

Tapping Technology for Immigration Enforcement

Immigration consultant Lisa Roney, former director of Research and Evaluation in the U.S. Citizenship and Immigration Services' Office of Policy and Strategy, discusses the government's E-Verify program.

Q. What is E-Verify?

A. E-Verify is a free, federally operated electronic program that lets U.S. employers determine whether newly hired employees are legally authorized to work in this country. It's run jointly by the U.S. Citizenship and Immigration Services (USCIS) and the Social Security Administration (SSA). The employer enters information from a new worker's I-9 Employment Eligibility Verification Form and quickly finds out whether it matches information in federal databases.

Form I-9 has been required of all employers since 1987. Under the I-9 process, newly hired workers attest to being U.S. citizens or noncitizens with authorization to work in this country. Employers must review specified documentation showing proof of the worker's identity and either U.S. citizenship or authorization to work in the U.S. Repeated analyses found that the I-9 system alone was vulnerable to fraudulent documents and therefore not sufficiently effective at reducing unauthorized employment. E-Verify was designed to change that.

Q. What happens when E-Verify cannot confirm work authorization?

A. When the program turns up a mismatch with federal information, the employer is to notify the worker and ask whether he or she wants to contest the mismatch with SSA or USCIS. Most data mismatches for employment-authorized workers relate to issues such as changes of name or citizenship status that haven't been reported to SSA or USCIS, but they can also result from errors or illegible writing on the Form I-9 and employer input errors.

If a worker decides to contest the initial E-Verify finding, the employer is required to provide instructions on how to proceed. This includes how to go in person to the SSA or to call USCIS to resolve the discrepancy. The



worker then has eight business days to take the required action to correct the record.

Q. And if the worker can't or won't do this?

A. If the worker with a mismatch with SSA or USCIS data doesn't contest an initial finding of not being work-authorized—most often because they lack proper work authorization—the employer is supposed to terminate employment. However, instructions about when this must occur aren't specific, and employer practices vary from firing workers on the spot to allowing them to finish a particular job or period of employment to allowing them to continue working in violation of the law.

Immigration authorities aren't contacted because federal enforcement priorities preclude picking up individual workers from thousands of employer locations. The worker loses his or her job, and to the extent that other employers in a given geographic area or industry are participating in E-Verify, the unauthorized worker lacks other employment opportunities.

Q. How well is the program working?

A. E-Verify began as a voluntary pilot program established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The program has been consistently improved over time to be more accurate and more responsive to employer needs, and it has grown from a few hundred employers to the current enrollment of more than 200,000. In fiscal year 2009, more than 8.7 million queries were run through E-Verify, the equivalent of about 18 percent of new hires.

During third quarter 2008, almost 97 percent of all verifications were completed electronically without further effort by the employee or the employer. Another 0.3 percent of cases were verified as work authorized after the employee contacted SSA or USCIS to resolve the cause for a data mismatch. The remaining 3 percent involved cases in which the worker wasn't authorized for U.S. employment or the employer or employee didn't take the steps necessary to resolve discrepancies.

Q. Are all employers required to use E-Verify?

A. Not at present. E-Verify remains voluntary for most employers, and less than 4 percent of them now participate. In September 2009, the program became mandatory for most federal government contractors, who must verify all new employees and any existing workers who are directly working on federal contracts. They also have the option of verifying their entire workforce.

In addition, at least some employers in 13 states are now required to use E-Verify, and more than half the states are currently considering legislation relating to the use of E-Verify. To date, Arizona and Mississippi are the only states mandating that all employers within the state use E-Verify, although Mississippi is phasing in participation through July 1, 2011, based on employer size. Beginning July 1, 2010, Utah will require all state agencies and contractors as well as all private employers with 15 or more employees to register with and use E-Verify.

Most, if not all, immigration reform legislation introduced over the past several

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years has included provisions requiring the use of E-Verify or a similar program that would electronically verify the employment authorization status of new hires. Some legislation would also require employers to verify the status of existing workforces, which is generally prohibited for currently participating employers other than federal contractors, who may elect to do so.

Q. Would making it mandatory to use E-Verify solve the problems with unauthorized workers?

A. Obviously, the program is effective only to the extent employers participate. If all were required to participate in E-Verify, we would expect the number of unauthorized workers to be reduced substantially. However, we have seen a longstanding pattern where unauthorized workers and those who assist them adapt to initiatives designed to keep them out of the U.S. workplace. Therefore, mandatory E-Verify as currently designed will not be a panacea.

A recent evaluation by Westat, a research organization, looked at how effective E-Verify was at detecting unauthorized workers and removing them from the workplace. Westat estimated that the program was detecting approximately half of all unauthorized workers, with a plausible range from about one-third to two-thirds.

The remaining unauthorized workers were able to escape detection by E-Verify through use of documentation with information that matched federal data, either because they had borrowed or stolen valid documents or because they were using counterfeit documents with good information about work-authorized persons. In addition, there may be employment possibilities in the informal sector, where workers are paid off the books, or through self-employment.

It’s also worth noting that E-Verify, even if not a complete deterrent, is more effective than the Form I-9 process alone. Furthermore, E-Verify is an important part of an overall federal strategy designed to reduce illegal immigration. The collective impact of the programs—including Border Patrol operations and Immigration and Customs Enforcement worksite investigations—is greater than any of the programs alone.

Q. Does using E-Verify result in discrimination against foreigners in general and certain minorities in particular, such as Hispanics?

A. Westat evaluation results indicate that most employers report that their participation in E-Verify makes them no more or less likely to hire foreign-born workers. When employers do report a difference due to E-Verify, it’s almost always in the direction of making them more willing to take on immigrants.

While data aren’t available by minority group, Westat evaluation findings show that based on their Form I-9 citizenship attestation, noncitizen workers are considerably more likely than U.S. citizens to have mismatches in their data during the E-Verify check. In part, this is because noncitizens go through both SSA and USCIS checks, whereas citizens are in most cases verified through only SSA.

For the second quarter 2008, for example, 0.3 percent of persons attesting to U.S. citizenship had mismatches, compared with 2.1 percent among those saying they were work-authorized noncitizens.

Within the noncitizen group, 5.3 percent of workers claiming they had temporary employment authorization had mismatches, well above the 1 percent of lawful permanent residents, usually green card holders, with mismatches. A series of USCIS database and system enhancements reduced these percentages considerably from the previous evaluation and are expected to reduce the discrepancy in mismatch rates between citizen and noncitizen workers further in the future.

Q. Can E-Verify be made more effective?

A. Improving E-Verify’s ability to detect the use of fraudulent documents will require difficult choices regarding the documentation that’s acceptable in the employment verification process and the possible use of biometric identifiers in E-Verify. These choices, of course, have both fiscal and civil liberties costs that will have to be considered.

The issues surrounding a national ID card in particular are huge, and moving in that direction would alter our basic tenets and way of life. Even if it were desirable, it would be extremely difficult to implement politically. Every immigration bill that has addressed verification has specifically prohibited creation of a national ID card.

The development of an identity card with readable biometrics is also difficult, not only in making such a highly counterfeit-proof card and issuing it to millions of lawful workers, but also in ensuring that all employers can easily read it.

Q. Do you think the government will extend the use of E-Verify in the near future?

A. There are big ifs here. I think that inclusion of a mandatory electronic employment verification program is almost a certainty in any serious immigration reform legislation that will be considered in the near future. The question, of course, is whether major immigration reform legislation will be enacted.

In recent years, it has taken several attempts to get legislation through both houses of Congress, and the U.S. population seems even more divided than ever on the direction and desirability of immigration reform.