

# The History of E-Verify

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**E**-Verify is a mostly voluntary and experimental Internet-based program that allows employers to electronically verify newly-hired employees' employment eligibility by accessing information in databases maintained by the Social Security Administration (SSA) and U.S. Citizenship and Immigration Services (USCIS), a bureau within the Department of Homeland Security (DHS).<sup>1</sup> Until 2007, E-Verify was known as the Basic Pilot Program.

## ■ Pre-E-Verify employment eligibility verification systems

On November 20, 1991, President George H.W. Bush signed Executive Order 12781, which authorized the creation of demonstration projects on alternative employment eligibility verification systems.<sup>2</sup> In response, the former Immigration and Naturalization Service (INS) implemented its first pilot program, the Telephone Verification System (TVS), in March 1992. TVS allowed employers to use a point-of-sale device that communicated by telephone with the INS to verify their employees' employment eligibility. TVS was piloted in two phases from March 1992 until 2000. The first phase involved nine volunteer employers in California, Florida, Illinois, New York, and Texas. The second phase initially involved 235 volunteer employers in the Los Angeles area. In 1996, TVS was expanded in the Employment Verification Pilot (EVP), which included an additional 1,000 employers throughout the U.S.

In 1994, the Commission on Immigration Reform (established by the Immigration Act of 1990) issued an interim report which found that a national computerized registry using data from INS and SSA would be the most promising option for an employment eligibility verification system.<sup>3</sup> Following release of the report, INS and SSA formed a working group to deter-

mine the technical feasibility of implementing and piloting the commission's recommendations for a national registry. The working group found that the lack of a common identifier between the two agencies made it impossible to build a unified database. However, on February 7, 1995, President Bill Clinton issued a directive to the heads of all executive agencies that included a proposal to develop and test employment eligibility verification methods based on the recommendations of the Commission on Immigration Reform.<sup>4</sup> INS and SSA then worked together to develop the Joint Employment Verification Pilot (JEVP). The program was piloted in July 1997 in Chicago with 38 volunteer employers. It was never expanded, however, due to the new pilot programs established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).<sup>5</sup>

## ■ Legislative authorization and extensions of the Basic Pilot program and additional electronic employment eligibility verification programs

The Basic Pilot program was one of three voluntary electronic employment eligibility verification pilot programs that were created under IIRIRA. The other two programs were the Citizen Attestation Pilot (CAP) and the Machine-Readable Document Pilot (MRDP). The Basic Pilot was modeled on the JEVP and was to be piloted in five of the states with the largest estimated populations of undocumented immigrants. The program began operating in California, Florida, Illinois, New York, and Texas in November 1997. It was expanded to Nebraska in March 1999 as a result of Operation Vanguard, an INS enforcement operation designed to remove unauthorized immigrant workers from the meatpacking industry.

The Basic Pilot Extension Act of 2001 extended Basic Pilot, CAP, and MRDP for two more years, until November 30, 2003. In 2003, Congress expanded



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Basic Pilot to all 50 states and reauthorized it for an additional five years, until November 30, 2008. CAVP and MRDP were terminated on their initial expiration dates in 2003.

## ■ Legislative expansions and administrative changes to E-Verify

– 2007 –

**March.** A pilot for a photo screening tool, “photo matching,” was initiated, with the participation of 51 employers that were using E-Verify.<sup>6</sup> Photo matching requires employers to compare the photograph on a newer employment authorization document or a newer permanent resident card with a digital photograph stored in USCIS’s database, if such a document/card is presented by a worker during the employment eligibility verification process.<sup>7</sup>

**August.** The federal Office of Management and Budget issued a memorandum stating that all federal departments and agencies would be required to use E-Verify.<sup>8</sup> Also in August, the George W. Bush administration announced a package of new immigration policies. Foremost among these was the rebranding of Basic Pilot as “E-Verify.” The changes included plans for DHS to:<sup>9</sup>

- Issue regulations to make the use of E-Verify mandatory for new federal contractors and vendors and modify the “Security Acquisition Manual” by designating a vendor’s participation in E-Verify as a positive consideration in evaluating who receives a DHS contract.
- Verify documents presented by workers against information stored in U.S. Department of State visa and passport records.
- Allow states to voluntarily share driver’s license photos and records with the E-Verify system to combat identity theft.

**September.** Photo matching was expanded to all employers using E-Verify.<sup>10</sup>

**November.** On November 14, 2007, the U.S. Department of Labor (DOL) issued a guidance letter “strongly recommend[ing]” that state workforce agencies (SWAs) use E-Verify to verify the employment authorization of noncitizen workers with H-2A temporary worker visas.<sup>11</sup> DOL has since entered into a

memorandum of understanding with DHS and SSA that allows SWAs to use E-Verify.<sup>12</sup>

– 2008 –

**April.** DHS issued an interim final rule that allows employers enrolled in E-Verify the opportunity to extend the employment of any F-1 student visa-holder (who has a degree in science, technology, engineering, or mathematics) employed under the Optional Practical Training (OPT) program from 12 to 29 months.<sup>13</sup>

**May.** E-Verify began automatically checking USCIS naturalization data.<sup>14</sup> USCIS also added the Integrated Border Inspection System, which provides real time arrival and departure information for non-U.S. citizens, to the records E-Verify checks.<sup>15</sup>

**June.** On June 6, 2008, President George W. Bush issued Executive Order 13465, mandating that certain public and private businesses that contract with the federal government use E-Verify to verify their employees’ employment eligibility.<sup>16</sup>

**September.** President George W. Bush signed a continuing resolution that extended E-Verify through March 6, 2009.<sup>17</sup>

**December.** U.S. Immigration and Customs Enforcement (ICE) and USCIS entered into a memorandum of agreement to formalize information-sharing between the two agencies for purposes of E-Verify.<sup>18</sup>

– 2009 –

**February.** USCIS added Department of State passport data to the records E-Verify checks.<sup>19</sup>

**June.** USCIS launched the Compliance Tracking and Management System (CTMS) to monitor employers based on their use of E-Verify.<sup>20</sup>

**September.** On September 8, 2009, the final rule implementing Executive Order 13465 (see June 2008, above) went into effect. It not only requires certain employers that contract with the U.S. to check the employment eligibility of all newly-hired employees, but also the employment eligibility of existing employees “assigned to the contract.”<sup>21</sup>

**October.** The Fiscal Year 2010 Department of Homeland Security appropriations act reauthorized E-Verify through September 30, 2012, and provided USCIS with \$137 million for operations.<sup>22</sup> This act amended IIRIRA to officially change the name of Basic Pilot to E-Verify.<sup>23</sup>

– 2010 –

**March.** USCIS entered into a memorandum of agreement (MOA) to share information with the Civil Rights Division of the U.S. Department of Justice, an MOA that was intended to formalize a referral process relating to misuse, abuse, and fraudulent or discriminatory use of E-Verify.<sup>24</sup>

**April.** USCIS implemented a hotline so that workers with questions about E-Verify (and employment eligibility verification in general) could get answers from customer service representatives.<sup>25</sup>

**September.** Photo matching was expanded to include passports and passport cards.<sup>26</sup>

– 2011 –

**March.** USCIS launched the E-Verify Self Check service, which allows individuals to check their employment eligibility and correct any errors.<sup>27</sup> USCIS plans to release Self Check in phases.<sup>28</sup> To date, the service is currently available in English and Spanish to users with an address in Arizona, California, Colorado, the District of Columbia, Idaho, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, South Carolina, Texas, Utah, Virginia, and Washington.<sup>29</sup> Because of the online nature of the service and its use of credit bureau data, however, Self Check is largely unavailable as a resource for many low-income workers and those without credit.

**June.** E-Verify expanded its data collection to include information contained on state-issued driver's licenses, driver's permits, and state-issued IDs.<sup>30</sup> This is part of the Records and Information from Department of Motor Vehicles for E-Verify (RIDE) initiative launched in March 2011 as a pilot program in Mississippi.<sup>31</sup> RIDE increases the types of information E-Verify collects from identity documents. If the state issuing the identification has a memorandum of agreement in effect with USCIS to participate in RIDE, E-Verify will validate this information against state Motor Vehicle Agency (MVA) records.<sup>32</sup> If the issuing state has not entered into a RIDE MOA with USCIS, E-Verify will still record the employee's name, date of birth, Social Security number, hire date, and document expiration date if the employee presents a driver's license, driver's permit, or state-issued ID, but will not validate this information with state MVA records.<sup>33</sup> The initiative does not currently include

photo matching of drivers' licenses and state-issued identification cards,<sup>34</sup> but it may be included in the future.<sup>35</sup>

### ■ States begin requiring employer participation in E-Verify

Although the federal government has not made E-Verify mandatory for most employers in the U.S., currently 18 states mandate that the program be used by some or all employers in those states. Alabama, Arizona, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Utah require all employers to use the program, while the rest of the states require either state agencies or businesses with state contracts to use the program. These states include Colorado, Florida, Idaho, Indiana, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma, and Virginia.<sup>36</sup>

The only state that has enacted worker-friendly legislation regarding E-Verify is Illinois, which passed laws designed to ensure that when using E-Verify, employers respect workers' privacy rights and do not use the program to engage in discrimination. The state government also has affirmatively stated that no state agencies will use the program because of its inaccuracies and the harm it would do to state workers and employers.<sup>37</sup>

### ■ The future of E-Verify

As of June 2011, over 271,000 employers were registered to use E-Verify.<sup>38</sup> This amounts to approximately 3.6 percent of the 7.6 million employers in the U.S. It is not clear how many of these registered employers actively use the program, however. As of April 2008, the Government Accountability Office reported that only approximately half of employers registered for the program actively used it.<sup>39</sup> Even when use is required by law, many employers are still not using it. For example, in Arizona, where use of E-Verify is mandatory under state law for all employers, only half actually use the system.<sup>40</sup>

Several legislative proposals in the 112th Congress seek to make the program mandatory for all employers in the U.S.<sup>41</sup> Some proposals would require that the program be applied to all newly-hired employees in the U.S. (in 2010 there were approximately 47.3 million new hires),<sup>42</sup> while others go further in effectively mandating that every existing worker be verified by the program (in 2010 there were approximately 139

million employed people in the workforce).<sup>43</sup> More information about federal legislative proposals is

available on NILC's website.

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## Notes

<sup>1</sup> For more information on Basic Pilot/E-Verify, see *Facts About E-Verify* (NILC, Jan. 2011), [www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-about-2011-02-15.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-facts-about-2011-02-15.pdf).

<sup>2</sup> See 56 FR 59203 (Nov. 22, 1991), amending Executive Order 854 of June 26, 1908, and revoking Executive Order 11339 of Mar. 28, 1967.

<sup>3</sup> *U.S. Immigration Policy: Restoring Credibility* (U.S. Commission on Immigration Reform, ISBN 0-16-045373-9, U.S. Govt. Printing Office, 1994). The commission's recommendations are summarized on pp. xii–xviii of the report's executive summary, a copy of which is available at [www.utexas.edu/lbj/uscir/exesum94.pdf](http://www.utexas.edu/lbj/uscir/exesum94.pdf).

<sup>4</sup> "Memorandum on Illegal Immigration," 31 *Weekly Compilation of Presidential Documents*, Feb. 7, 1995, 200–04, available at [www.gpoaccess.gov](http://www.gpoaccess.gov).

<sup>5</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Defense Department Appropriations Act, 1997, Pub. L. 104-208, 110 Stat. 3009-659 (Sept. 30, 1996).

<sup>6</sup> *Findings of the Web-Based Basic Pilot Evaluation* (Westat, Sept. 2007), [www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf](http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf), p. 151.

<sup>7</sup> "Photo Matching" (U.S. Citizenship and Immigration Services, Oct. 4, 2010), <http://tinyurl.com/4lfusz>.

<sup>8</sup> Memorandum from Stephen S. McMillin, Acting Director, U.S. Office of Management and Budget, "Verifying the Employment Eligibility of Federal Employees," No. M-07-21, Aug. 10, 2007, <http://georgewbush-whitehouse.archives.gov/omb/memoranda/fy2007/m07-21.pdf>.

<sup>9</sup> See "Fact Sheet: Improving Border Security and Immigration Within Existing Law" (Department of Homeland Security, Aug. 10, 2007), [www.dhs.gov/xnews/releases/pr\\_1186757867585.shtm](http://www.dhs.gov/xnews/releases/pr_1186757867585.shtm).

<sup>10</sup> "News Release: USCIS Launches Photo Screening Tool for E-Verify Program" (U.S. Citizenship and Immigration Services, Sept. 25, 2007), [www.uscis.gov/files/pressrelease/EVerifyRelease25Sep07.pdf](http://www.uscis.gov/files/pressrelease/EVerifyRelease25Sep07.pdf).

<sup>11</sup> See memorandum from Emily Stover DeRocco, Assistant Secretary, U.S. Dept. of Labor, "Clarification of Certain Procedures for Processing H-2A Labor Certification Applications," Foreign Labor Certification Training and Employment Guidance Letter No. 11-07, Change 1, Nov. 14, 2007, <http://wdr.doleta.gov/directives/attach/TEGL/TEGL11-07c1.pdf>.

<sup>12</sup> Memorandum of Understanding between the Social Security Administration, the Department of Homeland Security, and the

State Employment Agency,

[www.uscis.gov/files/nativedocuments/e-verify-swa-mou.pdf](http://www.uscis.gov/files/nativedocuments/e-verify-swa-mou.pdf).

<sup>13</sup> See 73 FR 18944 (April 8, 2008). The validity of the OPT extension was challenged in a lawsuit brought by the Immigration Reform Law Institute. However, the 3d Circuit affirmed dismissal of the complaint, holding that the plaintiffs did not have standing to sue. *Programmers Guild, Inc. v. Chertoff*, 338 F.App'x.239 (3d Cir. 2009), cert. denied, 130 S. Ct. 2090 (2010).

<sup>14</sup> "USCIS Announces Enhancements to E-Verify Program" (U.S. Citizenship and Immigration Services, May 5, 2008), <http://tinyurl.com/4r7ptk>.

<sup>15</sup> *Id.*

<sup>16</sup> See 73 FR 33285–87 (June 11, 2008), amending Executive Order 12989 of Feb. 13, 1996.

<sup>17</sup> The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329 (Sept. 30, 2008).

<sup>18</sup> Memorandum of Agreement Between U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement Re: E-Verify Program Information Sharing, December 2008, [www.uscis.gov/USCIS/Verification/E-Verify/E-Verify/USCIS-ICE-E-Verify-MOA.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify/USCIS-ICE-E-Verify-MOA.pdf).

<sup>19</sup> "USCIS Adds Passport Data in E-Verify Process for Foreign-Born Citizens" (U.S. Citizenship and Immigration Services, March 4, 2009), <http://tinyurl.com/cl5dxtw>.

<sup>20</sup> "Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain," Report to the House Committee on Ways and Means, Subcommittee on Social Security, at 26 n.39 (GAO-11-146, Government Accountability Office, Dec. 2010) [www.gao.gov/new.items/d11146.pdf](http://www.gao.gov/new.items/d11146.pdf).

<sup>21</sup> 48 C.F.R. §§ 2, 22.180, 52. See also "Summary of Final Rule: Federal Acquisition Regulation: Employment Eligibility Verification" (NILC, Aug. 2009), [www.nilc.org/immsemplymnt/ircaempverif/e-verify-FAR-summary-2009-08-31.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-FAR-summary-2009-08-31.pdf).

<sup>22</sup> Dept. of Homeland Sec. Appropriations Act of 2010, Pub. L. No. 111-83, § 547, 123 Stat. 2142, 2164-65, 2177 (2009).

<sup>23</sup> *Id.* at § 551.

<sup>24</sup> Memorandum of Agreement between U.S. Citizenship and Immigration Services, U.S. Dept. of Homeland Security and Civil Rights Division, U.S. Dept. of Justice Re: Information Sharing and Case Referral, March 17, 2010, [www.justice.gov/crt/about/osc/pdf/CRT\\_USCIS1.pdf](http://www.justice.gov/crt/about/osc/pdf/CRT_USCIS1.pdf).

<sup>25</sup> "DHS Unveils Initiatives to Enhance E-Verify" (U.S. Citizenship and Immigration Services, March 17, 2010), <http://tinyurl.com/72fznlq>.

<sup>26</sup> *E-Verify Connection*, Issue 1 (U.S. Citizenship and Immigration Services, undated), [www.uscis.gov/USCIS/Verification/E-Verify](http://www.uscis.gov/USCIS/Verification/E-Verify).

[Verify/E-Verify\\_Native\\_Documents/Newsletters/E-VerifyConnection01.pdf](#).

<sup>27</sup> “Secretary Napolitano Announces Launch of E-Verify Self Check” (U.S. Citizenship and Immigration Services, March 21, 2011), <http://tinyurl.com/7z7gs22>.

<sup>28</sup> “Self Check” (U.S. Citizenship and Immigration Services, August, 15, 2011), <http://tinyurl.com/5rhowzh>.

<sup>29</sup> *Id.*

<sup>30</sup> “E-Verify Enhancements: Driver’s License Verification” (U.S. Citizenship and Immigration Services, May 13, 2011), <http://tinyurl.com/7qala33>.

<sup>31</sup> “Privacy Impact Assessment Update for the E-Verify RIDE” (U.S. Dept. of Homeland Security, May 6, 2011), [www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_uscis\\_evride\\_update.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_evride_update.pdf), p. 2.

<sup>32</sup> *Id.* at 3-4.

<sup>33</sup> *Id.* at 3. As of July 2011, Mississippi is the only state that has entered into a memorandum of agreement with USCIS for RIDE. *Id.*, at n.1, Appendix A.

<sup>34</sup> “E-Verify: AAMVA RIDE Presentation to the AAMVA International Conference” (U.S. Citizenship and Immigration Services, Aug. 2010), [www.aamva.org/aic2010/2010AICDocs/Aug30-1330-SAVE\\_VLSandRIDE-RIDE-Mayhew-v1.0.ppt](http://www.aamva.org/aic2010/2010AICDocs/Aug30-1330-SAVE_VLSandRIDE-RIDE-Mayhew-v1.0.ppt), p. 9

<sup>35</sup> “Records and Information from DMVs for E-Verify (RIDE): Presentation for 2011 Annual International Conference” (U.S. Citizenship and Immigration Services), p. 9.

<sup>36</sup> For more information on state E-Verify laws, see *State Laws Concerning E-Verify* (NILC, Nov. 2011), [www.nilc.org/immsemplymnt/ircaempverif/e-verify-state-laws-summary-tbl-2011-11-10.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify-state-laws-summary-tbl-2011-11-10.pdf).

<sup>37</sup> More information about the Illinois laws, as well as other state and local measures, is available on NILC’s “Immigrants & Employment > State & Local: Legislation, Litigation, and Resources” webpage: [www.nilc.org/immsemplymnt/state\\_local/index.htm](http://www.nilc.org/immsemplymnt/state_local/index.htm).

<sup>38</sup> “History and Milestones” (U.S. Citizenship and Immigration Services, June 24, 2011), <http://tinyurl.com/26xf5jf>.

<sup>39</sup> Richard M. Stana, “Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System” (GAO-08-729T, Government Accountability Office, May 2008), <http://waysandmeans.house.gov/media/pdf/110/gao5608.pdf>.

<sup>40</sup> Daniel Gonzalez, “Illegal Workers Manage to Skirt Arizona Employer-Sanctions Law: Borrowed Identities, Cash Pay Fuel an Underground Economy,” *The Arizona Republic*, Nov. 30, 2008.

<sup>41</sup> The most notable proposal is the Legal Workforce Act (H.R. 2885), introduced by Rep. Lamar Smith in September 2011. For more information on the Legal Workforce Act, see NILC’s “Employment Issues > E-Verify & Electronic Employment Eligibility Verification > Federal Legislation > The Legal Workforce Act of 2011” webpage, [www.nilc.org/immsemplymnt/ircaempverif/e-verify.htm](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify.htm).

<sup>42</sup> *News Release*, Bureau of Labor Statistics, U.S. Dept. of Labor, March 11, 2011, [www.bls.gov/news.release/archives/jolts\\_03112011.pdf](http://www.bls.gov/news.release/archives/jolts_03112011.pdf).

<sup>43</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics, U.S. Dep’t of Labor, July 27, 2011.