

# E-VERIFY

## *Re-branded Pilot Program Takes On Larger Role in Immigration Enforcement*



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Formerly known as the Basic Pilot/Employment Eligibility Verification Program, E-Verify is the federal government's Web-based system that electronically verifies the employment eligibility of newly hired employees. The program, which has been around since 1997, is the result of a partnership between the Department of Homeland Security (DHS) and the Social Security Administration (SSA). E-Verify is experiencing rapid growth—more than 1,000 new employers are signing up each month—and the growth will likely continue as the federal government and some state governments begin to require its use by certain employers.

### HOW IT WORKS

An employer who wishes to participate in E-Verify must register online and enter into a Memorandum of Understanding, which provides the terms of the employer's agreement with DHS and SSA. After a participating employer completes the I-9 form with a new employee, the employer logs onto the E-Verify Web site and enters the employee's personal information, including name, date of birth, and social security number. If the information matches SSA records, the employer receives a message that the employee is authorized to work and the process is complete. However, if verification cannot be accomplished through the SSA database, then the employment eligibility is checked against DHS records. When the eligibility cannot be confirmed from DHS records, the E-Verify system sends a notice of tentative nonconfirmation, and the employer must inform the employee of the result. The employee then has eight business days to contest the tentative classification. Failure to timely contest will result in issuance of a determination of final nonconfirmation. If the employee chooses to contest the tentative result, then SSA and DHS have 10 working days to manually determine work authorization. A notice of final nonconfirmation will be issued unless the review confirms work authorization. Upon receipt of a notice of final nonconfirmation, the employer must terminate the employee.

Once enrolled in the program, an employer must use E-Verify for all newly-hired employees. The system may not be used to screen applicants; instead, it may only be used after an employee has been conditionally hired. Participation in the program provides an employer with a rebuttable presumption that the employer has not hired an unauthorized employee.

### ENHANCEMENTS AND EXPANSION FOR THE PROGRAM

The newest enhancement to the E-Verify program is a photo screening tool designed to help employers detect forged or faked immigration documents. Launched on August 31, 2007, the photo screening tool will allow an employer to check the photo on the new employee's Employment Authorization Document or Permanent Resident Card (green card) against the images stored in DHS immigration databases. The government hopes to expand this screening tool by seeking state participation to allow the

E-Verify system access to the photographs in state DMV databases. Future enhancements include an option for employers to generate letters for their employees in Spanish and an E-Verify Web site with a tutorial for employers considering enrollment.

Over 20,000 employers have already registered for E-Verify, and that number will likely dramatically increase in the near future. On August 10, 2007, Homeland Security Secretary Michael Chertoff and Commerce Secretary Carlos Gutierrez announced a series of immigration reforms. Included among those reforms was the commencement of a rulemaking process to require all federal contractors and vendors (more than 200,000 companies) to use E-Verify. The Administration also strongly encouraged states to make greater use of E-Verify. Some states, including Arizona and Oklahoma, have already passed legislation requiring employers in the state to utilize the E-Verify system.

### MANDATORY USE OF THE PROGRAM IS CONTROVERSIAL

While the federal government touts the E-Verify system as the best means available for employers to determine the employment eligibility of new hires, there is some resistance to government-mandated use of the program. Employer groups and immigrant worker groups have expressed concern regarding the potential for false results from the incomplete and sometimes incorrect DHS databases. Other concerns include the burden on small employers being forced to participate in the program and the possibility of abuse of the system by employers who pre-screen applicants. Additionally, it is not clear how well equipped the system is to handle the possible ten-fold increase in participation which will result from the requirement of use by federal contractors.

The opposition to the program has already resulted in litigation. A lawsuit has been filed in Arizona by the Arizona Contractors Association and other employer and Hispanic groups to prevent enforcement of the Arizona law requiring the use of E-Verify. In Illinois, the opposition to E-Verify resulted in the state legislature amending the state's Right to Privacy in the Workplace Act to actually forbid employers from using the E-Verify program. DHS has now filed suit to block the Illinois ban on E-Verify.

Like all aspects of immigration enforcement, the debate regarding the usefulness of E-Verify will likely continue. Nevertheless, it appears that the E-Verify system will play a more prominent role in the future of worker eligibility determinations.

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