

**INS BASIC PILOT EVALUATION**

**SUMMARY REPORT**

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U.S. Department of Justice  
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# EXECUTIVE SUMMARY

## A. BACKGROUND

In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) mandated that the Immigration and Naturalization Service (INS) – in conjunction with the Social Security Administration (SSA) – test and evaluate a series of voluntary pilot programs to electronically verify the employment authorization of newly hired employees. These small-scale IIRIRA pilots include the Basic Pilot, the Citizen Attestation Verification Pilot, and the Machine Readable Document Pilot.

The Basic Pilot program was implemented in 1997 in five states estimated to have the largest undocumented immigrant populations: California, Florida, Illinois, New York, and Texas. The goal of the Basic Pilot verification program is to determine, on a test basis, whether pilot verification procedures can improve on the existing I-9 system by reducing false claims to U.S. citizenship and document fraud, discrimination, violations of civil liberties and privacy, and employer burden.

INS selected two firms, the Institute for Survey Research at Temple University and Westat, to conduct an independent evaluation of each of the IIRIRA pilots. The evaluation of the Basic Pilot is the first of these efforts. The evaluation addresses the extent to which the Basic Pilot program is operating as intended and whether it has achieved its intended policy goals. The evaluation design includes the use of multiple sources of information to examine the program from three different perspectives - employers, employees, and Federal agencies. These data sources included pilot and matched non-pilot employer mail surveys, on-site interviews with pilot and non-pilot employers and pilot employees, observations, INS I-9 forms, government databases that record work status transactions, and interviews with Federal officials.

## B. EVALUATION FINDINGS

### 1. IS THE BASIC PILOT PROGRAM WORKING AS INTENDED?

As might be expected since they were volunteers, an overwhelming majority of employers participating found the Basic Pilot to be an effective and reliable tool for employment verification. The Basic Pilot system confirmed the vast majority of employees (87 percent) as work-authorized, of which almost all (90 percent) were immediately and automatically confirmed by the computerized comparison of data. Employees were also largely satisfied with the services provided by INS and SSA. The greatest Federal shortfall relates to the lack of timely INS data, which results in delayed verification in almost one-third of the cases going to INS for verification.

There is evidence that employers do not always follow Federally mandated safeguards specified in the Memorandum of Understanding (MOU) signed when they agree to participate in the Basic Pilot program. Some of these prohibited employment practices

include pre-employment screening, taking adverse action against employees who receive tentative nonconfirmations, failing to safeguard access to the pilot system, inconsistently protecting employees' privacy, missing pilot deadlines, failing to inform employees of their rights, and failing to terminate or report employees with final nonconfirmation.

## **2. DID THE BASIC PILOT PROGRAM ACHIEVE ITS PRIMARY POLICY GOALS?**

***Impact of the Basic Pilot on employment of unauthorized workers and the reduction of fraudulent claims of citizenship.*** Less than one-tenth of one percent of the employment verification attempts resulted in a finding of "unauthorized." However, it is likely that a substantial proportion of those employees whose work-authorization status was not definitively determined by the Basic Pilot system were unauthorized workers who did not contest a tentative nonconfirmation finding. The evaluation team's estimate is that 10 percent of all cases submitted to the Basic Pilot system for determination of work-authorization status were unauthorized workers. Further, it is likely that some unauthorized workers simply avoid applying to Basic Pilot employers. The Basic Pilot database did not yield conclusive data on the use of fraudulent documents and cannot identify imposter fraud. However, the level of false attestation to U.S. citizenship appears to be low.

***Impact on reducing discrimination.*** Employers claim that the Basic Pilot program makes them more comfortable in recruiting and hiring immigrants; however, the evaluation was not able to confirm that this resulted in an actual increase in the employment of work-authorized immigrants among Basic Pilot employers. Further, the evaluation found that employers do not always follow Basic Pilot procedures designed to prevent discrimination, such as not taking adverse actions against employees who are trying to resolve an initial finding of tentative nonconfirmation. Because the evidence points to both decreases and increases in discrimination caused by the Basic Pilot program, the evaluation could not determine whether the net effect of the program was discriminatory. However, it is clear that discrimination resulting from improper employer use of the Basic Pilot program could have been mitigated if Federal databases were more accurate and up-to-date.

***Impact on employee privacy.*** Because safeguards are built into the Basic Pilot system, there is little increased risk of misuse by Federal employees. However, because of the current design of the system, there is potential for unauthorized access to employee information at pilot establishments. Some employers also failed to protect employee privacy when notifying employees of their tentative non-confirmation status.

***Impact on employer burden and cost.*** A majority of employers indicated that the Basic Pilot process is easier than the current I-9 verification process. Further, they reported that it did not overburden their staff. INS officials estimate that the Federal government spent approximately \$9.6 million (\$2.3 million for start-up costs and \$7.3 million for operating costs) on the Basic Pilot program between November 1997 and April 2000. A majority of employers reported spending under \$500 for start-up costs and another \$500 annually for operating costs.



## **C. OPTIONS FOR THE FUTURE**

Various possibilities exist for continuing or expanding the Basic Pilot. Four alternative approaches were explored: a mandatory national program for all employers, a mandatory national program only for large employers, a voluntary national program open to all employers, and an improved voluntary program open to all employers in selected States. Each of these alternative programs has advantages and disadvantages.

## **D. RECOMMENDATIONS**

Based on the evaluation findings, electronic verification of employment authorization as tested in the Basic Pilot, while potentially a valid concept, is not ready for larger-scale implementation at this time. However, INS and SSA should continue to test pilot program improvements that would retain program advantages while mitigating current problems with the program. These include specific INS data system enhancements and technical improvements such as enhancing system software and training, incorporating quality control measures, and providing additional employer technical support.



# CHAPTER I. BACKGROUND

## A. PURPOSE OF THE REPORT

### 1. LEGISLATIVE OBJECTIVES

In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted. In this law Congress mandated that the Immigration and Naturalization Service (INS) – in conjunction with the Social Security Administration (SSA) – test a series of voluntary pilot programs to electronically verify the employment authorization of newly hired employees. Section 405 of IIRIRA further required that the Attorney General submit reports on these programs to the House and Senate Judiciary Committees. These reports were to:

- Assess the degree of fraudulent attestation of U.S. citizenship.
- Assess the benefits of the pilot program to employers and the degree to which they assist in the enforcement of employer sanctions.
- Include recommendations on whether the pilot program should be continued or modified.

### 2. EVALUATION QUESTIONS

This report presents the results of an extensive evaluation of the Basic Pilot, the first of the three small-scale IIRIRA pilot programs to be implemented. The Executive Branch and the many nongovernmental groups interested in employment verification viewed an extensive evaluation as an essential part of the implementation of the employment verification pilots. These groups also agreed that the evaluation needed to address a full range of issues to inform recommendations and decision making on the future of electronic verification of employment authorization in the workplace.

The issues to be addressed in the evaluation included input from a wide variety of stakeholders, taking into account the importance and difficulty of developing the information. The most important issues were retained regardless of their difficulty, but with the knowledge that it would be a challenge to collect good information in some of these areas. In mid-1997, INS selected two firms, the Institute for Survey Research at Temple University and Westat, to conduct an extensive independent evaluation of each of the IIRIRA pilot programs. The evaluation of the Basic Pilot is the first of these efforts.

### 3. REPORT ORGANIZATION

The report is divided into five chapters – background, operational findings, policy findings, options for the future, and recommendations. The background begins with a discussion of the legislative history of employer sanctions and employment verification, which is important for understanding the issues addressed in the evaluation. The

remainder of the background section describes the Basic Pilot, the context in which the Basic Pilot was conducted, and the methodology for conducting the evaluation.

The remainder of the report comports with the highest priority evaluation questions addressed throughout the study. The findings of the evaluation are presented from two perspectives. The first perspective describes the extent to which the pilot program is operating as intended. The second perspective looks at costs and whether the Basic Pilot program has achieved its four intended policy goals:

- Does the Basic Pilot reduce employment of unauthorized workers?
- Does the Basic Pilot reduce discrimination?
- Does the Basic Pilot protect employee civil liberties and privacy?
- Does the Basic Pilot reduce employer burden?

The final two chapters provide an analysis of options for the future expansion or continuation of employment verification programs similar to the Basic Pilot and recommendations from the evaluation.

## **B. LEGISLATIVE BACKGROUND**

### **1. PASSAGE OF EMPLOYER SANCTIONS**

Congress passed employer sanctions legislation in late 1986, making it unlawful for the first time for U.S. employers to hire undocumented workers. This law was passed in response to increases in undocumented immigration and recommendations by a series of Congressional and Executive Branch task forces and commissions – ranging from the small, bilateral Special Study Group on Illegal Immigrants from Mexico (1973) to the blue-ribbon Select Commission on Immigration and Refugee Policy (1981).

From the outset employer sanctions legislation had been controversial because of concern that it would lead to privacy violations, discrimination against persons who appeared or sounded foreign, and a national identity document. Many of the groups studying the issue had attempted to develop ways of administering employer sanctions and accompanying work authorization verification that would protect privacy and be nondiscriminatory.

### **2. EMPLOYMENT VERIFICATION AND CIVIL RIGHTS PROTECTIONS**

Accompanying the new employer sanctions provision, with its civil and criminal penalties for hiring undocumented workers, were two related provisions. The first prohibited discrimination on the basis of national origin or citizenship status and established a new agency, the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in the Department of Justice, to enforce this provision. The second required that the Immigration and Naturalization Service implement an employment verification system for all newly hired employees.

The universal employment verification system specified in IRCA was a paper-based system (implemented by INS as the I-9 form) that requires all newly hired employees to attest to being a U.S. citizen or national, a lawful permanent resident, or other work-authorized noncitizen. The system also requires employees to present documentation establishing their identity and work authorization. Employers are required to examine this documentation and attest that it appears to be genuine and that it belongs to the employee.

In addition, Congress authorized the Executive Branch to develop tests of alternative employment verification systems. Such systems had to be reliable, secure, and limited to use for employment verification. Specific additional requirements were levied before such a system could be implemented, and none was to include a national identity document. IRCA also required INS to establish a verification program known as Systematic Alien Verification for Entitlements (SAVE) to verify authorization of noncitizens for certain benefit and entitlement programs. INS developed a special extract of its main database for this purpose.

### **3. EVALUATION OF THE IMPACT OF EMPLOYER SANCTIONS IMPLEMENTATION**

Because of the widespread concern for unintended impacts, many prominent groups studied the implementation of employer sanctions and the employment verification system. Most prominent among such studies were the three IRCA-mandated reports by the General Accounting Office (GAO). In its final report in 1990, GAO found that the implementation of employer sanctions had resulted in a widespread pattern of discrimination against eligible workers. However, instead of repealing employer sanctions, GAO recommended mitigating employer confusion by reducing the number of acceptable documents and making them more secure.

The GAO findings triggered further inquiry on the discriminatory and other negative impacts of employer sanctions and employment verification by the Federal government, State and local areas with sizeable foreign-born populations, and private organizations such as the Urban Institute and RAND. Although some studies called for the repeal of employer sanctions, others believed that the problems could largely be remedied by simplifying and clarifying the I-9 employment verification system. Legislation was introduced to repeal employer sanctions, but it was not passed.

The Immigration Act of 1990 established the Commission on Immigration Reform, which continued study of employment verification. The Commission recommended testing a national registry-type system under which all newly hired workers, citizen and noncitizen alike, would be electronically verified for employment authorization through a unified database comprised of SSA and INS information. Although INS and SSA found that they did not have a way to link the information in their databases, the two agencies developed a voluntary pilot program that tested the basic concept of the Commission recommendation on a small scale by having all newly hired employees electronically verified through SSA. For those noncitizens for whom SSA data could not determine current work authorization status, a further check was made through INS.

#### **4. IMPLEMENTATION OF ELECTRONIC VERIFICATION PILOTS**

INS had begun testing a telephone-based employment verification system with a few employers using the database developed for SAVE for benefit verification. INS then expanded this test in 1992 to personal computer-based verification for noncitizen hires. The recommended two-step SSA-INS pilot for all new hires was a logical next step.

With renewed discussion of larger scale employment verification systems, civil rights groups expressed concern about further testing of alternative electronic employment verification systems and the impact on workplace discrimination and privacy. Additional recommendations followed from the Federal civil rights community as well as non-governmental organizations that dealt with worker rights problems first hand.

Legislative debate to consider the Commission's recommendations and to gain greater control over undocumented immigration ensued. Although several bills had proposed national implementation of an electronic verification system, the final legislation, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted in 1996, provided for small-scale testing, evaluation, and reporting on three voluntary pilot programs before a national system was considered. Testing on a pilot basis was considered to be especially important because of the limitations of Federal data for verification purposes, the potential for workplace discrimination and privacy violations, and practical logistical considerations about full-scale implementation.

The three IIRIRA pilots included:

- The Basic Pilot, under which all newly hired employees are verified through SSA and, if necessary, INS;
- The Citizen Attestation Pilot, under which U.S. citizens show more secure identity documents, requires electronic verification only for non-citizens; and
- The Machine Readable Pilot, which is identical to the Basic Pilot except that the data input for some employees is through a machine-readable driver's license or State-issued ID card.

#### **C. DESCRIPTION OF THE BASIC PILOT**

##### **1. GOALS OF EMPLOYMENT VERIFICATION AND THE BASIC PILOT**

The goals of employment verification and the goals of the verification pilots are somewhat different. The primary goal of employment verification is to ensure that all workers are authorized to work in the United States and thus to deter unauthorized employment and undocumented immigration. Studies by GAO, the Commission on Immigration Reform, and others found that the I-9 paper verification system used by all employers at present is confusing and easily circumvented. In contrast, the goal of the Basic Pilot verification program is to determine, on a test basis, whether pilot verification procedures can improve on the I-9 system by reducing false claims to U.S. citizenship

and document fraud, discrimination, violations of civil liberties and privacy, and employer burden.

## **2. DOCUMENTATION REQUIREMENTS**

The Basic Pilot program is predicated on a system of documentation that has existed since the implementation of employer sanctions. At the time of employment, workers are required to document their identity and authorization to work. Employment authorization can be established through documents such as a U.S. birth certificate or passport, a nonrestricted Social Security card, or an INS-issued document showing employment authorization. If the document showing work authorization does not include a photograph, employees are also required to document their identity, usually by showing a driver's license or State-issued ID card.

## **3. BASIC PILOT STATES**

INS and SSA implemented the Basic Pilot program in November 1997 in California, Florida, Illinois, New York, and Texas. Nebraska was added to the pilot in March 1999 to assist employers in the meatpacking industry. Establishments in other States may participate in the Basic Pilot if there is a participating establishment from the same employer in one of the six Basic Pilot States.

## **4. BASIC PILOT PROCEDURES**

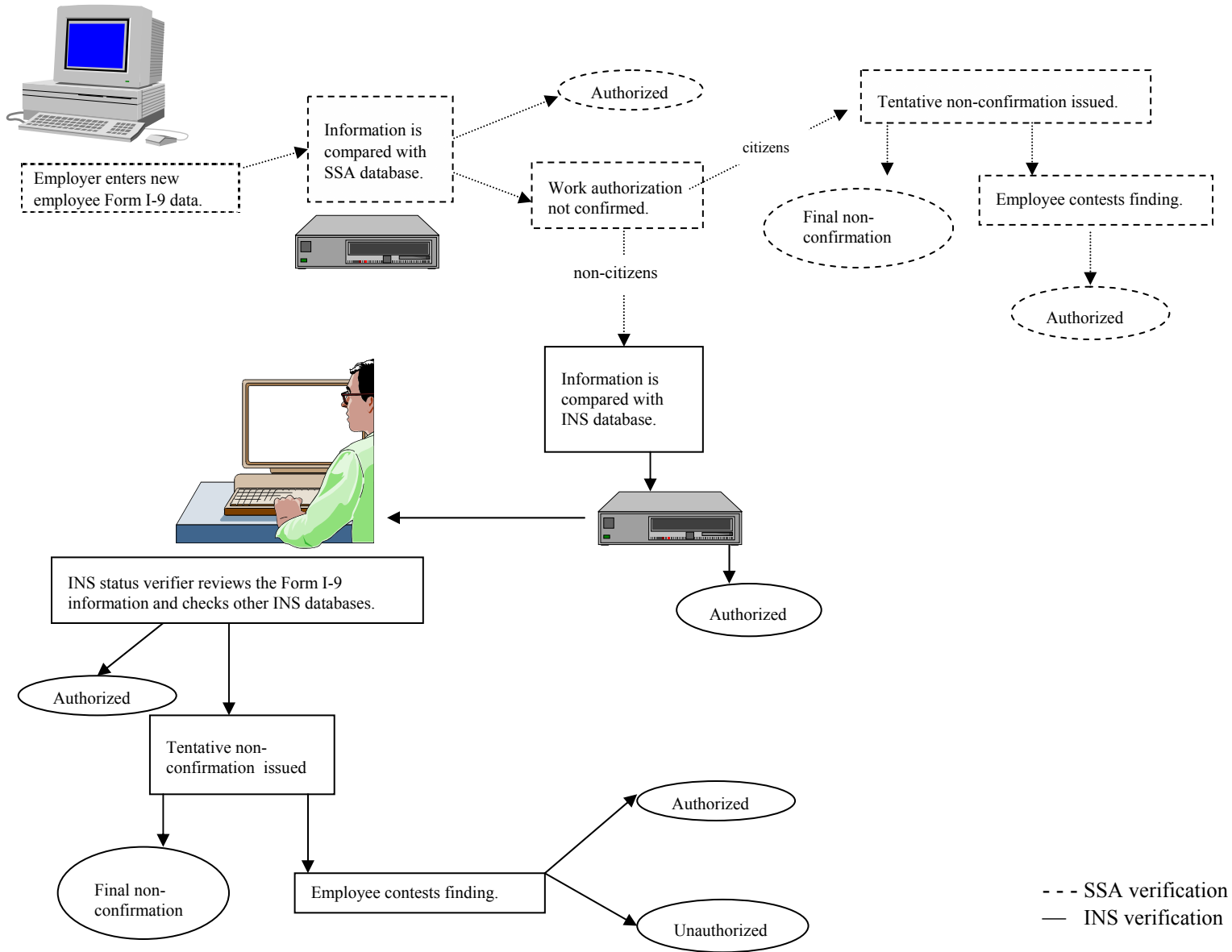
Employers wishing to participate in the Basic Pilot sign a Memorandum of Understanding (MOU) with INS and SSA promising to follow all pilot procedures. INS sends the employer the system software, manuals, and other materials needed to use the pilot program.

The Basic Pilot process is based on the existing employment verification system required of employers. The procedures were designed to provide employers with greater confidence in their ability to verify their employees, while safeguarding employee rights. They begin with the completion of the INS Form I-9, both by the employee, who provides personal information and attests to citizenship or immigration status, and by the employer, who records the type of documents examined for identity and employment authorization (see Exhibit 1).

The major additional steps required by the Basic Pilot program are:

- Employers send information about all new employees electronically to the Federal government;
- The Federal government checks the information submitted by the employer against relevant databases to determine if their records indicate that the employee is work-authorized;

**Exhibit 1: Basic Pilot Program Verification Process**





- If the Federal records do not verify the work authorization of an employee, the employee is given an opportunity to “straighten out” their records;
- While employees are trying to “straighten out” their records, employers are not permitted to take adverse actions against employees; and
- If the final determination of the Basic Pilot system is that the employee is not work-authorized, the employer is required to terminate the employee.

## **D. CONTEXT OF THE BASIC PILOT**

This section describes how pilot employers and States are similar or different from non-pilot States and employers. The Basic Pilot was originally implemented on a voluntary basis in the five States with the largest undocumented immigrant populations – California, Florida, Illinois, New York, and Texas.<sup>1</sup> These States and the employers and employees within them are not representative of the nation as a whole. Therefore, care must be taken in generalizing from the experiences of the pilot employers who volunteered to participate to all employers nationwide about how a verification system might work on a larger-scale basis.

### **1. STATE CHARACTERISTICS**

The five original Basic Pilot States are unique in many ways. They have larger populations, are more densely populated, and have larger foreign-born populations than the non-pilot States. Based on INS estimates, nearly 80 percent of undocumented immigrants reside in the five original Basic Pilot States, perhaps creating a greater incentive for some employers to participate in the pilot. Moreover, these five States contain 35 percent of the nation’s business establishments and employees. The population of these States are more diverse than the nation overall, having over twice the percentage of Hispanics (23 versus 11 percent) and slightly higher Asian/Pacific Islander populations (6 versus 4 percent).

Basic Pilot establishments are clustered in and around large urban areas in the five States. Although INS did not formally target urban areas in its advertising campaign soliciting participants for the Basic Pilot program, it did focus on metropolitan area newspapers and radio stations and hold seminars in urban areas, which likely affected the establishments that chose to participate. Additionally, many employers learned about the pilot from other employers, further tilting participation toward urban establishments.

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<sup>1</sup> Nebraska was subsequently named a Basic Pilot State, but because of its late implementation date, Nebraska was not included in the on-site phase of the evaluation.

## **2. EMPLOYER SIZE AND INDUSTRY**

Not surprisingly, since larger employers probably have more to gain by participating in the pilot program, pilot employers tend to be larger than non-participating employers. Fifty-nine percent of pilot establishments had 50 or more employees, compared with 4 percent of establishments nationwide. Conversely, few pilot employers (12 percent) reported fewer than 5 employees, compared with 63 percent of establishments nationwide. These smaller employers have considerably lower verification needs, are less likely to have the necessary computer equipment and staff to run the pilot, and may believe they are less vulnerable to employer sanctions. To the extent that these factors affect the usefulness of the Basic Pilot, it would be less cost-effective for small employers.

Pilot establishments are also more likely to be concentrated in just a few industries. Over 38 percent of pilot establishments are in manufacturing, compared with only 4 percent of establishments nationwide. Moreover, two-thirds of the pilot establishments in manufacturing are in food and kindred product manufacturing – particularly meat packing and poultry processing. These establishments, which often rely on recent immigrants to do unpleasant, unskilled work, received special emphasis in recruitment for the Basic Pilot. Although pilot establishments are under represented in the service industry overall, they are heavily over represented among help-supply services and temporary and employment agencies.

## **3. FOREIGN-BORN STATUS AND ETHNICITY OF EMPLOYEES**

As might be expected, employees working for pilot establishments are more likely to be foreign-born – even more so than the population of the five original Basic Pilot States. Among transaction database cases for whom foreign- versus native-born status was indicated, 31 percent of the database entries were for foreign-born employees, compared with 15 percent foreign-born populations in the pilot States. For those cases where race/ethnicity was available, Hispanics were over represented among pilot establishments, while Asians and non-Hispanic whites and blacks were under represented.

## **E. RESEARCH METHODS**

The evaluation of the Basic Pilot is based on multiple sources of information that examine the program from three different perspectives: employers, employees, and Federal agencies. The data sources include:

- Pilot and non-pilot employer mail surveys
- Employer on-site interviews and observation
- Employee interviews
- INS I-9 forms
- Pilot databases that record work authorization transactions

- Semi-structured interviews with Federal officials
- System testing
- Secondary data sources

## 1. STRENGTHS AND LIMITATIONS OF METHODOLOGY

To strengthen confidence in the conclusions that could be drawn from the findings, the evaluation of the Basic Pilot used multiple data sources. The main benefit of such a design is that it provides a strong basis upon which to derive conclusions. Conclusions were reached by comparing the results of the analysis of multiple data sources and reconciling or explaining inconsistencies among the findings. First, hypotheses about the research issues were developed, followed by analysis of the separate data sources. Then the results from all of the data sets on a given issue were compared to determine whether the findings supported the hypothesis. When results were contradictory, the evaluation team explored possible reasons and when feasible performed additional analyses to resolve the discrepancy.

Another major strength of the research design is use of a matched comparison group for employers. Such a comparison group helps to control for factors outside the scope of the program such as fluctuations in the labor market that may be affecting both pilot and non-pilot sites. Thus, matching increases the likelihood that differences in evaluation data between pilot and non-pilot employers have to do with the pilot experience and not extraneous factors.

As confident as the evaluation team is about the conclusions, the data sources used in the evaluation have limitations. First, self-selection of pilot establishments limits generalization to employers beyond those establishments that used the system. Since participation in the Basic Pilot program is voluntary, pilot establishments account for a very small proportion of all establishments in the country,<sup>2</sup> and a number of establishments that originally signed up to use the pilot ultimately did not use it. Second, as is true in all voluntary data collection efforts, nonresponse is present.

To statistically adjust for known differences between respondents and nonrespondents, weighting was used for all surveys conducted. For example, weighting may adjust for differences between responding and nonresponding employers due to size of establishment. However, weighting does not totally eliminate nonresponse bias. The kind of bias that cannot be controlled for by weighting is the bias from unknown and thus uncontrolled factors, such as attitudes toward employment verification.

Surveys also have limitations, particularly in capturing complex information. In the employer questionnaires, some of the questions involved estimates of detailed information and others were sensitive or potentially self-incriminating. The questions on the employee questionnaire often involved concepts and terminology that employees

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<sup>2</sup> Establishments volunteering to participate in the Basic Pilot comprise less than one-tenth of 1 percent of establishments in the five original pilot States.

found difficult and potentially incriminating. Although in-person interviews and on-site observations provided valuable in-depth information on employer performance in pilot employment verification procedures, the semi-structured interviews and qualitative nature of some of the data collected in the site visits limits its generalizability.

## 2. EMPLOYER MAIL SURVEY

A mail survey was sent in February 2000 to all 1,189 pilot establishments that had volunteered to participate in the program by July 31, 1999 (see Exhibit 2). Of those, 714 had used the pilot by the time the sample for the mail survey was selected. Based on information in a national employer database, a similar non-pilot establishment was selected to match each of these 714 employers, based on industry, size, and county.

**Response rate.** Of the initial population of 1,189 pilot establishments, 637 completed the mail survey, resulting in a response rate of 67 percent of the establishments still in business.<sup>3</sup> Among non-pilot establishments, 235 establishments completed the mail survey, resulting in a response rate of 44 percent.

### Exhibit 2: Summary of Sampling and Completion Statistics for Pilot and Non-Pilot Establishments

No. of Establishments	Pilot	Non-pilot	Total
Establishments selected for mail survey	1,189	714	1,903
Completed mail survey	637	235	872
Mail survey response rate	67%	44%	59%
Selected for on-site survey	352	200	552
Completed on-site survey	317	93	410
On-site survey response rate	90%	47%	74%
Provided sample employment application forms	264	58	322
Provided Forms I-9 at on-site visit	253	30	283

## 3. EMPLOYER ON-SITE VISIT

The on-site pilot employer sample was restricted to the five original pilot States (California, Illinois, Florida, New York, and Texas),<sup>4</sup> and consisted of 352 establishments that had 10 or more database transactions at the time of sample selection. The evaluation team also selected a random sample of 200 non-pilot establishments with similar

<sup>3</sup> The response rate is computed as:  $100 \times (\text{number of respondents}) / (\text{number of eligibles})$ ; out-of-business establishments are ineligible.

<sup>4</sup> The limitation of the on-site interviews to these five States means that the sample is not representative of employers outside these States. For example, most of the participating meat-packers were located outside the original Basic Pilot States.

characteristics to those of the selected on-site establishments. For pilot establishments, the on-site visits consisted of a structured interview, a records review that included the selection of I-9 forms, and observation related to pilot implementation issues. The non-pilot on-site visit included only the first two components.

**Response rate.** Researchers were able to conduct site visits at 317 of the 352 Basic Pilot establishments (90 percent response rate) and 93 of the 200 non-pilot establishments (47 percent response rate).

#### **4. EMPLOYEE IN-PERSON INTERVIEWS**

The employee interviews targeted current and former employees hired by pilot establishments. Employees were selected from among those hired and verified by pilot employers selected for the on-site visit. The sample was drawn from all verifications conducted within a 6-month study period, from July through December 1999. The sample was stratified by the agency making the work authorization decision (SSA or INS) and the outcome of the verification (authorized on first try, authorized after tentative nonconfirmation, unauthorized, or verification outcome never resolved). In general, strata with the fewest cases were sampled at a higher rate than strata with larger numbers of cases, to ensure that adequate information on each group would be obtained (see Exhibit 3).

However, subgroup estimates based on small samples are of relatively lower precision and yield lower statistical power than those based on larger samples. Conclusions drawn from interviews with employees told about work authorization problems (n=101) and the experiences of those who contacted SSA or INS to resolve work authorization problems (n=67) are based on small samples and must therefore be interpreted with caution. Further, care must be taken in interpreting the employee interview findings related to individuals found to be not work-authorized, since this group was very small to start with and the evaluation team was able to locate and interview only five persons in this group.

**Response rate.** The evaluation team selected 4,710 Social Security numbers from the transaction database to serve as the basis for the employee sample. Multiple attempts were made to locate all of the sampled persons. While cooperation with the survey was overwhelming (95 percent of those located were interviewed), ultimately less than a quarter of the sampled persons were located and resided in areas accessible by field interviewers, resulting in 970 interviews with pilot employees. Weighting by sampling strata and citizenship status compensates for some of the potential bias for known differences between the original sample and the interviewed sample, but it is reasonable to assume some non-response bias related to differences among employees who were located and those who were not.

**Exhibit 3: Employee Sample Sizes and Sampling Percentage, by Verification Outcome and Agency**

<b>Sampling Stratum</b>	<b>Approximate Population Size</b>	<b>Selected Sample Size</b>	<b>Number Interviewed</b>
<b>SSA</b>			
Initially authorized by SSA	40,026	800	176
Eventually authorized by SSA	11,929	800	182
Self-terminated or quit – SSA	4,448	350	30
Unconfirmed – SSA	2,448	350	61
<b>INS</b>			
Initially authorized by INS	5,362	600	172
Authorized by INS – 2nd stage	2,655	763	189
Eventually authorized by INS – 3rd stage	142	142	18
Self-terminated or quit – INS	348	348	64
Unauthorized by INS	114	114	14
Inconsistent authorization results	443	443	64
<b>Total</b>	<b>67,915</b>	<b>4,710</b>	<b>970</b>

**5. REVIEW OF I-9 FORMS**

The evaluation team attempted to collect I-9 forms from all pilot and non-pilot employers that participated in the on-site visits. Up to 20 I-9 forms were selected from each employer’s records during the visits. The random sample of I-9 forms from pilot employers was used for comparison with information in the verification databases and to identify any pilot employees who were hired but never verified through the Basic Pilot. Estimates based on the sample of I-9 forms are not weighted because the storage and record keeping procedures on-site presented challenges in capturing the information that was necessary to construct weights.

**Response rate.** I-9 forms were collected from approximately 80 percent of the participating on-site pilot establishments and one-third of visited non-pilot establishments.

**6. BASIC PILOT TRANSACTION DATABASE ANALYSIS**

The Basic Pilot transaction database captures information submitted by employers through the Basic Pilot system. The SSA and/or INS system responses are also captured, along with entries from Immigration Status Verifiers (ISVs) involved with each case.<sup>5</sup> The transaction database used in the analysis was a census of approximately 365,000

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<sup>5</sup> For the purposes of this study, the SSA and INS transaction databases as well as the independent databases each agency keeps on employers participating in this study were merged into one database that was analyzed for this study and is referred to in this report as the Basic Pilot transaction database.

employee records over a 2-year period, from November 1997 through December 1999. Since this was a census, the analyses are highly reliable.

## **7. INTERVIEWS WITH FEDERAL OFFICIALS AND CONSULTATION WITH STAKEHOLDERS**

The evaluation team identified 20 senior officials and contractors from SSA, INS, and other offices within the Department of Justice who had current or previous responsibility for designing and/or implementing the pilot programs. Senior evaluation staff conducted semi-structured interviews with Federal officials in a one-on-one or very small group setting. The information captured in these interviews represents the informed opinions of individuals who have experience with the pilot programs and with electronic verification systems. Federal cost information was also obtained through this mechanism. In addition, consultations with stakeholders from several advocacy groups representing a wide range of perspectives on the pilots were conducted at two group meetings as part of the development phase of the study.

## **8. SYSTEM TESTING**

The evaluation team tested the Basic Pilot system by trying to circumvent systems protections to access the system and program databases. Tests of the security and fraud resistance of the Basic Pilot system were performed by research assistants with intermediate knowledge of computer operations. The test for security consisted of determining whether unauthorized users can operate the Basic Pilot system without knowing the user ID and password combination. The test for fraud consisted of trying to manipulate the system to provide false documentation of work authorization.

## **9. SECONDARY SOURCES**

A number of secondary data sources were used in the evaluation to describe the characteristics of the nation, pilot States, employers, and employees and to calculate cost figures and projections. Since most of these data were taken from large Federal databases such as the Census Bureau's Current Population Survey or Federal reports such as INS's *Statistical Yearbook*, they can be considered to be reliable.

## **10. REASON TESTERS WERE NOT USED**

The evaluation team also considered the possibility of using "testers" to provide additional information on the probable effect of the pilot program on discrimination. However, to provide comprehensive information on discrimination related to the Basic Pilot program, it would be necessary to have the testers go through the full hiring process and the first 2 or 3 weeks of employment. The team was concerned that using testers in this way would place an unfair burden on employers who might invest resources in hiring and training the employees. A more limited use of testers would place fewer burdens on employers but would provide more limited information. Given the sensitivity of such an approach, the evaluation team decided not to use testers.





## **CHAPTER II. IS THE BASIC PILOT PROGRAM OPERATING AS INTENDED?**

Generally, the first step in a program evaluation is to determine whether the program was implemented as intended, since deviations from intended implementation often point to areas where the program needs modification to be effective. It also helps in identifying whether the intended results occurred or did not occur because of implementation issues or because of program design. This section focuses on how well the Federal Government, employers, and employees have done in meeting their obligations, as detailed in the Basic Pilot Memorandum of Understanding (MOU) signed by INS, SSA, and each participating employer.<sup>6</sup> The INS and SSA jointly developed the MOU to specify the Basic Pilot program requirements and responsibilities and to protect all parties from miscommunication and misunderstanding that may lead to unfair business practices and discrimination.

### **A. IS THE FEDERAL GOVERNMENT FULFILLING ITS OBLIGATIONS?**

The MOU places a number of explicit obligations on INS and SSA. To determine if the Federal agencies are complying with the requirements of the Basic Pilot program, the evaluation reviewed the MOU for specific agency requirements. These requirements, as stated in the MOU, include:

- Providing Basic Pilot employers with available information that will allow the employer to confirm the accuracy of Social Security numbers and the employment authorization of newly hired employees.
- Providing assistance with operational problems that arise.
- Safeguarding information provided by the employer, and limiting access to such information.
- Establishing a means of automated verification that is designed to provide confirmation or tentative nonconfirmation of employees' employment authorization within 3 Federal Government work days of the initial inquiry.
- Establishing a means of secondary verification for employees who contest tentative nonconfirmations designed to provide confirmation or final nonconfirmation of the employees' authorization within 10 Federal Government work days of the date of referral, unless additional time is needed.
- Providing participating employers with the information needed to implement the Basic Pilot program. Required information from INS includes an instruction manual for the system, notice of employer participation in the Basic Pilot, anti-

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<sup>6</sup> The full MOU is available through INS's Web site (<http://www.ins.usdoj.gov/graphics/services/basic.pdf>).

discrimination notices, and information needed to access the system. Although the MOU does not explicitly specify the quality of the services INS and SSA should supply, it is reasonable to expect the employment verification services to be accurate, easy to use, and provided promptly and courteously.

## 1. FEDERAL ROLE IN IMPLEMENTING THE PILOT

***Most employees were automatically confirmed by the Basic Pilot system.*** The analysis of the Basic Pilot database indicated that an overwhelming majority (90 percent) of employees found to be work-authorized were immediately confirmed by the computerized comparison of data. That is, the employee's work authorization status was returned immediately after the employer submitted the query.

***An overwhelming majority of employers found the Basic Pilot to be an effective and reliable tool for employment verification.*** An overwhelming majority of employers who had used the Basic Pilot system reported positive experiences with it. Ninety-six percent of employers believed that the Basic Pilot is an effective tool for employment verification. Similarly, a high percentage of employers (94 percent) also believed that the Basic Pilot verification process is more reliable than the process they used previously and that it is feasible to fulfill their obligations under the Basic Pilot program. These highly positive results may reflect, in part, that these employers volunteered to participate in the Basic Pilot.

As part of INS efforts to ensure the effectiveness and reliability of the Basic Pilot system, employers were provided the necessary tools to assist them in their use of the Basic Pilot system. Employers were provided a computer-based tutorial on the proper use of the system, a manual for future reference, and technical support. Almost all employers (96 percent) found the Basic Pilot manual useful. The majority of users (approximately 80 percent) also reported that they were always or often able to receive assistance from INS and SSA in resolving technical problems.

***Employees were also largely satisfied with the services provided by INS and SSA.*** The small number of employees who contacted a local SSA or INS office to resolve verification problems generally provided positive feedback about their experience. Almost all employees who visited SSA (95 percent) and INS (90 percent) said that Federal staff was able to resolve their work authorization problem in a timely, courteous, and efficient manner.<sup>7</sup> Further, an overwhelming majority of employees (90 to 98 percent) said that SSA and INS provided them with assistance in a language they could understand, office hours were convenient, and INS and SSA staff were helpful. Employees who were provided with services by telephone or fax reported similar satisfaction with their experiences.

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<sup>7</sup> Although the Basic Pilot does not require in-person visits to a local INS office, some individuals choose to resolve their work authorization problems in person.

***Federal agencies usually met the specified time limits when verifying employee work authorization.*** The MOU signed by INS and SSA allows each agency 10 Federal working days to resolve tentative nonconfirmations. Employers report that this deadline was generally met.

## **2. NEEDED BASIC PILOT IMPROVEMENTS**

***The accuracy and timeliness of INS data need to be improved.*** Most Federal officials interviewed agreed that the efficient operation of the pilot program was hindered by inaccuracies and outdated information in INS databases. One major contributory problem identified by INS officials is loss of data and delays in data entry for persons recently issued a new or replacement employment authorization document (EAD) and for new immigrants and refugees.

Part of the issue with timeliness of INS data entry results from large increases in workload associated with new groups of noncitizens becoming eligible to work in the United States as a result of new legislation and administrative actions. This growth is reflected in the more than doubling of the number of requests for work authorization documents INS has received in the past 8 years. INS is addressing its data entry delays through both policy and operational changes that are intended to significantly reduce the delay between the time a person becomes authorized to work and when the information is entered into the INS database and INS documentation is issued. Although some improvements have been made since the pilot evaluation concluded, others will take longer to implement.

When the INS database is not current and, therefore, cannot automatically confirm the work authorization of employees, the pilot relies on Immigration Status Verifiers (ISVs) to resolve the status of these cases. For cases that were not automatically verified by the system, the use of INS personnel was more expensive than automatic verification and allowed the possibility for human error. Indeed there were cases screened by multiple ISVs who made different work authorization determinations.

When government databases are inaccurate and outdated, the greatest burden falls on employees. Without reliable data with which to immediately determine work authorization, employees may be penalized by employers who are unsure of their work status. This issue will be discussed in more detail in the next chapter.

***There have been complaints to the Office of Special Counsel claiming actual or potential harm to individuals.*** If Federal employees are not well informed about the Basic Pilot program they may adversely affect the post-hiring status of employees who attempt to resolve work authorization problems. Although employees were largely satisfied with the services provided by INS and SSA, they have occasionally made complaints to the Office of Special Counsel (OSC) in the Civil Rights Division of the Department of Justice about INS implementation of the pilots. The OSC reported having received four such complaints at the time the evaluation was concluding. These included three cases in which an INS employee was misinformed about proper procedures for pilot

employees to follow, and one case in which the employee went to an INS district office several times and waited all day but was unable to get help.

***The Basic Pilot system needs computer and technical support improvements.***

Successful implementation of the Basic Pilot also depends on the soundness of the Basic Pilot technical system. Although employers found the Basic Pilot to be an effective verification tool, they also identified technical problems with it. These shortcomings may discourage or even prevent employers from successfully using the pilot. One-third of employers said they encountered difficulties in setting up the Basic Pilot program. Most of the problems involved modem connection, software, hardware, and telephone lines. Many employers also mentioned these same problems once the system was online. Further, 39 percent of employers reported that SSA never or sometimes returned their calls promptly and 43 percent reported a similar experience with INS.

**3. FACTORS AFFECTING SATISFACTION WITH THE BASIC PILOT PROGRAM**

***The usefulness of the Basic Pilot system is not the same for all employers.*** The differential appeal of the program to different employers is most likely one of the reasons that Federal officials found it difficult to recruit employers to the Basic Pilot program. An especially important factor affecting usefulness of the program is company size. Large pilot establishments were more likely to use the Basic Pilot than were small establishments. Establishments that used the system had, on average, hired over six times more employees in the 6 months preceding the survey than had non-users.

**B. ARE EMPLOYERS FULFILLING THEIR OBLIGATIONS?**

**1. EMPLOYER OBLIGATIONS**

The MOU specifies obligations for employers participating in the Basic Pilot. The MOU states that employers must verify all new employees within 3 business days. This means the Basic Pilot system should not be used for pre-employment screening of job applicants, screening of existing employees, or selective screening of new employees. Employers also agree to safeguard information received from SSA and INS, limit access to the computer containing the pilot system, post the Basic Pilot program notice in a prominent place, and inform employees of their rights, including the employer's commitment not to discriminate based on national origin and citizenship status.

When an employee receives a tentative nonconfirmation, employers agree to provide employees with a notice that describes their right to contest this initial finding along with a referral form to take with them to SSA or INS. During this time, employers may not take any adverse action against an employee such as delaying the start of work or training or reducing pay. Finally, the employer must check the Basic Pilot system for final resolution and must terminate employees who receive final nonconfirmation or inform INS or SSA that they are choosing not to terminate these employees. The employer is also required to file the final pilot verification results with the employees' I-9 forms.

## 2. FINDINGS

***Employers who sign an MOU with SSA and INS to use the Basic Pilot do not always use it.*** Of the employers who responded to the mail survey, only 75 percent reported that they were actually using the system at the time they completed the survey, while the remainder reported that they were not. The actual usage rate is probably even lower than this, since employers using the system were more likely to respond to the survey than were non-users. Large pilot establishments and those that hired more workers were generally more likely to use the Basic Pilot than were small establishments, suggesting that electronic verification may not be equally attractive to all employers.

***Employers do not always follow Federally mandated safeguards for the Basic Pilot program.*** There is evidence that employers are engaging in practices specifically prohibited by the Basic Pilot MOU. Some evidence of these problems is described in this section. Additional information is described in more detail in the next chapter.

***Pre-employment screening.*** Some pilot employers are prescreening job applicants. Among a sample of individuals classified on the transaction database as unresolved tentative nonconfirmations, 28 percent said that they did not receive a job offer from the pilot employer. These applicants were not informed that the employer was electronically verifying their employment authorization status. Consequently, they were denied not only jobs, but also the opportunity to resolve any inaccuracies in their Federal records.

***Adverse action.*** Employers sometimes take adverse actions against employees who receive tentative nonconfirmations. Thirty percent of pilot employers reported restricting work assignments while employees contest a tentative nonconfirmation. Among the 67 employees who decided to contest a tentative nonconfirmation, 45 percent reported one or more of the following adverse actions: were not allowed to continue working while they straightened out their records, had their pay cut, or had their job training delayed.

***Failing to safeguard pilot system information.*** The evaluation data indicated considerable differences among employers in their efforts to implement computer security. Over half of Basic Pilot employers had computers in rooms that could be locked, although many of these employers did not lock the room during business hours. Employers were generally more cautious about password security. At 70 percent of the establishments, the staff member responsible for verifying employees under the pilot had either memorized the password or stored it in a locked drawer or other secure location.

***Protecting employee privacy.*** Although the majority of employers appear to safeguard their employees' privacy, some employers did not exhibit the same level of concern. For instance, 15 percent of employees who were told about problems with their work authorization reported that they were not told in a private setting. Breaches in computer security and privacy may be attributable to a lack of training or employer concern for employee privacy or the impractical nature of the required level of security and privacy protections at that employer site.

*Missing Basic Pilot deadlines.* One complaint mentioned by 16 percent of employers about the Basic Pilot is that at times the number of employees hired is so great that it is impossible to submit the information required by the deadline of 3 business days from hire. This problem is exacerbated by the fact that some large companies with several locations conduct all pilot verifications at a central site.

*Failure to inform employees of their rights.* Employers do not always follow procedures designed to inform employees and prospective employees of their rights. Only half of establishments posted the required Basic Pilot program notice where job applicants could easily see it.

Basic Pilot procedures were also designed to protect employee rights to resolve verification problems. However, not all employers inform their employees of verification problems. It appears that 73 percent of the employees who should have been informed of work authorization problems were not. These employees were not aware that they had verification problems and were thus precluded from resolving these problems.

Further, employers did not always provide the printed Notice of Tentative Nonconfirmation that informs employees of their rights and responsibilities to resolve discrepancies under the Basic Pilot program. Nineteen percent of pilot employers reported that they did not always provide employees with a printed Notice of Tentative Nonconfirmation. Of the 67 employees who decided to clear up their work authorization problems, only 61 percent remember having received at least one of the Basic Pilot referral forms to visit SSA or INS. The differences in behavior reported by employers and employees may be attributable to employer reluctance to report that they were not following procedures and/or to employees forgetting they had received the written notice.

*Not terminating employment after receiving final nonconfirmation.* INS officials were not aware of any cases where an employer reported continuing the employment of persons receiving a final nonconfirmation. Yet, 44 percent of employees receiving a final nonconfirmation were still working for the employer when the survey was conducted, more than 6 months after they were hired. In some cases, there may be an explanation for this apparent discrepancy. Federal officials indicate that sometimes accurate closure information on an employee eventually found to be work-authorized is not entered into the transaction database. This is often because the case was resolved after the 10 Federal working day period, after which time cases cannot be updated on the system. In this situation, the system automatically classifies the case as a final nonconfirmation even if the employee eventually contacts the appropriate Federal agency and resolves the work authorization problem.

## C. ARE EMPLOYEES FULFILLING THEIR OBLIGATIONS?

### 1. EMPLOYEE OBLIGATIONS

While participation in the pilot is voluntary for employers, it is not voluntary for employees. However, employees have fewer obligations under the Basic Pilot program than do employers. All newly hired employees, whether working for a pilot or a non-pilot employer, are required to complete Section 1 of the I-9 form and to show the employer one or two pieces of the documentation listed on the I-9 as evidence of identity and authorization to work in the United States. This documentation must be valid and relate to the employee.

The 82 percent of employees verified under the Basic Pilot program without employee interaction are probably unaware of the pilot program, and there is no required pilot-related action on their part. Those employees for whom a finding of tentative nonconfirmation is returned to the employer must follow the instructions in the Notice of Tentative Nonconfirmation if they wish to resolve the discrepancy. This requires visiting a local SSA office or calling, faxing, or visiting an INS office within 8 Federal working days to resolve the discrepancies.

Separate from the pilot, Social Security number card holders have a responsibility to provide information to SSA to update any change in name and to correct errors in their record concerning date or place of birth or parents' names. The employment pilot programs as well as welfare reform provisions have also made it desirable that card holders notify SSA of changes in citizenship status. Failure to report these changes would presumably be reduced if the pilot were widely known or instituted on a larger scale.

### 2. FINDINGS

***Most employees present documentation that agrees with Federal databases.*** The Basic Pilot system confirmed the vast majority of employees (87 percent) as work-authorized. Only 1 percent of employees admitted to presenting a fraudulent document or a document that belonged to someone else. Cases determined to be unauthorized represented only 0.04 percent of the approximately 365,000 employees verified through the Basic Pilot system since the start of the pilot in November 1997. Therefore, the evaluation cannot say with any degree of confidence that all or even a large portion of cases that were unresolved due to lack of employer or employee action were due to the use of fraudulent documents. This issue will be discussed further in the following chapter.

***Most employees contacting SSA or INS receive work authorization.*** New employees with tentative nonconfirmation verification findings need to follow the instructions the employer provides to resolve the discrepancies identified in the Basic Pilot verification process. Only 1 percent of the employees who contacted SSA or INS were found to be not work-authorized.





## CHAPTER III. DID THE BASIC PILOT PROGRAM ACHIEVE ITS PRIMARY POLICY GOALS?

The intent of the employment verification provisions of the Immigration Reform and Control Act of 1986 was to establish a means through which employers can determine the work authorization status of persons they hire. This system was intended to be effective, nondiscriminatory, protective of privacy, and non-burdensome. The extent to which the Basic Pilot has met these four policy goals has been touched upon in the preceding chapter. This chapter discusses in more detail how well the Basic Pilot has achieved its policy goals.

### A. IMPACT OF THE BASIC PILOT ON EMPLOYMENT OF UNAUTHORIZED WORKERS AND THE REDUCTION OF FRAUDULENT CLAIMS OF CITIZENSHIP

#### 1. BACKGROUND

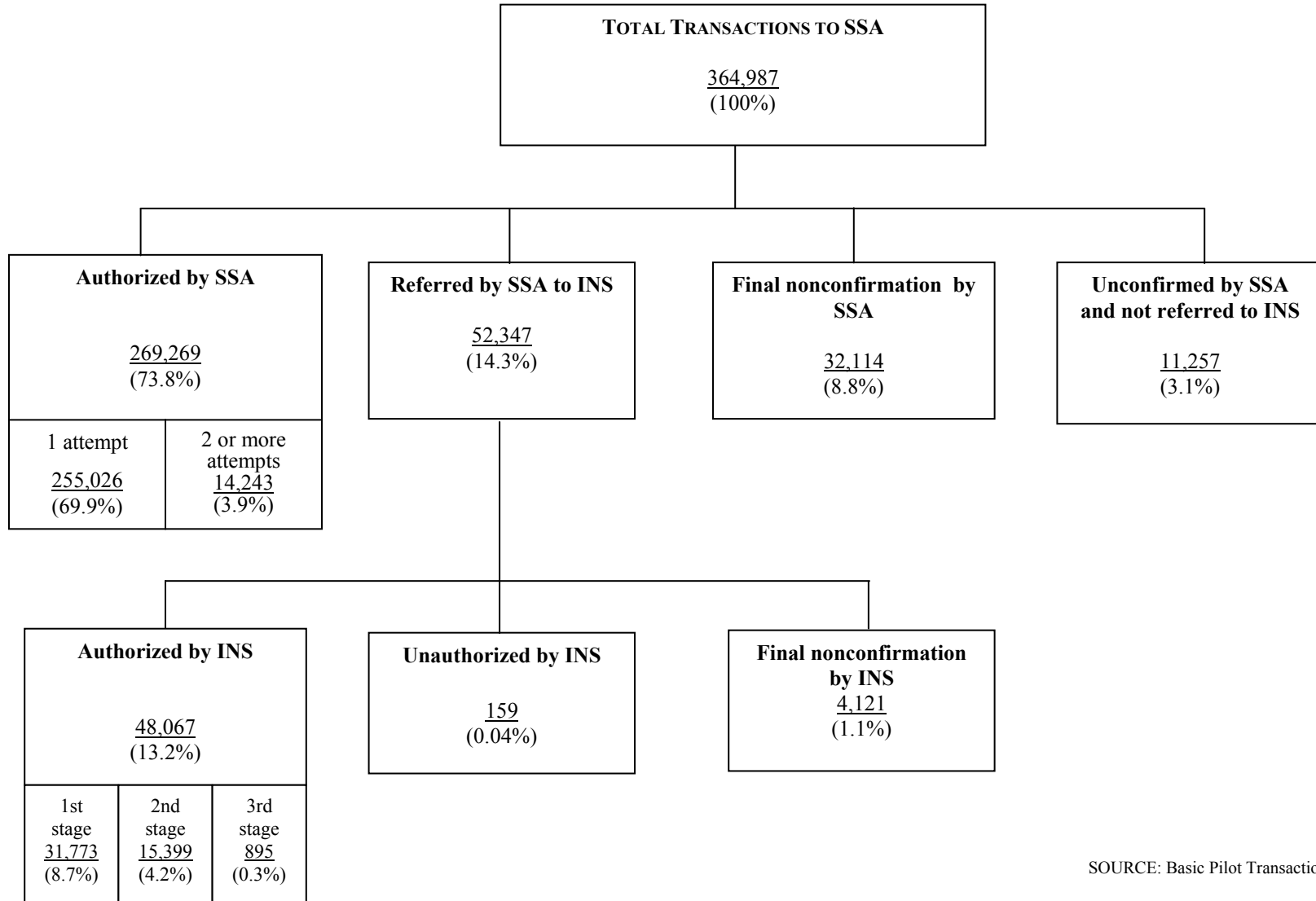
Since the Basic Pilot compares employee information with Federal database information, it would be expected to be better at deterring the employment of persons who present fraudulent documents and who make false claims to U.S. citizenship than the I-9 paper verification process alone. However, since the Basic Pilot is not designed to detect unauthorized workers who use either counterfeit or borrowed documents with valid information, the pilot would not likely be better than the I-9 system in this respect.

To obtain information on the effectiveness of the Basic Pilot at deterring the employment of unauthorized workers, the evaluation relied on several sources of information. These sources included analyses of the Basic Pilot database, the surveys of employers and employees, and SSA and INS record reviews for a small group of cases. The evaluation team also used these sources and assumptions about them to develop independent estimates of the number of undocumented workers in the pilot transactions. The results of Basic Pilot employment verification for the period November 1997 to December 1999 are presented in Exhibit 4.

#### 2. FINDINGS

*Some unauthorized workers were undoubtedly deterred from applying to pilot employers; however, the evaluation cannot provide good estimates of how often this occurs.* Employers participating in the Basic Pilot are required to prominently display pilot program and anti-discrimination notices in locations where job applicants and new employees will see them. It is reasonable to believe that some unauthorized workers see these notices or otherwise hear about pilot participation and avoid applying to Basic Pilot employers.

**Exhibit 4: Employment Verification Results for the Basic Pilot Program (November 1997-December 1999)**



SOURCE: Basic Pilot Transaction Database

There is no practical way to identify workers who would have applied to pilot employers if the Basic Pilot program had not been in effect, making it impossible to estimate the effect of the program on job applicants. In the mail survey, 64 percent of pilot employers agreed or strongly agreed with the following statement: “The number of unauthorized workers who apply for jobs decreases when the Basic Pilot verification system is used.”

***The Basic Pilot is able to confirm employment authorization for a majority of cases, but it does not capture the specific number of unauthorized workers among cases that were not resolved.*** The Basic Pilot confirmed the work authorization status of approximately 87 percent of all employees for whom employers entered information and found .04 percent of the individuals to be unauthorized. The 13 percent of cases that did not receive a final determination of authorizations status consisted of a sizeable number of workers who were authorized but for a variety of reasons did not straighten out their records with SSA and/or INS as well as others who were not authorized to work in the United States.

Having conclusive data on unauthorized workers from the Basic Pilot system would be a major benefit. However, the Basic Pilot is based on data systems that have inaccuracies and missing data, and it relies on voluntary compliance and cooperation from all pilot participants. As discussed in the previous chapter, there are many points in the verification process where employers, employees, and government officials introduce errors or fail to follow pilot procedures. When any one of these persons does not follow pilot procedures, the outcome of a particular case often cannot be determined. The cumulative effect of these inconsistencies is that the employment authorization status for most of the 13 percent of transactions with a final non-confirmation status is uncertain. These numbers also do not include impostors using either borrowed or counterfeit documents with valid information since such persons would appear to be work authorized in the Basic Pilot system.

***Additional detailed record checks on a portion of interviewed employees who had unresolved INS verifications from the Basic Pilot system provided information on their employment authorization status.*** In an attempt to obtain a better understanding of the cases for which the verification outcome was unclear, a sample of 95 cases of interviewed employees who had unresolved INS verifications (called final nonconfirmations by INS) was examined. This analysis found that a sizeable portion of these employees (42 percent) were work-authorized at the time of the verification. In close to half of those cases, employers had made keying errors. The analysis also found that the worker was most likely not authorized to work in the United States in almost a quarter of the cases. The status of the remaining third of the 95 cases could not be established using the information available from the Basic Pilot, usually because INS-issued identification numbers (“A-numbers”) were missing. Although this analysis confirms that the final nonconfirmation categories include both work-authorized and non-work-authorized cases, it cannot be used to estimate the percent of all final confirmation cases that are work-authorized because it is only representative of a small sub-group of the unresolved cases and thus not representative of all unresolved cases. Most importantly, it excludes the 91 percent of unresolved cases that were never sent to INS.

***The evaluation team estimated the number of unauthorized workers that would have been found by the Basic Pilot if the work authorization status of all employees had been resolved.*** The evaluation team developed a procedure to estimate the total number of unauthorized workers verified by Basic Pilot employers. To do this, the team used data from the transaction database, as well as information on employer and employee behavior from evaluation surveys, to reassign cases that were not resolved by SSA or INS into the employment authorized and unauthorized categories.

Using reasonable assumptions about the rate at which employers notified employees of the tentative nonconfirmation finding and the percentage of employees that contested the finding, the model estimates the total number of work-authorized individuals among the final nonconfirmation cases. Through this methodology, the model assigns outcomes for those final nonconfirmation cases where employees never contacted SSA or INS. Once the number of work-authorized employees is estimated, the number of unauthorized employees is readily derived since there are only two possible outcomes when all cases are resolved – work authorized or not work-authorized.

Using this model, the evaluation team estimates that 10 percent of all cases submitted to the Basic Pilot system for determination of work-authorization status represented individuals who were not authorized to work at the time they were hired. As expected from the 95-case review that indicated some final nonconfirmation cases are work-authorized, this is lower than the 13 percent final nonconfirmation outcomes reported by the Basic Pilot system. However, this estimate relates only to Basic Pilot employer verifications at the time of the evaluation. Because employers participating in the Basic Pilot are in States and industries with greater than average numbers of undocumented immigrants, the percentage of unauthorized workers elsewhere would likely be considerably lower. On the other hand, this estimate does not include workers using counterfeit or borrowed documentation with valid information, which would not be detected by the Basic Pilot system.

***The evaluation found evidence that workers with fraudulent documents containing valid information were confirmed as work-authorized by the Basic Pilot.*** Only 1 percent of pilot employees admitted to presenting a false document or a document that belonged to someone else. Based on information from the employee interview, 11 foreign-born employees who received a confirmation of work authorization through the Basic Pilot system reported that they were not authorized to work in the United States. Of these, eight employees reported that they presented fraudulent documents containing valid documentation to the employer.

***Employers reported encountering more fraudulent documents than documents that do not belong to the person presenting them.*** Almost three-quarters of pilot employers (73 percent) reported that they had encountered at least some counterfeit documents over the past year, while 59 percent reported detecting identity fraud. It is impossible to know whether these numbers accurately reflect different rates of these activities or the relative difficulty of detecting identity fraud compared to fraudulent documents that will not check out through the Basic Pilot verification.

***The level of false attestation to U.S. citizenship detected is low.*** Of the 2,933 I-9 forms sampled from pilot employers and matched to the basic Pilot transaction database, close to 97 percent showed the same citizenship status as the transaction database. One percent of cases showed noncitizen on the I-9 but U.S. citizen in the transaction database; these cases most likely reflect mistakes in checking the citizenship box. Two percent of the I-9 forms indicated U.S. citizenship while the transaction database showed noncitizen status. This discrepancy between the I-9 form and the transaction database may have several causes, including a change in citizenship status not reflected in the SSA database, an honest mistake in checking the wrong citizenship box, or false attestation to U.S. citizenship. However, the very fact that the Basic Pilot checks employee information for all workers, citizen and noncitizen alike, may serve as a deterrent to employees who might otherwise try to falsely claim citizenship.

## **B. IMPACT ON REDUCING DISCRIMINATION**

### **1. BACKGROUND**

As noted above there is evidence that some Basic Pilot employers violate the MOU provision that they will not discriminate “unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin, or in the case of a protected individual ...because of his or her citizenship status.” However, this provision does not impose new restrictions on pilot employers. It simply reiterates laws applicable to all, which non-pilot employers undoubtedly also violate. This section, therefore, focuses on the question of whether pilot employers are more or less likely to discriminate than are non-pilot employers. Related issues such as determining the level of employment discrimination in this country and the impact of I-9 employment verification on discrimination are beyond the scope of this evaluation.

Discrimination is defined as adverse treatment of individuals based on group identity. In employment, discrimination refers to differential treatment based on characteristics, such as citizenship status, that are unrelated to productivity or performance. Discrimination can occur because the employer intentionally treats members of a protected group differently than others. However, it can also occur unintentionally if employers’ actions have disparate impact on protected group members.<sup>8</sup>

Employment discrimination can occur at all stages of employment, including recruitment, hiring, placement, compensation, training, evaluation, disciplinary action, treatment on the job, and dismissal. Since the Basic Pilot procedures primarily affect recruiting, hiring, and the initial post-hiring period, this section of the report focuses on the effect of the Basic Pilot program during these initial stages of the process.

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<sup>8</sup> Title VII of the 1964 Civil Rights Act defines two major types of employment discrimination, *disparate treatment* and *disparate impact*. This report refers to these as *intentional* and *unintentional*.

The Basic Pilot program was intended to reduce discrimination that was occurring in the I-9 verification process. Based on the recommendations of the General Accounting Office (GAO), the Commission on Immigration Reform, and others, policymakers designed the Basic Pilot system to treat employees as equally as possible regardless of citizenship or immigration status. Additionally, policymakers decided that naturalized citizens should be treated exactly the same as native-born citizens. For example, if someone claims on an I-9 form to be a citizen and SSA records do not provide verification of the claim, the person is asked to resolve the tentative nonconfirmation with SSA rather than with INS.

Notwithstanding the intent of the framers of the Basic Pilot program to reduce discrimination, there were concerns that the Basic Pilot would, in fact, have the opposite effect. For instance, inaccuracies in the SSA and INS databases could result in some work-authorized persons being incorrectly identified as not work-authorized. Since these persons would most likely be disproportionately foreign-born, this would result in unintentional discrimination against foreign-born individuals. The failure of some employers to follow pilot system procedures could also result in increased discrimination. For example, employers could take adverse actions against employees who receive tentative nonconfirmations.

## 2. FINDINGS

As detailed below, there is evidence from the evaluation supporting both the contention of the pilot program framers that the pilot would reduce discrimination by making employers more comfortable in hiring foreign-born or foreign-appearing individuals and the concern that the pilot program is likely to introduce discrimination into the hiring process and the treatment of new employees.

***Employers report that the Basic Pilot program makes them more confident in their ability to determine the work authorization status of new employees and more willing to recruit and hire immigrants, thus reducing discrimination.*** Underlying the view that the Basic Pilot would decrease discrimination is the premise that the Basic Pilot program would result in employers being more confident in their ability to determine the work authorization status of new employees. This premise was supported by the results of the employer mail survey. Ninety-four percent of employers agreed or strongly agreed that “Work authorizations obtained through the Basic Pilot verification system are more reliable than the earlier process.” Forty-five percent of Basic Pilot employers interviewed on-site said that the Pilot program makes employers more willing to hire immigrants, compared to 5 percent who claimed that the pilot made them less willing. The remaining pilot employers said the program made employers neither more nor less willing.

Pilot employers also reported greater representation of immigrants in their hourly work force than did non-pilot employers. However, it is quite likely that at least some of the difference between pilot and non-pilot employers is attributable to pre-existing differences in the immigrant workforce, since employers with a large number of immigrant workers are more likely to find the Basic Pilot program attractive.

***The evaluation did not find conclusive evidence that documented increased hiring of immigrants.*** In the mail survey, pilot and non-pilot employers were asked whether they target recent immigrants and specified racial/ethnic minorities. Although 11 percent of pilot employers claimed that they recruited new immigrants compared to 7 percent of non-pilot employers, the difference was not statistically significant. There was also not a statistically significant difference in the percentage of pilot and non-pilot employers who reported an increase in the percentage of immigrants in their workforces (8 percent compared to 14 percent) during the preceding year.

***Failure to follow Basic Pilot procedures resulted in increased discrimination in the treatment of foreign-born individuals compared to native-born individuals.*** One source of increased discrimination was failure to comply with the MOU provision prohibiting employers from taking adverse actions against employees while they are resolving tentative nonconfirmations. Employees receiving tentative nonconfirmations are disproportionately foreign-born. Non-pilot employees do not go through a similar verification process to resolve a tentative nonconfirmation.

As discussed above, 30 percent of pilot employers reported that they limited work assignments during this time period. Similarly, a substantial percentage of interviewed employees who contested a tentative nonconfirmation finding said that their employers had not allowed them to continue working while they straightened out their records or had taken other adverse actions against them. According to staff of the Office of Special Counsel (OSC) at the time the evaluation was concluding, they had received nine recent complaints that included a charge that an employee was harmed or would potentially have been harmed because of post-hiring practices at a Basic Pilot company. In four of these cases, the complaint focused on problems pilot employees had with Federal employees.

***Although failure to comply with the MOU provision prohibiting employers from prescreening employees leads to discrimination, the level of discrimination does not necessarily increase due to the pilot, since non-pilot employers may also be prescreening.*** Since employers are not supposed to verify anyone until after they are hired, there should be no cases in which employees reported that they were never offered a job. Among interviewed individuals who received a tentative nonconfirmation from the Basic Pilot system, 23 percent said that they were not offered a job, compared to 13 percent among those who were confirmed immediately.

OSC staff also told the evaluators about a Basic Pilot employer case in which pre-employment screening was alleged. However, it is difficult in examining these cases to distinguish between discrimination caused by the Basic Pilot and discriminatory activity that would have existed without the program.

***The evaluation found no evidence that Basic Pilot employers were using the pilot to selectively verify new employees on the basis of citizenship, or employees other than new hires.*** Comparison of I-9 form data with information on the transaction database indicates little difference in citizenship attestation between employees whose I-9 forms were

verified through the Basic Pilot system (62 percent were U.S. citizens) and employees whose forms were not verified through the system (64 percent were U.S. citizens). Based on the analysis of I-9 forms, there was also no evidence that employers were verifying existing employees.

***The evaluation found no evidence of differences between pilot and non-pilot employers on other types of employment-related discrimination.*** The evaluation did not find differences on items such as asking discriminatory questions, requesting I-9 forms prior to hire, or requesting extra documents to verify work authorization.

### 3. NET IMPACT OF THE BASIC PILOT ON DISCRIMINATION

***Given the contradictory effects of the Basic Pilot program on discrimination, it is not possible to determine whether the net effect of the current Basic Pilot program on discrimination is an increase or a decrease in discrimination.*** The dilemma is perhaps best illustrated by hypothetical examples. First, consider an employer who has discriminated against immigrants in the past out of fear that INS may penalize him if foreign-appearing employees with ostensibly valid documents are, in fact, unauthorized. This employer believes that the Basic Pilot system makes it unlikely that he will inadvertently hire someone without work authorization. Because of this increased confidence, he hires a foreign-looking person whom he would not previously have hired. This person happens to be a work-authorized individual whose INS record has not been updated to reflect a recent extension of work authorization. When this employee is not immediately authorized by the system, the employer restricts his training until the employee contacts INS and his record is updated.

Suppose now that the employee in the preceding example had been fired rather than having his training postponed. Further, suppose he had turned down another job in order to take this one. In this scenario, the employee is probably disadvantaged because of the Basic Pilot program.

There is, of course, not a simple metric that can be used to determine how much discrimination was actually experienced by the individual in each of the two scenarios. This prevents the evaluation from determining the net impact of these contradictory effects.

***Discrimination engendered by the Basic Pilot program would have been less if Federal databases were more up-to-date and accurate.*** In the above example, if the person's INS records had been up-to-date, the employee would have reaped the benefits from the program without the subsequent discrimination and the net result of the Basic Pilot program would clearly have been a decrease in discrimination. Similarly, the number of work-authorized prescreened employees not offered jobs after receiving a tentative nonconfirmation would have been lower if the Federal databases were more up-to-date and accurate.



## C. IMPACT ON EMPLOYEE PRIVACY

### 1. BACKGROUND

Another goal of the Basic Pilot was to provide a verification system that protects the privacy and confidentiality of employees. The Basic Pilot system was, therefore, designed to protect the confidentiality and privacy of employee information entered into and accessed from the pilot system and against unauthorized use of the system at both the Federal and work site levels. These protections are in addition to the multiple barriers both SSA and INS employ to prevent unauthorized external access to their systems. This section summarizes the findings of the evaluation on privacy and confidentiality of information.

### 2. FINDINGS

***There is little increased risk of misuse of information in the Basic Pilot program by Federal employees.*** It is unlikely that Federal employees or contractors will misuse pilot information for unauthorized purposes since they already have access to other databases with considerably more information. Therefore, use of the pilot system increases the risk of improper disclosure or use at the Federal level only to the extent that it slightly increases the number of Federal employees and contractors who have access to systems information.

***Safeguards are built into the Basic Pilot system to protect against employer abuses of the system.*** Significant attention was given in the design of the Basic Pilot to safeguard against unauthorized employer access to the Basic Pilot system. This protection is realized through a series of requirements. First, employers must install the pilot system on a non-networked computer. Second, employers are assigned an establishment-level access code and individual user IDs. Each person trained and authorized to verify employees using the pilot system must change passwords regularly. By these means, the authentication of user information can be tied to a specific employer and user.

Employers are given minimum information through their access to the Basic Pilot. The only new information the Basic Pilot provides is current work authorization status. Employers actually input from the I-9 form all the other information the system returns along with the work authorization status. Moreover, employer access to the Basic Pilot system is through a “read only” file, making it impossible for an employer to access or change any information contained in a Federal database.

***There is greater risk of unauthorized disclosure of employee information at pilot establishments.*** Failure of employers to follow all of the computer security procedures is a concern. Although most Basic Pilot employers maintain password security and limit access to authorized users, evidence from on-site visits to a sample of establishments as part of the evaluation suggests that not all employers follow the basic security procedures. Although 60 percent of employers kept the computer used for the pilot in a room that could be locked, over a third of those (38 percent) were not locked during normal business hours.

Almost half of employers kept the instructions for using the pilot in plain sight; only 22 percent kept them in a locked or secured location. Although in 70 percent of the cases the person using the pilot system had memorized the password or kept it in a secure location, in 9 percent of establishments the password was in clear view. Therefore, in a small proportion of establishments, access to the computer with the pilot system along with availability of the pilot instructions and password allowed potential use of the computer by unauthorized persons. Although there was no direct evidence of breaches of this type, the potential exists for unauthorized access and violations of employee confidentiality.

Employers may also violate employees' privacy by not being sensitive to the need to be discreet in discussing verification problems with their employees. Based on interviews with a sample of pilot employees, 61 percent reported that they were informed of problems with their employment documents in private with no one else around. Among employees who were told they had a tentative nonconfirmation finding, 84 percent said they were informed in private with no one else around. Although the majority of employers would appear to be following good fair-information practices, the above information suggests that some employers are violating employees' rights to privacy.

***Previous pilot system design made it possible for unauthorized access and manipulation of employee information at the employer's site.*** Security checks conducted as part of the evaluation found that a user with an intermediate knowledge of computers could access a file maintained on an employer's computer and obtain the user ID and password needed to access the Basic Pilot system. Access to this unencrypted information could allow an unauthorized user to gain access to confidential information.

Additionally, the evaluation found that a moderately competent computer user could open the database on the employer's computer that stores the unencrypted information from system queries on new hires. Not only could this information be viewed, but evaluation testing also found that the information either input by the employer or the work authorization status provided by the Basic Pilot system could be changed and saved in the employer's computer. Through such means, an unauthorized worker's record could be altered from unauthorized to authorized, or vice versa, and a printed record with the misinformation could be recorded in the employee's file as the official verification record. Although the information would be changed only on the employer's computer and not on the Basic Pilot database or in the SSA or INS records, the lack of encryption of information provided an opportunity for falsification of employer records. There is no indication that such breaches occurred. INS corrected this problem immediately upon being informed.

#### **D. IMPACT ON BURDEN AND COST**

One of the objectives of the Basic Pilot program is to avoid unnecessary burden on employers.

## 1. EMPLOYER BURDEN

***Employers characterize the I-9 process and employment verification procedures as less burdensome after they implemented the Basic Pilot.*** Employers were asked to rate the I-9 process and employment verification procedures they had used before the pilot and those used at the time of completing the survey under the Basic Pilot program. The reported burden under the Basic Pilot program was significantly less than it had been prior to implementing the pilot. The percentage of employers who rated the Form I-9 process and the employment verification procedures as “not at all burdensome” increased from 36 percent before they implemented the pilot to 60 percent after they had implemented it because of the greater certainty it provided them. Ninety-three percent of employers indicated that the Basic Pilot process is easier than the I-9 process, and 92 percent reported that it did not overburden their staff. These results should be interpreted with caution since it is likely that employers were predisposed to be favorable to the pilot program since they had volunteered to participate.

***The Basic Pilot removes uncertainty regarding work authorization.*** Eighty-three percent of employers reported that the Basic Pilot reduced uncertainty regarding work authorization. By maintaining a workforce made up of authorized employees, employers are less burdened by loss of unauthorized employees if they are faced with an INS worksite enforcement action.

## 2. CURRENT BASIC PILOT PROGRAM COST

In the preceding sections, the report discussed the extent to which the pilot was implemented as planned and whether it met its intended goals. Also relevant to any overall assessment of the Basic Pilot program are the costs incurred, which will be examined in this section.

All the cost figures in this section must be viewed as estimates. Although much of the cost information provided by Federal officials is based on actual financial records, subjective judgments often had to be made in how to allocate costs between the Basic Pilot program and other related programs. The cost information provided by employers is sometimes based on actual records and sometimes on best estimates. Most of the employee estimates are best-guess estimates.

### ***a. FEDERAL GOVERNMENT COSTS***

INS officials estimate that the Federal government spent approximately \$9.6 million on the Basic Pilot program between November 1997 and April 2000. These costs can be broken into two broad types:

- Start-up costs, such as development of manuals and software, of \$2.3 million; and
- Annual operating costs of slightly less than \$2.3 million or \$7.3 million in total.

Annual operating costs were further broken down into fixed annual costs and costs that vary with the size of the Basic Pilot program. The single largest operating expense to date has been annual fixed expenses of nearly \$1 million dollars for INS Headquarters staff responsible for developing policy and technical systems for the Basic Pilot program. Variable costs were estimated at \$212 for each new establishment recruited into the program, plus \$47 ongoing expenses per year for each participating establishment.

The second largest annual operating expense to date has been INS field office costs that were estimated to be \$825,000 for the pilot period. This breaks down to estimated costs of \$1,000 per INS district office to manage the Basic Pilot, \$6 for each case sent to INS for manual verification, and \$2 per participating establishment to answer employer questions.

The third most costly component of Federal operating costs was for SSA salaries and expenses. The evaluation team estimated annual fixed costs to be \$50,000. Costs per case and costs per establishment were estimated to be the same as for INS, \$6 per case referred to SSA and \$2 per participating employer.

Another category of cost is related to the automated system and varies directly with the number of queries to the database. Each query costs \$0.28. Annual fixed costs are estimated to be approximately \$2,600.

#### ***b. EMPLOYER COSTS***

On average, employers reported that they spent a little under \$800 for start-up costs, with 62 percent spending less than \$500. Over 90 percent of employers reported that they spent less than \$2,500. The most frequently mentioned specific start-up costs were for training, telephone hook-up, and computer hardware costs.

Not all costs associated with a new system are easily quantifiable. Employers also incur indirect costs such as reassignment of employees, additional recruitment, and delayed production. Nearly 90 percent of the establishments reported that these indirect costs were either not a burden or were only a slight burden.

Employer annual operating costs for the Basic Pilot averaged approximately \$1,800, with about 85 percent of employers spending less than \$3,500, and over half spending less than \$500. Most costs were related to telephone charges, computer maintenance, wages for verification staff, and training for replacement staff.

#### ***c. EMPLOYEE COSTS***

Based on analysis of the transaction database and confirmed by employee interviews, approximately 4 percent of pilot employees (67) contacted SSA or INS to resolve problems with their work authorization status. Few of these employees reported spending money to clear up their work authorization problems. For these, the estimated average costs was approximately \$335. These monetary costs are relatively low and reflect resolution of problems that may have needed to be done even if there was no pilot. Nevertheless, resolving work authorization status is a tangible cost for employees usually

involving a visit to an SSA office or contacting INS by telephone or fax. Nearly all (approximately 95 percent) used personal time or time off from work, of which almost half reported resolution taking about a half a day.

Some employee burden appears to have occurred because employers did not follow required procedures. As discussed earlier, employees reported three major problems in interviews:

*Loss of work.* Some work-authorized individuals were screened through the pilot prior to hire and denied employment after the employer received a tentative nonconfirmation. Also, 45 percent of pilot employees who contacted SSA or INS to resolve work authorization problems reported that they were not allowed to continue working while they corrected the problems.

*Pay cuts and training delays.* Eighteen percent of pilot employees who were told they had work authorization problems reported that their pay was cut while they corrected them, and 29 percent reported that their job training was delayed.

*Not providing appropriate follow-up forms.* Pilot employees and employers both reported that referral forms for resolving status questions are not always given to individuals who decide to resolve work authorization problems. Fewer than half of the employees who were informed of tentative nonconfirmations remember being shown the notice.



## CHAPTER IV. OPTIONS FOR THE FUTURE

Recommendations on whether the Basic Pilot should be continued or modified are a part of the IIRIRA mandate for responding to Congress. Before presenting such recommendations, this section explores various possibilities for continuation or expansion of electronic verification of work authorization and their relative advantages and disadvantages.

### A. COSTS FOR CONTINUING OR EXPANDING THE BASIC PILOT PROGRAM

In considering how electronic verification could be expanded, four alternative approaches were explored:

- *A mandatory national program for all employers,*
- *A mandatory national program for large employers only,*
- *A voluntary national program open to all employers, and*
- *A voluntary enhanced pilot program open to employers in selected States.*

The cost estimates developed for these alternative systems are based on the current costs for the Basic Pilot as reported earlier. Thus, both the current and projected figures are based on data collected and best-guess estimates. These costs would change as the projected numbers of participating employers change. Small changes in cost elements could produce large differences in total costs if the verification program were to undergo a significant expansion.

The number of establishments expected to be involved and the estimated *annual operating costs* for these alternative programs are summarized in Exhibit 5.

#### Exhibit 5: Summary of Estimated Annual Operating Costs of Alternative Programs

<b>Program</b>	<b>Expected No. of Establishments (in thousands)</b>	<b>Expected No. of Employees (in thousands)</b>	<b>Total Costs (in millions)</b>
Current Basic Pilot program	0.7	826	\$6
Mandatory national, for all employers	6,228.3	108,118	\$11,725
Mandatory national, for large employers with			
10+ employees	2,533.1	95,890	\$4,949
50+ employees	1,425.0	76,525	\$2,863
1,000+ employees	812.2	47,506	\$1,646
Voluntary national, for all employers	1.4	1,672	\$11
Voluntary enhanced, in selected States	1.4	1,672	\$10

SOURCE: Estimated by the evaluation team.

## **B. ADVANTAGES AND DISADVANTAGES OF ALTERNATIVES**

Each of the above alternative programs has advantages and disadvantages, which were assessed by the following common criteria: their likely effects on undocumented immigration and employment, system capabilities, likely compliance, acceptability, and cost.

### **1. EFFECTS ON UNDOCUMENTED MIGRATION AND EMPLOYMENT**

Limited scope programs could reduce the employment of unauthorized workers at participating establishments. However, the impact of these limited programs is likely to be small as long as there are alternate employment opportunities with non-participating employers.

### **2. SYSTEM LIMITATIONS**

SSA and INS are currently capable of handling either of the voluntary programs described here, or some other program of limited scope. Neither agency is currently capable of enrolling and administering a program for the hundreds of thousands of employers in any of the large mandatory programs explored here. It is estimated that it would take several years to develop and implement such a system.

### **3. LIKELY EMPLOYER COMPLIANCE**

Employer compliance would be expected to be highest for the voluntary programs, since employers would be choosing to participate. Employers reported that companies that employ a large number of immigrants or unskilled laborers, or large companies, are likely to benefit the most from the pilot. Compliance for the mandatory programs would most likely be poor unless there was a high probability of being monitored and penalized for noncompliance. As noted in the sections above, lack of compliance is a major source of discriminatory impacts and risks to the confidentiality of employee work status information in the current pilot.

### **4. ACCEPTABILITY**

Currently, participating employers in the voluntary programs would likely be very receptive to the programs. Small employers are likely to be more resistant to electronic verification, because the perceived need is less and the cost is unlikely to be justified. The mandatory programs in particular are likely to meet with high resistance from employers and others opposed to Federal regulation of business and from employee rights groups concerned about the possible infringement of immigrant civil rights.



## 5. COST

The cost of the national and large employer programs is extremely high for the government, employers, and employees based on current cost estimates of approximately \$11.7 billion annually for a mandatory national system for all employers. Although the cost for the program involving only the very largest employers with over 1,000 employees would be significantly lower than a national mandatory program, any theoretical impact on undocumented migration would also be lower. System efficiencies and other recommended program modifications can be expected to reduce the cost of the programs from the projections in this report. If recommended modifications are made to increase the accuracy and timeliness of the databases, cost per employee will decrease.



## CHAPTER V. RECOMMENDATIONS

*Based on the evaluation findings, the Basic Pilot program should not be expanded to a mandatory or large-scale program. However, INS and SSA should continue to test, on a pilot basis, effective ways to address the deficiencies of the current Basic Pilot program and the data supporting it.* Most employers using the Basic Pilot program claimed it made them more confident of their ability to identify unauthorized workers without placing significant burdens on employers. However, it is likely that pilot employers were predisposed to be favorable toward the program since they had volunteered to participate. The level of acceptance observed in the pilot would not be anticipated if the program were made mandatory for any segment of employers.

The evaluation uncovered sufficient problems in the design and implementation of the current program to preclude recommending that it be significantly expanded. Some of these problems could become insurmountable if the program were to be expanded dramatically in scope. The question remains whether the program can be modified in a way that will permit it to maintain or enhance its current benefits while overcoming its weaknesses. The evaluation team therefore recommends that INS and SSA test a revised version of the Basic Pilot program designed to meet these goals. Although the original legislative authority for the pilot ended on November 30, 2001, 4 years after implementation, Congress extended this authority for an additional 2 years.<sup>9</sup>

INS is developing the capability to use Web-based technology in benefit program verification. This approach should be explored for use with an enhanced Basic Pilot system. Increased use of Web technology has the potential to reduce Federal and employer costs significantly and to lead to a more cost-effective system. Further, such an approach could presumably solve some of the problems employers have had with the hardware and software required by the current Basic Pilot system. INS and SSA should, therefore, continue to develop such an approach for testing with employment verification. However, implementation of the other improvements emanating from the evaluation is also important.

### DATA QUALITY IMPROVEMENTS

All pilot queries first go to SSA for verification. INS is then involved in approximately 14 percent of all Basic Pilot verifications, and because the INS electronic database is not current, about one-third of these INS cases require manual verification by specially trained personnel. These manual searches are expensive, do not always yield reliable results, and lengthen the time needed to complete the employment verification process. Moreover, data inaccuracies exacerbate the problems that arise when employers deviate from acceptable Basic Pilot procedures by using the electronic verification system to prescreen job applicants, by not informing employees of a tentative nonconfirmation finding, and by

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<sup>9</sup> The President signed P.L. 107-128 on January 16, 2002.

taking inadequate precautions to safeguard the security of the pilot system and the privacy of employees.

An important requirement for improving INS data systems is to provide for more timely and reliable entry of status information into INS databases. Some of the current systems are antiquated, inefficient, and error prone. INS is currently taking both policy and operational steps to improve the accuracy and timeliness of data and its entry into databases.

### **BASIC PILOT SYSTEM IMPROVEMENTS**

An effective automated employment verification system would also require improvements in training and system software, quality assurance mechanisms, and technical support to employers.

*Improving Training and System Software.* Improvements need to be incorporated into the Basic Pilot to reduce discretion in how employers use the system and the extent to which they follow pilot procedures designed to protect employee rights. These improvements can be made in part by more effective employer training. Additional feedback mechanisms and a training program incorporating Web-based approaches could incorporate mechanisms to make employers aware of common problems that lead to work authorized employees receiving tentative nonconfirmations and ways to avoid them. System program changes are also needed to increase checks on name variations and perform edit and consistency checks of the data entered by the employer.

*Incorporating Quality Assurance Measures.* The analysis and monitoring of information from the transaction database for quality control purposes is critical. Periodic reports are needed to identify information that suggests that employers may not be using the system correctly and to summarize general trends in verification requests. A mechanism providing feedback of these findings to employers is also essential.

*Improving Employer Technical Support.* Additional technical support and customer service is needed. The problems encountered with printing, connecting to the system, passwords, problematic software, and slow connections need to be resolved. Moreover, technical support to employers could be conducted more efficiently.

## GLOSSARY

Term	Definition
<b>Authorized worker</b>	An individual who is allowed to work legally in the United States.
<b>Basic Pilot program</b>	The first of three pilot projects for employment verification mandated by Congress in the Illegal Immigration Reform and Immigrant Responsibility Act. It verifies the status of all newly hired employees employed by participating employers in six States.
<b>Citizen</b>	A person owing loyalty to the protection of a particular State, usually by virtue of birth or naturalization. Generally used in the report to mean a U.S. citizen.
<b>Citizen Attestation Verification Pilot (CAVP)</b>	The second of three pilot employment verification projects mandated by Congress in the Illegal Immigration Reform and Immigrant Responsibility Act. The CAVP differs from the Basic Pilot in that employees who attest to being U.S. citizens are not verified by the pilot system.
<b>Database</b>	An electronic catalogue of information.
<b>Discrimination</b>	Adverse treatment of individuals based on group identity. In employment situations, discrimination is defined as differential treatment based on individual characteristics, such as race or gender, that are unrelated to productivity or performance.
<b>Employment authorized</b>	The designation that an employee is authorized to work in the United States. Persons authorized to work include U.S. citizens and nationals and noncitizens in various employment-authorized statuses.
<b>Employment verification</b>	Process of verifying authorization to work in the United States.
<b>Employment Verification Pilot (EVP)</b>	One of the early verification pilot programs instituted under the demonstration authority of the Immigration Reform and Control Act of 1986, as authorized under Executive Order 12781, dated November 20, 1991. This pilot verified the employment status of noncitizens only.
<b>Establishment</b>	A location where an employer's business is conducted. A single employer can have many establishments.
<b>Final nonconfirmation</b>	A result on the transaction database indicating that the employee's work eligibility was not established because the employee or the employer did not take the necessary action to resolve a tentative nonconfirmation. This result is only issued by the Basic Pilot system after the employer has been notified of a tentative nonconfirmation response.
<b>Foreign-born</b>	An individual who was born outside of the United States. American citizens can be foreign-born, either because they were born abroad to at least one parent of U.S. citizenship or because they were naturalized or derived U.S. citizenship through their parents.

## GLOSSARY (continued)

Term	Definition
<b>Fraudulent documents</b>	Identity and/or employment authorization documents that are counterfeit or are legitimate but have been altered to change the identifying information or images to represent another person.
<b>I-9 form</b>	The INS form employers use to verify the work authorization status of all newly hired workers in the United States. The form was developed following passage of the Immigration Reform and Control Act of 1986.
<b>Illegal alien</b>	A noncitizen who has not been lawfully admitted to the United States or who has violated the terms of his/her lawful admission. (See also <b>Undocumented immigrant</b> .)
<b>Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)</b>	A major immigration law enacted on September 30, 1996. Among other things, IIRIRA mandated that INS conduct and evaluate three pilot verification programs, including the Basic Pilot program.
<b>Immigrant</b>	A noncitizen who has been granted permanent lawful residence in the United States. Immigrants either obtain immigrant visas at consular offices overseas or, if a visa number is immediately available, adjust status at INS offices in the United States. Also refers to an individual who has moved to a new country with the intent of remaining there for 1 year or more. (See also <b>Lawful permanent resident alien</b> .)
<b>Immigration Reform and Control Act of 1986 (IRCA)</b>	A major immigration law enacted on November 6, 1986, to gain control over legal immigration. It provided for the legalization of certain long-term undocumented aliens and agricultural workers, increased border enforcement, and made it unlawful to hire undocumented workers. It also required that U.S. employers verify the identity and work authorization status of all persons they hire.
<b>Immigration Status Verifiers (ISVs)</b>	The group of INS field office employees who verify immigration status for benefits agencies and pilot employers. One of their functions is to verify the status of individuals receiving a tentative nonconfirmation from INS.
<b>Indirect costs</b>	A cost that is not identifiable with a specific function, product, or activity. For example, indirect costs associated with setting up the employment verification program can include reassignment of employees, additional recruitment, and delayed production.
<b>Lawful permanent resident</b>	A noncitizen who is a permanent legal resident of the United States. A green card holder. (See also <b>Immigrant</b> .)
<b>Machine-Readable Document Pilot (MRDP)</b>	Pilot mandated by the Illegal Immigration Reform and Immigrant Responsibility Act. The MRDP is identical to the Basic Pilot except that a machine-readable driver's license is used to enter employee information into the computer. The pilot is being tested only in Iowa.

## GLOSSARY (continued)

Term	Definition
<b>Memorandum of Understanding (MOU)</b>	A signed document in which an employer agrees to abide by the provisions of the pilot program and in which INS and SSA agree to provide certain materials and services.
<b>Non-pilot employer</b>	An employer who is not participating in the Basic Pilot program.
<b>Notice of tentative nonconfirmation</b>	The printed form a pilot employer provides notifying the employee that a tentative nonconfirmation has been issued by the verification system and informing the employee of his/her rights and responsibilities with respect to resolving the problem. The employee must sign the form, indicating whether he/she wishes to contest the finding.
<b>Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC)</b>	Office established in the U.S. Department of Justice by the Immigration Reform and Control Act of 1986 to provide remedies for immigration-related discrimination related to employer sanctions and employment verification. The office provides a mechanism for dealing with discriminatory employment practices, including hiring and discharge from employment based on citizenship status or national origin.
<b>Operating costs</b>	Recurring costs associated with program operations.
<b>Operator error</b>	An entry incorrectly keyed into an employment verification database by an employer.
<b>Pilot employee</b>	An individual working for a Basic Pilot employer.
<b>Pilot employer</b>	An employer that has signed a Memorandum of Understanding agreeing to participate in the Basic Pilot program. Not all of these employers are actively using the system at any point in time.
<b>Pilot non-users</b>	Employers who signed the Memorandum of Understanding but are not actually using the Basic Pilot system. In this report, pilot non-users are employers who reported in the employer mail survey that they were not using the system.
<b>Pilot State</b>	A State in which a pilot program is operating. For the Basic Pilot program, the pilot States are California, Florida, Illinois, New York, Texas, and Nebraska.
<b>Pilot users</b>	Pilot employers who are actually using the Basic Pilot system. In this report, pilot users are employers who reported in the employer mail survey that they are using the system.
<b>Prescreen</b>	To evaluate the employment authorization status of an individual before hiring him/her. This practice is prohibited by the Immigration Reform and Control Act of 1986.

## GLOSSARY (continued)

Term	Definition
<b>Referral notice</b>	The official notice an employer provides to an employee who wishes to contest a tentative nonconfirmation finding in the verification process. It explains what procedures the employee must take to resolve his/her case.
<b>Sanctions (of employers)</b>	A prohibition in Section 274A of the Immigration and Nationality Act that makes it unlawful to hire or continue to employ workers who are not authorized to work in the United States. It provides for fines and imprisonment for employers who knowingly hire workers who are not work-authorized.
<b>Secondary verification</b>	The second stage of employment verification under the pilot programs. For INS, Immigration Status Verifier reviews the case to determine the availability of additional information relevant to an employee's work authorization status. This step is required if there is a mismatch between the INS and SSA databases and the employee information entered by the employer.
<b>Secure documents</b>	Documents that have special features such as holograms, embedded images, biometric identifiers, or other security features that make them difficult to counterfeit. Such documents are typically issued through processes that are also secure.
<b>Stakeholders</b>	Individuals and organizations with an interest in a program or issue.
<b>Start-up cost</b>	The costs incurred by a business or the Federal Government to initiate and implement a new program
<b>Systematic Alien Verification for Entitlements (SAVE)</b>	An intergovernmental information-sharing program administered by INS and used by benefit-issuing agencies and employment verification pilot employers to determine a noncitizen's immigration status.
<b>Tentative nonconfirmation (of work authorization)</b>	The initial response from the employment verification pilot system when an employee's work authorization cannot be immediately confirmed. There are many possible reasons that an employee may receive a tentative nonconfirmation, ranging from employer keying errors to an employee's lack of authorization for work.
<b>Transaction database</b>	The administrative database that captures all Basic Pilot transactions by employers, SSA, and INS.
<b>U.S. citizen</b>	An individual who is born in the United States or attains U.S. citizenship by being born abroad to U.S. citizen parents, by being naturalized, or by deriving citizenship following his/her parents' naturalization.
<b>Unauthorized worker</b>	A noncitizen who does not have legal permission to work in the United States because of his/her immigration status or because he/she has applied and been found ineligible for work authorization.



## **GLOSSARY (continued)**

<b>Term</b>	<b>Definition</b>
<b>Undocumented immigrant</b>	A noncitizen who does not have permission to enter or reside in the United States. (See also <b>Illegal alien.</b> )
<b>Verification transaction record</b>	A record in the Basic Pilot transaction database capturing employer-entered information to determine an employee's work authorization.