology (US-VISIT) program seeks to develop an automated entry-exit tracking system that collects biographical and biometric data from foreign nationals at US consulates abroad as well as when they enter the United States. In principle, a verification system could ultimately make use of similar technology and a shared database, further streamlining the verification process and reducing database errors. Those technologies, however, require extensive time and financial resources to develop; their contribution to employment eligibility verification therefore remains a promising yet presently unrealized option.

Conclusions

Overall, the Basic Pilot program remains difficult to assess. The employers who have chosen to participate constitute a highly self-selected, nonrepresentative group who were already likely making good faith efforts to comply with labor and immigration laws. Conversely, the most problematic employers with respect to the employment of unauthorized labor almost certainly did not choose to participate.

There is broad consensus among experts in the field that the Basic Pilot will only achieve its mandate of reducing unauthorized employment if it becomes a mandatory program for all employers in the country.

There is broad consensus among experts in the field that the Basic Pilot will only achieve its mandate of reducing unauthorized employment if it becomes a mandatory program for all employers in the country. So long as the Basic Pilot program remains voluntary, unauthorized workers who are unable to find work through an employer participating in the Basic Pilot can simply move on to another employer who does not participate.

At present, 3,625 employers are registered with the Basic Pilot.[36] According to the Bureau of Labor Statistics at the Department of Labor, there were 8,363,289 employing entities in the US in fiscal year 2004. In other words, less than one-twentieth of 1 percent of the total number of employers in the country is presently registered with the Basic Pilot. How well the Basic Pilot program could scale up to take on a workload nearly 2,500 times greater remains an unanswered question.

The possibility of a mandatory verification system also raises important questions about implementation costs. At present, cost is a relatively insignificant issue, as the level of participation in the Basic Pilot is so small. There are adequate numbers of ISVs to be able to process verifications within 24 hours. However, were the Basic Pilot to become mandatory for all employers in the country,

the added cost of having to manually verify 30 percent of all submissions to USCIS could become a significant cost and source of delays. Before the Basic Pilot could be expanded, USCIS would need to further improve its rate of automated approvals for noncitizens to at least approximate the 99+ percent rate generated by SSA for citizens.

Another important knowledge gap concerns the composition of submissions that receive tentative nonconfirmation findings and, for whatever reason, do not follow up. Approximately 1 percent of total submissions to the Basic Pilot receive tentative nonconfirmation notices and never respond to them. As a result, final determinations of employment eligibility for this group can never be made. Undoubtedly some percentage are persons who were not employment-authorized and declined to challenge the nonconfirmation finding. However, it is also likely that some percentage were work-authorized individuals who abandoned their applications or were passed over by employers as a result of delays. Since prevention of unauthorized employment is the goal of the pilot and discrimination is the pilot's key weakness, the inability to assess these relative proportions makes it difficult to gauge the overall cost-benefit ratio.

The Basic Pilot program has recently obtained funding for a new set of independent evaluations. Given the uncertainties which still remain in the program's functionality at a stage when its expansion is being contemplated, a re-assessment of the program's current strengths and weaknesses seems prudent.

Ultimately, whether the reduction in unauthorized employment justifies the costs entailed in terms of employer burden and inconvenience to employers and employees is a subjective matter, depending upon how great a problem unauthorized employment is perceived to be. As the administration contemplates immigration reform legislation against the backdrop of increased national security imperatives and public concern regarding a growing population of unauthorized immigrants, the likelihood that new measures can actually succeed in reducing illegal immigration should be of the utmost importance in designing a comprehensive reform package.

Appendix 1. Basic Pilot Performance Chart

	FISCAL YEAR 2002	FISCAL YEAR 2003	FISCAL YEAR 2004
Total Basic Pilot Queries	**706,334**	**612,722**	**756,947**
Total Employment-Authorized at SSA	486,221	446,478	579,038
% Total Employment-Authorized at SSA	69%	73%	76%
Total referred to DHS (includes initial & SSA Resubmit queries)	114,888	78,641	74,567
% referred to DHS	16%	13%	10%
Total SSA Tentative Non-Confirmation Responses	105,642	87,761	101,591
% Total SSA Tentative Non-Confirmation Responses	15%	14%	13%
Reasons for SSA Tentative Non-Confirmation Responses			
Total Invalid SSN	10,297	8,950	9,668
Total No Match Birthdate	21,458	16,104	18,369
Total No Match Name	14,979	11,036	13,571
Total No Match Birthdate/Name	36,082	32,162	38,074
Total Death Record	811	654	663
Total Citizenship Code	22,015	18,855	21,246
Total Tentative Nonconfirmation Cases Referred to SSA offices	22,416	20,485	25,282
% Total of Tentative Nonconfirmation Cases Referred to SSA offices	21%	23%	25%
Total SSA Cases Resubmitted for Verification	10,986	6,924	10,260
% Total SSA Cases Resubmitted for Verification	49%	39%	41%
Total SSA Resubmittals Employment-Authorized	5,529	3,276	4,075
% Total SSA Resubmittals Employment-Authorized	50%	47%	40%
Total Resubmittals Final Non-Confirmation	5,132	3,595	6,156
% Total Resubmittals Final Non-Confirmation	47%	52%	60%
Total Basic Pilot Queries Forwarded to DHS	**114,888**	**78,641**	**74,567**
Total Employment-Authorized	62,492	53,184	52,101
% Total Employment-Authorized	54%	68%	70%
Total Cases Referred to ISVs (System-Generated)	52,396	25,457	22,466
% Total Cases Referred to ISVs (System-Generated)	46%	32%	30%
Reasons for Referred Cases to ISVs			
Total Alien Number Not Found	10,299	7,243	5,742
Total Bad Birthdate	4,223	2,680	2,244
Total Bad First Name Initial	8,417	5,585	5,322
Total Invalid COA	19,029	881	1,027
Total No/Expired EADS	10,428	9,068	8,131
Total Employment-Authorized by ISVs	26,549	10,117	8,028
% Total Employment-Authorized by ISVs	50%	38%	34%
Total Tentative Non-Confirmation Responses	26,918	16,648	15,916
% Total Tentative Non-Confirmation Responses	23%	21%	21%
Total Cases Referred to DHS by Employers	6,857	6,374	6,450
% Total Cases Referred by Employers	25%	38%	41%
Total Cases Referred found to be Employment-Authorized	2,264	1,933	1,720
% Total Cases Referred found to be Authorized	32%	30%	27%
Total Cases Referred found to be Employment-Unauthorized	179	205	208
% Total Cases Referred found to be Unauthorized	0.08%	0.10%	0.12%
Total No Shows of Cases Referred to DHS by Employers	4,638	4,286	4,480
% Total No Shows of Cases Referred to DHS by Employers	68%	67%	69%

Source: SAVE/USCIS/DHS (data as of February 8, 2005)

Appendix 2. Participation in Basic Pilot by State

State	Number of Sites	State	Number of Sites
Texas	6477	Indiana	142
California	2201	Wyoming	135
Florida	2021	Alabama	129
Colorado	1835	Mississippi	128
New York	706	Louisiana	112
New Jersey	704	Idaho	105
South Carolina	647	Massachusetts	103
Virginia	580	Oklahoma	89
Pennsylvania	468	Michigan	77
Illinois	429	Connecticut	65
Nebraska	396	Kentucky	59
Tennessee	385	South Dakota	48
Arkansas	385	Montana	44
North Carolina	357	Nevada	33
Minnesota	348	New Mexico	25
Ohio	299	Delaware	24
Maryland	296	North Dakota	22
Utah	285	Alaska	20
District of Columbia	257	Rhode Island	17
Arizona	254	Hawaii	11
Georgia	249	New Hampshire	6
Kansas	248	Maine	5
Missouri	217	Vermont	4
Washington	216	West Virginia	3
Iowa	184	Puerto Rico	3
Oregon	152	Virgin Islands	1
Wisconsin	144	**Total Sites**	**22,168**

Source: Basic Pilot program, SAVE/USCIS/DHS (data current as of June 7, 2005)

Appendix 3. Participation in Basic Pilot by Industry

Industry	Number of Participants
Administrative Support Services including Employment Agencies	3892
Clothing & Clothing Accessory Stores	2535
Food Services & Drinking Places	1504
Accommodations	1287
Gasoline Stations	1262
Health Care	919
Professional, Scientific & Technical Services	756
Food Manufacturing	751
Administration of Human Resource Programs	726
Construction	607
Real Estate	570
Management of Companies & Enterprises	491
Warehousing & Storage	408
Health & Personal Services Stores	389
Miscellaneous Manufacturing	331
Repair & Maintenance Services	280
Merchant Wholesalers - Non-durable Goods	274
Utilities including Nuclear Power Plants	254
Merchant Wholesalers - Durable Goods	228

Source: Basic Pilot program, SAVE/USCIS/DHS (data current as of June 7, 2005)

About the Author

Kevin Jernegan

Kevin Jernegan is a former Associate Policy Analyst at the Migration Policy Institute, concentrating on US immigration reform. Prior to working with MPI, Mr. Jernegan worked for several years with the Office of Refugee Programs at the US Conference of Catholic Bishops, where he served as an advisor on technical immigration status, documentation issues, port of entry procedures, and benefit eligibility matters for refugees resettled in the United States. His background also includes experience working with private law firms, aiding immigrant clients in the preparation of applications for immigration benefits, as well as research positions with the Center for Strategic and International Studies, the Institute for Eurasian Studies at George Washington University, and the Central Europe Institute. Mr. Jernegan holds Bachelors degrees in International Affairs and Biology from the University of Washington in Seattle, and received his Masters from the Elliott School of International Affairs at George Washington University.

ENDNOTES

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The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide. The institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world. MPI produces the Migration Information Source website, at www.migrationinformation.org.

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mpi MIGRATION POLICY INSTITUTE

1400 16th Street NW
Suite 300
Washington, DC 20036

202 266 1940
202 266 1900 (fax)

www.migrationpolicy.org
www.migrationinformation.org