**U.S. Citizenship
and Immigration
Services**

Memorandum

TO: Michael T. Dougherty
               Citizenship and Immigration Services Ombudsman

FROM: Michael Aytes /s/
               Acting Deputy Director

SUBJECT: Response to Recommendation 38, Observations on the E-Verify Experience in
               Arizona and Recommended Customer Service Enhancements.

Recommendation

The CIS Ombudsman recommends that USCIS simplify the language used in all E-Verify instructions and supporting documentation; make all registration and operational documents publicly available on-line for review by prospective E-Verify end-users and employees; ensure its education and outreach efforts reach small business communities; develop and add a tickler/calendar system into E-Verify capable of issuing timely system prompts to employers to advise them of their next appropriate course of action for each specific open and unresolved tentative non-confirmation (TNC); and announce as a stated goal an intention to replace the current Form I-9 process for employers that voluntarily use E-Verify.

USCIS Response to Recommendations

Recommendation 1: Simplify the language used in all E-Verify instructions and supporting documentation.

U.S. Citizenship and Immigration Services (USCIS) concurs with this recommendation and is working to simplify the E-Verify programmatic language. In Spring 2008, the USCIS Verification Division began a "Plain Language Initiative" to identify E-Verify terminology that is unnecessarily complex or difficult to understand. The Division is working to improve all E-Verify materials including the employer Memoranda of Understanding, user manuals, and

tutorial by substituting plain language for all confusing or difficult legal terminology, to the extent that can be done while retaining legal clarity, accuracy, and completeness.

In September and November 2008, E-Verify staff conducted a series of focus groups and interviews with key stakeholders, such as the Office of Special Counsel, various DHS offices, the American Immigration Lawyers Association and participating employers like Tyson Foods, during which actual E-Verify users and employee advocacy groups evaluated proposed new vocabulary. For example, we are reviewing new terms to replace those such as: "Designated Agent," "tentative non-confirmation" and "final non-confirmation." The USCIS Verification Division is planning the schedule for implementation of the new terms beginning in FY10. The USCIS Verification Division is currently working to prioritize these enhancements into the program's release schedule.

Additionally, in September 2008, the E-Verify Program revised the Department of Homeland Security (DHS) Tentative Non-Confirmation Notices and Referral Letters, and the corresponding Social Security Administration notices were revised in December 2008. The revised versions include simplified instructions for employees and employers on how to complete the TNC Notice and how to contest a referral. The notice revision process used plain language principles.

Recommendation 2: Make all registration and operational documents publicly available on-line for review by prospective E-Verify end-users and employees.

USCIS concurs with this recommendation and already has posted the following key operational documents in FY08:

- The E-Verify Memorandum of Understanding (MOU):
  http://www.uscis.gov/files/nativedocuments/MOU.pdf

- The E-Verify User Manual:
  http://www.uscis.gov/files/nativedocuments/E-Verify_Manual.pdf

The Memorandum of Understanding details the responsibilities between the SSA, DHS, and employer. The E-Verify User Manual details the specific functions and features of the system, and explains their proper use. Additional materials related to E-Verify (e.g., the M-274 Handbook for Employers for the Form I-9) are currently available at www.uscis.gov and the E-Verify website.

The E-Verify tutorial is an online interactive program that requires the user to actively engage in and become proficient with the program. The Verification Division will explore possibilities for providing tutorial-like documentation for public review online. Finally, the division will add other E-Verify documents, such as registration documents, to the website for more easy review by members of the public.

Recommendation 3: Ensure its education and outreach efforts reach small business communities.

USCIS supports this recommendation. In 2008, the USCIS Verification Division participated in 18 nationwide outreach and educational events focused on reaching small business communities such as local small business associations and minority-owned business conferences. Moreover, E-Verify has reached numerous small businesses as a result of presentations and other forms of outreach provided at the request of many local Chambers of Commerce in Arizona and other states. This outreach has included weekly Webinars, which are informational seminars about E-Verify and the Federal Acquisition Regulation, and additional E-Verify-related events. In 2009 and beyond, the USCIS Verification Division will initiate activities to target education and outreach to small businesses and to partner with government agencies and other organizations such as Business.gov and the Small Business Administration (SBA).

The USCIS Verification Division plans to place E-Verify links and information on the Business.gov website. We also plan to work with the SBA's Office of Small Business Development Centers, which provides management assistance, information, and guidance to current and prospective small business owners via branch locations (approximately 1,100 nationwide). Our goal is to establish an agreement that will allow us to provide literature and education on E-Verify to small business owners and entrepreneurs who rely upon these offices for information and assistance in their communities.

Also, the USCIS Verification Division has worked with SBA to identify webpages where it would be appropriate to integrate E-Verify information into the SBA internet site, though the timeline is dependent upon SBA's current webpage redesign efforts. We also plan to work with SBA to determine how E-Verify information can be integrated into their program activities.

Recommendation 4: Develop and add a tickler/calendar system in E-Verify capable of issuing timely system prompts that advise employers of their next appropriate course of action for each specific and unresolved TNC.

USCIS supports this recommendation to add a system that alerts E-Verify users via email and outside of the E-Verify system of cases that require action. Currently, users must log on to the system to see whether further action is required on a case. We are exploring the development of a capability for employers to receive email notifications, including researching the security feasibility of auto-authenticating users by clicking on an email link to bring them directly to their work page. The notification would be a basic note indicating that work has arrived in the user's queue and that the user needs to take action.

In the interim, and to help employers better manage cases, the USCIS Verification Division is developing a "Case Status Alert" for E-Verify. When the user logs onto E-Verify, an alert will appear at the center of the page should any case remain open. The alert will indicate: 1) the number of cases that require closure, 2) the number of tentative non-confirmations that require SSA or DHS referrals, and 3) the number of cases that possess the "DHS Verification in process," or "SSA Case in Continuance" statuses. Though the planned "Case Status Alert" is not

exactly a tickler system, it operates similarly and constitutes a significant improvement in user-driven case management.

Notwithstanding these future improvements, the current E-Verify system currently has a means of case management. When a user logs onto E-Verify, he or she immediately encounters, at the top of the homepage, a link to the Case Administration site. By selecting "View Cases" (listed under Case Administration on the homepage), the user is taken directly to the page on which pending case statuses may be checked. The user may then view case statuses according to: 1) Cases Requiring Action, 2) Cases in Process, 3) Resolved Cases, or 4) all cases at once. Additionally, users can also search for a specific case using identifiers such as social security number, alien number, or employer case ID number.

Recommendation 5: Announce an intention to replace the current Form I-9 process for employers that voluntarily use E-Verify.

Eliminating the Form I-9 for employers who use E-Verify would require a statutory change. The Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603, 8 U.S.C. §§ 1324a-d), IRCA, mandates the current employment verification process and requires all newly-hired employees to complete a Form I-9. The statutory provisions in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) governing E-Verify specifically state that employees shall record information "on the I-9 or similar form," and comply with Form I-9 requirements regarding retention of the form and review of documents, except as specifically modified by IIRIRA.[1]

However, the Verification Division is exploring the development of its own electronic I-9 form to help streamline the Form I-9 and E-Verify processes. The Government Paperwork Elimination Act (Pub. L. No. 105-277, 44 U.S.C. § 3501) mandates that federal agencies use electronic forms, when practicable. In fact, ICE permits and encourages the use of an electronic I-9.[2] When implemented (currently scheduled for FY 10), the USCIS electronic I-9 will populate the E-Verify data fields and allow employers to save an electronic version of the I-9 on their desktops and information systems and/or print a paper version of the I-9.

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[1] IIRIRA section 403(a) (8 U.S.C.A. § 1324a note).

[2] See Federal Register June 15, 2006 entitled "Electronic Signature and Storage of Form I–9, Employment Eligibility Verification."