CHAPTER II. DESCRIPTION OF PILOT PROGRAM

A. INTRODUCTION

As discussed in Chapter I, the new voluntary employment verification programs mandated under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) had many similarities to the earlier pilot programs that INS or, in the case of the Basic Pilot, INS and SSA had conducted. Therefore, much of the groundwork for implementation of the Basic Pilot had already been completed. The remainder of this report focuses on the first of the three IRIIRA pilots, the Basic Pilot, which was similar to the Joint Employment Verification Pilot that INS and SSA conducted with 38 employers in Chicago.

This chapter first discusses the overall goals of employment verification and the more specific goals of the Basic Pilot. Then it provides background on the evaluation's goals, approach, and priority issues. The discussion then turns to an overview of INS requirements regarding documentation, data, and systems for the Basic Pilot. Finally, the chapter discusses the implementation of the Basic Pilot and how it works.

B. GOALS OF EMPLOYMENT VERIFICATION

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. As described earlier, the Immigration Reform and Control Act of 1986 established a paper verification system. However, it also provided for the testing of alternative systems if the paper system proved ineffective at reducing the employment of persons without work authorization.

Although over the last 15 years the Form I-9 work-authorization verification system appears to have become a workplace standard for most employers, GAO and others have found that unauthorized workers can circumvent this process by presenting fraudulent documents and/or falsely claiming to be U.S. citizens.[16] While it can be assumed that most employers and employees nationwide are complying with the law – since undocumented migrants are estimated to comprise only 3 to 4 percent of the workforce[17] – it is troublesome that the Form I-9 system is not meeting its intended goal.

As discussed in Chapter I, GAO and others who have studied employer sanctions, both before and after the enactment of IIRIRA, have recommended testing various verification systems that would provide greater resistance to fraudulent documents and claims to U.S. citizenship. In a 1990 report to Congress indicating a pattern of widespread discrimination, GAO noted significant employer confusion on how to comply with the verification provisions. GAO recommended a simpler system that relies on fewer

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[16] General Accounting Office, 1999.

[17] General Accounting Office, 1999.

documents and employer verification with SSA and INS to confirm the information on the documents. GAO also believed that such a system would reduce other negative impacts of employer sanctions and verification, including discrimination and employer burden.

Although INS has not finalized proposed changes for substantially reducing the types of documents that can be used in the process, it has reduced the number of acceptable versions of INS documents that can be used and greatly improved the security of these documents. INS has invalidated the 17 readily counterfeited versions of the old lawful permanent resident identification card (green card) that could originally be shown as List A documents on Form I-9. There are currently three counterfeit-resistant versions of this card that may be presented in the verification process, and INS now issues only a highly secure card with holograms, a digitized photograph, and fingerprint images. Over time, INS is replacing the two older, less secure versions of the card.[18] INS issues employment authorization documents (EADs) to most other work-authorized immigrants. INS now issues only two relatively secure versions of the EAD and is increasingly issuing the new, centrally produced, highly secure version of the EAD that includes a hologram and other security features.

1. GOALS OF THE BASIC PILOT AND THE OTHER IIRIRA PILOTS

INS demonstration pilot programs and the IIRIRA voluntary pilot programs are intended to respond to recommendations by the Commission on Immigration Reform and GAO for an automated verification system by testing several such systems. In the Basic Pilot, the identity and work-authorization information for all newly hired employees is verified electronically with SSA and, if necessary, with INS. This pilot is specifically aimed at reducing two significant types of document fraud that are evident in the Form I-9 system: false claims to U.S. citizenship and use of counterfeit or altered documents. It also addresses some cases where valid documentation is presented that does not actually authorize employment.[19]

The IIRIRA pilot programs have four primary goals that are separate from the more general goals of employer sanctions and the Form I-9 employment verification system:

- Reduce employment of unauthorized workers by reducing false claims to U.S. citizenship and the use of fraudulent (counterfeit and altered) documents
- Reduce discrimination

[18] As cards issued to permanent residents expire or as those persons with these older versions of the card naturalize, the number of such cards in circulation decreases.

[19] Such cases include persons presenting unrestricted Social Security cards issued prior to 1981 and driver's licenses or other identity documents not issued by INS for which immigration status has not been verified during the issuance process.

- Protect employee civil liberties and privacy
- Reduce employer burden

a. REDUCE EMPLOYMENT OF UNAUTHORIZED WORKERS

The design of the IIRIRA pilot programs does not explicitly eliminate all unauthorized workers from a participating employer's workplace. The Basic Pilot is designed to reduce false claims to U.S. citizenship and the use of counterfeit and altered documents. However, unauthorized workers can still present valid documentation belonging to another person. If the employer finds that the employee resembles the photograph and any description of the person on the identity document, the Basic Pilot program may well find the employee to be work-authorized. Furthermore, the Basic Pilot is to be used only to verify employees hired after the employer implemented the pilot system. As such, any unauthorized workers already in the employer's workforce would not be addressed through the pilot.

Similarly, if an employee presents counterfeit documentation that contains valid information and appears valid, the SSA and INS Basic Pilot verification processes may verify the employee as work-authorized. However, to the extent that relatively few identities are used for producing large volumes of fraudulent documents, this type of fraud could be identified through multiple uses of the same information. On a small pilot basis, the likelihood of this occurring is relatively slim unless several persons receiving the same documents from a vendor go to a large employer and use the same identity information during the course of the pilot.

The only way to prevent – or substantially reduce – identity fraud would be to include a biometric identifier on all identity documents acceptable for verification of work authorization and to require employers to use equipment that can verify the biometric identifier. Such a system is far from feasible at this time, is extremely costly, and poses serious civil rights and privacy concerns. The Basic Pilot tests a verification tool intended to reduce the amount of fraud seen in the paper Form I-9 verification process, but it cannot detect identity fraud and, therefore, completely eliminate the employment of unauthorized workers at participating work sites.

b. REDUCE DISCRIMINATION

Under the Form I-9 requirements, employers must complete the same paperwork and document review for all new employees. However, GAO and others have reported that some employers apply these requirements in a discriminatory fashion, due at least in part to employer confusion about the procedures and out of fear of INS enforcement and penalties. Employers sometimes ask employees whom they perceive to be foreign to present INS-issued documentation or prescreen job applicants before hiring them to check their citizenship and documentation. Some employers discriminate by requesting INS documentation from persons who have attested to be U.S. citizens on the I-9 form. Others may discriminate by hiring only persons they believe to be U.S. citizens based on the applicant's appearance or declared citizenship. Employers may complete verification

only for employees who appear or sound foreign, or whom they otherwise believe are not authorized. Such practices are discriminatory and illegal.

Although the Basic Pilot and other automated pilot programs cannot ensure that employers will treat all workers fairly, they were designed to reduce discrimination in several ways. Unlike some of the demonstration pilots that INS undertook in which only noncitizen employees were verified through INS systems, the Basic Pilot requires that all new employees be verified electronically. In the original version of the Basic Pilot, a second, separate step was required for noncitizen employees for whom SSA could not determine work authorization. The Basic Pilot Integrated system improved the process so that all employees are electronically verified using the same method, with any transition from SSA to INS systems invisible to the employer. This verification most closely models the Commission on Immigration Reform recommendations for a verification system in which all employees are treated the same, regardless of their citizenship. However, in the Basic Pilot the employer inputs the employee's citizenship status as shown on the I-9 form. This information is used in determining the agency to which an employee will be sent in the event of a tentative nonconfirmation.

c. PROTECT EMPLOYEE CIVIL LIBERTIES AND PRIVACY

The IIRIRA pilot programs, including the Basic Pilot, have a number of provisions designed to safeguard the rights of workers. These provisions were designed to address concerns about differential treatment of workers whose work authorization is not immediately confirmed. For example, employers agree not to use the SSA and INS verification systems to screen employees prior to hiring. Further, under the pilot provisions and the Memorandum of Understanding that participating employers are required to sign, employers are prohibited from taking any type of adverse actions against employees while they are in the process of contesting any finding of tentative nonconfirmation. This includes such actions as reducing pay or withholding training or other benefits pending completion of the verification process.

There have also been concerns that information from the SSA and INS verification systems could be used for purposes other than verifying the work-authorization status of new employees. To minimize possible harm from misuse of the system, the information that employers can access is very limited. The system provides only information about whether work authorization is confirmed and, in some cases, the nature of inconsistencies in the electronic data, to help the employer determine if an error was made on data input. The SSA and INS databases are also subject to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. Section 552a(c), which specify procedures that Federal agencies must follow to protect the privacy and other rights of individuals whose information is included in the databases. Further, users at participating establishments are assigned user ID numbers and passwords to protect against access by unauthorized individuals. Also, the system can only be accessed from registered communication devices.

d. REDUCE EMPLOYER BURDEN

GAO, the Commission on Immigration Reform, and others have cited employer burden as a potential limitation of an automated employment verification system. Although the IIRIRA pilots are being implemented as an adjunct to the paper Form I-9 verification process, they are designed to reduce employer burden. 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. The Basic Pilot may also remove much of the uncertainty in reviewing documents and confirming work authorization that lead some employers to take such discriminatory actions as refusing to hire foreign-appearing individuals.

2. EVALUATION OF THE EMPLOYMENT VERIFICATION PILOTS

a. BACKGROUND

Since the pilot programs were established to test alternative employment verification systems before larger scale implementation of new verification systems is considered, extensive evaluation of the IIRIRA pilots has been an integral and crucial part of pilot implementation. The importance of the evaluation has been reiterated by the Commission on Immigration Reform and subsequent groups that considered the testing of these verification systems.

INS determined that the evaluation would be conducted by outside experts, as had been widely recommended. Not only did INS not have the in-house capability to undertake a large-scale evaluation, but an evaluation would be credible only if undertaken by independent experts with proven expertise in conducting large-scale, multi-disciplinary surveys of hard-to-reach populations, using statistically sound methodologies. Moreover, because of the complexity of the evaluation, it would require significant expertise in a wide variety of disciplines, including discrimination, employment and labor market analysis, privacy and security, and information systems. After an extensive competitive process and interagency review[20] of bids, in June 1998 INS awarded 5-year contracts to two firms – the Institute for Survey Research (ISR) at Temple University in Philadelphia[21] and Westat, a research firm in Rockville, Maryland.

Another critical feature of the evaluation design was the desire to obtain input from interested stakeholders, including immigrant advocates and employer groups, Federal agencies, and congressional staffs. INS held open meetings for stakeholders in May 1998, November 1998, and October 1999. The first stakeholder meeting provided a background briefing on the evaluation. It also included a demonstration of the Basic Pilot system and sought additional input on the evaluation, including the extensive list of issues that it should address.

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[20] The review panel included staff from INS, SSA, and the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

[21] Work was conducted by both the Washington, DC and Philadelphia offices of ISR.

The second meeting was an all-day workshop consisting of four working groups organized around several issues, including the following:

- Characteristics of employers, employees, and communities
- Program effectiveness and discrimination
- Privacy, security, accuracy, and impacts
- Employer and employee behavior

Through these workshops, stakeholders provided in-depth input regarding evaluation topics and guidance for further research priorities. Since time and resources prevented the evaluation from covering every aspect and impact proposed, the list of issues to be addressed by the evaluation was further refined following the workshop, as described later in this chapter.

The third meeting reported on the status of the evaluation and the refinement of research issues, and summarized the overall preliminary design for the Basic Pilot evaluation. This briefing also demonstrated how the planned research methodology would address priority issues. The methodological challenges facing the study were also presented for input and suggestions from interested persons. At the conclusion of the meeting, the draft survey instruments were distributed to participants for their final review and comment.

The original plan for the overall evaluation strategy included evaluations of the recent INS demonstration projects that tested alternative verification systems. These projects included the second phase of the Telephone Verification Pilot (TVP II), the Employment Verification Pilot (EVP), and the Joint Employment Verification Pilot (JEVP). Although an evaluation of these pilots was intended, it quickly became apparent that it would not be feasible or cost-effective. By the time the evaluation began, the TVP II had evolved into the EVP. There was no baseline information for these relatively small-scale pilots and little incentive to continue pilots that did not meet the principles of uniform and secure verification of all employees. The JEVP, implemented not long before the Basic Pilot, included only 38 employers in Chicago and was so similar to the Basic Pilot that it seemed imprudent to divert resources to evaluate it separately. Moreover, in May 1999, INS moved the JEVP participants to the Basic Pilot. Therefore, a decision was made to focus evaluation time and resources on the IIRIRA pilots that INS had a mandate to evaluate.

b. Goals of the Evaluation of the Employment Verification Pilots

The goals of the evaluation of the employment verification pilots derive directly from the statutory mandate, the expectations of those proposing the pilots, and the concerns expressed by stakeholders. These goals are listed below:

- Describe the environment within which the employment verification pilot programs are being implemented
- Determine whether the employment verification pilots are working as intended
- Determine the costs and benefits of the employment verification pilot programs
- Determine the undesirable impacts of the employment verification pilots, such as discrimination or privacy violations
- Make recommendations for resolving the problems observed during the evaluation
- Explore the impacts of larger scale or national implementation of the employer verification pilot programs

3. Identification of Priority Issues for Evaluation

As described earlier, the evaluation began with the development of an exhaustive list of issues to be addressed. The list was augmented by stakeholder input at public meetings. Following the all-day workshop at the second meeting, which was focused on further defining issues, the evaluation team and expert consultants who had facilitated the working groups prioritized the lists of issues. The evaluation team consisted of two research firms, with both organizations working in concert to collect and evaluate data.

The evaluation process was based on assessments of how important the issues were to the evaluation and how difficult it would be to collect the information. Based on this exercise, a ranked list of issues was assembled to assist in developing the final priority issues to be included in the evaluation. The final list was based on overall rankings of importance and the difficulty of obtaining the information necessary for evaluation. The most important issues were retained regardless of their difficulty, but with the knowledge that it would be hard to collect accurate information in some of these areas.

The following sections describe the seven broad issues identified through this process that guided data collection.[22]

[22] See Appendix C for a more detailed list of research questions.

a. What Is the Environment Within Which the Pilots Are Implemented?

This question focuses on describing characteristics of employers, employees, communities, and other factors likely to influence the processes, outputs, outcomes, and impacts of the pilots.

b. Do the Pilots Work?

This set of questions focuses on describing how the pilots operate and whether pilot processes are consistent with Federal guidelines provided in the legislation, regulations, and training manuals. Also included are questions focusing on whether processes are efficient and what factors might cause deviations from the requirements. Answers to questions in this section constitute a process evaluation.

c. What Are the Implications of the Pilots for Discrimination?

This issue is of critical and overarching importance. It focuses on issues relating to whether employers implement pilot procedures in a nondiscriminatory fashion. It includes determining whether employers develop, eliminate, or modify any discriminatory practices as a result of participating in the pilot.

d. What Are the Implications of the Pilots for Privacy and Fair Information Practices?

This overarching issue concerns the impact of the pilots on privacy, confidentiality, data accuracy, and system security. Automated verification raises concerns about the risks inherent in any large data system.

e. What Are the Costs Associated with the Pilot Program?

This issue includes the costs to employers, employees, and the Federal Government of implementing and running the pilot programs. It also assesses the associated burden to these same groups.

f. What Are the Other Economic and Social Implications of the Pilots, Locally and Individually?

Other intended and unintended outcomes are grouped together in this category, focusing primarily on the effects of the pilots on deterring unauthorized workers from employment and on illegal immigration.

g. What Are the Implications of the Pilots for the Nation and for an Expanded Verification Program?

As indicated in Chapter I, Congress and other policymakers are interested in the likely impacts of a nationwide or other large-scale verification program similar to the pilots. The importance of this issue, and the challenges involved in making such a generalization, warrant treating this issue separately.

C. DOCUMENTARY REQUIREMENTS, DATA, AND SYSTEMS

To understand how the employment verification process works, it is helpful to have an understanding of the documentary requirements to work in the United States. First, all workers must have valid Social Security numbers issued by SSA. The primary purpose of these numbers is to ensure that wages are posted to the correct retirement and benefits accounts. Second, upon hiring, all employees must show the employer proof of identity and authorization to work in the United States. This Form I-9 employment verification process became a workplace standard following implementation of the employer sanctions provisions in the Immigration Reform and Control Act of 1986. The documents or combination of documents that must be shown in this process, assuming that they are valid and relate to the person for whom authorization is sought, are sufficient to establish that only work-authorized persons will be employed.

1. SOCIAL SECURITY ADMINISTRATION

The Social Security Act requires SSA to accurately record earnings for all workers earning Social Security or Medicare benefits, and SSA assigns Social Security account numbers to record their earnings. SSA issues three types of Social Security cards, depending on the citizenship status and work-authorization status of the individual. The three types of cards appear to be identical except for the presence or absence of a particular legend. The type of card issued to U.S. citizens and lawful permanent residents, refugees, and asylees has no legend. A Social Security card with the legend "Valid for work only with INS Authorization" is issued to noncitizens with temporary work authorization. Noncitizens without work authorization who have a legitimate non-work reason for having a Social Security number are issued cards that include the legend "Not Valid for Employment."

Noncitizens must apply for Social Security cards in person at a local SSA field office. The applicant must show proof of identity, age, and immigration status. SSA verifies with INS the immigration status of the applicant through the INS SAVE system or through other established guidelines. Data from the application are keyed in the local SSA office and sent electronically to a central site. Before assigning a new number and issuing a card, SSA verifies that a number has not already been assigned to the applicant.

SSA maintains a record of each Social Security card, both original and replacement cards, in a system of records called the Numerical Identification File (NUMIDENT). NUMIDENT houses all relevant data connected to the issuance of the Social Security card, including the appropriate codes related to citizenship status and the type of Social Security card issued. The NUMIDENT system is considered to be highly accurate.[23]

[23] Of the 12.5 million Social Security number applications processed in 1998, 91 percent were found to be free from error.

2. IMMIGRATION AND NATURALIZATION SERVICE

The Immigration and Nationality Act of 1952 requires that all noncitizens who are over age 18 and in the United States for more than 30 days have and carry with them evidence that they have registered with INS. Noncitizens who are authorized to work in the United States must also have documentation showing that they are work-authorized. For most noncitizens, both requirements can be met with a single INS-issued document, which also serves as a List A document on Form I-9 during the employment verification process.[24] The Form I-551 permanent resident card (green card) issued to lawful permanent residents (immigrants) fulfills both registration and work-authorization requirements. INS issues employment authorization documents (EADs), either Form I-766 or Form I-688B, that satisfy both requirements for most other groups of work-authorized aliens. The Form I-94 arrival-departure document is used to fulfill both documentary requirements for refugees for 90 days until they receive an EAD. It is also used in an unexpired foreign passport for certain groups of nonimmigrant workers, primarily those who are admitted to the United States to work for a specific employer.

a. LAWFUL PERMANENT RESIDENTS

When lawful permanent residents are admitted to the United States with an immigrant visa or adjusted to permanent residence by INS, they are processed for permanent resident (green) cards. A Form I-551 stamp, stating that the holder has been admitted for lawful permanent residence, is placed in the passport to serve as temporary proof of immigration status and work authorization. The associated paperwork is forwarded to one of INS's service centers for entry of the information into the Computer-Linked Application Information Management System (CLAIMS)[25] and the Central Index System (CIS)[26] and for card production. Contractor staff perform the data entry and card production functions at the INS service centers. Once the data have been entered and the card produced, a process that took 2 months or more at the time of evaluation, the green card is sent to the new immigrant.

INS has continually improved the integrity of the permanent resident cards it issues. When the Form I-9 process began, 18 versions of the green card were valid and in use. None contained expiration dates, and most of these versions were highly susceptible to counterfeiting and alteration. Beginning in 1989, INS issued more secure permanent

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[24] Although these INS-issued documents fulfill the Form I-9 requirement, the holder is not obligated to present them during the employment verification process. However, if the worker presents a Social Security card bearing the "Valid with INS Authorization" legend, the employee must show the INS document to the employer.

[25] INS's CLAIMS is an umbrella system that incorporates casework processing and tracking related to INS benefits. Different versions support immigration and naturalization benefits.

[26] The INS CIS is an integrated, centralized computer-based information system accessible throughout the agency. It contains selected biographical and status information on persons for whom INS maintains official records, primarily noncitizens and naturalized citizens. The CIS also contains information from and links to other INS databases, such as CLAIMS; the Nonimmigrant Information System; the Refugee, Asylum, and Parole System; and the Deportable Alien Control System.

resident cards with 10-year expiration dates. As of March 1996, all of the oldest versions of the green card (Form I-151) were invalidated, and bearers who were not in the process of becoming U.S. citizens were required to obtain new, more secure documents with expiration dates. Since April 1998, INS has issued a highly secure permanent resident card that contains a digitized photograph and fingerprint of the cardholder. Among other security features, it contains a hologram and an optical memory stripe imbedded in the card.

b. OTHER WORK-AUTHORIZED NONCITIZENS

Many groups of noncitizens are authorized to work in the United States either incident to their immigration status or because they have been admitted on a temporary basis expressly to work for a certain employer. Others are in immigration categories where work authorization may be possible based on their current but temporary immigration status.[27] These groups of work-authorized noncitizens generally must apply and pay the $100 application fee[28] for INS to adjudicate and, if approved, issue one of two types of Employment Authorization Documents (EADs), the I-688B or the I-766.

The EAD application is processed at INS service centers, and, by regulation, the process may take up to 90 days. If INS does not make a decision on the application and send an EAD within the 90-day period, the applicant is entitled to work authorization until he/she receives either the EAD or a denial of the EAD application. Some groups of noncitizens are initially issued Form I-688B EADs rather than the Form I-766. The I-688B EAD is produced on outdated stand-alone machines at local offices; the I-766 EAD is a state-of-the-art, counterfeit-resistant card that includes a hologram, a photograph, and a fingerprint, among other security features. It is produced at the four INS service centers. Over time, INS intends to eliminate the I-688B EAD and issue only the more secure I-766 EAD. Currently, INS is issuing slightly more I-766 EADs than the less secure I-688B EAD, and the proportion of newer cards issued is increasing.

Data from EADs are captured in the CLAIMS system. Somewhat different processes are used for the I-688B and I-766 EADs. Since the I-688B EAD is issued through a decentralized process, data are downloaded daily onto floppy disks that are mailed to a central location for uploading into CLAIMS. Lost disks and interruptions in the local and central uploading processes result in loss of some data that are, as a result, not available in the CIS. Although processing of I-766 EAD information is far more centralized and less error prone, it still has resulted in some loss of data as information is moved from the local service center systems to mainframe CLAIMS. Lack of failsafe procedures in uploading data from CLAIMS to the CIS has also resulted in lost data. This problem was reported in a recent General Accounting Office (GAO) study that found that "CLAIMS 3

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[27] Such statuses are categorized in 8 CFR274a.12(c) and include certain nonimmigrant family members, applicants for adjustment of status, and persons who are awaiting travel documents following a final order of deportation and who can show economic necessity.

[28] As of February 19, 2002, this fee is $120.

cannot be relied on because it (1) is an antiquated system that is frequently non-operational, and (2) does not always update and store important case data when INS field offices transfer data from the local CLAIMS 3 system to INS' mainframe computer" (General Accounting Office, 2001).

D. BACKGROUND OF BASIC PILOT IMPLEMENTATION

INS and SSA implemented the Basic Pilot program in November 1997 in California, Florida, Illinois, New York, and Texas – the five States identified as having the largest undocumented immigrant populations.[29] The State of Nebraska was added in March 1999, primarily to assist employers in the meat-packing and -processing industries in ensuring the eligibility of their workforces as they encountered new INS worksite enforcement in Operation Vanguard.

INS used multiple approaches to recruit employers for the Basic Pilot. A *Federal Register* notice published on September 15, 1997, explained how interested employers could obtain information and sign up for the Basic Pilot program. INS promoted the Basic Pilot at its routine educational meetings to help employers understand the requirements of the law such as proper completion of the I-9 form, identify documents acceptable for work authorization, and avoid discriminating against workers during the verification process. INS also contacted some employers who, based on INS enforcement assessments, seemed to be having difficulty verifying employment authorization. Other employers became interested in the Basic Pilot by hearing about it from others in their industry. In 1999, INS conducted a large-scale publicity campaign in major cities in the five designated States, including advertisements in major newspapers and spots on early morning radio encouraging employers to participate.

The voluntary employment verification pilots mandated under IIRIRA are similar in many ways to earlier INS demonstration pilots but also have some significant differences. The Basic Pilot program resembles the Joint Employment Verification Pilot (JEVP), but attempts to further promote accuracy in work-authorization decisions and to avoid unfair burdens on employees. For the first time in any pilot, employers using the Basic Pilot may not accept List B documents without photographs as evidence of identity. IIRIRA mandated that several of the timeframes for completing verification procedures be shortened from those used in earlier INS pilots. For instance, IIRIRA requires that employers make inquiries within 3 working days of the date of hire, rather than within 3 days of completing the I-9 form. In cases where the employee contests a finding of tentative nonconfirmation of work authorization, IIRIRA also requires that secondary verification result in a finding of final confirmation or nonconfirmation within 10 Federal working days of the tentative nonconfirmation.[30] Previous pilot programs generally gave

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[29] In October 1996, INS estimated that 2 million undocumented immigrants lived in California, 700,000 in Texas, 540,000 in New York, 350,000 in Florida, and 290,000 in Illinois. Collectively, these five States contain 78 percent of the total estimated undocumented immigrant population (see U.S. Immigration and Naturalization Service and Bureau of International Labor Affairs, 1999, p. 57).

[30] Provisions are made for an extension beyond the 10 days when circumstances warrant.

the worker and Immigration Status Verifiers (ISVs)[31] up to 30 days to resolve the discrepancy.

The staff of INS and SSA collaborated on the design of the Basic Pilot program. This joint effort capitalized on the experience of developing the JEVP and emphasized the incorporation of the Act's requirements, INS and SSA policy guidelines, and the input provided by various stakeholders. As one program official described the situation, "IIRIRA pushed the agencies to move faster and make some changes to implement the Basic Pilot program."

Many factors were considered in the design of the Basic Pilot. As discussed in Chapter I, a key factor that affected the design was the desire to make the program requirements for native-born citizens, naturalized citizens, and noncitizens as similar as possible. At the same time, the system designers had to work within the limitations of INS and SSA databases, systems capabilities, and agency needs. As noted in Chapter I, a major limitation of using the existing SSA and INS databases for verification was the lack of a common identifier between the databases. Moreover, SSA was initially committed to telephone-based access for security purposes, while INS needed to transmit considerable alphanumeric information for secondary verification and required a computer-based system. These realities made it necessary to continue the JEVP two-step design in the Basic Pilot program.

Other system design considerations included the desire to maximize the speed of the response to the employer from SSA and INS and to make the system as easy as possible for employers to use. The Basic Pilot evolved over time to meet these goals and has been improved throughout the course of its implementation. For instance, INS first implemented the Basic Pilot using a DOS-based system to allow employers at the lower end of the computer hardware and software spectrum to use the system. Once the Windows-based platform became standard, INS replaced the Basic Pilot telephone and DOS version with the Windows-based Basic Pilot Integrated system that automatically directs the computer query to SSA and then to INS, if necessary, thereby ending the two-step telephone and computer access method.

The INS system was also designed to capture a great deal of the information on verification transactions in a database. This was done to accommodate INS's responsibility for evaluating the pilot programs and its needs for managing the iterative verification process that occurs for a substantial percentage of cases. Because Social Security verification is a much simpler process and SSA does not have a similar reporting mandate, little SSA transaction information was captured in the original Basic Pilot program. The Basic Pilot Integrated program allowed the incorporation of a transaction-specific identification number that permitted linkage between the SSA and INS information. Nonetheless, because of the potential burden on SSA staff and pilot

[31] ISVs are INS staff in charge of resolving work-authorization problems by checking INS databases not accessible directly by the Basic Pilot system.

employers, the transaction database captures no SSA information about how employers closed verification records at that stage.

E. HOW THE BASIC PILOT WORKS[32]

1. THE ENROLLMENT PROCESS

The Basic Pilot program is available for employers in California, Florida, Illinois, New York, and Texas (i.e., the five Basic Pilot States) and Nebraska and for companies outside these States that have establishments enrolled in the program in one of the six States. Employers interested in participating in the Basic Pilot contact the INS Systematic Alien Verification for Entitlements (SAVE) Program for information. Many employers read about the pilot program on the INS Web site and download the registration materials. Upon deciding to participate in the Basic Pilot, the employer co-signs a Memorandum of Understanding (MOU) with SSA and INS (see Appendix B). The MOU states the roles and responsibilities of each party, and by signing it the employer agrees to abide by all of the pilot requirements. INS then sends the employer all pilot program materials, including the system software and installation instructions, a computer-based tutorial, a user's manual, and English and Spanish posters indicating their participation in the pilot program. As part of this process, INS provides user IDs and temporary passwords to each staff member designated as an operator of the pilot system at that establishment. Although the responsibility for verifying the status of new employees varies with the size and nature of the employer, it is typically human resources staff members who perform this function.

2. USING THE BASIC PILOT SYSTEM

The employer installs the Basic Pilot system by loading the software on a PC with a modem. A dedicated telephone line is required to transmit data. Each staff member who has an assigned user ID is required to complete a computer-based tutorial and review the Basic Pilot operations manual. After the user completes the tutorial, INS activates the user's ID and the user can log on and access the system.

The following sections outline the Basic Pilot verification process in terms of timeframes, system responses, and employer, employee, and Federal Government actions required for confirmation of work authorization. The process is also summarized in Exhibit II-1.

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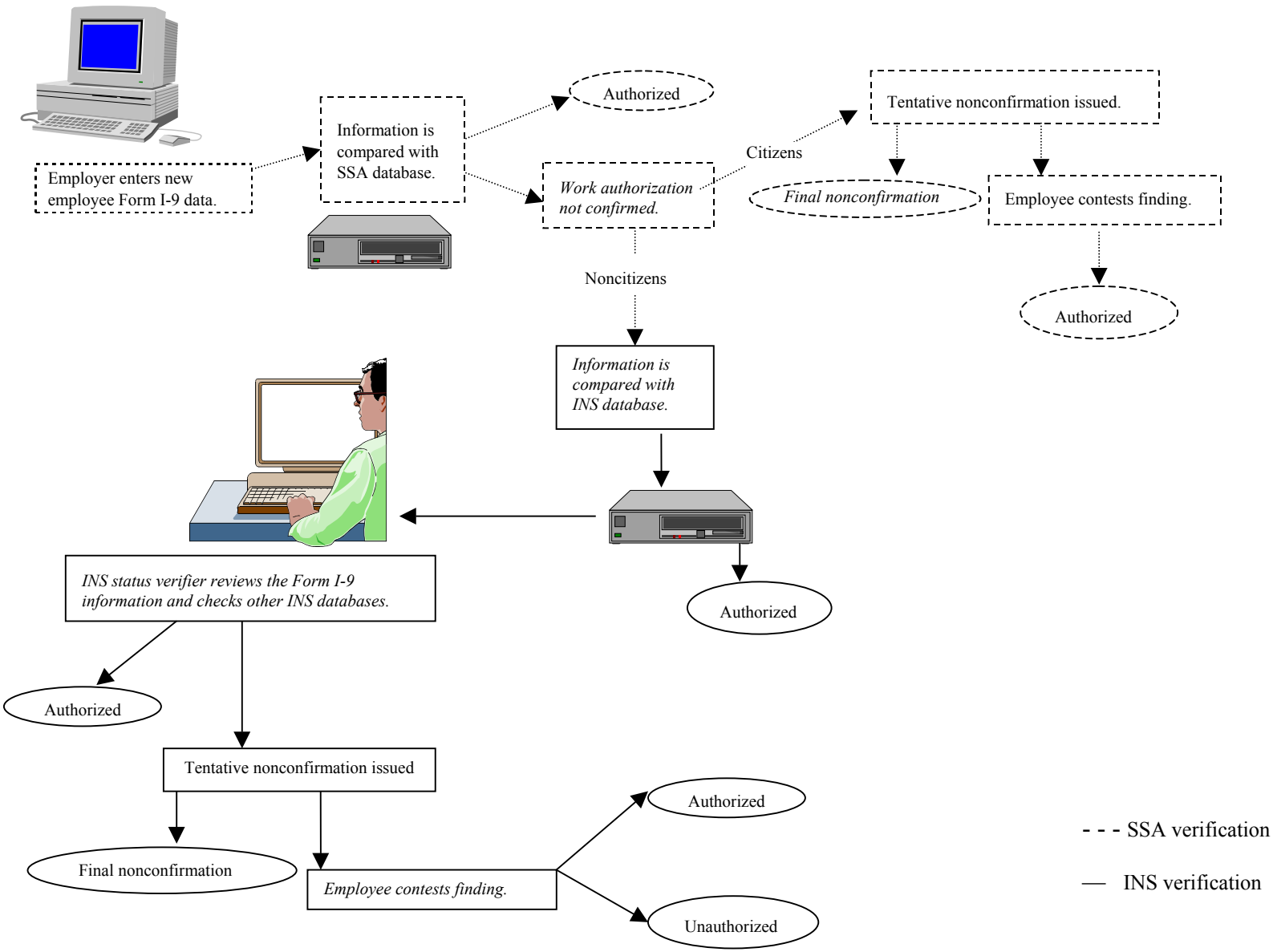
[32] This section describes the Basic Pilot Integrated process that has been in place since January 1999, rather than the earlier two-step system under which the employer contacted SSA by telephone and then, if necessary, INS by computer and modem.

Exhibit II-1: Basic Pilot Program Verification Process



3. PERFORMING THE INITIAL VERIFICATION

The Basic Pilot procedures require that verification of an employee's work authorization be initiated within 3 business days of hiring. The process begins with the completion of INS Form I-9. In Section 1, the employee records personal information, attests citizenship status, and signs the form. The employer completes Section 2 of Form I-9, recording the type of documents examined for identity and verification of work authorization and any document expiration dates. The Basic Pilot procedures require that if a List B and a List C document are presented, the List B document must contain a photograph. After reviewing the documents presented by the employee, the employer records the date of hire and signs the Form I-9 to certify having examined the identity documents presented by the employee. Exhibit II-2 shows the documents that may be presented as part of the Form I-9 process.

The Basic Pilot verification process follows the Form I-9 process and begins when the operator logs onto the system and enters the employee's information from Form I-9: the name; date of birth; Social Security number; citizenship status and Alien Number or Admission Number (I-94), if provided; the type of document(s) presented with Form I-9; and the expiration date of documents, when appropriate. The employer submits verification queries for comparison against the Federal databases, up to 15 at one time.

4. RESULTS OF THE INITIAL VERIFICATION

The electronic match of the Form I-9 information to the Federal databases usually results in an instantaneous response, approximately the time it takes for a usual computer-modem connection. In the majority of cases, the response is "employment authorized," and the Basic Pilot procedures require only that the employer record the verification ID number and result on the I-9 form, or print a copy of the transaction record and retain it with the I-9 form. For verification results that require review by an ISV, the employer immediately receives a message indicating that the "INS verification is in process." If the ISV review results in work authorization, the response is usually communicated to the employer by the following day.

5. VERIFICATIONS REQUIRING EMPLOYEE INVOLVEMENT

When an electronic comparison to SSA records, or a review of information by an ISV, is not sufficient to confirm the employee as work-authorized, the system displays a notice that the case is a "tentative nonconfirmation." The Basic Pilot procedures require that the employer notify employees of tentative nonconfirmations by presenting them with one of two standardized forms. These forms specify the employee's rights and responsibilities in resolving the tentative nonconfirmation, provide information for contacting SSA or INS, and indicate that the employee has 8 Federal working days to resolve the problem. If the employee chooses to contest the tentative nonconfirmation result, he/she must sign and date the appropriate form. The employer agrees to allow the employee to continue working while resolving the tentative nonconfirmation. If the employee decides not to contact the agency to resolve the work-authorization problem, the employer is authorized to terminate employment.

Exhibit II-2: Documents Required by Form I-9*

LISTS OF ACCEPTABLE DOCUMENTS

LIST A

Documents that Establish Both Identity and Employment Eligibility

1. U.S. Passport (unexpired or expired)
2. Certificate of U.S. Citizenship *(INS Form N-560 or N-561)*
3. Certificate of Naturalization *(INS Form N-550 or N-570)*
4. Unexpired foreign passport, with *I-551 stamp or* attached *INS Form I-94* indicating unexpired employment authorization
5. Alien Registration Receipt Card with photograph *(INS Form I-151 or I-551)*
6. Unexpired Temporary Resident Card *(INS Form I-688)*
7. Unexpired Employment Authorization Card *(INS Form I-688A)*
8. Unexpired Reentry Permit *(INS Form I-327)*
9. Unexpired Refugee Travel Document *(INS Form I-571)*
10. Unexpired Employment Authorization Document issued by the INS which contains a photograph *(INS Form I-688B)*

OR

LIST B

Documents that Establish Identity

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
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
3. School ID card with a photograph
4. Voter's registration card
5. U.S. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic,-doctor, or hospital record
12. Day-care or nursery school record

AND

LIST C

Documents that Establish Employment Eligibility

1. U.S. social security card issued by the Social Security Administration *(other than a card stating it is not valid for employment)*
2. Certification of Birth Abroad issued by the Department of State *(Form FS-545 or Form DS-1350)*
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
4. Native American tribal document
5. U.S. Citizen ID Card *(INS Form I-197)*
6. ID Card for use of Resident Citizen in the United States *(INS Form I-179)*
7. Unexpired employment authorization document issued by the INS *(other than those listed under List A)*

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

* In 1996, the old version of the permanent resident card, the Form I-151, was deleted as an acceptable List A document and the new employment authorization document, the Form I-766, was added as a List A document. In 1997, INS published an interim rule removing four documents from List A, including the Certificate of United States Citizenship, the Certificate of Naturalization, the Re-entry Permit, and the Refugee Travel Document. INS does not take enforcement action against employers who accept any of these documents.

6. RESULTS OF EXTENDED VERIFICATION

For cases where the employee decides to resolve a tentative nonconfirmation result, the agency (SSA or INS) is required to determine work-authorization status within 10 Federal working days from the date of referral.[33] For cases receiving SSA tentative nonconfirmations, the employee is required to show the employer the form from SSA indicating that the work-authorization problem has been resolved. The employer must check the Basic Pilot system for confirmation of the work-authorization result and file the verification result with the employee's I-9 form. INS provides this information to the employer electronically.

If the employee does not contact INS or SSA within 10 Federal working days, the system will indicate a result of "final nonconfirmation." After a final nonconfirmation response, the employer is authorized to terminate the employee.

[33] In some cases, exceptions can be made to allow more than 10 Federal working days to resolve the case.