

GAO

Testimony

Before the Subcommittee on International Law, Immigration  
and Refugees, Committee on the Judiciary,  
House of Representatives

152558

For Release on Delivery  
Expected at  
10:00 a.m., E.D.T.  
Wednesday,  
September 21, 1994

---

EMPLOYER SANCTIONS

Comments on H.R.  
3362—Employer Sanctions  
Improvement Act

Statement of  
Laurie E. Ekstrand, Associate Director  
Administration of Justice Issues  
General Government Division



---

---

COMMENTS ON H.R. 3362--  
EMPLOYER SANCTIONS IMPROVEMENT ACT

SUMMARY OF STATEMENT OF  
LAURIE E. EKSTRAND  
ASSOCIATE DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES  
U.S. GENERAL ACCOUNTING OFFICE

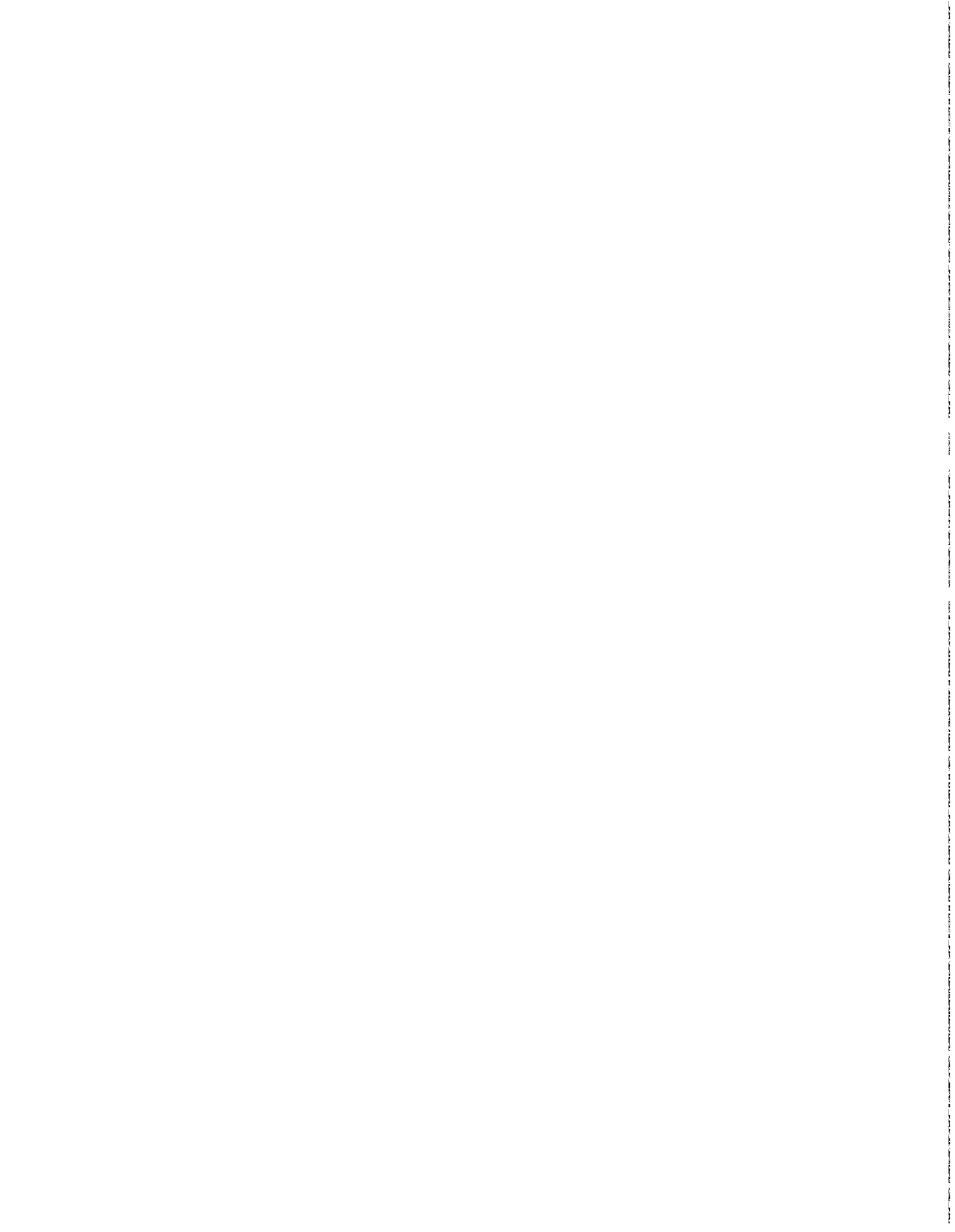
The Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify that their employees are eligible to work in the United States. Employers can be fined for hiring unauthorized workers. To comply with IRCA, employers review documentation presented by new employees to confirm their identity and work authorization. Some 29 different types of documents are acceptable for this purpose. The large number of acceptable documents has led to confusion for employers and, in some cases, discrimination against foreign looking job applicants.

H.R. 3362 is intended to enhance the enforcement of employer sanctions and reduce the number of acceptable documents for identification and work authorization. GAO agrees with these goals. The growing illegal alien population, coupled with the declining resources the Immigration and Naturalization Service (INS) devotes to employer sanctions enforcement, confirms the need to enhance enforcement. GAO's 1990 report on IRCA urged a reduction in the number of work authorization and identity documents.

To enhance enforcement, H.R. 3362 would allow the states to have their own employer sanctions programs. GAO has two concerns about this proposal. First, having multiple employment verification systems in place with potentially different requirements could lead to more employer confusion and possibly more discrimination against foreign looking job applicants. Second, GAO's past work has shown that states with employer sanctions laws prior to IRCA failed to enforce them. GAO does, however, think that enlisting the support of states in enforcing the current law should be considered. This could include encouraging state labor standards staff to conduct preliminary investigations of potential employer violations.

H.R. 3362 would statutorily reduce the number of allowable work authorization and identity documents. INS is currently working to finalize regulatory changes that would also reduce the number of allowable documents. GAO suggests that these reduction efforts be closely coordinated to avoid any unintended consequences.

Increased enforcement and a reduction in the number of work authorization documents are both steps toward reducing the number and use of counterfeit and fraudulent documents. Other steps, such as INS' telephone verification system, which was recently tested, and the Jordan Commission's proposal for a national registry of persons authorized to work, represent approaches to address employer sanctions enforcement issues.



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss H.R. 3362, the proposed "Employer Sanctions Improvement Act of 1993." Two of the major provisions of the bill are intended to (1) promote the enforcement of employer sanctions by encouraging states and individuals to participate in enforcement programs and (2) improve the employment verification system by reducing the number of documents that individuals use to establish work eligibility and identification. These provisions of the bill are the focus of our testimony. Our comments are based primarily on the findings of our 1990 report--Immigration Reform: Employer Sanctions and the Question of Discrimination (GAO/GGD-90-62, Mar. 29, 1990)--but also include new information that we have developed.

We are in agreement with the intentions of the bill to enhance enforcement of employer sanctions and to reduce the number of documents acceptable for identification and work authorization. However, we believe that a proliferation of employer sanctions laws and programs across states may not be the most beneficial way to have the states participate in employer sanctions enforcement. We offer some other options. In relation to document reduction, we believe that INS and this Subcommittee should work together to get this done expeditiously.

#### BACKGROUND

The employer verification and sanctions provisions are key components of the Immigration Reform and Control Act of 1986 (IRCA). They are designed to discourage the employment of unauthorized aliens and thereby reduce the lure of job opportunities as an incentive for illegal immigration. The intended effect is to reduce the growing illegal alien population. These provisions require employers to verify the employment eligibility of all persons they hire, both citizens and aliens. They impose civil penalties on employers who (1) knowingly hire or continue to employ aliens not authorized to work in the United States or (2) fail to comply with the verification requirements of the act. Criminal penalties are provided for employers who engage in a pattern or practice of knowingly hiring or continuing to employ unauthorized workers.

New employees must present their employer with documentation that establishes both their identity and that they are authorized to work in the United States. On the basis of such documentation, employers are required to complete an Employment Eligibility Verification Form (I-9) for each new employee. New employees may present an employer with a single document that establishes both their identity and work eligibility, or they may present two documents--one that establishes identity and one that establishes work eligibility. In completing the I-9, employers certify that have examined the information contained in the documents, that

the documents appear genuine, and that they relate to the individual named.

Both the Immigration and Naturalization Service (INS) and the Department of Labor have enforcement responsibilities for employer sanctions. INS' enforcement responsibilities include (1) investigating employers who are suspected of employing unauthorized workers, (2) inspecting employers' I-9s, (3) arresting aliens who are not authorized to work, and (4) issuing employers warning notices and notices of intent to impose fines for violations. Labor's enforcement responsibilities are limited to inspecting employers' I-9s and issuing warning notices to employers for violations of the employment eligibility verification or paperwork requirements. Labor sends INS reports that contain the results of its employer I-9 compliance inspections that may contain leads that could warrant further enforcement action by INS.

In our 1990 report to Congress, we concluded that confusion on the part of employers over their responsibilities under the act was a contributing factor to discrimination. This confusion related to verifying employment eligibility given the multiplicity of documents and the prevalence of counterfeit and fraudulent documents. We also said that the prevalence of counterfeit and fraudulently obtained documents threatened the security of the employment verification system.

#### PROMOTING ENFORCEMENT OF EMPLOYER SANCTIONS

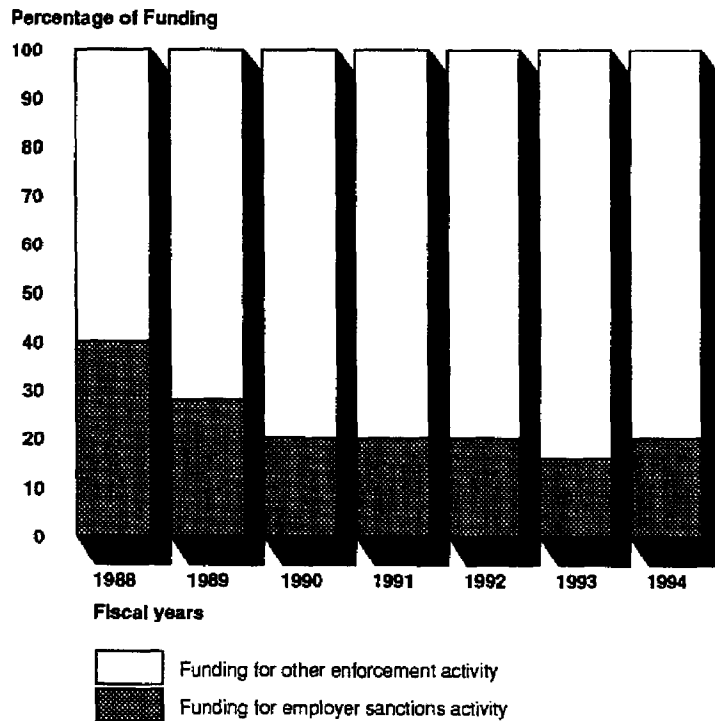
Title I of H.R. 3362 contains a number of provisions designed to enhance enforcement of employer sanctions. Section 101 would reverse the current rule of IRCA, which preempts state and local laws imposing sanctions upon those who employ unauthorized aliens, thereby allowing states to establish their own employer sanctions programs. Section 102 would create a private right of action through which persons and entities (including states) "aggrieved" by an employer's violation of IRCA could institute administrative proceedings to impose sanctions. Sections 103 and 104 authorize grants to states and localities that assist in enforcing their own or federal employer sanctions programs and limit federal assistance to those that fail to do so or impede federal enforcement efforts.

#### Employer Sanctions Enforcement Resources Decreased

The need to enhance employer sanctions enforcement has recently been highlighted. In her August 1994 testimony before the Senate Judiciary Committee, Barbara Jordan, Chair of the U.S. Commission on Immigration Reform, said that both employer sanctions and labor standards enforcement had suffered resource losses, and that neither had received sufficient priority. Available data showed that resources devoted to employer sanctions have dropped

off during the past several years. Figure 1 also shows that employer sanctions' share of INS' enforcement funding has generally declined from fiscal year 1988 through 1994.

Figure 1: Share of Funding for INS Employer Sanctions Activity Has Declined Since Fiscal Year 1988

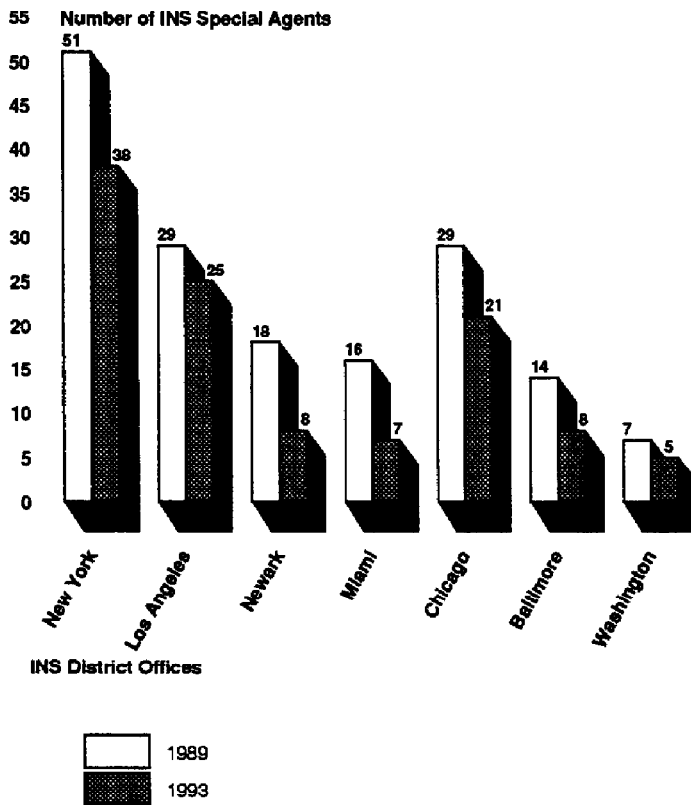


Note: Funding is for INS investigations and does not include Border Patrol.

Source: GAO analysis of INS data.

We recently obtained additional data from seven INS districts that, according to INS, have large concentrations of unauthorized workers. These districts are New York, Los Angeles, Miami, Chicago, Newark, Baltimore, and Washington. Figure 2 shows that overall the number of investigators assigned to employer sanctions activities in these districts declined 32 percent from January 1989 to December 1993.

Figure 2: INS Investigators Assigned to Employer Sanctions in Seven Major Districts Have Declined Since 1989



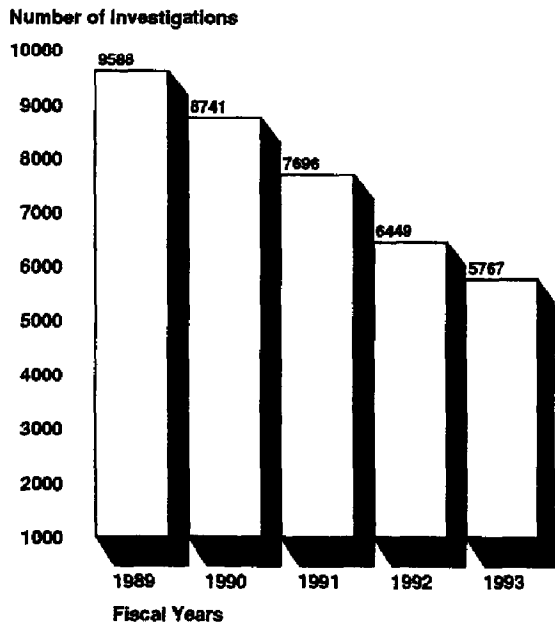
Source: GAO analysis of INS data.

Clearly, these resource reductions have had an impact on the program. Indeed, nationwide, lead-driven<sup>1</sup> investigations of potential employer sanctions violations have declined 40 percent (9,588 to 5,767) from fiscal year 1989 through 1993 (see figure 3).

<sup>1</sup>The identification of possible employer sanctions violations by anyone (e.g., citizen or Labor official).



Figure 3: The Number of Lead-Driven Investigations Has Declined Since Fiscal Year 1989



Note 1: INS' first full year of sanctions enforcement was fiscal year 1989.

Note 2: Data include Border Patrol investigations.

Source: INS.

At the present time, INS estimates that it has a backlog of about 36,000 leads that it has not staffed, 23,000 received from the public-at-large, and 13,000 received from Labor.

Paperwork compliance inspections by both INS and Labor also have declined. INS I-9 compliance inspections decreased 50 percent (from 5,118 to 2,542) between fiscal years 1989 and 1993. On the basis of data provided by Labor, its I-9 compliance inspections have declined 27 percent (from 41,624 in fiscal year 1988 to 30,379 in fiscal year 1993).

#### INS Follow-up Inspections Are Minimal

In our March 1990 report, we recommended that INS reinspect employers of unauthorized aliens to determine if they have come into compliance. According to INS, it now reinspects only about 10 percent of the employers who have been sanctioned. According to an INS official, there are insufficient data from the reinspections to determine if the sanctions have had a deterrent

effect. INS' fiscal year 1995 immigration initiative for employer sanctions includes a request for \$19.2 million, part of which is to be used to begin systematically reinspecting employers.

### Enlisting States Into Employer Sanctions Enforcement

The main thrust of title I of the bill is to enlist states and private parties into employer sanctions enforcement. We believe that finding ways to augment the limited resources INS has devoted to employer sanctions enforcement deserves serious consideration. Further, given the concerns raised by several states over the costs to them of illegal aliens and the level of federal efforts to combat illegal immigration, it seems appropriate to consider ways to enlist their aid. In her August 3, 1994, testimony, Alice Rivlin, Deputy Director of the Office of Management and Budget, advocated a "shared responsibility" and "partnership" between the federal government and the states in addressing problems of illegal immigration.

We have two concerns with authorizing new state and local employer verification and sanctions programs. First, enactment of state employer sanctions laws could complicate, rather than assist, federal enforcement efforts. Our work on the implementation of the employment verification system pointed to misunderstanding and confusion on the part of employers as major problems and the cause of much discrimination against foreign looking or sounding job applicants. The existence of parallel federal and state systems with potentially different and inconsistent, substantive and procedural requirements could exacerbate the confusion and thus add to discrimination. Permitting states and private parties to bring IRCA enforcement actions also could heighten confusion and impose unreasonable burdens on employers.

Second, pre-IRCA experience casts doubt on whether the states could effectively undertake their own employer sanctions programs. Before enactment of IRCA, several states did have laws that imposed sanctions on employers who knowingly hired unauthorized aliens. Most of these laws were enacted in the late 1970s, following a 1976 Supreme Court decision--DeCanas v. Bica (424 U.S. 351)--which held that such laws were not then subject to federal preemption. In a 1980 report, we identified 11 states that had employer sanctions laws, but we observed that enforcement of these laws had been "virtually nonexistent."<sup>2</sup> A subsequent law review article concluded that "states simply do

---

<sup>2</sup>See Illegal Aliens: Estimating Their Impact on the United States (PAD-80-22 Mar. 14, 1980), pp. 45-49.

not enforce" their employer sanctions laws and that the reported cases do not show a single successful prosecution.<sup>3</sup>

There may be ways of augmenting INS resources and otherwise relieving its enforcement burdens within the context of the unitary federal system enacted by IRCA. The following are some approaches that might be considered.

IRCA now provides for state employment services (as defined by the Attorney General) to verify and certify the employment eligibility of persons they refer to employers, thereby relieving the employers of the responsibility for making this determination and incurring the risk of sanctions. According to INS officials, this provision is rarely used. Making greater use of state employment services for IRCA employment verification might reduce the likelihood of employer violations and thereby ease investigative and enforcement burdens on INS.

Another option might be to enlist state agencies, such as those responsible for state labor standards compliance, in the preliminary investigation of IRCA employer sanctions violations. State agencies can now provide leads to INS but do not investigate the leads further. Encouraging state agencies to conduct at least preliminary investigations could make some inroads into the large backlog of leads now awaiting investigation by INS. Using state agencies for preliminary investigative purposes might be particularly suited to potential violations of IRCA I-9 record-keeping requirements.

We believe that options such as these afford the potential to augment INS' employer sanctions enforcement resources while promoting a coordinated approach to enforcement. In this regard, the Jordan Commission supported the establishment of national and local task forces to promote greater coordination in enforcement of labor standards, and IRCA's employer sanctions and antidiscrimination provisions. The assistance provisions of H.R. 3362 might be a means of encouraging state participation and cooperation.

There are also potential means of enhancing the effectiveness of employer sanctions enforcement at the federal level. For example, the Task Force on IRCA-Related Discrimination report to Congress recommended that Labor's existing authority to inspect I-9 record-keeping requirements be expanded to include authority to institute enforcement actions concerning IRCA's paperwork requirements.<sup>4</sup> This is consistent with the Jordan Commission's

---

<sup>3</sup>Coping with Illegal Immigrant Workers: Federal Employer Sanctions, 1984 Ill. L. Rev. 959, 967-969.

<sup>4</sup>8 U.S.C. 1324a(k) required the report.

recommendation that INS target its enforcement resources on likely violations of the prohibition against knowingly hiring unauthorized workers, as opposed to paperwork violations.

#### IMPROVING THE EMPLOYMENT VERIFICATION SYSTEM

The primary purpose of title II of H.R. 3362 is to reduce the number of documents that can be used to establish identity and/or employment eligibility. Section 201 would eliminate certain documents that are now provided for by statute or administrative regulation and would limit the Attorney General's authority to add documents in the future. Section 202 would transfer from the President to the Attorney General the current authority in IRCA to monitor the employment verification system and test and make changes in the system if it is found not to be secure. Section 203 would require the Attorney General to report to Congress on efforts to consolidate documents evidencing temporary work authorization.

#### Reducing the Number of Documents

The need to simplify IRCA's employment verification system, particularly by reducing the multiplicity of documents that are now available, has been recognized repeatedly. Our 1990 report urged simplification of IRCA's employment eligibility verification system. Specifically, we said that to be optimally effective, the employment eligibility verification system must (1) greatly reduce the number of work eligibility documents, (2) make the documents harder to counterfeit and obtain by fraud, and (3) apply to all members of the workforce. We believe such a system would make it easier for employers to comply with the law, thereby reducing IRCA-related discrimination and generally improve the reliability of verification determinations. The final report of the Task Force on IRCA-Related Discrimination also recommended reducing the number of documents.

As shown in attachment 1, there are presently 29 types of documents that new employees may use to meet the employment eligibility verification requirements: 10 documents in List A establish both identity and employment eligibility, 12 documents in List B establish identity, and 7 documents in List C establish employment eligibility. Some of these document types are specifically required by law; others result from use of the Attorney General's discretionary authority to add to the list of acceptable documents prescribed by the law.

The number of document types has remained constant at 29 since implementation of the employment eligibility verification system in November 1986. It also is important to note that a single document type may come in many different forms. For instance, there are numerous different official birth certificates issued by cities, counties, and states.

The executive branch recognizes the need to reduce the number and types of documents used in the verification process. However, progress has been slow since we initially recommended document reduction in our 1990 report. In November 1993, INS published proposed regulations to reduce the number of document types to 16. The proposed regulations have yet to be finalized. In fact, INS recently advised us that the current proposal is being revised and probably will be reissued as a new proposed regulation. INS has indicated that once this is done, it will take an additional 6 months to revise and distribute the Form I-9 and educate employers to its use.

Revisions to the regulations by INS and the introduction of H.R. 3362 have the same goal in mind, and they are being considered simultaneously. Yet, they differ in the documents they eliminate. For example, the bill would eliminate three documents from list A that the proposed regulations would not. The reason behind some of these differences is that only Congress can amend the law and thus eliminate statutorily required documents. INS' authority is confined to making regulatory changes.

We suggest that INS work closely with this Subcommittee and assist in making a well-reasoned decision to achieve the goal of reducing the number of documents while avoiding any unintended consequences.

#### Need to Improve Document Security

INS has indicated that it is proceeding with document reduction incrementally, in view of its resource constraints. It indicated that resources would be needed to issue new documents to authorized workers to replace those that will be made invalid and to educate employers about changes in acceptable documents. Also, the need exists to balance the objective of document reduction against the need to avoid undue burdens on those who may require new documentation to gain employment. We believe that these are valid considerations, but they should not be an excuse for INS not to reduce the number of work authorization documents.

Given the significance of the problem and the time that has already elapsed without a reduction in the number of work authorization documents, we endorse strongly H.R. 3362's provision to require INS to report on its progress. On the other hand, eliminating or removing the Attorney General's authority to add documents by regulation may not allow sufficient flexibility to meet unforeseen circumstances. One alternative might be to condition the Attorney General's authority to add documents upon a determination that such action is essential to meet a need that cannot reasonably be accommodated within the current array of documents.

While reducing the multiplicity of documents is an important factor in reforming the employment verification system, there is also a need to greatly enhance the security of the system by making it harder for documents to be counterfeited or obtained by fraud. According to a senior INS investigator, almost all of the unauthorized workers arrested in his district had counterfeit documentation that was relied on by employers to establish their employment eligibility.

In a recent testimony, the Commissioner of INS reported that a pilot test of a telephone verification system (TVS) had been successful. This pilot allowed participating employers to tap into the INS' Alien Status Verification Index to confirm alien employment eligibility. The Jordan Commission's proposal for a national registry of persons authorized to work in the United States might also help to curb the use of counterfeit documents. Both TVS and the Jordan Commission's proposals represent approaches to address employer sanctions enforcement issues.

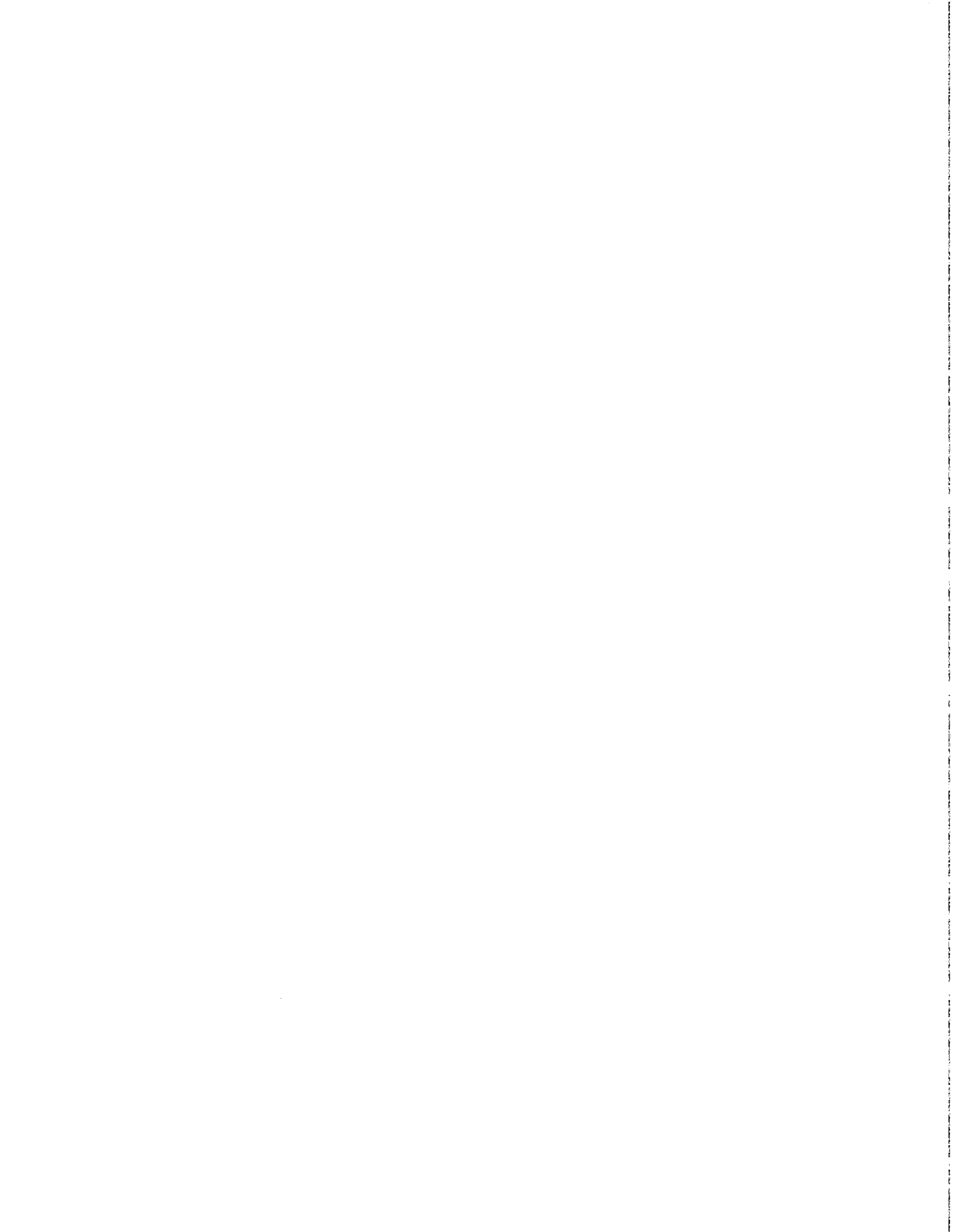
- - - - -

This concludes my prepared statement, Mr. Chairman. I would be pleased to respond to any questions.

Chart 1: List of Acceptable Documents**Documents That Applicants Can Use to Establish Work Eligibility and/or Identity**

<b>LIST A</b>	<b>OR</b>	<b>LIST B</b>	<b>AND</b>	<b>LIST C</b>
<b>Documents That Establish Both Identity and Employment Eligibility</b>		<b>Documents That Establish Identity</b>		<b>Documents That Establish Employment Eligibility</b>
<ol style="list-style-type: none"> <li>1. U.S. Passport (unexpired or expired)</li> <li>2. Certificate of U.S. Citizenship (<i>INS Form N-560 or N-561</i>)</li> <li>3. Certificate of Naturalization (<i>INS Form N-550 or N-570</i>)</li> <li>4. Unexpired foreign passport, with <i>I-551 stamp</i> or attached <i>INS Form I-94</i> indicating unexpired employment authorization</li> <li>5. Alien Registration Receipt Card with photograph (<i>INS Form I-151 or I-551</i>)</li> <li>6. Unexpired Temporary Resident Card (<i>INS Form I-688</i>)</li> <li>7. Unexpired Employment Authorization Card (<i>INS Form I-688A</i>)</li> <li>8. Unexpired Reentry Permit (<i>INS Form I-327</i>)</li> <li>9. Unexpired Refugee Travel Document (<i>INS Form I-571</i>)</li> <li>10. Unexpired Employment Authorization Document issued by INS which contains a photograph (<i>INS Form I-688B</i>)</li> </ol>	OR	<ol style="list-style-type: none"> <li>1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address</li> <li>2. ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address</li> <li>3. School ID card with a photograph</li> <li>4. Voter's registration card</li> <li>5. U.S. Military card or draft record</li> <li>6. Military dependent's ID card</li> <li>7. U.S. Coast Guard Merchant Mariner Card</li> <li>8. Native American tribal document</li> <li>9. Driver's license issued by a Canadian government authority</li> </ol> <p><b>For persons under age 18 who are unable to present a document listed above:</b></p> <ol style="list-style-type: none"> <li>10. School record or report card</li> <li>11. Clinic, doctor, or hospital record</li> <li>12. Day-care or nursery school record</li> </ol>	AND	<ol style="list-style-type: none"> <li>1. U.S. social security card issued by the Social Security Administration (<i>other than a card stating it is not valid for employment</i>)</li> <li>2. Certificate of Birth Abroad issued by the Department of State (<i>Form FS-545 or Form DS-1350</i>)</li> <li>3. Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal</li> <li>4. Native American tribal document</li> <li>5. U.S. Citizen ID Card (<i>INS Form I-197</i>)</li> <li>6. ID Card for use of Resident Citizen in the United States (<i>INS Form I-179</i>)</li> <li>7. Unexpired employment authorization document issued by INS (<i>other than those listed under List A</i>)</li> </ol>

Source: INS.





---

### Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

**Orders by mail:**

**U.S. General Accounting Office  
P.O. Box 6015  
Gaithersburg, MD 20884-6015**

**or visit:**

**Room 1100  
700 4th St. NW (corner of 4th and G Sts. NW)  
U.S. General Accounting Office  
Washington, DC**

**Orders may also be placed by calling (202) 512-6000  
or by using fax number (301) 258-4066.**

**Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (301) 258-4097 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.**

---

**United States  
General Accounting Office  
Washington, D.C. 20548-0001**

**Bulk Mail  
Postage & Fees Paid  
GAO  
Permit No. G100**

**Official Business  
Penalty for Private Use \$300**

**Address Correction Requested**

---