

ATTACHMENT C:

STAKEHOLDERS MEETING SUMMARY, 2007 (DC)

**NOVEMBER 27, 2007 STAKEHOLDER
MEETING REPORT**

January 2008

Report Submitted to:
U.S. Department of Homeland Security
Washington, DC

Prepared by:
Westat
Rockville, Maryland

STAKEHOLDER MEETING REPORT

Introduction

On November 27, 2007, the USCIS Office of Policy and Strategy and Westat hosted a stakeholder workshop in Washington, D.C., on the evaluation of the E-Verify program. The purpose of this one day workshop was to provide an open forum to identify, discuss, and prioritize topics that should be studied in the upcoming Westat evaluation of the USCIS E-Verify program. The workshop was attended by over 120 stakeholders including representatives from 65 private organizations as well as USCIS, DHS, Congressional and other government agencies staff.

The evaluators at Westat will use information from the workshop in the development of the evaluation design. Identifying stakeholders' high priority issues early in the research process provides important input into the evaluation design and, therefore, increases the likelihood of providing the best possible answers to key questions. Of course, other factors, such as costs will be considered in developing the evaluation design and data collection instruments. Thus, a suggested high priority issue that would be extremely costly or take more time than this one-year evaluation would allow may not be included, even though some lower priority issues are incorporated.

This report consists of five sections and two appendices in addition to this introductory section. The second section explains how the workshop was organized. The third section is a summary of the opening plenary session. Section 4, is a summary of what participants thought were the highest priority issues for the evaluation to address across the spectrum of the different workshop topics. Section 5 summarizes the discussions of each of the 6 workgroups, emphasizing research questions raised or implied in the discussion. The final section is a summary of the closing plenary. Appendix A provides the sections of the advance package sent to potential attendees describing E-Verify and providing an overview of the workgroup discussion topics and sub-topics. Appendix B contains a list of workshop attendees.

Workshop Organization

The workshop consisted of an opening plenary session, six morning workgroup sessions, six afternoon workgroup sessions, and a closing plenary session. The group sessions were divided into six topics:

Topic 1: Use of the Photo Tool and Biometric Techniques in E-Verify

Topic 2: Resolving Tentative Nonconfirmations

Topic 3: Timing of Employee Verifications

Topic 4: Focusing on Special Employer Types: designated agents and the Employers Using designated agents

Topic 5: Focusing on Special Employer Types: Employment Agencies and the Temporary Help Services

Topic 6: Focusing on Special Employer Types: Infrequent Users

Due to the high interest in Topic 2, there were two sessions for this topic in both the morning and the afternoon. Topic 5 was only offered in the afternoon and Topic 6 was only offered in the morning. Participants were assigned to a morning and an afternoon session using the preferences they had indicated on their registration forms as well as practical considerations such as the number of participants interested in the topic and a desire to spread organizational representation among sessions.

Opening Plenary

Lisa Roney, Director of Research and Evaluation in the USCIS Office of Policy and Strategy, welcomed the participants to the workshop. She pointed out that the number of people attending the workshop and the diversity of government and private agencies represented were indicative of the high interest in the E-Verify evaluation. She then introduced Carlos Iturregui, Chief of the USCIS Office of Policy and Strategy who spoke about the importance of this evaluation in light of the strong support for E-Verify from Michael Chertoff, Secretary of the Department of Homeland Security and other DHS officials.

Jonathan Scharfen, Deputy Director of USCIS, next addressed the session and emphasized that the reason for this workshop and the evaluation was to gather input to make the E-Verify system work better and to find “next steps.” He pointed out that this was extremely important in light of various immigration bills of which E-Verify is a part.

The next part of the plenary consisted of several Power Point presentations. Gerri Ratliff, Associate Deputy Director, USCIS National Security, Records, and Verification, presented an update on E-Verify. She talked about the growth of the program and the new the Photo Tool. She said that E-Verify currently has a 92 percent instant verification rate and that the mismatch rate has been lowered. She said that plans to include additional naturalization information in USCIS databases should lower it even more. Ms. Ratliff touched on other efforts that will focus on marketing the program to increase the number of users as well to improve ways to explain the program to employees, to monitor for problems, to address compliance issues, and to coordinate with SSA.

Lisa Roney then gave a presentation on the evaluation background, including legislative history. She noted that the current pilot legislation ends in November 2008 and that it is still unknown whether the program will continue as a pilot, remain voluntary, or be made compulsory for some or all employers. She spoke about the impact of prior evaluations including administrative changes that have already been made to the E-Verify program because of the evaluation reports.⁵ She also presented the key research questions and information on the evaluation research methods that Westat will use in the current evaluation.

The next presentation, given by Carolyn Shettle, Project Director, Westat E-Verify Evaluation, was an overview of the key findings from the FY 2007 report. These included findings on proper implementation, reducing unauthorized employment, protecting against discrimination, safeguarding privacy and employee rights, preventing undue burden on employers, changes in user population and the impact of those changes. She concluded her presentation with the goal of

⁵ This report can be found at <http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>

the meeting: identifying and then prioritizing the issues that the evaluation team should investigate in the upcoming evaluation.

Denise Glover, Assistant Project Director, Westat E-Verify Evaluation, gave an overview of the meeting logistics and guidelines for participation in the workshops. The plenary session then concluded with a short question and answer period. In response to a question about what is being done to follow up on fraudulent cases or on employers who are noncompliant, Ms. Ratliff said that standard operating procedures were developed in 2007 for this purpose, staff is being hired, and an office will be opening outside of Washington, D.C., to start the monitoring this coming year. Another participant questioned if there is a firewall to protect employers from criminal enforcement if they are voluntarily participating in E-Verify. Ms. Ratliff responded that information from E-Verify is only made available to Immigration and Customs Enforcement (ICE) investigators if they are already investigating an employer. Finally, in response to a question about a formal process to appeal a final nonconfirmation, Ms. Ratliff said that USCIS is considering ways to re-open cases to address this issue.

Summary of Priority Issues across Topics

Although the workgroups discussed separate topics and concerns, there was a great deal of overlap in issues raised. The fact that certain issues came up in most or all of the workgroups is a useful indicator of their high priority. The following broad research questions reflect what appear to be the highest priority issues.

Is communication among the Federal government, employers, designated agents, and employees adequate to ensure the efficient operation of the E-Verify program?

Workgroup members discussed situations illustrating how communication breaks down on many levels: from government to employer or designated agent, from employer to employee, and from employee to the government. Employers may not be correctly implementing the program because information is not clearly communicated; for example undefined key terms (like “new hire”) or vague time frames create problems for employers and employees. Workgroup members were especially concerned that employers don’t always get important information from USCIS about changes or enhancements to E-Verify. Many employers participating in the workshop were unaware that EV*STAR even existed while others “accidentally” found out about it when it came up on a specific log-in screen. Participants felt strongly that users needed to be informed of changes to the program in a more direct, visible, and timely manner in order to properly train staff and make any procedural changes before having to implement the modifications.

An example of confusion related to communication was exemplified by designated agents who said that they provided E-Verify services to some but not all of their clients. Those clients using E-Verify themselves were using the Photo Tool; however, designated agents were unable to use it for their other clients. Attendees also reported that E-Verify information sometimes differs or even conflicts among information sources, such as the manual, the tutorial, the DHS website, and advice given during phone calls. Participants felt very strongly that communication problems need to be identified and corrected before expanding E-Verify.

Communication problems affect employees in several ways. Currently, key documents are available only in English and Spanish and the literacy level required to read the

materials is higher than appropriate for many employees. Participants noted that all materials, such as the poster, the tentative nonconfirmation notice, and USCIS E-Verify information for employees on the web should be available in many other languages and use more appropriate literacy levels. For example, one participant commented that her company employs speakers of more than 20 different languages in just one location.

Participants wondered if employees actually understand the tentative nonconfirmation process. They suggested that more specific information should be given to employees, either through employers or the written notification, which would explain in more detail what had to be done to resolve a tentative nonconfirmation. Some suggested that USCIS provide templates that the employer could use to explain the process to the employee. Of course, communicating this information effectively to employees who are not native English speakers would still be a problem.

In addition, workshop members said that employees trying to resolve tentative nonconfirmations at SSA offices have encountered problems in communicating with SSA personnel who are not well informed about E-Verify and have, therefore, had problems in getting the tentative nonconfirmation resolved. These problems are exacerbated when there are no translators available for non-English speakers.

Another communication problem for both employers and employees raised is not being able to get through to DHS by phone. Participants reported getting busy signals or getting no answer because they called after operational hours. The questions are as follows: Can the phone system handle all of the calls if the program expands and how will DHS accommodate people who work odd hours or live in different time zones?

What are the causes of employer noncompliance with E-Verify procedures and how can these be reduced? Participants opined that some noncompliance is intentional; for instance, there may be intentional attempts by employers to use E-Verify to prescreen or discriminate. For example, temporary help agencies may prescreen by waiting to place someone until work authorization is verified and, if the person is not authorized, simply not placing that person. This might be difficult to determine because many people who sign up with temporary help agencies don't get placed immediately for many other reasons. Prescreening also occurs when clients of staffing companies request that the staffing company complete the verification process before referring anyone to them so that they only get work-authorized employees. Similarly, employers may withhold training or job placement when a tentative nonconfirmation is returned so they don't incur the expense of training someone who is not work-authorized. It is also possible that employers discriminate by prescreening more frequently in the case of noncitizens than citizens.

Workshop attendees also indicated that other employers may be purposefully noncompliant to avoid staffing or financial burdens. For example, employers may postpone the tentative nonconfirmation notification of employees or wait a significant time after a final nonconfirmation to fire someone in order to get a particular job completed without having to hire and train someone else.

However, participants also said that noncompliance is in some cases the unintentional result of problems in the E-Verify program. As discussed above, unintentional noncompliance may occur because terms such as "hire date" are not clearly defined and

the time frames for specific actions required by E-Verify are not clearly stated. Many participants also felt that employers should have additional closure codes to explain why tentative nonconfirmations don't get resolved.

Workshop attendees also discussed compliance issues that emerged with the introduction of the Photo Tool. Some thought that users just don't understand the directions while others wondered if employers were purposely requesting other documents to bypass using it. Additionally, because the Photo Tool is currently only used for noncitizens and the matching process is somewhat subjective, discrimination, intentional or not, could result. They also wondered if employers have more difficulty matching photos of certain national origin groups and suggested that examining data on non-matches might show a pattern of possible discrimination.

After discussing these issues, participants felt it was important to have a better system to monitor compliance. Right now ending the participation in E-Verify is the only potential negative consequence of being noncompliant. Participants wondered what would happen if the system is made mandatory, because termination of program participation would not then be an option.

Do the E-Verify training materials adequately prepare employers to use E-Verify and, if not, how can they be improved? This topic is closely related to the previous topics but focuses on a specific aspect of communication. Of paramount concern to attendees was training on system changes such as the Photo Tool and EV*STAR. Many participants whose businesses use E-Verify had not heard of these relatively recent additions to the program. Others, who did know about them, were concerned that the training was not clear enough for users to understand how they should modify their use of the system. This highlighted the participants' concern that the tutorial and other training information would not be able to keep up with changes or additions to the E-Verify program, especially if the system were made mandatory.

Workgroup members also discussed how the effectiveness of the training may be weakened by the ambiguity in the definitions of key terms such as hire, new hire, and start date. They questioned why explicit definitions and examples of key terms were not included in the tutorial and noted that there were inconsistencies in the definition of terms across Federal agencies. Participants were interested in how users came up with their interpretations of the terms, particularly if that impacted how they implemented the program. Workgroup members also said that the training is not clear about the time allowed between an employer receiving notification of a tentative nonconfirmation and actually notifying the employee, the time when the 8-day period to contest actually begins, and the time frame for firing an employee after a final nonconfirmation.

Participants noted problems that can occur because users of designated agents are not required to complete the tutorial, yet they are ultimately the ones responsible for following through with tentative nonconfirmations. Many felt that signing the MOU was not sufficient and that the employers who use designated agents should still have to complete the tutorial. In addition to user training, group members discussed the problems that occur, mainly for employees, because many staff in some SSA offices aren't adequately trained on the E-Verify program.

Are there ways that the employer and employee burden of E-Verify can be reduced?

Several participants said that the current time frame for resolving tentative nonconfirmations may not be realistic. In some cases, the closest SSA office could be hours away, creating burdens for the employee such as time lost from work, loss of wages, arranging transportation and the cost for child care, etc. For the employer, this means losing a day's work from the employee. Then, if the employee has to go back a second or third time to bring the correct documentation or resolve other problems, the same burdens are multiplied. Furthermore, multiple trips to SSA could make it extremely difficult to resolve a tentative nonconfirmation in time. Employees also have difficulty resolving the tentative nonconfirmation in time when SSA offices are not knowledgeable about E-Verify or do not enter data in a timely manner. One participant cited her own situation when it took the entire 8 days to resolve a tentative nonconfirmation although there were no problems with her documentation.

It was reported that SSA would like to change the time frame; however, the 60 to 90 days that SSA feels is needed would be unfair to employers who would have trained and established the employee in the job only to possibly find out much later that the employee was not work-authorized and had to be fired. A reasonable compromise needs to be made on the time allowed to resolve a tentative nonconfirmation, especially with regard to naturalized citizens who have a 10 percent rate of false tentative nonconfirmations. If a case is put "in continuance," with no end date, it again burdens the employer with the expense and time involved in training and establishing an employee, who may end up being found to be "not authorized to work," on the job. However, if the employer is sure that an employee who received a final nonconfirmation because the tentative nonconfirmation couldn't be resolved in time is, in fact, work-authorized, is it fair to make the employer fire the employee? Participants felt strongly that a formal appeal process is needed and would benefit both employers and employees.

Participants from some employment and temporary help agencies brought up other issues which affect their competitiveness and could become a financial burden. If an employment agency keeps placing workers who end up as not work-authorized with a client who must train them and put them to work, only to have to fire them and then find new workers, there is a good chance that the agency will lose that client. Similarly, if a temporary help agency places someone in a short term position and then that person has to take off to resolve a tentative nonconfirmation, it is difficult to justify to the client. According to some participants, these situations have happened and they noted that there are some agencies which prescreen to avoid this problem. Obviously, by prescreening, those agencies are not complying with the program's provisions. Therefore, the question is, until all agencies must use E-Verify and prescreening can be effectively monitored and stopped, how can the burden be eased without compromising the integrity of the E-Verify program?

A very different type of burden to employers discussed is the technology needed for E-Verify, especially if the program were to become mandatory. For example, small employers may find the cost of setting up and maintaining the technology too high; small employers, in particular may not have the technology required to use the Photo Tool; and some employers that do off-site hiring may not have computers, or even if they have laptops, they may not have Internet access, photocopying, or fax capability. Additional

burdens or challenges, for those using E-Verify in remote hiring situation include training, communications, and security. As E-Verify expands, participants were concerned about increased burdens and the impact on employers and employees.

WORKGROUP SUMMARIES

INTRODUCTION

The goal of each session was to frame and prioritize the research questions related to the topic that participants thought should be addressed in the upcoming evaluation. Topics and sub-topics⁶ were provided to guide the discussion of each of the groups and participants were encouraged to suggest additional topics. Each of the following summaries incorporates the comments and priorities from all workshops on that topic and the feedback from workshop reporters in the workshop wrap-up session. It is important to note, that although the charge to each group was the same, there were differences in the way that the groups chose to implement it. Because of these differences, the write-ups of the workgroups are not strictly comparable. In particular, the differentiation between high priority questions and those of lower priorities is not necessarily consistent among groups. Additionally, not all of the questions discussed in each session could be arranged easily under the subtopics. As a result, some of the questions were not assigned a priority and left unrated. Each summary is organized into three or four sections:

1. Background
2. Higher priority questions
3. Lower priority questions
4. Other unrated questions, if there were any unrated questions

These summaries are not intended to capture the verbatim conversations of the participants. To maximize the usefulness of the summaries for guiding the evaluation, the workgroup summaries emphasize the research questions that participants considered important for the evaluation to address. In addition, the listing of questions within the priority groups roughly reflects the broad topic groupings:

implementation issues

- communication and training
- accuracy of findings
- compliance with program requirements

program outcomes

- impact on employment of workers without work-authorization
- discrimination
- burden and cost
- privacy

needs of special groups

needed programmatic changes

impacts of scaling up E-Verify

⁶ See Appendix A for a copy of the questions and sub-topics given to attendees.

TOPIC 1: USE OF THE PHOTO TOOL AND BIOMETRIC TECHNIQUES IN E-VERIFY

1. Background

E-Verify recently started requiring that all employers, except designated agents, use the Photo-Screening Tool which currently provides employers with photographs from immigration documents when the person being verified presents such documents. Using this tool, the employer can verify that the picture on the document matches the photo in USCIS files. Workshop participants were asked to raise and prioritize issues the evaluation should consider related to how well the Photo Tool was working and any problems related to its use. They were also asked to consider issues related to using biometrics such as finger prints or iris scans in E-Verify.

2. High priority questions

Participants identified a number of high priority issues that they thought the evaluation should address. These issues include:

Did the rapid roll out of the Photo Tool process raise issues that could affect other rapid changes to E-Verify? Does a short implementation time from the announcement of a new verification process to its mandatory use create problems for employers that may need more time to train their personnel on it? Did users have enough time to master the tutorial? If not, did that cause errors when they used the Photo Tool? Did the short time to implement the Photo Tool make it more difficult for employers to follow procedures correctly? Should future changes to the E-Verify process be implemented as quickly as the Photo Tool was, and, if they are, when should E-Verify users be informed about the changes, where and how would they get the information that changes were being made, and how can we ensure timely and thorough training on the new procedures before they have to be used?

Is the training for using the Photo Tool adequate? Workshop members questioned whether employers receive adequate training on using the Photo Tool and if the tutorial is clear enough for employers to easily follow through with the correct procedures.

Are employers able to make accurate comparisons from photocopies or scanned photographs that might not be clear? Do the quality and/or timeliness of photos transferred through a fax machine or photo-copied create problems?

What is the error rate in uploading photos from the original database to E-Verify? What happens if there are multiple applications and photos for one person? Will there be a test to determine if employers have false matches?

Are there safeguards to detect errors? How is the Photo Tool monitored? Are there technical malfunctions that could affect the Photo Tool? What would the employer do, for example, if the Photo Tool was not functioning but E-Verify was? As E-Verify expands, especially if it becomes mandatory for all employers, will the Photo Tool be able to handle the case load?

What problems could occur with verification results based on the Photo Tool?

Participants said that it is important to evaluate the Photo Tool results. For example, were any nonconfirmations based on Photo Tool results later found to be work authorized? Conversely, were there any false matches? Participants discussed the problems of subjectivity and discrimination. Is there a pattern to false mismatches or false matches reflecting national origins?

Do employers follow Photo Tool procedures correctly? Are they properly retaining all photo documentation? Are they firing employees whose photos don't match? Are employers asking for non-Photo Tool documents in order to circumvent having to use the Photo Tool?

Are employers more lax on the Form I-9 process because of the Photo Tool?

Participants were concerned that employers may not be as careful in using document photographs in the required Form I-9 determination of whether documents appear to belong to the person presenting them when using the Photo Tool. Other participants expressed concern that employers may compare the Photo Tool document to the employee instead of to the copy of the photo on documents presented during the I-9 process.

Are unauthorized employees more likely to show non-Photo Tool documents than are authorized employees? Are employees presenting different documents than they did before the Photo Tool? On the employer side, the question to ask is whether employers are specifically requesting (the Photo Tool) documents. Do they violate I-9 rules and request I-551s or I-866s of noncitizens? A comparison of the types of documents presented pre/post the Photo Tool could help answer the question.

Does the Photo Tool lead to discrimination because it is only required of noncitizens? Because the Photo Tool is only for noncitizens, is there a proclivity to discriminate? How does employer subjectivity affect the outcome, especially when using photos that are not clear? Are there verification problems due to the quality of the photos and/or the timeliness of transmittal? Will the fact that it is the employer's responsibility to do the comparison add to discriminatory practices? Would we see a pattern if we broke down the requests for other types of documentation (Form I-551, I-766) or the results from the Photo Tool into national origins? Is this amplified if passport photos are added to the Photo Tool?

Does the Photo Tool create new burdens for the employer? Will employers incur additional expenses to purchase or update the technology needed for the Photo Tool? Are there other burdens associated with transmitting photos to the verification site, especially if there is off-site hiring? Is there a financial burden related to transmittal or storage? Are there any burdens related to security issues?

Would it help or hinder the procedure if more types of documents could be used for matching? Participants thought that the Photo Tool reassures employers about hiring noncitizens. If new documents are phased in, it would be useful to continue an evaluation of changes to the types of documents presented by employees as well as which documents employers accepted, especially if that shows any relation to the national origin and status of employees.

3. Lower priority questions

Although participants did not consider the following issues to be as high in priority as the preceding, they did raise questions that the evaluation should consider, if possible:

Is there a greater chance for error or malfunction with photos from other agencies that may be included, since DHS can't control the quality of their systems?

How can we determine whether the Photo Tool does, in fact, help detect fraudulent documents? Participants discussed an evaluation of mismatches. They also suggested looking at “failure to contest” tentative nonconfirmation cases when they were the result of the Photo Tool mismatch. Has the Photo Tool created more problems?

Could the Photo Tool lead to more “fake” employer fraud and identity theft because the employer could capture the photo and information that went with it and make new documents that would pass E-Verify? Will the change in types of documents lead to fraud or more identity theft?

What would be the impact of using biometrics on privacy? Who would own the data or have access to the data? Who would keep records of false matches or mismatches and how would they be stored? Privacy issues and civil liberties must be addressed for the Photo Tool or any biometric used. Other privacy concerns included whether the system or database could be hacked or if the query could be hacked. Just how secure is it? Is it possible that there could be unauthorized access within the government? Does a centralized database present problems? What protection needs to be in place to limit the use of the information in E-Verify? Participants also questioned whether other DHS agencies would have access to E-Verify biometrics.

What are the implications of using state-level documents in the Photo Tool? Would use of driver's licenses and nondriver IDs create a Federal database that would include most Americans? Should states be the ones to authenticate these documents rather than DHS? (It was clarified that employers are only supposed to retain a pass/fail for the photo match and not the copy of the photograph returned by the system under the Photo Tool.) Employers and civil liberties advocates should be asked about the above in terms of privacy, etc.

Will subjectivity become more of a problem if the Photo Tool is broadened to include more documents?

What would be the implications of using a “real” biometric tool instead of or in addition to the Photo Tool? Would E-Verify users be interested in a voluntary fingerprint pilot program, such as the Whole Foods “pay by touch” system?⁷ What would it cost? What would be the benefits? Would it be difficult to implement with so many employers? Are there other biometric tools that could be used for verification? Should a true biometric tool be an alternative or an additional check? How many incidents of fraud have been identified because of the Photo Tool? Are there data on how effective other biometric tools have been in reducing fraud? Would it be better to put more money into the Photo Tool or into a different “true” biometric tool? Would a “true” biometric tool

⁷ This is a payment system which uses a customer's digital fingerprint to charge the customer's checking account or credit card

avoid problems associated with the Photo Tool? If “true” biometrics were used, would subjectivity and discrimination decrease? Participants recommended that for the current evaluation, the focus should be on the Photo Tool even though it is not a true biometric.

TOPIC 2: RESOLVING TENTATIVE NONCONFIRMATIONS

1. Background

E-Verify sends a tentative nonconfirmation of work authorization status to the employer when employee work-authorization status cannot be determined. Once the employer informs the employee of the tentative nonconfirmation, the employee has eight business days to contest this decision. Past evaluations have shown that there are problems with this process, including employers that don't properly notify employees and the burden on employers for training employees who do not successfully contest the tentative nonconfirmation. Workshop participants were asked to raise and prioritize issues the evaluation should consider related to the how well the process for contesting tentative nonconfirmations is working, including the recently introduced automation of the SSA process for handling tentative nonconfirmations (EV*STAR).

2. High priority questions

Participants identified the following high priority issues that they thought the evaluation should address:

Do communications with recipients of tentative nonconfirmation notices need to be improved? Do communication issues affect the process to resolve a tentative nonconfirmation? One member commented that employers are not given any information to pass on to the employee other than to go to an SSA office after receiving the tentative nonconfirmation. Also, some employees may not actually understand the tentative nonconfirmation notice (as well as E-Verify posters and other information) due to literacy and language difficulties, especially since it is written at a high literacy level and is currently available in only English and Spanish. Would it improve the process to have more detailed instructions on the referral notice to the employee, based on the reason for the tentative nonconfirmation, or to have templates for employers to inform their employees of what they need to do (or documents to get) before they go to resolve the tentative nonconfirmation?

Was there sufficient notification about and training for EV*STAR? Many participants were unaware of this new process and said that they had not received any notification of its existence. Others "accidentally" found out about it when it came up on the log-in screen. How many users actually knew EV*STAR existed and received information on how it works?

Are the E-Verify instructions and/or communication problems between the government and the employer major factors in employer compliance or noncompliance? Does the fact that both the training and MOU do not give specific time frames for notifying employees after the employer receives notification of a tentative nonconfirmation or final nonconfirmation result in accidental or intentional noncompliance?

Is EV*STAR reducing the number of erroneous final nonconfirmations? Participants wanted to know if EV*STAR solves the problem of the employee who goes to SSA, gets everything straightened out, but still receives a final nonconfirmation because the employer makes a second inquiry before the corrected data are entered by SSA. The

participants suggested comparing the number of erroneous final nonconfirmations with EV*STAR to the number of final nonconfirmations prior to its use. Similarly, rates of erroneous tentative nonconfirmations should be compared.

Who can best improve the E-Verify process? In all the discussion about the E-Verify process, workshop members voiced concern that many of the problems related to tentative nonconfirmations, especially for naturalized citizens, were due to problems in the system - SSA databases not kept up-to-date, no system for timely update of SSA databases by DHS regarding naturalized citizens, poor communication from government agencies to employers, and lack of training in the process for SSA employees. Some participants asked if the burden should be shifted from the employer to the government.

What are the chances of false positives? Why are there conflicting results between E-Verify and SSA no match decisions?

Are there problems with compliance because of web-based sites and forms that are not kept updated? Are there other reasons that employers are not correctly notifying employees? Do we have data to understand how many tentative nonconfirmations become final nonconfirmations and the actual reasons? Some participants suggested asking employers if they wanted additional closure codes such as “can’t locate employee” or “employee will not return until...” in order to show reasons with more accuracy. How are web services being used?

What are reasons that employers may not want to terminate employees receiving final nonconfirmations? Is there an official definition for “terminate.” Participants pointed out that the MOU does not give an exact time frame for terminating. Does the MOU need to set a specific time or should it be case by case? Group members discussed why it might be difficult to set a specific time frame to terminate. They cited the example of employers who may have to locate off-site employees. They also discussed other explanations of why employers may not want to terminate an employee in a set time frame. These included the employer that thinks the case could be resolved if the employee had more time or that wants to appeal a final nonconfirmation because the employer is convinced that the employee is actually authorized to work. Are there other reasons to examine? Currently, there is no formal appeal process that would give the employer extra time before having to terminate. Are there any consequences for the employer who terminates an employee based on faulty E-Verify data? Would employers be open to discrimination suits if they terminated due to an erroneous final nonconfirmation?

Is there a system in place for monitoring compliance? Workshop members thought an evaluation of the monitoring would be useful as well as how monitoring impacts participation.

Do financial and/or staff burden cause employers to be noncompliant or to drop out of the program? Participants discussed evaluating the problem of small companies or large companies with small branch offices where the lack of trained human resources personnel or the cost in dollars and time to train new human resources personnel make the E-Verify process a burden so that the employer gives up using the system or ends up

being noncompliant. Do the special problems faced by employers with remote sites cause them to become noncompliant?

What has been the impact of EV*STAR on response times? One E-Verify user's experience is that it has been taking 3 to 4 weeks for a response to show up in the system. Are data actually updated in real time? What has been the experience of users with EV*STAR? Participants said that more data on the actual response times from EV*STAR need to be collected before evaluating its impact on employees.

Is the current time frame realistic and fair to both employers and employees? Workshop members discussed the difficulties (time involved, expenses, transportation, and loss of income) that employees faced to meet the time frame, especially if they were in rural areas with no SSA offices nearby, were working off-site, or if more than one trip to SSA was necessary. Employers of off-site workers said that the initial problem is just getting the tentative nonconfirmation notice to the employee to get a signature before the employee can start the process to resolve it. This difficulty could mean a long delay between the date an employer receives the tentative nonconfirmation and the date it is given to the employee. Could this benefit an employer who suspects that the employee is not work-authorized but wants to keep the employee working? On the other hand, participants said the delay could mean that the employer will incur significant costs and training time for someone who will have to be replaced. Does the time frame take into account problems with the SSA office such as not understanding what information the employee needs to correct, the documents the employee needs to show, or not entering corrected data in a timely manner to avoid a final nonconfirmation?

Does the current time frame give employees time to retrieve the necessary documents? Participants discussed options for changing the time frame for resolving cases. SSA would reportedly like 60-90 days but that would create an unfair burden on employers that have to deal with employee benefits, insurance, training, etc. At the same time, participants said that with a 10 percent erroneous tentative nonconfirmation rate for naturalized citizens, the current time frame is probably too short. Participants agreed that more research is needed to find a reasonable compromise on lengthening the time to resolve without creating additional employer burden. Similarly, participants questioned the ability of USCIS verifiers to resolve complicated noncitizen cases within the current time frame. How do "in continuance" cases impact employers and employees and how long can a case be "in continuance"?

Is a process needed to request a reconsideration of a final nonconfirmation? Several participants suggested a study of the process used to reopen a final nonconfirmation. Currently, it seems to be an informal process and a more formal appeal process might be beneficial. What do employers and employees think about this?

Does SSA implement EV*STAR when an employee shows up without the referral letter?

Is privacy an issue? Do employers find it difficult to be compliant regarding privacy issues when dealing with tentative nonconfirmation or final nonconfirmation notifications to off-site employees, such as in the trucking and construction industries? Who actually gives the tentative nonconfirmation to the employee working off-site? What burdens does an employer have in these cases to stay compliant? Are they reasonable burdens? How

can employee privacy be protected if other employees can get access to E-Verify information by getting someone else's password? Is sharing of passwords an issue to be explored?

Are there particular problems with E-Verify when it comes to special groups such as refugees, those with temporary protected status, those with nonimmigrant visas, and others? How does the program work for employees with expired but extended protected status that is not shown on any document (and who would probably get a tentative nonconfirmation and final nonconfirmation)? How does the accuracy of DHS databases, especially if they aren't up-to-date, affect E-Verify results for the special groups? How does E-Verify manage cases of employees whose temporary authorization to work would expire after they've been hired or whose authorization is restricted to a specific employer?

What does implementation of mandatory participation in Arizona show us about the likely effects of a larger-scale mandatory program? Participants thought it would be important to study Arizona, if mandatory participation becomes law there this year. This could be an indicator of the ability of the program to expand as well as showing problems that occur with expansion. Would making E-Verify mandatory cause any companies to go out of business because of costs, staffing, and/or the consequences of noncompliance? Is the publicity about E-Verify effective?⁸

3. Lower priority questions

Although participants did not consider the following issues to be as high in priority as the preceding, they did raise questions that the evaluation should consider, if possible:

Is more outreach to employees needed? Participants questioned if some noncompliance was the result of the failure to effectively notify employees and if that failure was due to language and literacy barriers. As with the tentative nonconfirmation, it was noted that the poster that is required to be posted to explain to employees about the program and their rights may have the same language/literacy issues. Do employees understand what "discrimination" actually means?

What are the consequences of noncompliance? Workshop members first wanted to know if there were actual consequences and then how these consequences affect employer participation.

Do employers close final nonconfirmations as invalid queries?

Would a review of the documentation answer questions regarding the time of termination?

Is there a way for an employer to know that the I-9 needs updating without asking the employee? Changes that could impact compliance include whether it would be effective to have a way to sign off electronically on the I-9 and tentative nonconfirmation?

Why do employees receive a final nonconfirmation?

⁸ This issue came up within the context of another issue and it is not clear whether participants thought this was a

Priority 1 task.

Is there a way to determine if discrimination plays a part in how quickly employees with final nonconfirmations get terminated?

What is the cost/benefit ratio of keeping the USCIS Immigration Status Verifiers (ISVs) and what percent of tentative nonconfirmations do they actually resolve? Do all databases need to be integrated before considering terminating the ISVs? Would there still be a need for some verifiers, even if the system became totally electronic? Participants discussed the need for a ceiling on the ratio of the erroneous tentative nonconfirmation rates for noncitizens to citizens prior to eliminating the USCIS secondary verification process.

TOPIC 3: TIMING OF EMPLOYEE VERIFICATIONS

1. Background

There appears to be little consensus surrounding the definition of a new hire among employers. This may have important implications for how E-Verify is used by employers, especially as it relates to the potential for prescreening. Workshop participants were asked to raise and prioritize issues the evaluation should consider related to the timing of employee verifications.

2. High priority questions

Participants identified a number of high priority issues that they thought the evaluation should address:

What is the definition of a “new hire”? Participants were concerned with the lack of clarity in the definition of new hire. How do USCIS and E-Verify materials, such as the on-line tutorial and manual, define new hire? They believe that there needs to be an assessment of employer understanding of the definition of “new hire”. Many participants said the definition of “new hire” is ambiguous. For example, if one firm buys another firm, are the employees of the acquired firm considered new employees? Can an employer verify a job candidate who has accepted a conditional offer as a new hire? The definition needs to be tied to a specific action or event. Specific examples should be provided in the training materials instead of a simple definition. One participant recommended that “new hire” should mean when an employee is first paid. However, other participants objected because being hired and being paid are not always closely connected. For example, a temporary staffing agency may hire someone and not have work available until weeks or months later.

Where are employers getting their understanding of new hire and hire date? All participants thought the evaluation should include a question to determine not only how employers interpret “new hire” but where they came up with their interpretations.

Is the E-Verify definition of “new hire” consistent with the definition used by other Federal agencies? Several of the attorneys in the groups mentioned that USCIS should review the definition of hire provided by the U.S. Department of Labor and the U.S. Department of Justice, and the Internal Revenue Service. Other Federal agencies have knowledge and experience on how to define a new hire. Participants agreed that employers prefer a consistent definition of new hire.

Should the definition of “new hire” be industry-specific? Participants recommended that a range of industries be examined to see if the definition of new hire could be tailored to an industry.

How should E-Verify be used by contractors? Are employees of contractors considered new hires? Should contractors working for Federal or state governments be treated in the same way as private contractors? Are Federal and state contractors verified for each contract they are employed under?

Do employers understand the connection between the I-9 and E-Verify for new hires? Most participants understood the connection between the I-9 and E-Verify for new

hires. However the participants noted that not all employers understand this relationship. One participant said that an I-9 would be not be required when hiring a foreign worker and added that there may be other exceptions where the I-9 and E-Verify may not be linked. Are the training documents and guidance regarding use of I-9 and E-Verify consistent? Are there cases where the I-9 and E-Verify are not linked? Is there documentation provided regarding any exceptions?

Are there situations when the three-day window for verifying new hires is not required? One exception to the three-day window was noted: the case where an employee has applied but not yet received a Social Security number. Participants asked what other exceptions might exist and if these exceptions were documented.

Are employers properly implementing the procedures for using the I-9 and E-Verify?

Are employers complying with the three-day window? There was agreement that employers could easily not comply with the three-day window by changing the start date entered in the E-Verify system. Are employers pushing back the start date if verifying before the employee accepts the job? Are employers changing the start date if they verify an employee after more than three days? Participants noted that the new the Photo Tool would make it more difficult for some employers, such as those without computers and other technology or employers who hire seasonal and/or rural workers, to verify employees within three days.

Is the three-day window for verifying new hires the appropriate interval in all cases? Participants understood that there is a three-day window for verifying the new hires after they had started work. Verifying employees with the Photo Tool within three days will be a challenge for some seasonal, rural, high-volume and small employers. These employers may not have computer access at all work sites or have the technology to reproduce and send color photographs.

3. Lower priority questions

Participants considered the following issues to be of lower priority than the preceding:

How well do employers understand their E-Verify obligations with respect to prescreening?

How well do employees understand their rights and know about the E-Verify program?

How pervasive is prescreening?

What are DHS and USCIS doing or planning to do for monitoring and compliance regarding prescreening?

Is E-Verify being used to re-verify some or all employees after they are hired? One example of a possible legitimate use of re-verification is after an employee's temporary work authorization expires.

Is prescreening being done only for certain types of job candidates, for example, based on national origin?

Are there differences in verification based on national origin, etc.?

Are employers using E-Verify as a tool to retaliate against certain types of employee behavior? One example is an employer who does not verify new employees and then threatens to verify them if they attempt to unionize or join a union.

What is the employer cost burden for tentative nonconfirmations resulting in final nonconfirmations?

What is the cost to employees in terms of lost time working while resolving tentative nonconfirmations or the loss of a job due to a tentative nonconfirmation?

Are different industries prescreening for different reasons?

4. Other unrated questions

The following questions were discussed but their priority is not clear:

How can USCIS effectively communicate accurate and consistent information to employers? Stakeholders noted that E-Verify information can vary depending on the source: the manual, the on-line tutorial or phone calls. Calls to USCIS can yield conflicting information and the current documentation does not always reflect the guidance given verbally.

What are the issues for E-Verify when minors are hired to work, for example, in the fast food industry? Should they be verified through the program?

In what languages other than English and Spanish should E-Verify employee notices be translated?

What differences are there between employers that use designated agents and employers that use E-Verify themselves? For example, do they differ in terms of tentative nonconfirmation rate, compliance issues, and rate of termination of employees when required?

Is there a way for a corporate headquarters to check to see if any of its branch offices have signed up for E-Verify? Several stakeholders discovered their branch offices had signed up for E-Verify without informing the corporate headquarters.

Do SSA and USCIS have the capability to process additional workers as E-Verify expands?

TOPIC 4: FOCUSING ON SPECIAL EMPLOYER TYPES: DESIGNATED AGENTS (DAs) AND THE EMPLOYERS USING DESIGNATED AGENTS

1. Background:

There has been a recent increase in the number of designated agents using E-Verify. Prior evaluations have not asked any questions about the unique needs of or problems facing these users. Workshop participants were asked to raise and prioritize issues the evaluation should consider related to designated agents and employers using designated agents. The discussion primarily reflects the perspective of designated agents because few employers using designated agents were represented at the workshop.

2. High priority questions

Workgroup members discussed what they believed to be high priority issues for the evaluation:

What services do designated agents perform for their clients? There was some confusion about what services designated agents should, could, or would provide to their clients. Who has responsibility for what portion of the work, especially notification of tentative nonconfirmations? What roles do designated agents play? Some participants did not know that there are different types of services offered by designated agents. Participants agreed that designated agents' clients are responsible for dealing with tentative nonconfirmations and final nonconfirmations, but other responsibilities were less clear. Some participants said that a designated agent's basic service is to "outsource" submission of employment verification queries for newly hired employees. Others said the basic services are either to provide electronic Form I-9 software that links with E-verify or to provide Web-services to do verification. Designated agents may input information from an electronic Form I-9 and report the findings back to the client; then, based on the findings, clients follow up on certain cases such as tentative nonconfirmation cases. Furthermore, designated agents said that clients may not really understand how using a designated agent actually works because they sometimes ask their designated agent to follow up with tentative and final nonconfirmation cases and have to be informed that the designated agent cannot legally perform those functions for their clients.

Do the designated agents provide sufficient training to their clients? What training do designated agents provide to their clients? How does it vary by the type of designated agent? From the discussion, it was obvious that designated agents do not all provide the same level of training or assistance to their clients. Some instruct clients how to use the software or provide training on the basic use of the web system while others do not. What level of client training is needed? What is required? Does the training meet USCIS standards related to level of compliance?

What should training include? Can it vary by designated agents/employers based on division of responsibilities? Do/should designated agents train on employee rights? Do/should they train on the tentative nonconfirmation process, even though the designated agent is not involved in that process other than notifying the employer of a tentative nonconfirmation? Participants also questioned whether designated agents should

be expected to train on employee rights and wanted to know where the line can be drawn between training, consulting, and legal advice.

Do designated agents need to address problems that arise when their clients use different (or older) web-browsers that display module/information differently?

Participants reported that when this happens, the regular training materials do not work for them. The designated agent then has to create different training materials to accommodate these users.

How can communication between designated agents and USCIS be improved? How much time do designated agents need to incorporate new features into their systems and into the trainings before being required to implement them? Several designated agents made it clear that they need to be informed by USCIS ahead of time about any changes to the system (such as the implementation of EV*STAR and the Photo Tool) so that designated agents can keep up with the latest features and incorporate these features into their systems and training. They also suggested that designated agents be involved in the development process for new features and wondered what the best medium is to reach designated agents? There seemed to be consensus that using email to reach designated agents is not sufficient. One suggestion was for USCIS to have a web repository to store all the changes they made so that clients as well as designated agents can access and see them. The groups were not able to come up with a consensus idea about an effective communication tool.

Should USCIS be taking a more active role in communicating with clients of designated agents? Many participants agreed that clients of designated agents should be required to take the E-Verify tutorial or at least be educated about how to use E-Verify, beyond what they learn from the MOU. One participant added that clients and designated agents should have the same levels of understanding but the current communication model could be a problem, since it goes from USCIS to clients, then clients to designated agents, which they believe is not working the way it should be. Three-way communication among the parties was suggested as a better model.

One participant noted that her company had been doing all its own verifications, including using the Photo Tool. When the company decided to use a designated agent for verifications at some branches, it found out that designated agents did not yet have the Photo Tool. This created an “inconsistency” in the process since the company had been using the Photo Tool previously and would continue to use it with the branches for which it was not yet using designated agents. The company was not aware that designated agents were unable to use the Photo Tool and having the two different processes in place has caused confusion.

Should USCIS be doing a better job in communicating with the general public? Some information (including general materials, user manual, and the tutorial) is available only to registered users. USCIS has reportedly been working to improve putting the information out to the public and there is now a website for E-Verify.

How does varying training impact level of employer compliance? Participants thought that the evaluation should look at the results of training. Are rules being followed regardless of the type of training?

What are the obligations of designated agents and their clients with respect to ensuring privacy? Who stores the data and how? What are security needs of clients? Another concern for both the designated agent and designated agent user is technology that is not up-to-date which creates security concerns and training issues. One participant gave the example of how some designated agents use outdated encryption protocols which creates possible security problems. It was reported that clients have stopped using designated agents without up-to-date technologies because of these security concerns.

What are the challenges faced by special groups of employers? What are the challenges of using E-Verify in remote hiring situations—including technology availability, management of security, training, and communications? What are the consequences of not being able to adhere to E-Verify rules because of remote hiring or other problems? For example, will this affect discrimination or privacy? Participants noted that these challenges will be tremendous if the process goes mandatory. Even now, it can be difficult to comply with the “within certain-days rules.” Another problem, especially when hiring night shift employees, is that the system is not available 24/7.

How should the designated agent process work? What services are appropriate for the designated agents to provide? Some designated agent users prefer having control over the verification process while others think the designated agent should have the responsibility to take care of tentative and final nonconfirmations. Attitudes towards allocating responsibilities between designated agents and their clients varied considerably. Several participants felt that using a designated agent should allow companies to “outsource the human resources function completely,” and complained that the responsibilities (e.g., following up tentative nonconfirmation/final nonconfirmation cases) are still on the client. These participants questioned why the current MOU does not allow designated agents to take care of tentative nonconfirmation notifications.

Participants wondered if designated agent practices could be standardized or if they would need to vary based on serving different employer types or industries. Are there industry specific needs of clients that designated agents can serve? Are the two MOUs (one for employers, one for designated agents) sufficient, given the variety of approaches used by designated agents?

Should there be a certification process for designated agents? Participants wondered if clients would want their designated agents to be certified by USCIS, and if so, what would that certification include?

3. Lower priority questions

Although participants did not consider the following issues to be as high in priority as the preceding, they did raise questions that the evaluation should consider, if possible:

How should USCIS communicate with employees? Participants agreed that the poster is not an effective way to put information out to employees.

What types of monitoring do/can designated agents provide to make sure their clients are following the rules for notifying employees?

Why do/would clients, including Federal Government agencies, use designated agents?

What problems do clients of designated agents encounter? Many of those present felt this was a low priority because it was up to the employer to monitor their contractors.

Would greater differentiation of the types of designated agents be useful? Further clarify distinction among the different types of designated agents (i.e., web service designated agents, regular designated agents, etc). What types of designated agents are there? Do designated agents provide services to other designated agents and, if so, how?

How can use of E-Verify by designated agents be improved or streamlined to better serve employers? How can the program be improved to make it worthwhile for employers to use designated agents instead of “just buying the software”? Participants would like the evaluation to look at how E-Verify is similar or dissimilar to other designated agent services to see how the process might be streamlined.

4. Other unrated questions

The following questions were discussed but their priority is not clear:

Whose responsibility is it to notify clients of new features and how to use them?

How do designated agents communicate with clients? Is it industry specific? Do they communicate new features if they know about them?

What training should be provided for designated agents? In addition to the tutorial, what other types of training can be provided? What subject areas should be covered? Do designated agents understand the importance of educating employers? How can USCIS help designated agents provide training?

What information do clients of designated agents want or need? What information can clients access or how much do they know about the system? If an employer is using a designated agent to reduce the burden, would requiring more training for the employer add burden?

What monitoring/compliance is done to see if designated agents provide adequate training?

Do designated agents have to build in new features when USCIS adds new features? Is there a cost burden?

What are the challenges for current users transitioning to using designated agents? How widespread is dual/mixed use, i.e., employers using designated agents for some verifications, perhaps at specific sites, and also doing other verifications on their own? What special challenges or problems does this present?

TOPIC 5: FOCUSING ON SPECIAL EMPLOYER TYPES: EMPLOYMENT AGENCIES AND TEMPORARY HELP SERVICES

1. Background:

An increasing percent of verifications are conducted by companies providing employment services. The previous evaluations have shown that these employers have relatively high rates of prescreening, quite possibly because the “normal” hiring and verification process assumed by E-Verify is not consistent with the ways that employment services actually operate. Workshop participants were asked to raise and prioritize issues the evaluation should consider related to the unique needs of the temporary help and employment agencies.

2. High priority questions

Participants identified a number of high priority issues that they thought the evaluation should address:

Are agencies prescreening? Is there a way to determine if agencies are prescreening (other than the occasions when employees, who think they have been prescreened contact DHS)?

Why does prescreening occur? “What is the definition of hire? Is it the date an employee accepts a job or the first day of paid work?” Apparently DHS considers it to be the former, while ICE considers it to be the latter.

When should employment agencies and temporary help agencies be using E-Verify? Participants discussed the major difference between how an employment agency operates and how a temporary help agency operates, particularly as it relates to using E-Verify. They concluded that because employment agencies refer but do not actually hire or pay employees, they should not be verifying work authorization. Temporary help agencies, however, actually hire people to be in their pool of available workers and issue them paychecks and, therefore, do need to verify. A subset of employment agencies includes day labor centers and state agencies. Participants stated that because neither of these is an actual employer, they are not supposed to do verifications. Also, the fact that some staffing agencies offer both employment services and temporary help services creates additional complications.

Are agencies prescreening at the request of clients or to be able to ensure clients that all employees they refer or place are work authorized? A temporary help agency could delay placing someone until it was sure the person was work authorized or an employment agency could register to use E-Verify and then only refer work-authorized potential employees to its clients.

What are the burdens of E-Verify for those employers providing employment services? What are the burdens associated with off-site hiring? Does the volume of verifications done by agencies create more of a burden?

Can system down-time be decreased? Attendees reported that this issue especially affects agencies doing verifications during extended business hours. They said that this is a problem for agencies, especially those with large numbers of employees.

Should the maximum number of cases for batch processing be increased?

How can SSA response to E-Verify be improved? Workgroup members said that SSA office employees don't understand E-Verify. They don't recognize the referral letter and don't resolve the correct issue. They believe that the SSA response time needs to be shortened.

3. Lower priority questions

Participants did not consider the following issues to be as high in priority as the preceding:

Is it clear how to handle special hiring procedures? All participants from agencies agreed that there are no special burdens or procedures when an employer converts an employee of a temporary help agency into a permanent employee. However, one participant stated that most staffing agencies would recommend to their clients that they re-run employees who are converted from temporary to permanent through E-Verify.

Why should or shouldn't prescreening be allowed?

Could prescreening be used to discriminate?

What are the burdens of clients of employment services? Employment agency participants said they face a challenge in making sure that their clients that hire off-site, to which they refer employees, have the necessary technology- computers, Internet access, faxes, etc. to use E-Verify. The Photo Tool has also created some issues, especially with off-site recruiting. One participant suggested that it might be useful to talk with agencies that don't use the system to find out their reasons for not participating.

Does E-Verify reduce the competitiveness of employment service agencies using E-Verify compared to agencies not using it? One group member commented that some clients don't understand why the agency can't share the results of E-Verify with them. This may cost them business since other agencies may be willing to share the information illegally.

TOPIC 6: FOCUSING ON SPECIAL EMPLOYER TYPES: INFREQUENT USERS

1. Background

According to prior evaluations, employers who use E-Verify are not representative of all employers in the nation; e.g., enrolled employers tend to be disproportionately large employers that presumably use the program more frequently than other employers would. This raises the concern that unanticipated problems may arise if the program is made mandatory for all employers. Because of time and funding limitations, interviews with employers that have never signed an MOU are not planned for the current evaluation. However, we do plan to obtain information from employers who have signed up for the program but never used it or have terminated using the program. This session focused on understanding what kind of information we need from these employers that is likely to be of use in shaping E-Verify in the future.

2. High priority questions

The workgroup examining infrequent users did not formally rate the research questions. However, the discussion permits identifying some questions that appear to be high priority for the workgroup participants:

What are the special challenges faced by small employers? Are there more small employers in the “infrequent user” category than large employers? Does the small employer with five or fewer employees have any incentive to use the system? For the small employer, are cost or the possibility of getting an erroneous non-confirmation which would, in effect, represent a large percentage of the employer’s workforce factors in using or not using the system? Would using a designated agent make the small employer more willing to use E-Verify?

What are the special challenges facing the largest employers? One participant mentioned the difficulty with seasonal hiring, such as in agriculture, and having to verify 300 employees in a short amount of time. Another problem in the agriculture industry is email and Internet access. One suggestion for the evaluation was to break out groups that use temporary worker/H2A programs and find out why they use E-Verify to see if the reasons are the same as the rest of the agriculture industry. Another participant suggested broadening this to include any industry with seasonal workers, such as the landscaping industry. What would be their reasons for using or not using E-Verify?

Why do most employers not participate in E-Verify? Throughout the discussion, participants reiterated that the evaluation needed to include employers that never signed up for E-Verify and not just the employers that signed up but had never used E-Verify and those that had signed up for the program but later terminated use of it. Participants thought that the cost to train an employee who may lose time when resolving a tentative nonconfirmation or who ends up as a final nonconfirmation and has to be terminated could be a reason not to use the system. Some thought that the additional cost and responsibility of using the Photo Tool may cause employers to terminate.

Are there employers that are apprehensive about using the system because their employees are largely illegal? If so, they should be asked if there is anything other than mandatory implementation that would get them to sign up and use E-Verify. One group

member noted that this question has been asked and basically employers don't want to use the system if everyone else in their industry isn't also using it. Another participant commented that the evaluation should look at other surveys that have been done on E-Verify, such as by the Society for Human Resource Management (SHRM) and the National Federation of Independent Business (NFIB).

Do employers believe that E-Verify has negative consequences? Do employers believe that participation in E-Verify makes them more likely to be subject to enforcement actions by Immigration and Customs Enforcement (ICE)? Does using E-Verify affect employer competition and would that cause a user to terminate? An example was given of a contractor, not using E-Verify and employing illegal workers, who successfully put in a lower bid for a job than his competitor who only used verified workers. Did the competitor have to bid higher because of the cost of using E-Verify and only employing legal workers?

Why do some employers use E-Verify infrequently? One participant commented that infrequent users are not necessarily purposely avoiding the system but could simply be employers who just don't need to use it that often. Another questioned the difficulties faced by a small employer with a high employee turnover rate. Another group member thought that these infrequent users needed to be asked if they would be more likely to use the system again if tentative nonconfirmations, especially for naturalized citizens, could be reduced. This reduction could occur with more accurate and up-to-date databases and with better communication between DHS and SSA. Another participant suggested that if a marketing push by SSA got people to update their information (change of name due to marriage or divorce, for example), it might lower the tentative nonconfirmation rate which might encourage employers to use E-Verify again.

3. Lower priority questions

The following question appeared to be of lower priority than the previous questions:

How can we best categorize types of infrequent users? Participants suggestion making the following distinctions between employers:

- Employers that have never registered to use E-Verify
- Employers that no longer want to use the system but have not formally terminated use
- Employers that have formally terminated use
- Employers that are dissatisfied with the system
- Employers that rarely have new hires
- Employers selectively screening new employees
- Employers that registered for E-Verify but never actually used it; for example, some employers may have just signed up to find out more about the tutorial and the system. If this is so, would it encourage prospective employers to sign up if they could first have a demo of the registration process and the tutorial?

- Employers that mistakenly signed up for E-Verify as a new user instead of going through the administrator when the company is already registered

CLOSING PLENARY

To give everyone an overview of all the topic workshops, one participant from each of the topic sessions presented a summary of the main discussion points for that session. This information was incorporated into the discussion from the individual workgroups. The floor was then opened to other research suggestions. The research questions raised included:

Are there any difficulties with the employer registration process and, if so, why do they occur?

What are the implications of expanding E-Verify from a small to a large population? What is likely to happen if E-Verify becomes mandatory? In particular, what will the effect be on training and enforcement? If Arizona makes E-Verify mandatory this year, it could serve as a model.

How well are key terms defined and how should they be defined to make sure that they are clear and consistent.

Are there questions about the program that are not addressed in the MOU and, if so, why?

What modes of communication for new information and training from USCIS would employers prefer?

Are the databases used in E-Verify secure?

Has illegal employment been reduced by E-Verify? To what extent are “false positives,” i.e., failure to detect employees without work-authorization a problem?

What are the reasons for erroneous tentative nonconfirmations? This could be addressed by examining information from USCIS regarding the challenges to tentative nonconfirmations. How would greater clarity and transparency on this issue affect the program?

Next, Carolyn Shettle went over the “next steps” following the stakeholders meeting. They are:

A report on the Stakeholder workshop

Reconsideration of the methodology for the evaluation in light of the workshops, including formulation of questions to ask employees and employers

Kathy Lotspeich closed the session by reiterating the importance of the Stakeholders meeting and the evaluation. She reminded participants that USCIS is already implementing changes based on Westat’s most recent evaluation. She concluded by noting that in just one year the number of staff working on E-Verify has grown from 18 to 154 people which is an excellent indicator of the importance of the program. Finally, in response to a question, she said that, for her, the main “take home” message from the conference was the need for better communication.

Appendix A: Information Sent to Potential Workshop Participants

Description of the E-Verify Program

E-Verify (formerly known as the Basic Pilot) is a secure Internet-based system operated by the U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). E-Verify allows participating employers to electronically verify the employment eligibility of their newly hired employees. *The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)* first authorized the Basic Pilot program and required it to be evaluated. Since the small-scale start of the program, the program has expanded; it is currently available to all U.S. employers. More than 23,000 employers are currently registered for E-Verify.

Employers can register for E-Verify online by completing an application and signing the Memorandum of Understanding (MOU) with USCIS which is necessary to officially participate in the program. Once registered, users must take an online tutorial and pass a Mastery Test prior to using the system.

E-Verify users enter information captured on the Employment Eligibility Verification Form (I-9) for all newly hired employees no later than 3 business days after the new hire's start date. The employer may not prescreen job applicants and may not take any adverse action against employees based upon E-Verify unless the program issues a final nonconfirmation of employment authorization. E-Verify compares employee information for both citizens and noncitizens against the more than 425 million records in the SSA database. For those claiming to be citizens, if the information is consistent with the SSA data and the employee information shows that the employee was born in the United States or has permanent work-authorization, the system confirms work-authorization. For employees claiming to be noncitizens, if SSA finds that the employee Form I-9 information is consistent with its records, the information is compared to the more than 60 million records stored in the DHS database. If the employee information is consistent with DHS information and the DHS records indicate that the person is work-authorized, a work-authorized finding is issued. Currently, 93 percent of queries are instantly verified as work-authorized.

When a noncitizen referred for a DHS check cannot be immediately verified as work-authorized, the case is referred to an Immigration Status Verifier who will check additional DHS records. If these records indicate that the employee is work-authorized, a finding of work-authorization will typically be made within a day of the employer's submitting the case.

If work-authorization cannot be verified by SSA or DHS, a tentative nonconfirmation finding is issued by the system. The employer is required to notify employees of the tentative nonconfirmation notice and ask whether they wish to contest the finding. Employees wishing to contest are referred to SSA or DHS, as appropriate, to straighten out their records within eight days of being referred. Employees who do not contest or who are not found to be work-authorized after contesting receive final nonconfirmations and the employer should terminate their employment.

The employer may choose to use an E-Verify Designated Agent (DA) as a liaison between the employer and E-Verify to conduct the verification process. Both the DA and the employer must register online and sign an MOU with SSA and USCIS.

If a company has several hiring sites interested in participating in E-Verify, each site that will perform the employment verification queries must go through the registration process and sign an individual MOU.

For additional information on E-Verify, please visit: www.dhs.gov/E-Verify.

Description of Workgroup Topics

Introduction

The write-ups below describe the workgroup topics and sub- topics to be discussed at the workshop. Workgroup members will also be encouraged to bring up additional relevant issues in these groups that we may not have thought of.

Topic 1: Using Biometrics (e.g., the Photo Tool) for Verification

Overview: E-Verify recently started requiring that all employers use the Photo-Screening Tool which currently provides employers with photographs from immigration documents when the person being verified presents such documents, so that the employer can verify that the picture on the document matches the photo in USCIS files. The goal of this session is to frame and prioritize the research questions related to the photo tool and other potential biometric tools that the evaluation should address.

Sub-topic 1: How well do you think the Photo Tool is working? Are there problems that you are aware of that the evaluation should explore?

Sub-topic 2: Does the Photo Tool raise any new issues for employers/employees that we should explore?

Sub-topic 3: Do you think it has been effective in detecting fraudulent work documents? Are there questions about its effectiveness that we should be addressing?

Sub-topic 4: Do you think that the Photo Tool has resulted in changes to the types of work documents employees are submitting for the Form I-9? Is this an issue for research?

Sub-topic 5: Do you think that the Photo Tool should be expanded to include additional documents? Why or why not? Is it important to ask employers about this?

Sub-topic 6: Do you think we should raise questions about additional biometric tools that could be used to reduce identity fraud and the employment of unauthorized workers? If so, what?

Sub-topic 7: What do you think the effects of using biometrics are on discrimination and privacy? Is this something we should address?

Wrap-up: Among the areas identified for evaluation research, what are the relative priorities?

Topic 2: Resolving Tentative Nonconfirmations (TNC's)

Overview: E-Verify sends a tentative nonconfirmation of work authorization status to the employer when employee work-authorization status cannot be determined. Once the employer informs the employee of the tentative nonconfirmation, the employee has eight business days to contest this decision. Past evaluations have shown that there are problems with this process, including employers that don't properly notify employees and the burden on employers for training employees who do not successfully contest the tentative nonconfirmation. The goal of this session is to frame and prioritize the various issues related to tentative nonconfirmations that may arise for the employee and the employer.

Sub-topic 1: How long should employees have to resolve tentative nonconfirmations? Are there any specific aspects of this process that the evaluation should address?

Sub-topic 2: What are employers' views of the new SSA procedures for handling TNC's using EV*STAR which makes employer procedures for handling SSA TNC's more similar to the USCIS procedures? What implications do you think this has on potential employees? Are there questions about EV*STAR that we should be addressing?

Sub-topic 3: Why do employers sometimes fail to notify employees of their rights and how to contest? Is there a way to increase compliance? Are there circumstances in which notification is not feasible? What additional information about this problem could the evaluation obtain?

Sub-topic 4: What criteria do you think should be used in deciding that it is possible to terminate the use of USCIS secondary confirmations, i.e., confirmations done by USCIS Immigration Status Verifiers prior to issuing a TNC for noncitizens that are not found to be work-authorized automatically?

Sub-topic 5: How long do you think employers should have to terminate employees who receive final nonconfirmations?

Wrap up: What are the key issues surrounding TNC's that this evaluation should address?

Topic 3: Timing of Employee Verifications

Overview: There appears to be little consensus surrounding the definition of a new hire among employers. This may have severe implications for how E-Verify is used by employers, especially as it relates to the potential for prescreening. The purpose of this session is to formulate and prioritize questions to address how employers define new hire, and what implications this has for potential employees and possible prescreening.

Sub-topic 1: How do you think employers are interpreting the definition of new hire? What do you think should be the definition of “new hire” for the E-Verify program? Is there a need for the evaluation to examine this question?

Sub-topic 2: When does a new hire “begin work” (the first day of paid work, or when they begin training, etc.)? What implications do you think this has for discrimination? Is there a need for the evaluation to examine this question?

Sub-topic 3: Do you think E-Verify is used selectively or inconsistently for new hires? How can we address this issue in the evaluation?

Sub-topic 4: What do you think are the implications of prescreening for employers and employees? Are there any circumstances in which prescreening should be allowed? How should this evaluation address issues surrounding prescreening?

Wrap Up: What should be the relative priorities in addressing issues of employee verification?

Topic 4: Focusing on Special Employer Types: Designated Agents (DA's) and the Employers Using Designated Agents

Overview: There has been a recent increase in the number of DA's using E-Verify. Prior evaluations have not asked any questions about the unique needs of DA's and the employers that use DA's. The goal of this session is 1) to understand the role DA's and Employers using DA's play as it relates to using E-Verify, and 2) to frame relevant questions that will yield insight into unique issues related to these employers.

Sub-topic 1: What specific E-Verify-related services do Designated Agents (DA's) provide to clients/companies? How does the E-Verify process work with DA's and their clients? Who has responsibility for what portion of the work, especially resolving TNC's? What kind of information should the evaluation collect from DA's and their clients about these processes?

Sub-topic 2: What types of training or technical assistance do or should DA's provide to their clients? (e.g., privacy issues related to transferring work documents to DA's; who is responsible for prescreening employees, if this occurs—the DA or the company?)

Sub-topic 3: What problems have companies encountered in working with DA's or do you think they might encounter? What questions do they ask DA's? What information should the evaluation collect on this topic?

Sub-topic 4: How do you think the clients of DA's are made aware of the latest tools, such as the Photo Screening Tool and EV*STAR? Is this sufficient?

Sub-topic 5: Do you think that employers using DA's should be required to take the E-Verify Tutorial and Mastery Test? Why or why not? How, if at all, should the evaluation address this issue?

Sub-topic 6: What problems do you think companies encounter in working with DA's? What questions should be asked in the evaluation to address these possible concerns?

Wrap up: What are the relative priorities when addressing issues related to DAs and Employers using DAs for this evaluation?

Topic 5: Focusing on Special Employer Types: Employment Agencies and Temporary Help Services

Overview: An increasing percent of verifications are conducted by companies providing employment services. The previous evaluations have shown that these employers have relatively high rates of prescreening, quite possibly because the “normal” hiring and verification process assumed by E-Verify is not consistent with the ways that employment services actually operate. This session is designed to develop the relevant questions that should be addressed to understand what unique issues related to these employers should be addressed in the new evaluation.

Sub-topic 1: What do we need to know about the practices of employment services? Should we collect this information from employers or are there other reliable sources of this information?

Sub-topic 2: Do you think the burden of using E-Verify is different for employers providing employment services than for other employers? If so, how? What do we need to find out about this in the evaluation?

Sub-topic 3: Do special issues arise when a company wants to convert an employee of a temporary help service agency into a permanent employee? For example, does it make sense for the hiring company to verify an employee already verified by the temporary help agency using E-Verify? What more do we need to know about how this works?

Sub-topic 4: Are there specific improvements to E-Verify unique to employment services that you think we should ask them about?

Wrap Up: What are the relative priorities when addressing issues related to employment services providers for this evaluation?

Topic 6: Focusing on Special Employer Types: Infrequent Users

Overview: According to prior evaluations, employers who use E-Verify are not representative of all employers in the nation; e.g., enrolled employers tend to be disproportionately large employers that presumably use the program more frequently than other employers. This raises the concern that unanticipated problems may arise if the program is made mandatory for all employers. Because of time and funding limitations, interviews with employers that have never signed an MOU are not planned for the current evaluation. However, we do plan to obtain information from employers who have signed up for the program but never used it or have terminated using the program. This session focuses on understanding what kind of information we need from these employers that is likely to be of use in shaping E-Verify in the future. The goal of this session is to develop and prioritize questions that provide some insight as to the special challenges, if any, these employers have with the system.

Sub-topic 1: What are the possible reasons employers terminate their use of the program that you think we should obtain information about? (e.g., staffing issues)

Sub-topic 2: Should we obtain information about the circumstances that would lead them to sign up to use the system again?

Sub-topic 3: If the program should become mandatory, what challenges do you think these employers might face that we should ask about?

Sub-topic 4: Are there sub-groups of employers in the infrequent user category that should be identified, so that we can ask them targeted questions? If so, what are they and what kind of information do we need from them?

Wrap Up: What specific issues are most important to address in the evaluation regarding infrequent users of E-Verify?