

# Basic Pilot / E-Verify

## Why Mandatory Employer Participation Will Hurt Workers, Businesses, and the Struggling U.S. Economy

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**B**asic Pilot/E-Verify is a voluntary Internet-based program whose purpose is to allow employers to electronically verify the information that workers present to prove their employment eligibility by accessing information in databases maintained by the Department of Homeland Security (DHS) and the Social Security Administration (SSA).<sup>1</sup> As of January 8, 2009, approximately 100,000 employers were enrolled in Basic Pilot/E-Verify — slightly more than 1 percent of the approximately 7.4 million employers in the U.S. Only half of those enrolled, however, actually use the program.<sup>2</sup>

While Basic Pilot/E-Verify often is portrayed as the magic bullet that would curb the hiring of unauthorized workers, since its inception in 1997 the program has been plagued by multitude problems that adversely affect both workers and businesses. Numerous entities, including the Government Accountability Office (GAO), the Social Security Administration's Office of the Inspector General (SSA-OIG), and a research firm under contract with DHS, have found that Basic Pilot/E-Verify has significant weaknesses, including (1) its reliance on government databases that have unacceptably high error rates and (2) employer misuse of the program to take adverse actions against workers.<sup>3</sup>

### ■ Workers and businesses pay a high price for Basic Pilot/E-Verify database errors.

- A 2007 independent evaluation of the program commissioned by DHS found that the Basic Pilot/E-Verify database “is still not sufficiently up to date” to meet the requirements for “accurate verification.”<sup>4</sup>
- SSA has estimated that if Basic Pilot/E-Verify were to become mandatory and the databases were not improved, SSA database errors alone could result in 3.6 million workers a year being misidentified as not authorized for employment.<sup>5</sup> For example:<sup>6</sup>
  - A U.S. citizen and captain in the U.S. Navy was flagged by E-Verify as not eligible for employment after 34 years in the service and maintaining high security clearance with the U.S. government. It took him and his wife, an attorney, two months to resolve the discrepancy.<sup>7</sup>
  - Carmen, a U.S. citizen, applied for a position with a temporary agency in California, only to be turned away because E-Verify was unable to confirm her work authorization. The employer did not advise her of her right to contest the finding and violated the law by asking her to show additional documents. She was unemployed for over four months without health insurance and was diagnosed with a serious illness during that time.<sup>8</sup>



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- Foreign-born U.S. citizens feel the greatest impact, with almost 10 percent initially being told that they are not authorized to work (versus 0.1 percent of native-born U.S. citizens).<sup>9</sup>
- Although DHS claims that the error rates are low, that is not what U.S. businesses report:
  - Queries submitted to Basic Pilot/E-Verify by Intel Corporation in 2008 resulted in nearly 13 percent of all workers being initially flagged as unauthorized for employment. All of these workers were cleared by Basic Pilot/E-Verify as work-authorized, but only after “significant investment of time and money” and “lost productivity.”<sup>10</sup>
  - The U.S. Citizenship and Immigration Services Ombudsman interviewed a variety of employers in Arizona (where use of E-Verify is mandatory) and found the “concern most frequently identified” is that the notices employers receive when the federal databases cannot confirm a worker’s employment eligibility are “issued on work-authorized individuals.”<sup>11</sup>

### ■ **Mandatory participation in Basic Pilot/E-Verify would impose exorbitant costs at a time when our economy is most vulnerable.**

- According to the Congressional Budget Office, implementation of a mandatory program (without legalizing the current undocumented population) would decrease Social Security Trust Fund revenue by more than \$22 billion over ten years because it would increase the number of employers and workers who resort to the black market, outside of the tax system.<sup>12</sup>
- An economic analysis commissioned by the U.S. Chamber of Commerce concluded that the net societal costs of a rule requiring all federal contractors to use Basic Pilot/E-Verify would be \$10 billion a year.<sup>13</sup>
- Small businesses employ approximately half of the entire U.S. workforce and have generated 60 to 80 percent of net new jobs annually over the last decade.<sup>14</sup> These businesses, already struggling in the current economy, will face additional burdens and unanticipated problems if they are required to use Basic Pilot/E-Verify, potentially harming their ability to create new jobs and revenue.

### ■ **Qualified workers won’t have a chance to prove they are authorized to work.**

- The 2007 evaluation of Basic Pilot/E-Verify found that the rate of employer noncompliance with the program rules is “substantial.”<sup>15</sup> These are long-standing problems that DHS has failed to address since they were first identified in 2002.
  - Against program rules, 47 percent of employers put workers through Basic Pilot/E-Verify *before* the employees’ first day at work.<sup>16</sup>
  - 9.4 percent of employers did not notify workers of a tentative nonconfirmation notice,<sup>17</sup> and 7 percent who gave workers the notice did not encourage them to contest it because, they said, the process of contesting the notice takes too much time.<sup>18</sup>
  - 22 percent of employers restricted work assignments, 16 percent delayed job training, and 2 percent reduced pay based on tentative nonconfirmation notices.<sup>19</sup>

- According to the 2007 evaluation, “Employees reported that the supervisors assumed that all employees who received tentative nonconfirmation findings were unauthorized workers and therefore required them to work longer hours and in poorer conditions.”<sup>20</sup>

### ■ **Mandatory participation in Basic Pilot/E-Verify would further increase the cost of doing business in a tough economic climate.**

- According to the American Council on International Personnel (ACIP), the reason 99 percent of employers have not enrolled in Basic Pilot/E-Verify is not because they are hiring undocumented workers or shirking their employment verification responsibilities, but because Basic Pilot/E-Verify enrollment is “not easy or efficient.”<sup>21</sup>
- An ACIP member with 50,000 U.S. employees recently outsourced Basic Pilot/E-Verify to a vendor after 18 months of planning. The company made the decision that verification was not a core business function and that verification of its dispersed workforce was best handled by another organization with expertise in this complex legal area. The annual tab for this service is \$40,000 per year.<sup>22</sup>
- According to a manager of a small business in Maryland, it takes seriously its legal obligation to confirm its employees are eligible to work in the U.S. but has not enrolled in Basic Pilot/E-Verify because it does not have “the luxury of a large human resources department” and the costs for one year would total approximately \$27,000.<sup>23</sup>
- MCL Enterprises, an employer in Arizona, found the transition to Basic Pilot/E-Verify “extremely costly” and “disruptive” to operations.<sup>24</sup>

### ■ **Mandatory participation in Basic Pilot/E-Verify would mire SSA deeper in bureaucracy and backlogs.**

- A bill debated in the 110th Congress (H.R. 4088) that would require all employers to use E-Verify would cost SSA more than \$1 billion a year to implement, about 10 percent of SSA’s administrative budget.<sup>25</sup>
- SSA is already overburdened by its primary mission of administering critical benefits to the public, such as Supplemental Security Income disability benefits and retirement payments. There are currently 751,767 disability cases waiting for a hearing decision with average waiting times of 499 days.<sup>26</sup> Additionally, in 2008, the first of 78 million baby boomers became eligible for retirement benefits, and the number of retirees receiving Social Security benefits is expected to rise by approximately 13 million over the next 10 years.<sup>27</sup>
- According to the president of the National Council of Social Security Management Associations, Inc., if a mandatory employment eligibility verification system is implemented without the necessary funding, “it could cripple SSA’s service capabilities” and negate any progress in addressing the disability backlog.<sup>28</sup>

#### FOR MORE INFORMATION, CONTACT

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<sup>1</sup> For more information on Basic Pilot/E-Verify, see *Basic Information Brief: DHS Basic Pilot/E-Verify Program* (NILC, Mar. 2008), [www.nilc.org/immseplymnt/ircaempverif/e-verify\\_infobrief\\_2008-03-13.pdf](http://www.nilc.org/immseplymnt/ircaempverif/e-verify_infobrief_2008-03-13.pdf).

<sup>2</sup> Not all of those enrolled, however, have even used the program once. In April 2008, when 61,000 employers were enrolled in the program, only half were active users, “active users” being defined as employers who had run at least one query in fiscal year 2008. See Richard M. Stana, *Testimony Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, House of Representatives: Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Verification System* (Government Accountability Office, June 10, 2008, GAO-08-895T), [www.gao.gov/new.items/d08895t.pdf](http://www.gao.gov/new.items/d08895t.pdf), at 10.

<sup>3</sup> See *Findings of the Basic Pilot Program Evaluation* (Temple University Institute for Survey Research and Westat, June 2002), <http://tinyurl.com/dhcwga>; *Findings of the Web-Based Basic Pilot Evaluation* (Westat, Sept. 2007) (hereafter “Westat 2007”), <http://tinyurl.com/2tdqqs>; *Congressional Response Report: Accuracy of the Social Security Administration’s Numident File* (Office of the Inspector General, Social Security Administration, Dec. 2006), [www.socialsecurity.gov/oig/ADOBEPDF/auditxt/A-08-06-26100.htm](http://www.socialsecurity.gov/oig/ADOBEPDF/auditxt/A-08-06-26100.htm); *Congressional Response Report: Employer Feedback on the Social Security Administration’s Verification Programs* (Office of the Inspector General, Social Security Administration, Dec. 2006), [www.ssa.gov/oig/ADOBEPDF/A-03-06-26106.pdf](http://www.ssa.gov/oig/ADOBEPDF/A-03-06-26106.pdf); *Congressional Response Report: Monitoring the Use of Employee Verification Programs* (Office of the Inspector General, Social Security Administration, Sept. 2006), [www.ssa.gov/oig/ADOBEPDF/A-03-06-36122.pdf](http://www.ssa.gov/oig/ADOBEPDF/A-03-06-36122.pdf); and Richard M. Stana *supra* note 2.

<sup>4</sup> See Westat 2007, *supra* note 3, at xxi, emphasis added. Section 404g of the Illegal Immigration Reform and Immigrant Responsibility Act states: “The Commissioners of Social Security and the Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process. . . .”

<sup>5</sup> *Transcript from Hearing on Employment Eligibility Verification Systems* (Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, June 7, 2007).

<sup>6</sup> For more examples of U.S. citizens and lawful immigrants impacted by the program, see *How Errors in Basic Pilot / E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants* (NILC, Apr. 2008), [www.nilc.org/immseplymnt/ircaempverif/e-verify\\_impacts\\_USCs\\_2008-04-09.pdf](http://www.nilc.org/immseplymnt/ircaempverif/e-verify_impacts_USCs_2008-04-09.pdf).

<sup>7</sup> Account related at a Jan. 24, 2009, town hall meeting in Ashtabula, OH, sponsored by Building Unity in the Community and billed as “Why We Need Comprehensive Immigration Reform.”

<sup>8</sup> Summary of charge filed with the Dept. of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices in 2008.

<sup>9</sup> See Westat 2007, *supra* note 3, at 50.

<sup>10</sup> Intel Corporation, “Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12989 (as amended),” Aug. 8, 2008.

<sup>11</sup> *Observations On The E-Verify Experience In Arizona & Recommended Customer Service Enhancements* (U.S. Department of Homeland Security Office of the Citizenship and Immigration Services Ombudsman, Dec. 22, 2008), [www.dhs.gov/xlibrary/assets/cisomb\\_everify\\_recommendation\\_2008-12-22.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf).

<sup>12</sup> Letter to Chairman John Conyers, Chair, Committee on the Judiciary, U.S. House of Representatives, from Peter Orszag, Director, Congressional Budget Office, Apr. 4, 2008.

<sup>13</sup> Richard B. Belzer, *Peer Review of Regulatory Impact Analysis: Federal Acquisition Regulation Case 2007-013 (Employment Eligibility Verification)* (Labor, Immigration and Employee Benefits (LIEB) Division, U.S. Chamber of Commerce, August, 2008).

<sup>14</sup> *Frequently Asked Questions* (Small Business Association Office of Advocacy, Sept. 2008), [www.sba.gov/advo/stats/sbfaq.pdf](http://www.sba.gov/advo/stats/sbfaq.pdf).

<sup>15</sup> See Westat 2007, *supra* note 3, at xxii, emphasis added.

<sup>16</sup> *Id.* at 71.

<sup>17</sup> Employers receive a “tentative nonconfirmation” notice from either SSA or DHS when the agencies are unable to automatically confirm a worker’s employment eligibility. A “tentative nonconfirmation” notice is not an indication of an immigration violation, and workers have the right to contest the finding with the appropriate agency.

<sup>18</sup> See Westat 2007, *supra* note 3, at 76–77.

<sup>19</sup> *Id.* at 77.

<sup>20</sup> Westat 2007, *supra* note 3, at 77, emphasis added.

<sup>21</sup> American Council on International Personnel, “Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008),” Aug. 11, 2008, emphasis added.

<sup>22</sup> *Id.*

<sup>23</sup> *Chamber of Commerce of the USA v. Chertoff*, No. 08-cv-3444-AW (D.Md.).

<sup>24</sup> Mitchell C. Laird, *Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives: “Employment Eligibility Verification Systems (EEVS) and the Potential Impacts on the Social Security Administration’s (SSA’s) Ability to Serve Retirees, People with Disabilities, and Workers”* (MCL Enterprises, Inc., May 6, 2008), <http://waysandmeans.house.gov/media/pdf/110/laird.pdf>, emphasis added.

<sup>25</sup> Letter to U.S. House of Representatives Democratic colleagues from Chairman McNulty, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives and Chairman Charles Rangel, Committee on Ways and Means, U.S. House of Representatives, March 27, 2008.

<sup>26</sup> Patrick P. O’Carroll Jr., Inspector General, Social Security Administration, *Reducing the Disability Backlog at the Social Security Administration*, testimony before the U.S. House Appropriations Committee, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Feb. 28, 2008, [www.ssa.gov/oig/communications/testimony\\_speeches/02282008testimony.htm](http://www.ssa.gov/oig/communications/testimony_speeches/02282008testimony.htm).

<sup>27</sup> Richard Warsinsky, Past President, National Council of Social Security Management Associations Inc., *Written Testimony for the Record*, submitted to the U.S. House Appropriations Committee, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Feb. 28, 2008, <http://socsecperspectives.blogspot.com/2008/02/social-securityadvocacy-group-written.html>.

<sup>28</sup> Richard Warsinsky, President, National Council of Social Security Management Associations, *Testimony before the U.S. Senate Committee on Finance*, May 23, 2007, <http://finance.senate.gov/hearings/testimony/2007test/052307testrw.pdf>, emphasis added.