

SUPPORTING STATEMENT

E-Verify Program

(No Agency Form Number; File OMB-18)

OMB No. 1615-0092

A. Justification

1. **Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); Public Law 104-208, dated September 30, 1996, provided for the establishment of a Basic Pilot Program to last four years. The Basic Pilot Program's operation has been repeatedly extended by Congress; See Basic Pilot Extension Act, Public Law 107-128 (2002); Basic Pilot Program Extension and Expansion Act, Public Law 108-156 (2003); Consolidated Security, Disaster Assistance, and Consolidated Appropriations Act, 2009, Public Law 110-329 (2008). The Department of Homeland Security (DHS) renamed the Basic Pilot "E-Verify" in August 2007.

The E-Verify program allows employers to electronically verify the employment eligibility status of newly hired employees by matching information provided by employees on the Form I-9, Employment Eligibility Verification, against existing information contained in the Verification Information System (VIS), a composite information system that checks against systems within the Social Security Administration (SSA), DHS, and the U.S. Department of State.

Since E-Verify is a complex system dealing with sensitive information – and because employer misuse of the system could have serious consequences such as privacy breaches, pre-screening, and illegal discrimination – it is necessary for E-Verify to have a statement of shared and agreed upon responsibilities in the form of a Memorandum of Understanding (MOU). The MOU sets forth the agreement between DHS and the employer; in addition, the MOU provides the specific terms and conditions governing the rights and responsibilities of all parties involved.

Every E-Verify employer, including federal agencies, small businesses, and large corporations, electronically signs an E-Verify MOU upon enrollment with the program. The employer's consent to and signature of the MOU are mandatory in order for the employer to participate in E-Verify. E-Verify does not negotiate the terms of the MOU with employers.

The electronic signature is collected one time during the company's enrollment in E-Verify.

There are several different types of E-Verify users:

- (a) Employers – those who use E-Verify to verify their own employees;
- (b) E-Verify Employer Agents – those who are hired to create E-Verify cases on behalf of another company, usually for a fee;
- (c) Employer Agent Clients – the clients of E-Verify Employer Agents; and
- (d) Web Services Users – those companies who wish to develop software that interfaces with E-Verify. Companies elect this option for various reasons, including the desire to restrict the internet access of its employees. Among Web Services Users, there are those who are Employers, E-Verify Employer Agents, and Employer Agent Clients.

Because of the diversity of rules and requirements pertaining to these groups, USCIS has decided, in consultation with its chief counsel, to create separate MOUs for these different E-Verify users so that the provisions in the MOUs are relevant to how the employer uses E-Verify.

For E-Verify's present needs, using a package of six MOUs is necessary. Those MOUs include: (1) the Employer MOU; (2) the E-Verify Employer Agent MOU; (3) the Employer Agent Client MOU; (4) the Web Services Employer MOU; (5) the Web Services E-Verify Employer Agent MOU; and, (6) the Web Services E-Verify Employer Agent Client MOU. Two of these MOUs – the Web Services Employer MOU and the Web Services E-Verify Employer Agent Client MOU – are new and not currently in use, but they are necessary for E-Verify so that all E-Verify users can have an MOU that provides specific terms and conditions regarding their method of E-Verify use. The other four MOUs are currently in use, but E-Verify has revised them in order to enhance their organization, readability, and ease of use, as well as update policies that have changed since these MOUs were issued. It is important to keep the MOUs up to date so that they are useful guides for employers, and employers can rely on the accuracy of the terms and conditions therein.

The MOUs provide the most efficient means for articulating the terms of the shared and agreed upon responsibilities between the parties.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The employer's signature on the E-Verify MOU constitutes an information collection. E-Verify stores this information with the company's user profile, as proof that the employer agreed to the terms and conditions of E-Verify use. In some cases, when potential employer misuse of E-Verify is discovered, E-Verify's Monitoring and Compliance Branch may use the employer's signature of the MOU to assist with correcting the misuse.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The collection of the employer's signature occurs electronically during enrollment with E-Verify. This form of collection was adopted because E-Verify is primarily a web-based system. Allowing employers to sign their MOUs electronically is fast and simple, and decreases the burden of this collection.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

There is no duplication of effort, and there is no other similar information currently available that can be used for this purpose.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

This collection of information does not appear to have a significant impact on small businesses or other small entities. This is a voluntary program for those employers wishing to participate and a requirement for certain contractors and subcontractors that choose to do work for the Federal government. In addition, some state and local laws require that employers participate in E-Verify. The MOU takes only 40 minutes on average to read and sign. Also, the employer only has to read and sign the MOU once, during E-Verify enrollment.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If this information collection is not conducted, employers will not have any statement of shared and agreed upon responsibilities about the terms and conditions of their E-Verify use, which could lead to widespread abuse or misuse of the E-Verify system. Also, E-Verify's Monitoring and Compliance Branch would have no way to address violations without proof that employers agreed to use the system correctly and in compliance with applicable laws and policies. Without approval for the collection of necessary data from employers, the program cannot proceed.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

- **Requiring respondents to submit proprietary trade secrets, or other**

confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The special circumstances contained in item seven of the supporting statement instructions are not applicable to this information collection of signed MOUs because the MOUs are only collected once and the employer is not required to store them.

- 8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

On September 11, 2012, USCIS published a 60-day notice in the Federal Register at 77 FR 55858. USCIS received comments from two commenters on the 60-day notice. On February 27, 2013, USCIS published a 30-day notice in the Federal Register at 78 FR 13369. USCIS received one comment on the 30-day notice. USCIS has summarized the comments and responses to the comments in the appendices attached to this supporting statement.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality. The system used to support the E-Verify Program is operated and maintained according to DHS and Federal privacy requirements. The system of records notice associated with this information collection is the E-Verify Program System of Records. Published in the Federal Register on May 19, 2010 at 75 FR 28035. The associated privacy impact assessment is the E-Verify Program: Use of Commercial Data for Employer Verification.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person's from whom**

the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. **Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of responses, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Annual Reporting Burden.

| Information Collection Activity | No. of Respondents | # Responses per Respondent | Avg. Burden per Response (in hours) | Total Annual Burden (in hours) | Avg. Hourly Wage Rate | Total Annual Respondent Cost |
|---------------------------------|--------------------|----------------------------|-------------------------------------|--------------------------------|-----------------------|------------------------------|
| New Enrollment: | 65,000 | 1 | 2.26 | 146,900 | \$30.44 | \$4,471,636 |
| Yearly Training | 425,000 | 1 | 1 | 425,000 | \$30.44 | \$12,937,000 |
| Queries | 425,000 | 55 | 0.129 | 3,015,375 | \$30.44 | \$91,788,015 |
| | | | | 3,587,275 | | \$109,196,651 |

The total number of respondents for this information collection is as follows:

- New Enrollment 65,000
- Yearly Training 425,000
- Queries 23,246,667
- **Total** 23,736,667

Annual Reporting Burden.

Total annual reporting burden hours are 3,587,275. This figure was derived by multiplying:

- Multiplying the number of newly enrolling respondents (65,000) x number of responses (1) x 2.26 hours (2 hours 16 minutes) per response (enrollment time includes review and signing of the MOU, registration, new user training, and review of the user guides); plus
- Multiplying the number of already-enrolled respondents receiving training on new features and system updates (425,000) x number of responses (1) x 1 hour per response; plus
- Multiplying the number of respondents submitting queries (425,000) x average number of queries (or “responses”) per respondent (55) x .129 (approximately 8 minutes) per query. (Please note that the response time is the weighted average of the time required for the initial query and the time required to assist an employee with the Tentative Non-Confirmation (TNC)¹ contestation process, when necessary. The weighted average was calculated as follows: {(98.3% (percent of queries resolved without TNC) x .12 (time, in hours, to submit the initial query)} + {(1.7% (percent of queries that receive a TNC) x 0.5 (time, in hours, spent assisting employee with the contestation process)} = .129 (7.75 minutes) per query.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and, (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the**

¹ A TNC is issued after the case cannot be resolved as “Employment Authorized” during the initial electronic check. It is a tentative status, meaning that the employee has the right to contest the mismatch with the relevant government agency and receive an “Employment Authorized” finding if manual review finds them to be so.

time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995; (2) to achieve regulatory compliance with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the government; or, (4) as part of customary and usual business or private practices.**

Capital or Start-Up Costs

The Estimated Average Annual Capital Cost is \$1,887,000. A computer, printer and internet access are required to use the E-Verify Program. While we believe that employers will already have a computer, printer, and an internet connection, there may be a very small number of companies that do not have a computer, printer, or internet connection at their hiring site. Many companies have hiring sites or multiple hiring sites that are not co-located with the company headquarters or the location where the employees perform work for the government. Each firm requiring a computer would need internet access as well.

- **Multiplying the average annual estimated number of firms 2,550 x \$740 (\$400 estimated cost of a computer + \$100 estimated cost of a printer/copy/scanner/ fax machine + \$240 estimated cost of internet for a year).**

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Government Cost

The estimated cost to the Government is \$6,877,281. This figure is calculated by:

- Multiplying the total estimated number of queries 23,246,667 x \$.26 (estimated average cost per query); plus
- Multiplying the number of people that either went to SSA to resolve their issue or called DHS to resolve their issue (note: not all employees who receive a tentative non confirmation take steps to resolve the issue) 48,865 x \$17.05 (average DHS and SSA cost per tentative non-confirmation resolution).

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

There is no change in the total estimated burden hours reported in the last submission. However, there is revised text in the six Memoranda of Understanding (MOUs) that enrollees may see during the enrollment process. During enrollment, the enrollee will see only the Memorandum of Understanding that is associated with the E-Verify access method he or she has selected. The E-Verify screen display has also been slightly updated to more prominently show the Paperwork Reduction Act language on the landing page and the MOU signature page has been updated to show the revised MOU text.

The information package includes four E-Verify MOUs that have been in use, two new MOUs, and language revisions to the Employer MOU included in the previous ICR submission. All six MOUs contain revised language regarding employer, employer agent, or client company cooperation with Department of Homeland Security, Social Security Administration and each agency's contractors or other agents in conducting compliance, monitoring, and evaluation of E-Verify use.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

USCIS does not intend to employ the use of statistics or the publication thereof for this collection of data.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

USCIS will display the expiration date of OMB approval for this information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.

USCIS does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.