THE PRACTICES AND OPINIONS OF EMPLOYERS WHO DO NOT PARTICIPATE IN E-VERIFY

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U.S. Department of Homeland Security
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Prepared by:
Westat
Rockville, Maryland

CONTENTS

EXECUTIVE SUMMARY

E-Verify, formerly titled the Basic Pilot Program, is an Internet-based program that allows participating employers to electronically verify the work-authorization status of new hires. After employers enter data from the Form I-9 into E-Verify, the data are compared electronically with data in Social Security Administration records and in Department of Homeland Security immigration records. Typically (96.9 percent of queries in July through September 2008) employees are automatically confirmed as work authorized either immediately or within 24 hours, requiring no employee or employer action.[1] If problems are found, then employers are required to notify workers and give them an opportunity to contest the initial finding.

Past surveys of E-Verify users have shown high levels of satisfaction. However, as of 2009, less than 3 percent of all employers in the United States participate in E-Verify. Many policymakers have looked for ways to reduce unauthorized employment, including State law mandates to participate in E-Verify for all employers (in Arizona and Mississippi) or selected groups of employers (in 11 states and in the Federal government, which requires participation by certain Federal contractors). This study was designed to determine why employers do not participate in E-Verify, what factors they desire in E-Verify, and what they think about a mandatory program.

This report presents the results of a nationwide survey of nonusers—i.e., companies that have never signed a Memorandum of Understanding (MOU) to participate in E-Verify. The response rate was too low to provide reliable national estimates; however, several broad patterns can be detected from the 511 respondents if the survey is treated as a case study. Therefore, this report treats the results as a case study and supplements the survey of nonusers with results from focus groups of additional nonusers.

The principal barrier to participation in E-Verify appears to be a lack of awareness of the Program. Among the case study participants, 63 percent were not familiar with E-Verify. Case study participants were often positive about the characteristics of E-Verify, and among the 101 who answered a question concerning their future plans, 23 percent definitely planned to participate in E-Verify in the future (while 32 percent would not participate unless mandated to do so). For those employers who have heard of E-Verify, the information often came from nongovernmental sources such as professional organizations.

The other primary reasons for not participating were not perceiving a benefit from participating, and thinking it would be too costly or time-consuming to participate. The perception of burden is based in part on employers' reported negative experiences with other government Internet-based programs (such as the Social Security Administration/Business Services Online Website).

The case study participants supported many program changes to E-Verify, with the most popular including the increased use of technology to identify fraudulent documents and to verify identity, allowing a formal appeal by an employer and/or employee of a final case finding, and allowing verification of job applicants before a job decision is made.

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[1] http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextchannel=a16988e60a405110VgnVCM10000047 18190aRCRD&vgnextoid=f82d8557a487a110VgnVCM1000004718190aRCRD.

The case study participants generally opposed creating a mandatory program for all employers, particularly for small business owners. A substantial minority said they lacked sufficient resources to participate, with about one-fourth of the case study participants saying they did not have staff with sufficient skills available and about one-tenth of small businesses saying they lacked computers with an Internet connection or their connection was very slow. E-Verify may have less impact on employment for very small businesses, which often reported that they rarely hired new employees and had no noncitizens as employees.

Westat recommends that U.S. Citizenship and Immigration Services explore ways of increasing awareness of E-Verify, including through alternative sources such as nongovernmental organizations. Also, participation in E-Verify might be increased by adopting some of the program changes supported by employers, recognizing that these changes must be weighed against potentially competing priorities (such as privacy and discrimination concerns) and can only be implemented if legally authorized and technically feasible, and by addressing the perceptions of a lack of benefit from the Program and the perceived burden. A mandatory program appears necessary if the desire is to get all employers to participate; however, substantial increases in participation appear possible without a mandate. Based on the input for this study, a mandatory program may be burdensome for some employers.

CHAPTER I. BACKGROUND

1.   INTRODUCTION AND PURPOSE OF THE STUDY

This report is part of a multi-year evaluation of the E-Verify Program and presents the results of a survey and focus groups of nonusers (employers that do not participate in E-Verify) conducted in 2009. The multi-year evaluation has previously focused on E-Verify users via surveys, focus groups, and reviews of transaction data with the purpose of identifying problems that employers experience with E-Verify and potential changes to improve the accuracy and ease of use of the Program.

In recent years, policymakers have given widespread attention to reducing unauthorized employment, in part by increasing participation in E-Verify. E-Verify has rapidly expanded on a proportional basis in the last two years as the result of the increased outreach by U.S. Citizenship and Immigration Services (USCIS) on the benefits of participation, public awareness surrounding the question of immigration, and consideration of state legislation requiring employers to use the E-Verify system. However, except in Arizona, which recently mandated participation for all employers within the state, relatively few employers participate in E-Verify.[2] As of the writing of this report, there are approximately 237,000 employers enrolled in E-Verify out of an estimated 6.7 million private sector employers in the United States, or 4 percent of all employers.[3] Because larger employers were more likely to participate in E-Verify than small employers, E-Verify covered a greater proportion of new hires than might be expected from the employer statistics alone; in April through June 2008, 11.7 percent of new hires were verified through E-Verify, an increase from 1.3 percent in April through June 2005.[4]

There have been activities to increase participation in the Program. USCIS has several types of outreach to provide information to employers about E-Verify. There is currently interest on the part of Congress to expand the current program and possibly institute mandatory employment verification for all or a substantial percentage of the Nation's employers. Thirteen states have already passed legislation to mandate use of the Program for some or all of their employers,[5] four states have enacted legislation influencing the use of E-Verify, [6] and 14 states have pending legislation that would require at least some employers to use E-Verify[7] (see Appendix A). Effective January 1, 2008, the Legal Arizona Workers Act mandated the use of E-Verify for all employers in Arizona.[8] A recent initiative to implement such a

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[2] A separate study of the mandated participation in Arizona is planned for release later in 2010.

[3] USCIS, Verification Division, E-Verify Weekly Report, December 4, 2010, and BLS Business Employment Dynamics: First Quarter, 2010, November 18, 2010, http://www.bls.gov/news.release/pdf/cewbd.pdf. Some E-Verify participants are public rather than private employers.

[4] *Findings of the E-Verify Program Evaluation*, December 2009, p. 78.

[5] For one of these 13 states, Virginia, the law goes into effect December 1, 2012.

[6] An example of legislation that influences the use of E-Verify is that Tennessee does not mandate participation, but it allows an employer to use its registration with E-Verify as a defense if it is charged with knowingly hiring an unauthorized alien. All four cases of legislation influencing the use of E-Verify are described in Appendix A.

[7] Four additional states with legislation mandating E-Verify for some of its employers also have pending legislation to expand the use of E-Verify for other employers.

[8] The Legal Arizona Workers Act, as amended, prohibits businesses from knowingly or intentionally hiring an "unauthorized alien" after December 31, 2007. Under the statute, an "unauthorized alien" is defined as "an alien who does not have the legal right or authorization under Federal law to work in the United States." The law also requires employers in Arizona to use the E-Verify system (a free Web-based service

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program includes Executive Order 12989, as amended by President George W. Bush on June 6, 2008, which directs Federal agencies to require that Federal contractors and their subcontractors electronically verify the employment eligibility of their employees. The amended Executive Order reinforces the policy, first announced in 1996, that the Federal government does business with employers that have a legal workforce. The rule will only affect Federal contractors who are awarded a new contract on or after September 8, 2009, that includes the Federal Acquisition Regulation (FAR) E-Verify clause (73 FR 67704).[9]

Given the variety of activities undertaken to increase participation in E-Verify, the survey of nonusers was designed to better understand:

- The needs, characteristics, and opinions of current nonusers in order to determine why they do not currently use E-Verify;

- What impact the Form I-9 employment verification system currently has on these employers;

- What modifications of E-Verify would make it more appealing to employers; and

- What the employers' opinions are concerning a mandatory program.

It is hoped that this information will be helpful in forming future legislation and administrative procedures related to employment verification programs.

2.   DESCRIPTION OF THE E-VERIFY PROGRAM

E-Verify, formerly titled the Basic Pilot Program, was originally mandated under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to electronically verify the work-authorization status of new hires of participating employers. Its authorization has been extended several times since then, and the Program has been expanded in scope and modified considerably.

All workers hired after November 6, 1986, along with their employers, are required to complete the Form I-9, which is used to certify that new hires are authorized to work in the United States. As part of this process employers also examine documents such as U.S. passports or driver's licenses that are evidence of the worker's identity and/or work authorization.

E-Verify provides a Web component so that participating employers can quickly verify their new hires' statuses. In order to participate, employers must sign a Memorandum of Understanding (MOU) agreeing to comply with all of the E-Verify requirements. After employers enter data from the Form I-9 into E-Verify, the data for all new hires are compared electronically with data in Social Security Administration (SSA) records, and data from noncitizens are also compared with data in Department of Homeland

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offered by the U.S. Department of Homeland Security) to verify the employment authorization of all new employees hired after December 31, 2007.

[9] See USCIS Web site:
http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=534bbd181e09d110VgnVCM1000004718190aRCRD&vgnextchannel=534bbd181e09d110VgnVCM1000004718190aRCRD.

Security (DHS) immigration records. [10] Most often employers receive immediate notification that the new hires are authorized to work; however, in some cases Federal records do not permit immediate confirmation of the worker's employment-authorization status. When the government cannot immediately confirm that the worker is authorized to work, a Tentative Nonconfirmation (TNC) is issued. A TNC might indicate that a person is not authorized to work, but it also might occur for other reasons such as typographical errors when entering the data or a worker not registering a name change with Social Security or USCIS. Employers are required to inform workers about TNCs and give them an opportunity to contest these findings by contacting SSA in person or USCIS by telephone or fax and resolving any problems. If a worker fails to contact SSA or USCIS within 10 Federal workdays, the E-Verify system issues a Final Nonconfirmation (FNC) finding and employers are expected to promptly terminate the worker's employment.

3.   TERMINOLOGY AND DATA SOURCES

When discussing results from the survey of nonusers, this report uses three terms largely interchangeably. The primary term used is *case study participants*; this term was chosen to emphasize that the text discusses the 511 particular employers who responded to the survey (or some subset who responded to a specific question), and that the percentages for these particular employers may not correspond to the percentages that would be found in the Nation overall. Because the phrase is somewhat awkward, the report also uses the terms *employers* and *nonusers* (depending on the context) as shorter ways of referring to the same respondents.

In addition to the survey statistics, this report also includes quotations or summaries of verbal comments by employers who do not participate in E-Verify. These quotations were taken either from the three focus groups that were conducted with employers or from the survey respondents, who sometimes were asked to provide open-ended responses about particular topics.

Some data on the characteristics of all employers in the United States are based on data provided by Dunn & Bradstreet, which maintains a national database of companies and which provided the data used to select the survey sample. The statistics reflect the particular way that eligible employers were defined for this study, and may not always correspond to other national statistics on employers. In particular, the Dunn & Bradstreet statistics exclude companies with only one employee (such companies were not considered to be employers because Dunn & Bradstreet lists the owner as an employee in single-person companies) and branches of an employer (since the survey was sent only to the headquarters and to firms with only a single location).

This report sometimes presents data on employer characteristics, such as employers' industry types and employer size. Data on employer characteristics are based on two sources: the employer's own responses (i.e., survey question C1 covered industry types, and survey question C3 covered employer size) and data from the sampling frame. Where possible, the employers' responses were used because these data were considered to be the most accurate and up-to-date. However, if the employers did not respond to the survey questions (or, in the case of employer size, if they indicated that the sampling frame data were correct), then the sampling frame data were used.

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[10] In some cases, data on naturalized citizens may also be compared with DHS and U.S. passport records.

When providing statistics on employers who participate in E-Verify, this report presents data from a separate earlier report, *Findings of the E-Verify Program Evaluation*, December 2009.[11] Such data are either survey statistics, which are weighted to represent the total number of eligible E-Verify users in the Nation, or from the E-Verify transaction or employer databases. The survey statistics are based on 2,320 respondents who represent 12,485 employers participating in E-Verify (with certain rules used to specify employers who were eligible for the survey). That survey, which received a weighted response rate of 84 percent, provides reliable and nationally representative estimates concerning employers that use the E-Verify Program.

4.   REPORT ORGANIZATION

The report is organized into six sections. Chapter I provides background on the study. Chapter II discusses the study methodology. Chapter III addresses the reasons employers choose not to participate in E-Verify. It describes the level of familiarity of nonusers with E-Verify, how nonusers who are familiar with the Program learned about it, what barriers to using E-Verify are reported by those nonusers who are familiar with it, nonusers' plans to use E-Verify in the future, and how nonusers differ from E-Verify users. Chapter IV describes the implications for nonusers of signing up for E-Verify, discusses their current verification procedures, and assesses the impact of participating in E-Verify. Chapter V summarizes nonusers' opinions on mandatory participation in E-Verify and on possible program changes. Chapter VI provides conclusions and recommendations for USCIS based on the findings in the previous sections. Appendix A provides a table summarizing current state legislation related to E-Verify. Appendix B contains the survey data collection instruments.

The report presents descriptive statistics from the nonuser survey. Nonuser focus group discussion and nonuser survey open-ended comments provide qualitative information on the perspectives of nonusers. Generally, data presented in the report are from the nonuser survey; however, where possible, they are supplemented with information from the focus groups, and this is noted in the text.

This report often presents quotations from those who were surveyed or interviewed. Some of the employers' comments reflect misunderstandings about E-Verify or the work authorization process, and some of the employers indicated following procedures that are in violation of current regulations. Westat did not attempt to correct the employers during the interviews since making corrections might have made them less willing to offer their opinions. The opinions are presented here because employers' perceptions are important to those seeking to increase participation in E-Verify regardless of whether the opinions are accurate. Employers were promised confidentiality when they were surveyed or interviewed, and the comments have been edited to remove identifying information.

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[11] The report can be found at:
http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3a351e56d3856210VgnVCM100000082ca60aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD

CHAPTER II. METHODOLOGY

This chapter describes the research methodology used for this study.

1.   CONTEXT FOR THE STUDY

The survey of nonusers was one component of a large, multi-year, and multimodal evaluation of E-Verify. The full evaluation included the following:

- Discussions with stakeholders at a meeting in Arizona in March 2009;

- Focus groups of employers, including those who were not using E-Verify;

- Surveys of employers that participated in the E-Verify Program;

- Surveys of employers that had not enrolled in the E-Verify Program;

- National onsite interviews and observation of employers, and separate onsite interviews and observations of employers in Arizona;

- Interviews of workers who received E-Verify Tentative Nonconfirmations (TNCs);

- Reviews of worker verification records;

- Analyses of E-Verify transaction and employer databases; and

- Other Federal data sources.

2.   SURVEY SAMPLING

The first stage in sampling was to purchase a stratified nationally representative sample of 10,000 businesses from Dunn & Bradstreet. [12]   Based on instructions from Westat, Dunn & Bradstreet excluded all employers in Arizona (which adopted a statewide mandate to participate in E-Verify), all employers located in U.S. territories, all branches (i.e., Dunn & Bradstreet retained employers with a single location, headquarters of employers with multiple branches, and franchises, which can fall in either of the first two categories), all companies with only one employee (in such companies the owner was typically the employee), and all duplicate listings.   The sample frame was stratified by industry sector and by employee size class. Westat drew a stratified sample of 3,819 employers. The stratification was designed to help ensure that the sample would include sufficient numbers of key employer characteristics in order

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[12]Dunn & Bradstreet maintains a worldwide commercial database with more than 140 million business records. One of the principal sources of data on businesses, it continually updates the database to add new businesses and delete closed businesses.

to permit statistical comparisons. Westat also drew a pre-selected reserve sample in case it would be needed to replace employers that were ineligible or refused to participate, but the reserve sample was never used for this purpose. The reserve sample was used later for selecting focus group participants.

Three main industries were used for the purpose of stratification:

- Employment agencies, temporary help services, and farm labor contractors—1,260 employers;

- Industries known to have relatively large percentages of undocumented workers—1,268 employers;[13] and

- All other industries—1,291 employers.

The first two categories represent classes of employers who are likely to have special needs or different experiences regarding E-Verify. For example, employment agencies and temporary help services may be asked to perform checks on work authorization by the employers that they support. Industries with large percentages of undocumented workers may face a greater likelihood of losing unauthorized workers and having fines imposed as a result of enforcement actions, and may have more difficulty finding alternative workers to hire. The stratification was designed to ensure that there would be a sufficient number of such respondents to provide reliable data.

The second stratification variable was employer size. Within each of the three industry sectors, the sample of 3,819 employers was further divided into the following size subcategories:

- Small—1,139 employers had 2 to 14 employees;

- Medium—1,412 employers had 15 to 99 employees; and

- Large—1,268 employers had 100 or more employees.

Employer size was of interest because it may affect several aspects related to hiring, including an employer's level of resources (e.g., whether an employer has a separate human resources department), the frequency of hiring (e.g., whether E-Verify needs to be relearned with each new hire), and the total volume of hiring (e.g., requiring a greater amount of data entry).

The Dunn & Bradstreet data did not include information on employers' E-Verify participation status, and the E-Verify database lacked a common identifier for merging with the Dunn & Bradstreet data. There was no attempt to remove E-Verify users from the Dunn & Bradstreet file, since less than 3 percent of U.S. employers participate in E-Verify. However, since large employers were over-sampled relative to

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[13] These industries were Agriculture, Forestry, Fishing, and Hunting, excluding farm labor contractors and crew leaders; Construction; Food Manufacturing; Services to Buildings and Dwellings; Food Services and Drinking Places; and Personal and Laundry Services. The definition of this category is based on the following report: Jeffrey S. Passel, Senior Demographer, Pew Hispanic Center, and D'Vera Cohn, Senior Writer, Pew Research Center, *A Portrait of Unauthorized Immigrants in the United States*, 4.14.2009 (http://pewhispanic.org/reports/report.php?ReportID=107).

their frequency in the country, and large employers are more likely to participate in E-Verify, a slightly larger proportion of the sample (8 percent) than in the population ultimately were found to be ineligible because they were currently using or had participated in E-Verify.

Additional employers also were found to be ineligible through a combination of data provided by Dunn & Bradstreet and obtained from the data collection process. After finding that many of the companies lacked any employees other than the owner, Westat obtained data from Dunn & Bradstreet on "cottage industries" (which are generally home-based businesses), and excluded all such companies as ineligible. Additional companies were removed because they were no longer in business, were duplicate listings, or had their headquarters outside of the United States.

Of the 3,819 employers, 1,072 (28 percent) were ultimately found to be ineligible: 287 employers (8 percent) were currently using E-Verify; 534 (14 percent) were no longer in business; 246 (6 percent) had no employees; and 5 (less than 1 percent) were a duplicate listing or had their headquarters outside of the United States.

A table providing the numbers of employers within each stratum is provided later in this chapter as part of the discussion of response rates to the survey.

3. QUESTIONNAIRE DESIGN AND DEVELOPMENT

3.1. Selection of Questions for the Survey

One source of survey questions was a survey of E-Verify participants conducted by Westat in 2008; it contained many questions about the processes that employers used to check on work authorization, opinions about the verification process and the mechanisms and rules that might aid the verification process, as well as questions on employer characteristics that were related to hiring policies. Using this survey of users as a primary source for the nonuser questionnaire facilitated making comparisons of responses between the two groups.

The survey questionnaire was adapted by including questions of particular relevance to nonusers, including the respondent's familiarity with the E-Verify Program and reasons why the employer did not participate. The following modifications were made during the design of the survey instrument:

- Questions were added reflecting information obtained during a series of nonuser employer focus groups and early discussions with USCIS staff involved in administering or evaluating the E-Verify Program.

- Questions designed to obtain additional insights into the special needs of nonuser employers and staffing and temporary help agencies were added.

3.2. Stakeholders Meeting

On March 9, 2009, Westat conducted a stakeholders meeting in Phoenix, Arizona. The purpose of the meeting was to assist the Westat evaluation staff in prioritizing research topics for an evaluation of the E-Verify Program in Arizona, following the recent adoption of a state requirement that all employers

participate in E-Verify. The issues discussed included how the E-Verify Program is working in Arizona, how the Program was implemented by various types of employers, and what challenges they encountered. Additionally, stakeholders were encouraged to share information about the Program that would be helpful to other states that are considering mandating use of E-Verify for their employers.

The meeting had a different focus than the survey, since the stakeholders concentrated on users of E-Verify while the Web survey was for nonusers. However, information about employers' concerns about E-Verify was used to help refine the survey questionnaire.

3.3.   Pre-Testing of the Draft Paper Survey

The initial drafts of the different versions of the survey were pre-tested with small groups of employers to verify that questions were clear and the survey did not take an excessive amount of time to complete. The research team conducted six online focus groups using WebEx, a Web-hosting service for integrated teleconferencing. The survey was then modified based on input from the focus groups. (The six focus groups used for pre-testing of the questionnaire were separate from the three focus groups conducted after the survey was completed. It is the latter three focus groups that are frequently referenced in this report.)

The pre-test was used to identify questions that respondents might misunderstand, areas in which respondents had difficulty obtaining answers, and topics of importance that had not been covered in the original questionnaire. Several small changes were made to the questionnaire as a result of the pre-test. In addition, a secondary but important finding of the pre-test was that employers were often reluctant to participate, even though a financial incentive was offered and even though it is often easier to recruit respondents for a pre-test than for a survey itself. Some of the reasons for the reluctance to participate appeared to be that employers were too busy or not interested, there was a company policy against participating in surveys, and there were scheduling difficulties. In addition, many employers were difficult to locate or contact, especially given the limited time available for scheduling the focus groups.

3.4.   Creation and Testing of the Final Survey Instruments

Programming staff created an online version of the survey. The process used to develop the Web application was an iterative one. Research staff provided specifications for the survey. After programmers had created and tested the draft instrument, research staff tested the survey and requested changes to its appearance and functionality. Programmers made and tested the requested changes, which were then tested again by research staff. This process continued until both programming and research staff approved the survey for use.

The following is a list of the features of the online survey:

- Logins, passwords, and a Secure Sockets Layer (SSL) were used to ensure limited access and data security.

- Programmable conditional and skip logics were built in. Respondents were automatically navigated to the correct location in the survey based on their responses to prior questions so that employers were not asked irrelevant questions.

- Validations and edits were designed to alert respondents to missed questions or inconsistent responses.

- Respondents were able to save and close the survey and then return to the next unanswered question at any time before the survey was completed.

- Different response formats such as "select one" and "select all" were allowed. Questions were formatted with all the standard input controls (i.e., drop-down boxes, text areas, text boxes, radio buttons, and check boxes).

- Respondents were able to navigate back through the survey and change prior responses without data loss.

- When respondents completed the survey, they were offered the opportunity to print a copy of their responses. This printed copy also informed them which questions were part of a skip pattern, as well as which ones had not been answered.

- A receipt control module was built into the system to provide the evaluation team with information on response rates and other survey statuses.

During the data collection process, it became apparent that many employers could not be reached or would not respond to the online survey. As an alternative, a hardcopy version of the questionnaire was created based on the hypotheses that (1) a mail survey may sometimes reach a respondent more effectively (given the difficulties that appeared when trying to make telephone or email contacts), (2) the use of FedEx might draw special attention to the survey, and (3) employers lacking an Internet connection might be better able to participate. Because the online survey contained a large number of skip patterns that were performed automatically by the computer survey but would appear complex on paper, the paper version was a condensed and simplified version that dropped some questions and reduced the number of skips.

Copies of the final versions of both the Web and mail surveys are provided in Appendix B.

4.   DATA COLLECTION AND ANALYSIS

4.1.   Staff Training

The evaluation team provided thorough training to the telephone and data entry staff who worked on the employer survey. For the telephone staff (who obtained correct addresses, reminded respondents that their questionnaires had not been completed, answered respondent questions, and conducted refusal conversion), this training included an explanation of the purpose of the survey, a review and explanation of calling duties, and role-playing scenarios. For data entry staff (who used the data management system), training consisted of an explanation of the purpose of the survey, a review of result codes and edits, and practice inputting data into the management system.

4.2. Data Collection

Data collection took place during a three-month period starting in June 2009.

The initial contact with employers was through a letter from U.S. Citizenship and Immigration Services (USCIS) Director of Research and Evaluation on agency letterhead (mailed to the sample by Westat). This letter explained the reason for the survey, asked participants to cooperate with the evaluation, informed them that Westat would be conducting the survey, and stressed that information provided by the respondent would be kept confidential. Included with the letter was a brochure about the study and a phone number that could be called if there were any questions. About a week later, a similar letter was sent on Westat letterhead containing the information that the employer needed to access and complete the survey; it also requested that the recipient provide information on who should be contacted if the recipient was not the correct contact person. Then another week later, a Westat reminder letter containing similar information was sent prior to beginning the reminder telephone calls to employers.

Since the pre-test revealed that the locating information for the sampled employers often was outdated, the employer addresses were confirmed through a change-of-address service, which provided updated addresses and telephone numbers and indicated employers that had closed. Despite the use of the updates, many of the remaining sampled employers had closed, while others had moved, which complicated the task of reaching the employers. Exhibit II-1 shows the number of employers on the sample frame, the number of those employers where at least one of the above-mentioned letters was returned as undeliverable, and the percentage of mail returns.

Exhibit II-1.   Survey Sample Size and Mail Return, by Stratum

Stratum	Number of employers in the sample	Number of employers with an undeliverable letter	Mail returns (percent)
Employment/temporary agencies	**1,260**	**219**	**17.4**
2 to 14 employees	428	111	26.0
15 to 99 employees	412	56	13.6
100 or more employees	420	52	12.4
Industries with high percent of undocumented workers	**1,268**	**158**	**12.5**
Employee count unknown	260	57	21.9
2 to 14 employees	306	46	15.0
15 to 99 employees	279	25	9.0
100 or more employees	423	30	7.1
All other industries	**1,291**	**131**	**10.1**
Employee count unknown	92	20	21.7
2 to 14 employees	405	51	12.6
15 to 99 employees	369	35	9.5
100 or more employees	425	25	5.9
Total	3,819	508	13.3

When the Post Office returned any letters as undeliverable, the sample was checked to see whether an alternate address had been provided as part of the Dunn & Bradstreet database. If an alternative address was available, a new letter was sent to that address. Often, the alternative address was a post office box. If there was no alternative address, or if the letter sent to the alternative address was also returned as

undeliverable, the employer was called to determine what the next appropriate step would be. In many of these "returned letter" cases, either the employer was no longer in business or the person to whom the letter had been addressed was no longer with the employer. If, during the phone contact, a new contact name was provided as a more appropriate person, a letter was sent to that person if requested.

Approximately three weeks after data collection had begun, 1,229 employers (31 percent) had received a final status (i.e., they either were ineligible or provided a survey response), while 2,590 (69 percent) were still pending. Included in the final status group at that time were 289 employers that had completed the survey. On July 16, 2009, Westat began making telephone calls to the employers to verify that the packages had been received and had reached the right person, obtain updated contact information if needed, and prompt the sampled employers to respond to the survey. It soon became clear that (1) obtaining a high response rate would be difficult and highly expensive, and (2) the telephone calling process was not very productive. As an alternative approach to provide one final follow-up attempt, a FedEx package was sent to each of the employers still remaining in the nonresponse sample. Over a three-week period in August, Westat sent 2,514 FedEx packages. Each package included a letter with instructions for logging on to the survey and a hardcopy version of the Web questionnaire that could be completed and returned.

A summary of the various nonuser mailings follows:

- June 11, 2009: 3,819 USCIS introductory letters were mailed.

- June 18, 2009: 3,819 Westat information letters were mailed.

- June 24, 2009: ~3,700 Westat reminder letters were mailed.

- In July, the remaining 3,133 non-finalized sample cases were divided.

    - July 16, 2009: 1,699 cases were assigned to telephone callers.

    - July 29, 2009: 1,434 cases were sent a second Westat reminder letter.

- On August 12, 2009, Westat began sending hardcopy questionnaires by FedEx.

    - August 12, 2009: 1,450 hardcopy questionnaires were sent.

    - August 19, 2009: 707 hardcopy questionnaires were sent.

    - August 28, 2009: 225 hardcopy questionnaires were sent.

    - September 1, 2009: 132 hardcopy questionnaires were sent.

Exhibit II-2 shows the results of the data collection effort for the E-Verify nonuser survey.

Exhibit II-2.   **Results of Data Collection Efforts**

Sample component	Sample size	Percent of employers	Results prior to FedEx	FedEx results	Telephone results
Total Sample	3,819	100.0	1,229	2,514	76
Ineligible companies	**1,072**	**28.1**	**782**	**277**	**13**
E-Verify user	287	26.7	199	76	12
Employer closed	534	49.8	430	104	0
No employees	246	22.9	148	97	1
Other ineligible	5	0.5	5	0	0
Eligible companies	**2,747**	**71.9**	**447**	**2,237**	**63**
Web survey complete	384	14.0	289	68	27
Mail survey complete	127	4.6	0	127	0
Survey refusal	191	7.0	143	15	33
Other result	2,045	74.4	15	2,027	3

NOTE: Percents add to 100 within each major category (e.g., 287 E-Verify users form 26.7 percent of 1,072 ineligible companies).

5.   RESPONSE RATES AND STATISTICAL RELIABILITY

The pre-test of the survey instrument suggested that employers often would be difficult to locate and/or reluctant to participate. Several steps were taken in an effort to improve the likelihood of employers responding. Endorsements for the study were obtained from three professional organizations, the American Payroll Association, the Society for Human Resources Management, and the National Small Business Administration,[14] and employers were mailed a brochure that described the purpose of the survey and included statements from each of the three endorsing organizations. Repeated contacts were made to nonrespondents through mail, email, telephone, and FedEx packages. Additionally, while the survey was originally intended as a Web survey, a hardcopy mail version was provided as an alternative; ultimately, 25 percent of the responses were received through mail/FedEx. However, despite these efforts, it became clear that nonresponse follow-up was increasingly unproductive and would require greater resources than was judged desirable. For this reason, data collection was terminated without reaching a satisfactory response rate.

Of the 2,747 eligible employers, 2,236 employers (81 percent) did not complete the survey, while 511 completed the survey either on the Web or by mail. Thus, the overall unweighted survey response rate was 19 percent.

Survey researchers disagree on what is considered an acceptable response rate, but a response rate of 85 percent or higher is widely accepted as a desirable target, and response rates below 70 percent are often considered as undesirable or even unacceptable for academic or government research. Commercial market research often is conducted under severe time and budget constraints, and market researchers often focus on achieving a set number of responses (perhaps within each of several target groups) without reporting a response rate. The key considerations are whether nonrespondents differ systematically from respondents, and whether sufficient data are available to properly weight the data to adjust for

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[14] The organizations were not necessarily endorsing E-Verify itself but, rather, the collection of survey data to evaluate E-Verify.

nonresponse. The concern in this study was not with the number of responses, but that the response rate was too low to properly evaluate what types of systematic differences may have appeared between respondents and nonrespondents. At 19 percent, the nonuser response rate was too low for the survey to provide statistically reliable results by traditional academic or government standards. Instead, the survey data are being treated as a case study, i.e., as an analysis of a limited amount of data to better understand employers' decision-making processes and concerns relative to E-Verify, without considering those results to be nationally representative.

Exhibit II-3 shows the number of employers on the sample frame, number that were sampled, number of eligible employers, number of completed surveys, and response rate for each stratum. There were small differences in response rates based on employer type, with industries that typically have a high proportion of undocumented workers showing a somewhat lower response rate (16 percent) than other industries (20 percent for employment/temporary help agencies, and 20 percent for all other industries). Greater differences appeared based on employer size, with employers with fewer than 15 employees having lower response rates (14 percent) than employers with 100 or more employees (23 percent).

Exhibit II-3.   Web Survey Sample Size and Response Rate, by Stratum

Stratum	Number of employers in the Nation*	Number of employers in the sample	Number of eligible employers	Number of completed surveys	Response rate
Employment/temporary help agencies	**49,061**	**1,260**	**829**	**160**	**19.3%**
Employee count unknown	60	0	--	--	--
2 to 14 employees	42,178	428	237	39	16.5
15 to 99 employees	5,092	412	310	59	19.0
100 or more employees	1,731	420	282	62	22.0
Industries with high percent of undocumented workers	**2,103,050**	**1,268**	**929**	**152**	**16.4**
Employee count unknown	196,917	260	167	11	6.6
2 to 14 employees	1,675,745	306	187	28	15.0
15 to 99 employees	211,547	279	228	47	20.6
100 or more employees	18,841	423	347	66	19.0
All other industries	**7,300,898**	**1,291**	**989**	**199**	**20.1**
Employee count unknown	149,636	92	58	9	15.5
2 to 14 employees	6,366,163	405	269	30	11.2
15 to 99 employees	664,513	369	315	62	19.7
100 or more employees	120,586	425	347	98	28.5
Size category					
Employee count unknown	346,613	352	225	20	8.9
2 to 14 employees	8,084,086	1,139	693	97	14.0
15 to 99 employees	881,152	1,060	853	168	19.7
100 or more employees	141,158	1,268	976	226	23.2
Total	**9,453,009**	**3,819**	**2,747**	**511**	**18.6**

NOTE: These statistics are based only on the sampling frame in order to have comparable data on respondents, nonrespondents, and the survey population as a whole. By contrast, data in the tables providing survey responses include updated data from the employers on their size and type, and thus have somewhat different distributions.

*Excludes companies with only one employee.

 -- = Not applicable/not available.

For tables in the remainder of this report, data on employers' size and type were updated using the employers' survey responses. Based on the survey responses (combined with data from the sampling frame), the respondents' distribution by employer type consisted of 115 employment/temporary help agencies, 151 industries likely to employ undocumented workers, and 245 other industries. With regard to employer size, there were 126 employers with 2 to 24 employees, 174 with 15 to 99 employees, 210 with 100 or more employees, and one with an unknown number of employees.

6.   FOCUS GROUPS

To provide supplemental and in-depth data on nonusers' knowledge and attitudes concerning E-Verify, three focus groups of small and medium-sized employers that had not used E-Verify were conducted. An in-person focus group was conducted at Westat in Rockville, Maryland, on October 7, 2009, and two telephone focus groups were conducted on October 14 and October 20. The in-person focus group lasted about two hours, and the telephone focus groups lasted about an hour and 15 minutes each.

Small and medium-size employers with between five and 99 employees were targeted for the focus groups because a very low percentage of small employers had completed the survey. Employment agencies (companies that refer workers seeking employment to companies seeking workers) were excluded because their hiring processes are very different from other types of employers. The sample for the nonuser focus groups came from the reserve Dunn & Bradstreet sample that had been obtained for the survey but had not been used for that purpose. Therefore, none of the employers in the survey sample were contacted again for the focus groups.

For the in-person focus group, only employers in Maryland and the District of Columbia were targeted, while the telephone focus groups included participants throughout the United States. Additional recruiting for the in-person focus group was conducted through a presentation at the Rockville Chamber of Commerce monthly meeting.[15] Nine employers participated in the in-person focus group, five employers participated in the October 14 telephone focus group, and six employers participated in the October 20 telephone focus group.

A recruiting script and set of Frequently Asked Questions were prepared. The training of three recruiters took place on September 10, 2009. Recruitment began directly after the training and continued through October 2, 2009. A moderator script was prepared for the conduct of the focus group discussions.

All three focus groups were audio-taped and a Westat staff member also took notes as a back-up. The audiotapes were later transcribed. A summary report was prepared for each focus group and the summaries were compiled into one document for ease of analysis.

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[15] At the meeting, companies were asked to volunteer. All volunteers were then called to verify that they matched the categories in which additional companies were desired.

7.   DATA LIMITATIONS

Originally, the nonuser survey was designed to provide nationally representative statistics on nonusers. However, the response rate to the survey (19 percent) was too low to provide reliable national estimates.[16] Though the total number of respondents (511) could be considered sufficient for reliable national estimates, the presence of substantial nonresponse creates the possibility that nonrespondents may differ in systematic ways from the respondents, in which case the statistics may overrepresent some types of employers relative to other types. Often weighting can be used to adjust for nonresponse, but when the response rate is sufficiently low and there are little data on the differences between respondents and nonrespondents, weighting might falsely imply a level of precision that does not actually exist. Two known biases are that small employers in particular were less likely to participate, as also were employers in some industries (e.g., those with a high proportion of foreign-born workers). These biases in response rates should be kept in mind when seeking to apply the statistics in this report to a broader population.

Therefore, the data presented here are not weighted and should not be considered nationally representative. One should be wary of considering any of the survey estimates as being precise. Nevertheless, the data from the survey still provide information about a large number of employers with diverse characteristics. Researchers often use case studies with a limited number of participants as a way of identifying important issues and patterns that later might be quantified more precisely through a representative survey. Thus, the survey data therefore are presented here as a large-scale case study; though the data are not precise, they can be used to infer large patterns, particularly when there is a large consensus among the respondents.

One of the design features of the study was to pick roughly equal numbers of large employers (those with 100 or more employees), medium-sized employers (those with 15 to 99 employees), and small employers (those with two to 14 employees) in order to facilitate comparisons between the three groups.[17] If large employers had been sampled in proportion to their actual frequency (2 percent of all businesses in the sample frame), there would be too few large employers to provide accurate statistics.[18] The current study, even as a case study, still provides acceptable numbers of each size of employer, with 226 large employers, 168 medium-sized employers, and 97 small employers (plus 20 employers whose size was unknown at the time of survey sampling). Thus, this report does look for broad patterns with regard to whether these different sizes of employers give different responses.

While this sampling approach is desirable for comparing different sizes of employers, it does have implications for the summary statistics that combine all employers together. Because the data are not weighted, the overall estimates (combining all sizes of employers) tend to give greater weight to the perceptions/experiences of large employers than is justified by their actual frequency. Large employers

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[16]See Section 5 in this chapter for a more extensive discussion of the response rate.

[17]Similarly, the study was designed to provide roughly equal numbers of three different industry types: employment and temporary help agencies, industries that typically have a high proportion of undocumented workers, and all other industries. The text focuses on the implications concerning company size because the nonresponse bias was much greater relative to company size than to industry type. Still, the same reasoning also applies to industry type.

[18]See Exhibit II-3 for additional information about the frame.

formed 44 percent of the respondents but only 2 percent of all businesses.[19] Similarly, small businesses formed 19 percent of the respondents but 89 percent of all businesses. Many of the statistics in this report showed few differences between large and small employers. However, in those cases where the report shows strong differences based on employer size, the estimates for small employers are likely to provide better estimates of the frequencies for the country as a whole than the statistics that combine all three sizes of employers.

Finally, an important consideration when interpreting the data is that many employers have little knowledge of E-Verify and have given little thought to it. In fact, this may be the primary finding of the survey: 63 percent said they were not familiar with E-Verify. Also, though the possibility that participation in E-Verify might become mandatory has been discussed in the media and by some professional organizations, roughly a quarter of the respondents had no opinion on whether participation should be mandatory. Thus, the nonuser opinions presented in this report may reflect quickly formed judgments rather than deeply held opinions. The lack of information and consideration of E-Verify may also explain why it was so difficult to get employers to respond to the survey, since employers may have felt reluctant to comment on a program that was not relevant to them and about which they could not provide informed opinions.

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[19] However, large companies have a disproportionate number of the Nation's employees. According to U.S. Bureau of the Census data on 2007 County Business Patterns, establishments with 100 or more employees formed 2 percent of U.S. establishments and had 46 percent of the employees. Establishments with fewer than 20 employees formed 86 percent of U.S. establishments and had 25 percent of the employees.

CHAPTER III. EMPLOYERS' DECISIONS ON PARTICIPATING IN E-VERIFY

1. INTRODUCTION

Since a primary purpose of this study is to examine ways of increasing participation in E-Verify, perhaps the single most fundamental research question is determining employers' reasons for not participating. The data suggest that the primary factors are neither a conscious choice by employers to reject E-Verify nor an objection to a particular program feature, but rather a lack of knowledge of or interest in E-Verify. Thus, this chapter first looks at employers' lack of knowledge of E-Verify as one barrier to participation, followed by a discussion of other reasons that employers gave for not participating. Next, this chapter looks at the likelihood that employers' nonparticipation will change in the future. Finally, the chapter examines how nonusers differ from users and whether some employer characteristics such as size and type of industry are related to participation in E-Verify.[20]

2. LACK OF FAMILIARITY AS A BARRIER TO PARTICIPATING IN E-VERIFY

This section describes the nonusers' familiarity with E-Verify and how familiarity is related to employer size and industry and discusses how nonusers who were familiar with E-Verify learned about the Program.

2.1. What is the Level of Familiarity?

The primary barrier to participation appears to be a lack of familiarity with the E-Verify Program. Overall, 63 percent of the survey respondents were not familiar with E-Verify (Exhibit III-1). Further, as shown later in this chapter, these unweighted statistics do not fully reflect the higher level of unfamiliarity among small businesses, which form a substantial part of the economy. Findings from the focus groups reinforce employers' lack of familiarity with E-Verify. Only one of the employers from the two telephone focus groups had heard of E-Verify prior to participating in the focus groups. Familiarity was also low for the in-person focus group, except that Federal contractors (who faced an upcoming mandate to participate) showed higher awareness.

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[20] For additional information see *Findings of the E-Verify Program Evaluation,* December 2009, at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3a351e56d3856210VgnVCM100000082ca60aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD. The nonuser survey and the E-Verify Web user survey included some of the same questions, but new questions were added to the nonuser survey. We include a discussion of the E-Verify Web users only where the questions are comparable.

Exhibit III-1. Whether Employer Was Previously Familiar With the E-Verify Program
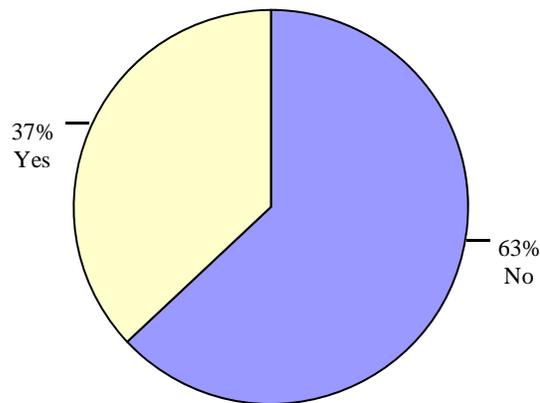
NOTE: Number of respondents = 503.

SOURCE: Employer Nonuser Survey.

Accentuating the importance of familiarity with E-Verify, one employer commented: "We would definitely use the verification program on a voluntary basis if it was easily accessible, free of charge, self-explanatory, and fast. I would welcome a program that lets me plug in the information that I have received on the I-9 form and verify its contents. We have not used the verification system so far because this is the first time I have ever heard of it." Another said: "We will be interested in trying out E-Verify provided it is quick, free and a user-friendly solution."

2.2.   What Employer Characteristics Are Related to Familiarity With E-Verify?

Large employers were much more likely to be familiar with E-Verify than small employers. A majority of large employers in the case study (56 percent) were familiar with E-Verify, compared with 29 percent of medium-sized employers and 17 percent of small employers (Exhibit III-2). Given that small businesses constitute 89 percent of all businesses in the United States (based on the sample frame), the overall national statistics across all sizes of employers should be fairly close to the 17 percent found for small employers.

Exhibit III-2.   Percent of Respondents Showing Familiarity With E-Verify, by Employer Size
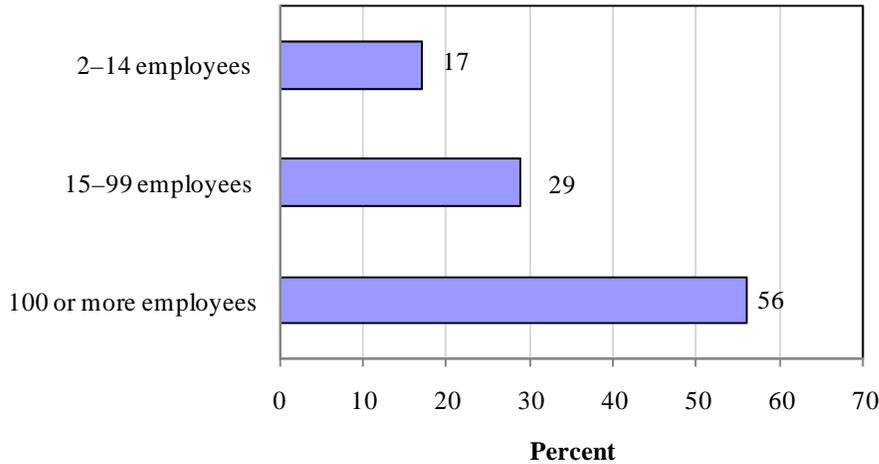
NOTE: Number of respondents = 2 to 14 employees, 122, depending on the item; 15 to 99 employees, 173; 100 or more employees, 207.

SOURCE: Employer Nonuser Survey.

Awareness of E-Verify also varied by industry type. Slightly below half of the employment and temporary help agencies in the case study reported that they were familiar with E-Verify, compared with 39 percent of businesses likely to employ undocumented workers and about one-third of all other industries (Exhibit III-3). Since less than 1 percent of U.S. businesses are employment and temporary help agencies, the relatively higher rate of familiarity among employment and temporary help agencies has little influence on the overall national statistics.

Exhibit III-3.   Percent of Respondents Showing Familiarity With E-Verify, by Industry Type
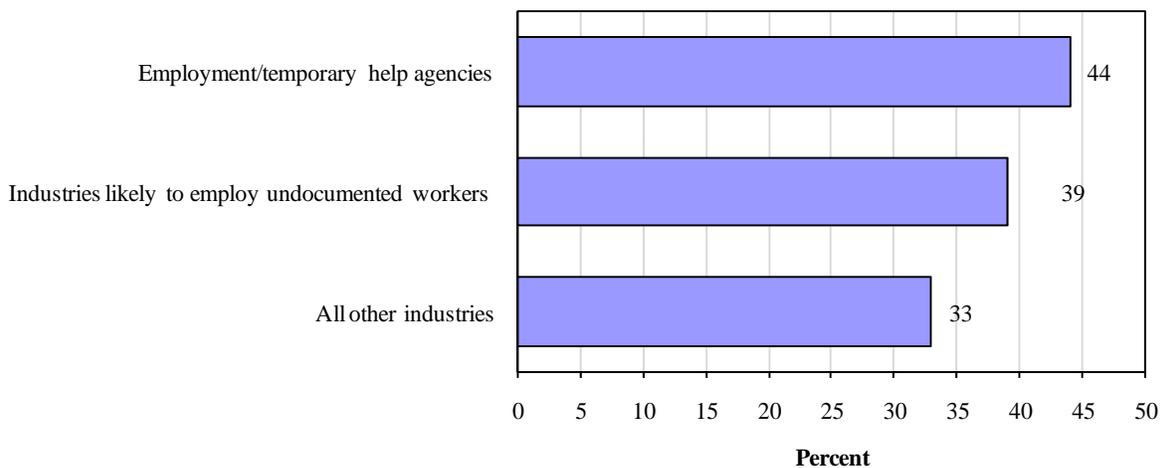
NOTE: Number of respondents = 113 employment/temporary help agencies, 149 industries likely to employ undocumented workers, and 241 other industries.

SOURCE: Employer Nonuser Survey.

2.3.   How Did Employers Hear About E-Verify?

If increasing participation in E-Verify is an important goal and a lack of familiarity is the major barrier, then it is important to understand how employers learn about E-Verify. Among those employers in the case study who were familiar with E-Verify, the most commonly reported sources of information were professional associations (28 percent), media outlets (26 percent), and government materials or publications (23 percent) (Exhibit III-4). Three focus group participants commented that they sought information on law-related hiring issues from the Worker's Compensation office; none of them had learned of E-Verify from that source, but their comments suggest it might also be an appropriate medium for communicating information. Since a natural focus among government policymakers is on what the government can do to increase familiarity, it is interesting that government materials and publications are only one of the top three sources. In surveys that use statistical sampling, small variations may appear by chance; thus, it is more appropriate to consider the top three sources as being roughly equally important than to rank them as first, second, and third. No other source of familiarity with E-Verify was mentioned by more than 10 percent of respondents. Focus group participants who were familiar with E-Verify stated that they learned about it from professional publications and meetings/conferences.

Exhibit III-4.   How Nonusers Familiar With E-Verify Found Out About the Program
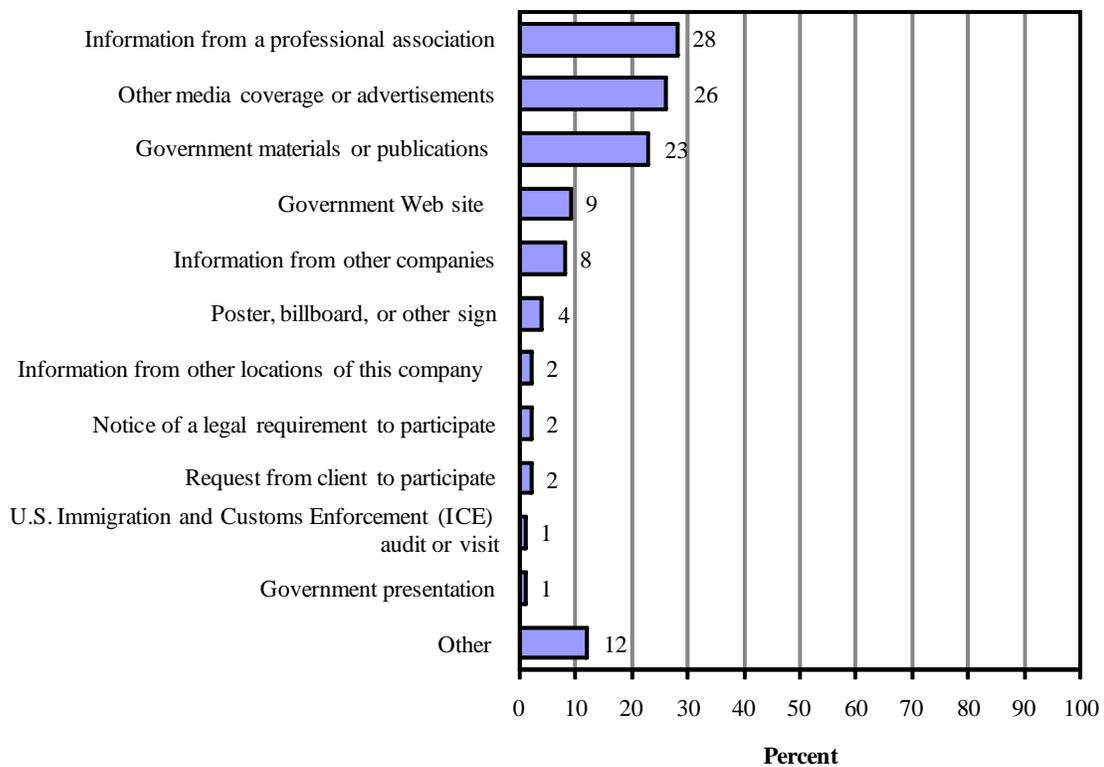
NOTES: Number of respondents = 286. Sum does not add to 100 percent because respondents could provide more than one response.
SOURCE: Employer Nonuser Survey.

3.   BARRIERS TO USING E-VERIFY FOR EMPLOYERS THAT ARE FAMILIAR WITH IT

3.1.   Reasons Nonusers Gave for Not Participating

Of the respondents who indicated that they were familiar with E-Verify, the most common reason for not using E-Verify was the concern that the Program would not be worth the effort to implement it. As shown in Exhibit III-5, 50 percent of employers in the case study reported that they did not see any benefit from using E-Verify, and 47 percent thought it would be too costly or time-consuming to set up or use. A substantial number (43 percent) also said that making the transition to a new system would be too difficult or disruptive, though most of the employers selecting this item indicated that it was only a minor reason for not using E-Verify. These reasons contrast with the primary reason that former E-Verify users gave for not continuing to participate in E-Verify—that they rarely hired new employees.[21]

Some businesses did not see participating in E-Verify as beneficial because they viewed it as a government priority rather than a business priority. One employer requested that "our elected officials begin to make it the government's responsibility (not the employers') to control illegal immigration. Our government has a history of allowing illegal immigration to flourish and then relying on the businesses to bear the cost and exposure of controlling it." Another employer said: "By strict legal definitions I agree that it [E-Verify] will reduce the use of fraudulent practices. But I think we're missing the real issues around our immigration practices and I'd like to see the political debate center around that real issue. To assume that this practice will stop/reduce illegal immigration is false; it will however encourage illegal activity as a means for survival. There are hundreds of thousands of noncitizens who have been hard-working, productive, tax-paying contributors to our country under fraudulent work-authorization documents. We must consider the implications for them and their families, and fair treatment before implementing such a program."

Also, some employers viewed themselves as already following their legal obligations, so they again did not see a benefit to E-Verify.

- One employer said that her company could accomplish the same goals in other ways.   She mentioned that during the verification process with new hires, they inform them that they intend to call SSA to ensure that their Social Security documentation is legitimate. As a result, the majority of people walk out, presumably due to possessing fraudulent documents.

- Another said, "We already run a thorough background and fingerprinting check on new hire employees."

- A third said, "We are required by law to do extensive checks on all employees."

- Another saw no need for verification because of the lack of new hires. "I have only 3 staff; [they have] been with me for years."

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[21] Data on former E-Verify users are from the 2008 survey of users, discussed in *Findings of the E-Verify Program Evaluation*, December 2009, p. 83.

Exhibit III-5.   Reasons Nonusers Who Are Familiar With E-Verify Are Not Using It

Legend:
- Very important reason
- Important reason
- Minor reason

Reason	Percent
We do not see any benefit from using this type of program.	50
We think it would be too costly or too time-consuming for us to use.	47
Making the transition to a new system would be too difficult or disruptive.	43
We rarely hire new employees.	26
We decided there is a better way to verify whether individuals are authorized to work in the United States.	25
We are concerned that using this type of program would increase the chance of an audit, raid, or fine by the U.S. Immigration and Customs Enforcement (ICE).	24
We do not have available staff with sufficient skills to work on a verification program.	23
We only hire U.S. citizens.	22
We have trouble finding enough workers to meet our needs. Using a work-authorization verification program might make that worse.	9
We do not have computers with an Internet connection or our connection is very slow.	6
As long as people do the work, their immigration status is none of our business.	3
Hiring only people with proper document would be too expensive.	2

NOTE: Statistics are based on only 171 responses since most users were not familiar with E-Verify. Sum does not add to 100 percent because respondents could choose more than one reason.

SOURCE: Employer Nonuser Survey.

Nonusers' perceptions of burden appeared to be based in part on their experience with other government programs.

- "We have already experienced problems with government Internet systems such as this— and can never reach anyone for help when issues arise, and this will be another program with similar problems. It's just easier to complete the I-9 forms with supporting documentation, as we can control it at our local level, rather than have issues with an Internet-based system. We are strongly opposed to a mandatory-based E-Verify system as we have no confidence that the system will work properly, based on past experience."

- Similarly, one employer commented: "The Web site cannot be confusing or difficult or people won't use it. A good example of a confusing Web site is the SSA/BSO (Social Security Administration/Business Services Online) Web site. To get our folks registered to be able to verify SS numbers is a long, cumbersome, and confusing process and requires reactivation on a too-regular basis. It wastes a lot of time for our employees, especially considering the numbers of new employees we have to verify each year."

For many employers, participation in E-Verify represented one extra set of tasks to perform, and that constituted a burden. One commented: "It would take too much time and add another step to our already extremely lengthy hiring process."

- **Some mentioned that the initial training was time-consuming, given the 61-page manual and three-hour tutorial.** One employer, who considered himself to be an advocate of "streamlined processes," said he would rather spend three hours focusing on increasing his sales than completing the tutorial. Another said: "With limited HR staff there is concern about how much additional time E-Verify may actually take including tutorials, testing, updates, etc."

- **Others found the three-day deadline for submitting worker information to E-Verify to be problematic.** One employer said: "With E-Verify the employer must initiate a query no later than the end of three business days after the new hire's start date. Although we realize this is the time frame for collection of the I-9 information, E-Verify would be an additional step in the new hire process."

- Some mentioned the staffing requirements for participating in E-Verify as a concern, particularly if they were small or in the process of downsizing. One said: "[My company] is a small, specialized non-profit. I am a one-person office." Two employers said that they lack sufficient time or money to learn a new system since they are the only human resources staff.

- **Some were concerned about a potential loss of income.** This can especially be a concern for recruiters or employment agencies who do not earn any income until a worker is placed in a position.

- **Others mentioned the time required to fix mistakes.** One said there would be "too much hassle if a mistake is made by E-Verify or Social Security such as a data entry error."

- One mentioned the extra demands involved through having multiple locations, saying it would be "hard to ensure compliance."

Relatively few employers said that participating in E-Verify would make it difficult to find enough workers. However, there were exceptions. An employer in the farming industry that responded to the mail survey considered the difficulty of finding enough workers to be its most important reason for not using the Program. While this employer reported that between 41 and 80 percent of its current workers are work-authorized noncitizens or lawful permanent residents, it also reported hiring some new workers that were not authorized to work, ranging from 6 to 10 percent in the 2008 calendar year. Approximately

85 percent of the 284 workers it hired in 2008 were short-term or temporary workers hired during the harvest season. One employer indicated that it would not be beneficial for farming employers to use E-Verify for verifying work authorization, particularly during the harvest season.

In addition to the reasons shown in Exhibit III-5, employers provided other reasons for not using E-Verify through responses to open-ended survey questions. The additional reasons are summarized below.

- **Concerns over accuracy.** One employer indicated that he was concerned about "the ability of the system to handle the volume and the inaccuracies." Another said that they "have no confidence that this (E-Verify) will work properly." Yet another employer expressed concerns about how the system handles name changes and foreign names.

- **Fear of legal trouble.** One employer requested: "Hold me, personally, and my company harmless from any loopholes in the system that become exploited by the undocumented population and their lawyers. Bottom line...I don't want to make the 5 o'clock news by complying with a broken system." Another said: "This program should provide some sort of guarantee that, if used, and the employee is hired after being verified, that the employer is free from any fines, etc., if the employee is later found to be illegitimately employed."

- **Concerns over privacy.** One employer commented the "[Memorandum of Understanding] document requires us to give the government access to all of our hiring records." Another said: "Online databases also raise the question, what about individual privacy? If your picture and/or information is available to any employer that has access to your Social Security number, I'm not sure how comfortable I would feel about that." E-Verify policies are intended to protect both employer and employees privacy, but these comments suggest that communicating those policies to employers is important to encourage employers t o participate.

- **Concerns over timing.** One employer said: "My understanding is that E-Verify could cause delays in start date [of newly hired employees]." Others commented on the E-Verify requirement to input the Form I-9 information into the E-Verify system within three days of hire. Most employers in the focus groups did not express concerns with using E-Verify within three days of hire, as long as they were able to access it. However, several small employers were concerned. One employer said it is "the worst case scenario when you operate a one-person shop and you have an illness or you go on vacation and it is the employee's second day of employment."

- **Conflict with other procedures.** One employer said: "We are a union company and hire out of the union hall."

The study participants also described specific types of employers for which participation in E-Verify might not be useful.

- **Family-run businesses or other small businesses.** Such employers often predominantly employ relatives and a few full-time or part-time nonrelatives that are well known to employer staff. An employer said, "Small 'mom & pop' companies do not need the extra stress, or paperwork." A focus group employer that owns a family business does not do

formal testing or background checks, saying "I can sort of size them and decide whether they are kosher or not." One employer remarked, "As in our situation, we are a small, local business, and we personally know most of our teenage employees before we hire them. We have not had any migrant workers or workers of questionable residency apply for employment with us. We use the I-9 form now to show proof of residency—if an Internet verification were easier/quicker to use that would benefit us in time-savings only."

- **Employers that hire seasonal and temporary workers.** One employer wrote that employers that would not benefit from participation in E-Verify would include "companies that hire seasonal workers, laborers, construction companies, restaurants, etc...." Another gave the example of "construction companies who are unionized and employ their workers from a hiring hall. These workers are hired and laid off as work is available. Each contractor to employ one of these workers would have to spend the time verifying their status, even though another contractor already did. Not to mention one contractor may hire the same worker numerous times over a couple years' time frame."

3.2.   Relationship Between Reasons for Not Using E-Verify and Employer Characteristics

This section examines how employer characteristics are related to employers' reasons for not participating in E-Verify.

Small employers were more likely than large employers to give several reasons for not participating. As Exhibit III-6 shows, small employers more often said they rarely hire new employees (84 percent versus 13 percent for large employers), only hire U.S. citizens (58 percent versus 12 percent),[22] and have trouble finding enough workers (15 percent versus 7 percent). Though one might anticipate that small employers would be more likely to cite problems with resources, they about as likely to say they lacked available staff with sufficient skills than did large employers (25 percent versus 22 percent) and only slightly more likely to say they lacked a computer with an Internet connection or had a slow connection (10 percent versus 5 percent). Small employers were less likely than large employers to say that the transition to a new system would be too difficult (28 percent versus 43 percent).

The reasons for not participating also varied by industry. Employment and temporary help agencies were more likely to say participation would be too costly or time-consuming (64 percent versus 36 to 48 percent among other industries), they lacked available staff with sufficient skills (37 percent versus 16 to 20 percent), and there was a better way to verify work authorization (43 percent versus 9 to 22 percent) (Exhibit III-7). Employment and temporary help agencies also were more likely to say the transition would be too difficult (55 percent), though there was only a small difference with industries more likely to employ undocumented workers (47 percent) but a large difference with other industries (31 percent). Industries that were more likely to hire undocumented workers were more likely to say they rarely hire new employees (35 percent versus 21 to 22 percent for the other two categories) and that

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[22]The phrase "only hire U.S. citizens" could have multiple interpretations. Employers might mean that they refuse to hire noncitizens, which is illegal. They might also mean that they happen to know that their workers are U.S. citizens (e.g., because of the nature of the community or because of a close personal relationship with their workers), without necessarily performing any verification activities or making citizenship a requirement in the hiring process. The phrase was intentionally ambiguous since it might be hard for employers to admit they were violating the law.

workers' immigration status was none of their business (9 percent versus 0 percent for the other categories). Both employment and temporary help agencies and industries that were more likely to hire undocumented workers were slightly more likely to fear that participation would increase the chance of an audit, raid, or fine (26 to 27 percent) than other industries (19 percent).

Exhibit III-6.   **Reasons Employers Do Not Participate in E-Verify, by Employer Size**
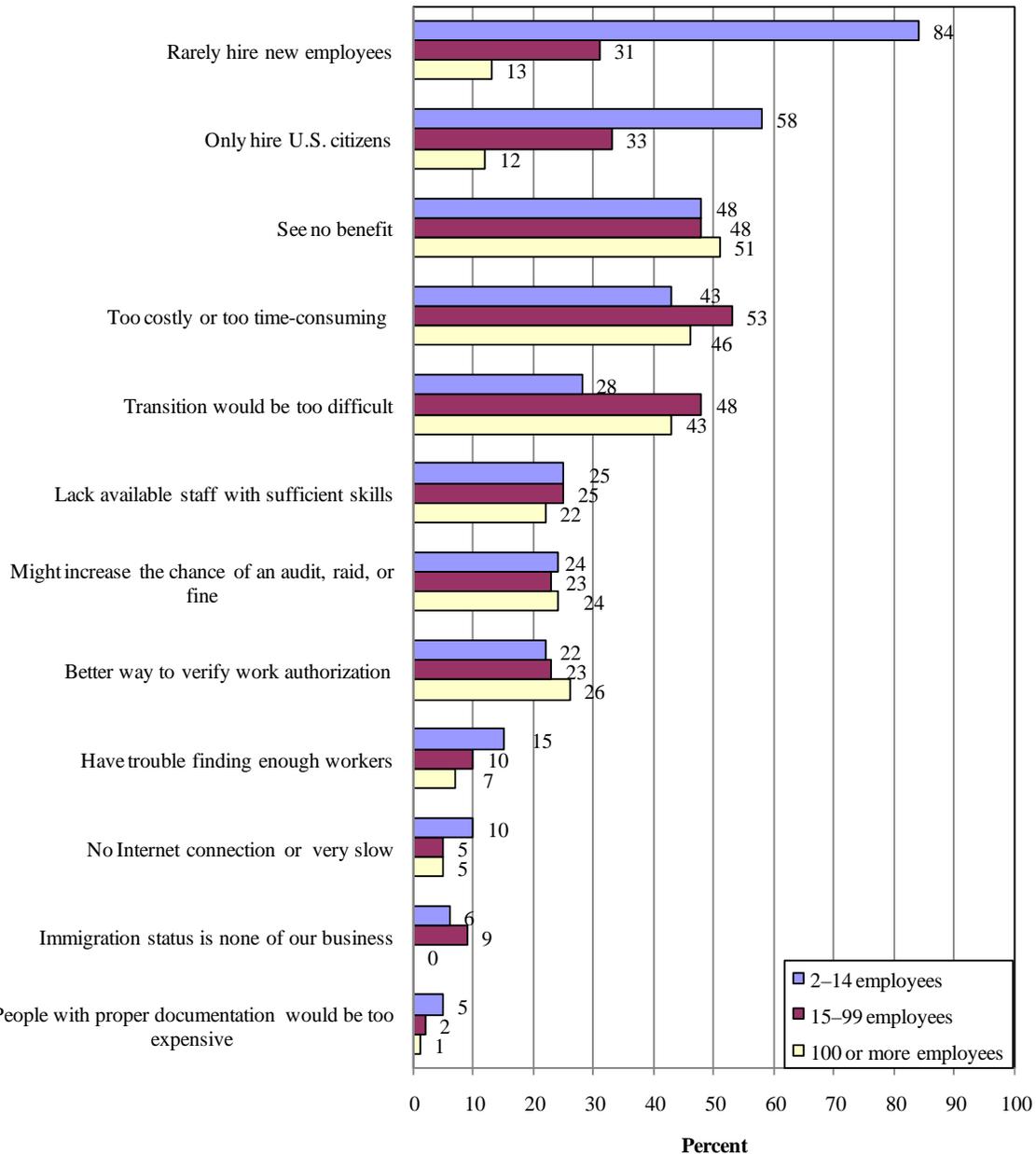
NOTE: Number of respondents = 2 to 14 employees, 18-21, depending on the item; 15 to 99 employees, 40-46; 100 or more employees, 96-112.
SOURCE: Employer Nonuser Survey.

Exhibit III-7.   Reasons Employers Do Not Participate in E-Verify, by Industry
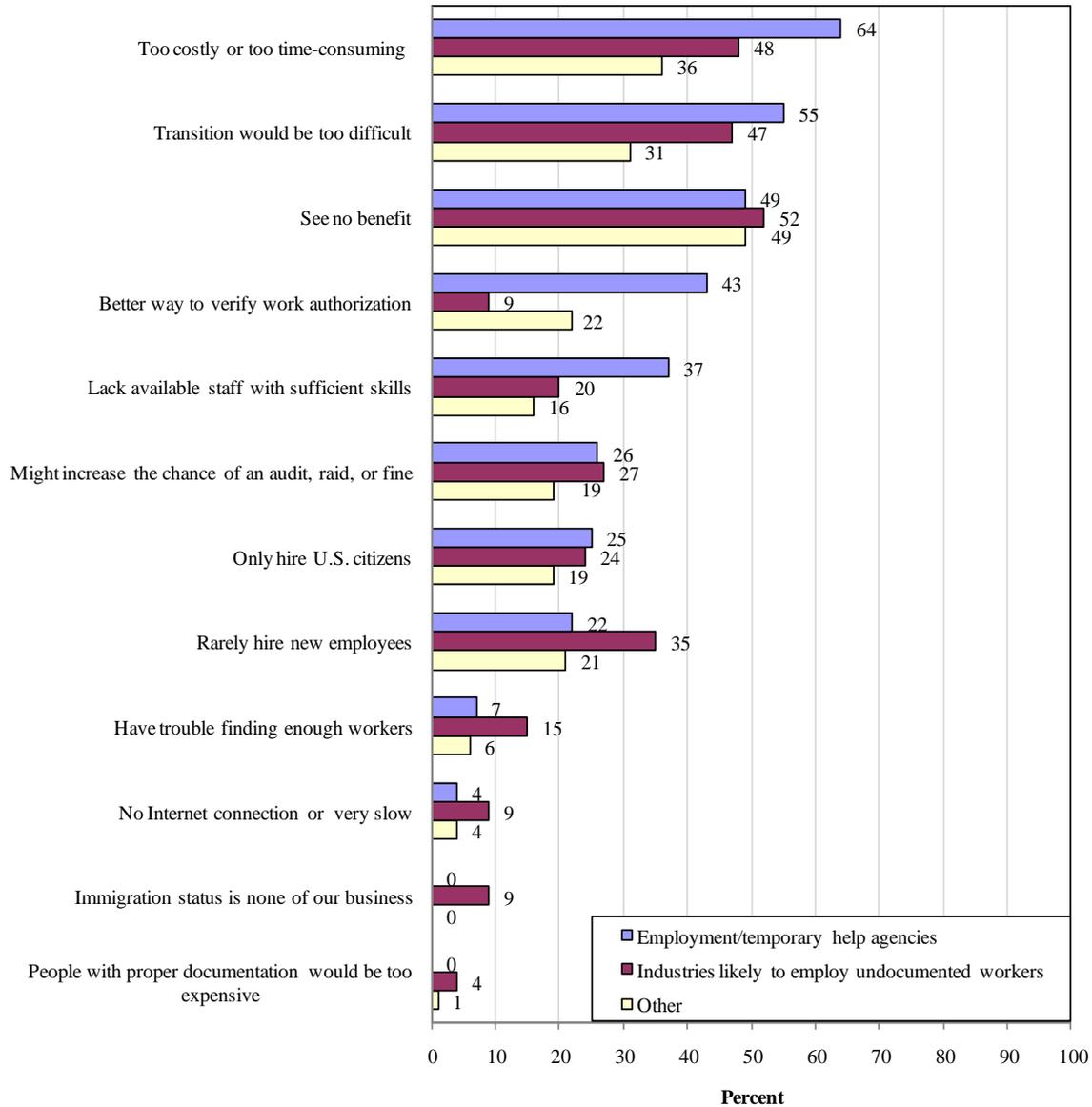
NOTE: Number of respondents = employment/temporary help agencies, 44-47, depending on the item; industries likely to employ undocumented workers, 43-55; other, 67-76.

SOURCE: Employer Nonuser Survey.

4. PLANS TO USE E-VERIFY IN THE FUTURE

The survey addressed whether employers would plan to use E-Verify in the future. Only limited data are available on this topic from the survey, however, because the question was not asked of everyone.[23] Among those employers who did respond, there were strong differences between those who were familiar with E-Verify and those who were not.

Many of the respondents said they definitely planned to use E-Verify in the future, but more either had not decided or did not intend to use E-Verify unless they were mandated to do so (Exhibit III-8). Depending on their current level of familiarity with E-Verify, between 18 and 30 percent said they definitely planned to use E-Verify, while between 32 and 56 percent said they would not participate. Respondents who were familiar with E-Verify showed less interest in participating than those who were unfamiliar with the Program. That is, 56 percent of those who were familiar with it said they did not plan to use it unless they were mandated to do so, compared with 32 percent of those who were not familiar with it.

Exhibit III-8. Does This Company Plan to Use E-Verify in the Future?
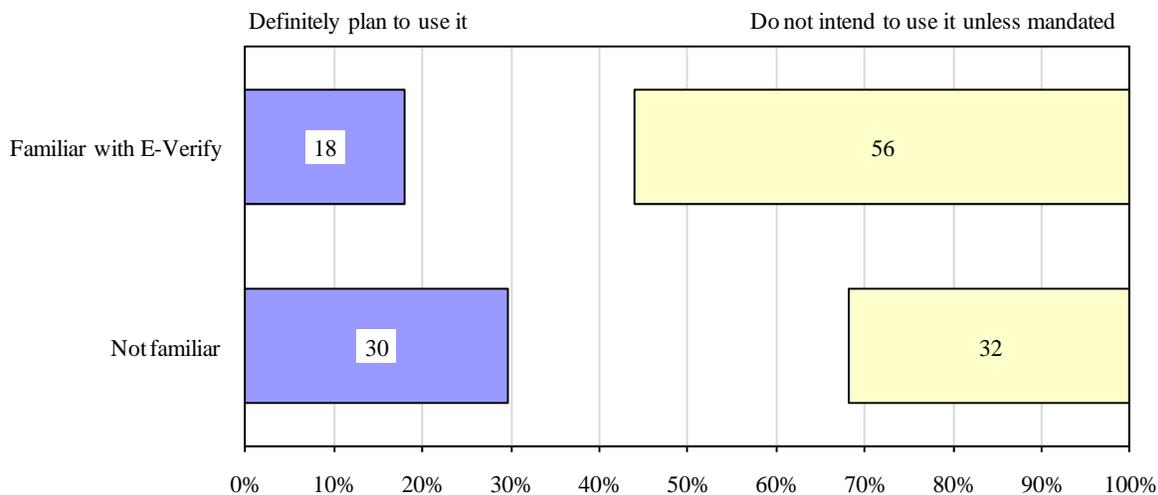
OTES: Statistics are based on only 57 respondents who were familiar with E-Verify and 44 respondents who were not familiar with E-Verify. Web respondents were not asked this question unless they indicated familiarity with E-Verify. Sum does not add to 100 percent because of rounding.

SOURCE: Employer Nonuser Survey.

It is not clear how to interpret the difference in future plans to use E-Verify between those who were familiar with the Program and those who were not. One would expect that employers that were unfamiliar with E-Verify would be more likely not to have made a decision, as actually happened. But the statistics presented here do not necessarily imply that employers that are unfamiliar with E-Verify will tend to oppose participation once they become familiar with it. One factor is that there is probably some

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[23] The survey question was asked of all respondents on the mail survey. However, Web survey respondents were only asked this question if they were familiar with E-Verify and responded that they had considered using E-Verify. As a result, only one-third of survey respondents were asked this question.

self-selection among employers who were familiar with E-Verify that would bias the statistics in a negative direction; that is, employers that were familiar with E-Verify and had a positive impression may have started to participate in E-Verify and thus become ineligible for the survey. This bias is probably small in terms of the percentage of employers affected since less than 3 percent of employers participate in E-Verify. But the context for hearing about E-Verify also may be important. If many who were unfavorable had been exposed to an unfavorable news article or to materials prepared by a group opposed to E-Verify, their opinions may not be the same as those exposed to new outreach efforts. Too few employers responded to this survey question to examine the reasons for their negativity in detail. By contrast, the exposure to E-Verify through the survey process may have been more neutral, resulting in a more even distribution among the respondents who had been unfamiliar with E-Verify. The process of participating in a focus group helped to motivate one employer, who declared a plan to investigate using E-Verify as soon as the focus group ended.

5. CHARACTERISTICS OF NONUSERS

5.1. How Do Nonusers Differ From Users?

Since less than 3 percent of all employers currently participate in E-Verify, identifying the characteristics of nonusers is essentially the same as identifying the characteristics of all employers throughout the United States. This section uses statistics from the nonuser survey and from the sample frame developed from data provided by Dunn & Bradstreet to describe nonusers, and data from the 2008 E-Verify Web Survey to describe users. There were several systematic differences between nonusers and users.

Compared with E-Verify users, nonusers were disproportionately likely to be small businesses. While 58 percent of E-Verify users were large employers (with 100 or more employees), only 2 percent of all employers nationally are in this size category (Exhibit III-9).[24] Similarly, while 8 percent of E-Verify users were small employers (with 2 to 14 employees), 89 percent of all U.S. employers were small.

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[24] The statistics exclude employers with no employees (other than the owner) and home-based employers, both of which groups were treated as ineligible for the survey. If these employers were also included, then the proportion of companies with 100 or more employees would be lower than shown here.

Exhibit III-9.   Percent of All Employers Nationally and Percent of E-Verify Users, by Employer Size
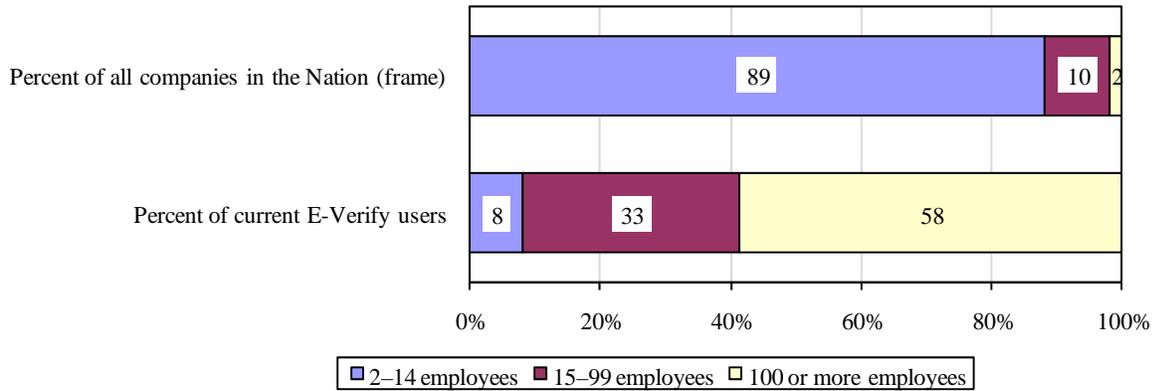
NOTES: Number of eligible employers in Nation = 9,453,009; number of E-Verify users = 8,697. Sum does not add to 100 percent because of rounding.

SOURCES: E-Verify Web survey: 2008; sample frame developed from data provided by Dunn & Bradstreet.

Nonusers were less likely than E-Verify users to fall within two industry types: employment and temporary help agencies and industries that are highly likely to employ undocumented workers.
While 11 percent of E-Verify users were employment and temporary help agencies, such employers form only 1 percent of all employers in the Nation (Exhibit III-10). Also, while 27 percent of E-Verify users were in industries that are highly likely to employ undocumented workers, only 22 percent of all employers in the Nation are in those industries.

Exhibit III-10. Percent of All Employers Nationally and Percent of E-Verify Users, by Industry
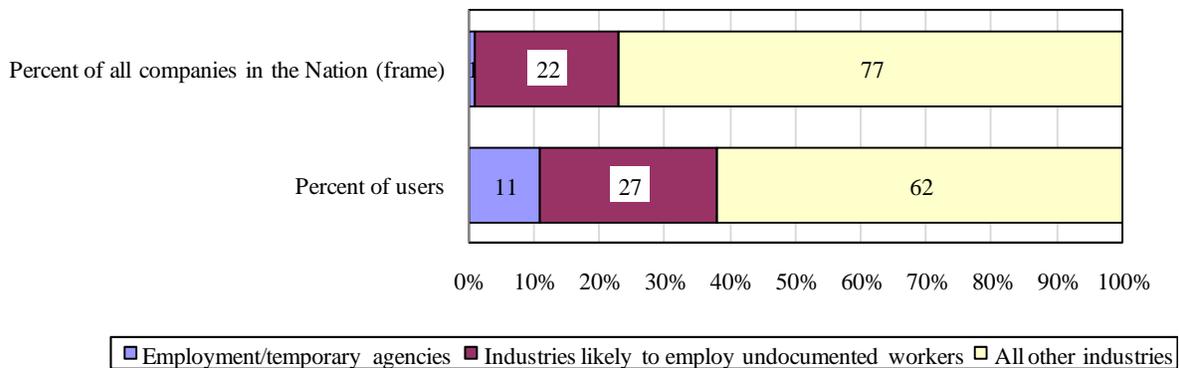
NOTE: Number of eligible employers in Nation 9,453,009; number of E-Verify users = 9,002 (weighted).

SOURCES: E-Verify Web Survey: 2008; sample frame developed from data provided by Dunn & Bradstreet.

Nonusers often hired few noncitizens. Eighty-one percent of nonusers in the case study currently had few current workers (5 percent or less) who were lawful permanent residents (LPRs) or other noncitizens (Exhibit III-11). While the data for E-Verify users reported from an earlier survey are not fully comparable because the user survey asked about the proportion of workers who were immigrants, roughly

half of the E-Verify users said that more than 5 percent of their workers were immigrants.[25] This suggests that E-Verify users may be more involved with work-authorization issues than nonusers.

Exhibit III-11. Percent of Current Workers Who Are Lawful Permanent Residents or Other Noncitizens, as Reported by Employers
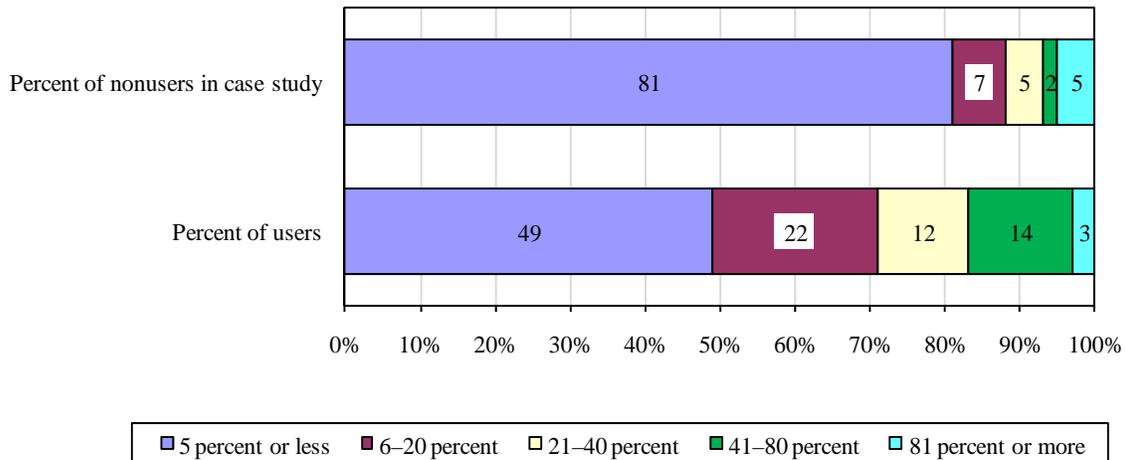
NOTES: Number of respondents to the nonuser survey = 493 (unweighted); number of E-Verify users = 8,647 (weighted). The survey of nonusers asked for the proportion of employees who were noncitizens, while the survey of users asked for the proportion who were immigrants.

SOURCE: E-Verify Web Survey: 2008 and Employer Nonuser Survey.

5.2. Other Employer Characteristics That Have Implications for Participation in E-Verify

Case study participants were asked to provide additional information about their employer characteristics in areas that might affect their participation in E-Verify.

About two-thirds of nonusers in the case study described their employers as a single location or local franchise of a larger company (Exhibit III-12).[26] Employers with multiple locations potentially raise several issues for E-Verify participation: (1) there is a question whether each individual location or only the headquarters needs to be recruited for E-Verify participation; (2) employers with multiple locations may have different levels of resources for participating in E-Verify; and (3) new employees might be processed through either the central headquarters or at the local site, possibly affecting the availability of data for entry into the E-Verify system and the employers' ability to meet the three-day schedule for entering data.

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[25] Immigrants include all workers who were born outside of the United States (whether or not they were citizens), and thus are a larger group than noncitizens.

[26] The sample excluded branches of a company, but franchises were treated as independent companies and were included as part of the sample.

Exhibit III-12. Single or Multiple Location Status of Case Study Participants

36%
Multiple location

64%
Single location or
local franchise
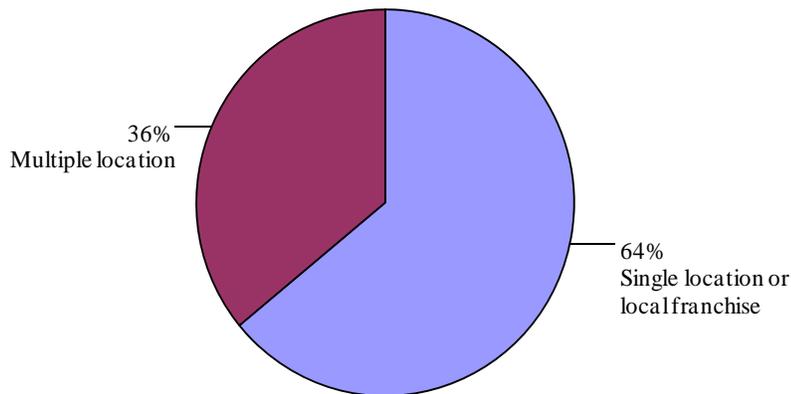
NOTE: Number of respondents = 511.

SOURCE: Employer Nonuser Survey.

Many case study participants did relatively little hiring in 2008. Roughly one-third hired four or fewer new workers in 2008, while a similar number hired between 5 and 30 new workers (Exhibit III-13). [27] The median number of workers hired by case study participants in 2008 was 15. The number of new hires affects employers' needs to check workers' employment authorization and the level of time and effort required to check work authorization; for example, small employers that do not frequently hire new workers potentially need to relearn the procedures each time a new worker is hired, especially if the worker receives a TNC, and possibly need to reset a lapsed password.

Exhibit III-13. Number of New Workers Hired by Case Study Participants in 2008

37%
31 or more workers

32%
0–4 workers

31%
5–30 workers
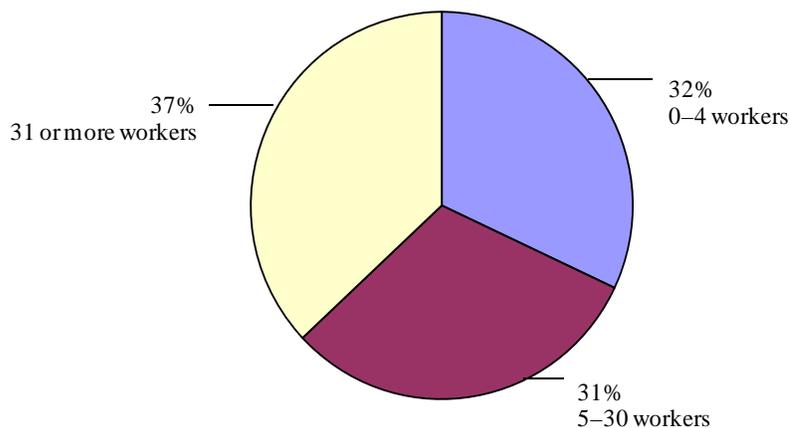
NOTE: Number of respondents = 297.

SOURCE: Employer Nonuser Survey.

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[27] These statistics may be lower than normal since the survey was conducted during an economic recession. For the years 2001–04, roughly 40 percent of average annual employment consisted of new hires, with the rate varying greatly by industry. See *Developing Annual Estimates of Hires and Separations*, by Brady Stephens and Kim Riley, Bureau of Labor Statistics, August 2005 (http://www.bls.gov/osmr/pdf/st050250.pdf). From a work-verification perspective, the absolute number of new hires may be more important than the percentage who are new hires, since small businesses may not have as many resources and procedures in place to handle work-authorization issues.

Case study participants also often did little or no hiring of short-term or temporary workers in 2008, which might affect their need for and uses of E-Verify.[28] Forty-two percent reported they hired no short-term or temporary workers, and 23 percent reported they hired one to four new workers of this type (Exhibit III-14). In some industries, short-term or temporary employees may be more likely not to be work authorized; also, the burden of checking on the work authorization of short-term employees may appear to be great considering that an employer may be making only a short-term commitment to such employees.

Exhibit III-14. Number of Short-Term or Temporary Workers Hired in 2008 by Case Study Participants
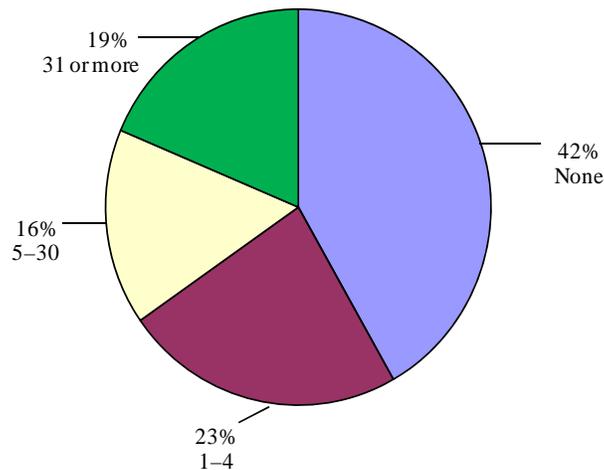
NOTE: Number of respondents = 268.
SOURCE: Employer Nonuser Survey.

Half of the case study participants reported that hiring is typically even throughout the year (Exhibit III-15). Employers were asked about seasonal hiring because it may affect the level of work associated with participating in E-Verify. Large surges of seasonal workers may make timely processing of workers' employment-authorization status more difficult, especially for complying with the three-day rule to enter new hires into E-Verify.

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[28] This question was not asked of E-Verify users in the 2008 survey so no comparative data are available.

Exhibit III-15. Percent of Nonusers Reporting Even Hiring Throughout the Year or Hiring at Specific Times in a Typical Year

50%
Hiring at specific
times in a typical year

50%
Even hiring in
a typical year
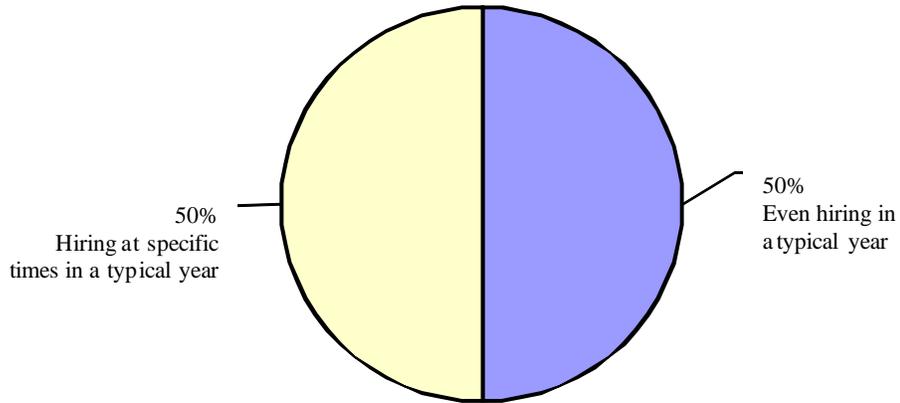
NOTE: Number of respondents = 496.
SOURCE: Employer Nonuser Survey.

CHAPTER IV. IMPLICATIONS OF SIGNING UP FOR E-VERIFY FOR NONUSERS

1.   INTRODUCTION

All employers are required to use the Form I-9 verification procedures for their new hires regardless of whether they participate in E-Verify, but employers may also conduct other verification procedures at their own initiative. The extent to which E-Verify provides a help or a burden depends in part on what additional procedures the employers are already doing. This chapter examines the types of verification procedures currently followed by nonusers and discusses the implications of participating in E-Verify for current nonusers.

2.   DESCRIPTION OF CURRENT NONUSER VERIFICATION PROCEDURES

2.1.   Use of the Form I-9

Most, but not all, case study participants reported using the Form I-9. Eighty-one percent reported using the Form I-9 to verify the employment authorization of their workers.

Case study participants that had multiple locations were most likely to have the Form I-9 completed at their company headquarters. Most reported that Form I-9 paperwork was completed at their headquarters (41 percent) or at local company establishments (35 percent), as shown in Exhibit IV-1. Some nonusers reported completing the I-9 at both company headquarters and at local branches (12 percent). A small percentage reported completing the Form I-9 at offsite locations (2 percent).

Exhibit IV-1.   Where Is the Form I-9 Completed?

Location	Percent of nonusers
At headquarters	41
At each of the local establishments of the employer	35
Headquarters and local establishments	12
Offsite, in the field	2
Other (including combinations of above categories)	10

NOTES: These statistics are only for the 122 employers with multiple locations. The only combined location category shown is "headquarters and local establishments" because the remaining combined categories represent such small percentages. The "other" category includes other locations and all other possible combinations of reported categories.

SOURCE: Employer Nonuser Survey.

Very few case study participants used an electronic Form I-9 to verify the employment authorization of workers (Exhibit IV-2). Federal law allows the use of an electronic I-9, but the capacity to produce and maintain electronic I-9s is typically provided through outside vendors who charge a flat monthly fee or per employee fee. The fee might involve a separate charge or be incorporated within a larger package of vendor services.

Exhibit IV-2.   Do You Currently Use Any Form of Electronic I-9?

Response	Percent of nonusers
Yes	5
No	95

NOTE: Number of respondents = 433.

SOURCE: Employer Nonuser Survey.

Most case study participants completed the Form I-9 between the time the person accepted the job offer and the time the person began working. As Exhibit IV-3 shows, approximately half of employers complete the I-9 when the person has accepted the job offer, but has not begun working yet (54 percent), while others complete it once the person has already started working (21 percent). Some employers reported asking job applicants to complete the Form I-9 as part of the application process (12 percent).[29]

Exhibit IV-3.   When in the Hiring Process is the Form I-9 Completed?

Timeframe	Percent of employers
When the person has started work	21
When the person has been offered a job, has accepted it, but has not started to work yet	54
When the person has been offered a job, whether or not he/she has accepted it	4
When the person applies for a job	12
Other	9

NOTE: Number of respondents = 508.

SOURCE: Employer Nonuser Survey.

Focus group employers provided more detailed information regarding the Form I-9 and their current verification procedures. Some employers mentioned that they intend to have the paperwork completed on the first day, but sometimes the process is prolonged for a few days when workers forget to bring the completed documents. One employer said the I-9 is typically completed on the first day of work unless the person has an H-1B Visa, in which case it would be completed earlier. One employer who was a Federal contractor mentioned that when it sends out job offer letters, the Form I-9 is included along with several other documents. The company requests that people return the completed documents on their start date. Another employer said that her company may interview a job candidate, offer the person a position, and have the I-9 and other documentation completed and verified within 45 minutes. This same employer previously allowed people to begin working before completing all of their paperwork, but because it took some new hires too long to do this, they now must bring in their completed paperwork prior to the first day of work.

Several employers expressed concerns about the Form I-9 process. One employer said, "My fear is when an employee fills out the I-9 and is required to have two forms of ID, typically their Social Security card and a driver's license, both could be fake." Another employer mentioned that many of their new hires attempt to use fake IDs belonging to a relative since they do not have the appropriate documentation. A different employer commented that documents can appear legitimate, but it is difficult to be certain, especially when workers provide licenses from states outside of the employer's location. Another explained that the I-9 requires that the employer examine the workers' documents and indicate which type

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[29]There are two steps to complete the Form I-9; first the employee must complete one portion, after which the employer completes the remainder. Some employers may have been referring to when the employee completed the form rather than when the company completed it.

of document was provided. This employer remarked that you complete the documentation in "good faith" based on the information the worker provides, and "that's the end of our responsibility."

2.2.   Procedures for Employment Verification

Employers used a variety of means of checking work authorization instead of or in addition to the Form I-9 procedures. As seen in Exhibit IV-4, many employers indicated that they check references and/or employment history (53 percent), ask appropriate questions in the application form (50 percent), and conduct background checks (44 percent).[30] Some employers (23 percent) also reported verifying Social Security numbers with the Social Security Administration (SSA).

Exhibit IV-4.   Employers' Current Verification Procedures

Procedure	Percent of employers
We use the Form I-9 to verify authorization to work	81
We check references and/or employment history	53
We ask appropriate questions in the application form	50
We conduct background checks	44
We verify Social Security numbers through SSA	23
We pay another company to do our verification for us	11
We do not have a formal process in place to verify work authorization	5
Other	9

NOTE: Number of respondents = 511.

SOURCE: Employer Nonuser Survey.

2.3.   Who is Verified?

The nonuser survey asked employers which types of workers they verify for work authorization, with several categories of workers listed. Respondents could choose more than one option.

Two-thirds of employers in the case study (69 percent) reported verifying all new hires. A number of employers verified job applicants (32 percent); there is some ambiguity as to what step employers referred to when saying an employee was verified, but this response could be inconsistent with the requirement that the Form I-9 not be used for prescreening (Exhibit IV-5).[31] Some employers reported verifying all workers regardless of when they were hired (12 percent), workers who claim to be citizens (8

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[30] The survey did not ask employers to provide additional details, such as which questions were included on the application forms or what was involved in the background checks.

[31] Some employers may have identified the initial part of the process, when the employee section of Form I-9 is completed, as verifying the employee. Employers are not required to have the I-9 completed until the employee begins work, but they may ask employees to complete the Form I-9 earlier, including as part of the application process. The employer portion of the form should not be completed until the applicant has been offered and has accepted the job. The USCIS *Handbook for Employers* (p. 29) states: "The law requires that you complete Form I-9 only when the person actually begins working. However, you may complete the form earlier, as long as the person has been offered and has accepted the job. You may not use Form I-9 process to screen job applicants." Discussions at the stakeholders meeting in Arizona indicate that some employers are confused about the timing of the verification process. Some employers might also have thought of other actions, such as asking on the application form whether the employee was work authorized, as verification.

percent), and workers who claim to be noncitizens (8 percent). Seven percent of the employers said they did not verify any categories of workers.

Exhibit IV-5.   Which Types of Workers Are Verified for Work Authorization?

Type of worker verified	Percent of employers
All newly hired employees are verified	69
All job applicants are verified	32
All workers regardless of when they were hired are verified	12
Workers who claim to be citizens are verified	8
Workers who claim to be noncitizens are verified	8
No workers are verified	7
Workers filling specific jobs are verified	2
Other	5

NOTES: Number of respondents = 496. Sum does not add to 100 percent because employers could provide more than one response.

SOURCE: Employer Nonuser Survey.

Employers differed on how they defined an employee as "newly hired." As shown in Exhibit IV-6, 42 percent of employers in the case study defined a newly hired employee as "a person who has been offered a job, has accepted it, but hasn't started work yet," and 35 percent used a definition that included "a person who has started work." Some employers (16 percent) considered a new hire to be "a person who has been made a conditional offer of a job and has accepted it," and a very small portion (4 percent) used a definition that included job applicants.

Exhibit IV-6.   Definition Used for "Newly Hired Employee"

Definition	Percent of employers
A person who has started work	35
A person who has been offered a job, has accepted it, but hasn't started to work yet	42
A person who has been made a conditional offer of a job and has accepted it	16
A person who has been offered a job, whether or not he/she has accepted it	4
Other	2

NOTE: Number of respondents = 511.

SOURCE: Employer Nonuser Survey.

Eighty-five percent of employers in the case study reported that they did not have any new hires in 2008 that were not found work authorized. Seven percent reported that at least one or two employees were not found work authorized, 4 percent reported that three to five employees were not work authorized, and 4 percent reported more than 10 (Exhibit IV-7). The survey did not ask for information on how the employees were found to be not work authorized.

Exhibit IV-7.   Number of Newly Hired Employees Not Found Work Authorized During 2008, as Reported by Nonuser Survey Respondents

Number of employees	Percent of employers
None	85
1 or 2	7
3 to 5	4
6 to 10	0
More than 10	4

NOTE: Number of respondents = 492.

SOURCE: Employer Nonuser Survey.

On average, employers reported spending less than 15 minutes per employee on verifying authorization to work. As shown in Exhibit IV-8, 35 percent spent from 5 to 14 minutes each verifying new employees' work authorization and 28 percent spent less than 5 minutes. Another 16 percent reported taking 15 to 29 minutes to complete verification procedures, 11 percent reported taking between 30 minutes and an hour, and roughly 10 percent reported taking more than one hour per employee.

Exhibit IV-8. Time Spent Verifying Each New Employee's Work Authorization

Time	Percent of employers
Less than 5 minutes	28
5 to 14 minutes	35
15 to 29 minutes	16
30 to 59 minutes	11
1 to 4 hours	7
5 to 9 hours	1
10 hours or longer	1
No formal process	1

NOTE: Number of respondents = 489.

SOURCE: Employer Nonuser Survey.

3.   IMPACT OF E-VERIFY ON CURRENT NONUSER PROCEDURES

This section focuses on the potential impact of participating in the E-Verify Program for nonusers in terms of the resources and process required to participate.

3.1.   Resources

As shown in Exhibit III-5, some employers in the case study indicated that they did not have the resources to participate in E-Verify: 23 percent said they did not have available staff with sufficient skills,[32] and 6 percent said they did not have computers with an Internet connection or they had only a slow Internet

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[32]The questionnaire did not ask the companies to specify which skills were an issue. These skills might include computer skills and/or knowledge of E-Verify and work authorization.

connection. Thus, while the large majority of employers have the basic resources needed to use E-Verify, there remains a substantial segment for whom the lack of resources would be an issue. The employers facing the greatest issues with regard to resources appear to be employment and temporary help agencies.

Following are some comments received from focus group and survey participants related to specific types of resources:

- **Administrative resources.** A focus group employer mentioned, "I don't have an HR person or someone to handle the payroll. We outsource everything—payroll, legal, HR, insurance." This respondent seemed unaware that participation in E-Verify can also be outsourced through the use of Designated Agents (DAs).

- **Computer resources.** An employer commented, "There are many small employers that still exist without any type of computers in use—forcing them to purchase a computer and pay for monthly Internet charges could be a hardship." Another mentioned the potential for difficulties among "those small rural businesses or ranches which might not have or have limited Internet access." An employer that participated in a focus group said, "we have some issues here in a rural area with our Internet service so that could be a problem."

Employers that lack sufficient resources or training might instead choose to use DAs. DAs are companies that provide E-Verify services and sometimes other services for a fee.   The nonuser focus group participants were asked several questions about their interest in using DAs to run queries on their new hires through E-Verify. When asked what information they would like to know about DAs before hiring them, the majority of participants indicated they would like to know how much the DA would charge for the service. Several others said they would like to know not only if the company was competent and reputable, but also how quickly they could complete queries. One focus group participant went a step further, saying: "It would be easier [to identify] DAs if they have some sort of certification, proof they have gone through training, read the 61 page [user] manual, and passed some sort of test, and the 'government swears they know what they're doing.'" Two others agreed, mentioning they would want the DA to be licensed or certified.[33]

3.2.   Process

As shown in Exhibit VI-4, all but 5 percent of the case study participants had a formal process in place to verify work authorization, and 81 percent used the Form I-9. For those employers that had the verification process in place, however, participating in E-Verify would involve new activities beyond the E-Verify process itself. Participating would also place them in compliance with the Federal requirement to use the Form I-9.

Depending on the purpose of their other background checks, some employers may reduce their reliance on other activities by using E-Verify instead. As a rule, employers did not devote a lot of time to verification activities, with most employers in the study (63 percent) spending less than 15 minutes per

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[21] Currently, DAs are required to sign a Memorandum of Understanding between the Department of Homeland Security, SSA, and the DA; complete the E-Verify Web-based tutorial; and become familiar with and comply with the E-Verify manual. (See http://epic.org/privacy/surveillance/spotlight/0707/mou_everify.pdf.)

employee; for such employers, there is little potential for E-Verify to substantially reduce the time spent in verification. However, roughly 10 percent spent more than one hour per employee; if using E-Verify would lessen their time spent on verification, that time savings could be a benefit. In particular, since 23 percent of the case study respondents verified Social Security numbers through SSA, participating in E-Verify might replace that process. Similarly, the 11 percent that paid another company to do verifications for them might stop using that vendor and start using E-Verify themselves or pay a DA to use E-Verify for the verification process. However, it is not clear the extent to which using E-Verify can be substituted for other verification procedures currently in use.   One employer commented:

> I like the idea if it decreases HR administrative time and if it does not cause delays in hire date for those who are authorized to work (i.e., misidentification or system errors that result in delays are not acceptable to our clients). The concept of being able to identify eligibility to work over the Internet is conducive to our company's multiple locations. The requirement that forms of verification for the I-9 must be seen in-person by a company representative is unreasonable in today's marketplace.

Some employers performed verification activities at a different time than specified by E-Verify, with 12 percent of the case study participants asking job applicants to complete the Form I-9 and 32 percent saying that all job applicants have their work authorization verified. If employers use the Form I-9 to screen applicants, they would be required to change that timing if they participate in E-Verify; however, the Form I-9 also should not be used to screen applicants. Both the Form I-9 and E-Verify are to be used to check the work authorization of new hires, not of job applicants, and the MOU for E-Verify specifically prohibits using the I-9 to verify job applicants who have not accepted an offer of employment..

CHAPTER V. OPINIONS ON A MANDATORY E-VERIFY AND POSSIBLE PROGRAM CHANGES

1.   INTRODUCTION

As noted in the introduction to this report, many states and the Federal government have acted to make E-Verify participation mandatory for at least some groups of employers, and Congress is considering enlarging that mandate to include all employers. This section looks specifically at employers' opinions concerning a mandatory E-Verify Program. Since another way of encouraging participation might be to make program changes that would be appealing to employers, this chapter also looks at employers' opinions concerning potential changes.[34]

2.   MANDATING PARTICIPATION IN E-VERIFY

2.1.   Support or Opposition for Mandating Participation

In general, the employers in the case study were opposed to making participation in E-Verify mandatory. A majority of the case study participants either strongly opposed a mandatory program (25 percent) or opposed it (32 percent) (Exhibit V-1). Conversely, 25 percent supported and 17 percent strongly supported a mandatory program.

Exhibit V-1. Level of Support for Making Participation in E-Verify Mandatory
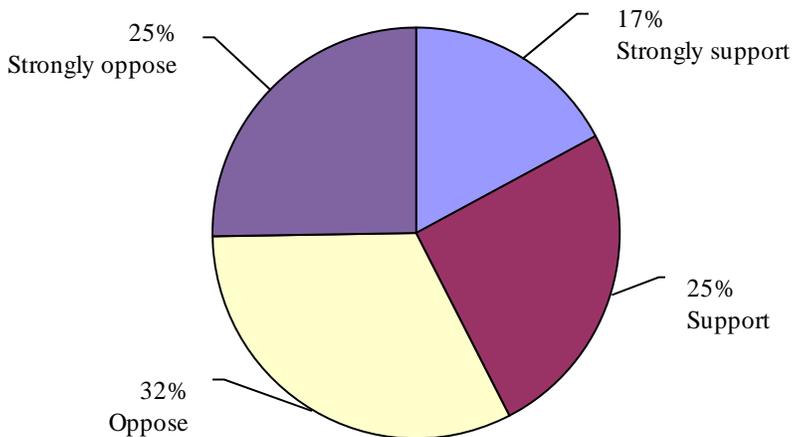
NOTE: Number of respondents = 507. Sum does not add to 100 percent because of rounding.

SOURCE: Employer Nonuser Survey.

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[34] For simplicity, this section refers to E-Verify whether or not the survey questionnaire made specific references to E-Verify. That is, for those employers that indicated they were not familiar with E-Verify, the questionnaire asked for employers' opinions about an Internet work-authorization program in general rather than specifically about E-Verify.

Following are statements made by employers that expressed an unfavorable view of a mandate. Since this study was an exploratory study and does not provide precise national estimates, no attempt is made here to examine the implications of the suggested changes. These comments were made either as text included as part of the survey responses or within the focus groups. As noted earlier in this report, these comments are included because they provide information about employers' perceptions, whether or not those perceptions are correct.

- **Some employers expressed a general objection to a mandatory program.** For example, one focus group participant said: "If E-Verify turns out to be efficient and saves time then everyone will start talking about it and using it, just like the Internet. Because if it works, it's all the advertisement you need. You don't have to have a law to do it."

- **Others saw reasons for making E-Verify mandatory for certain groups of employers but not for all employers.** Some respondents suggested that E-Verify could be made mandatory for employers that have had violations with hiring illegal immigrants, for large employers, or for those in certain geographic regions. One focus group participant recommended limiting the Program to some states, particularly those with an influx of people who are not authorized to work. Another focus group participant added that it should be mandatory for specific industries—all service industries and the construction industry.

- **Requiring small employers to participate was particularly an issue.** One survey respondent said, "Making it mandatory to smaller companies that have one person in their HR Department, such as ours, is quite disconcerting." Mississippi earlier recognized the greater potential difficulties facing small employers and is phasing in mandated participation more slowly for smaller than for large employers. Utah chose to exempt small employers from a mandate; it recently enacted legislation requiring private employers with 15 or more employees to participate as of July 1, 2010.

- **One survey respondent was concerned that a mandatory program would increase identity theft.** "Making use of technology to mandatorily verify employment would probably cause a rise in identity theft as those who are not legal to work in this country would need those documents to pass a screening. If we had picture ID matching or tools to help verify the validity of a document that would be more helpful. It's hard to fake a picture if we had access to that kind of database. Although such information can also potentially be abused by certain individuals if not carefully implemented."

- **Another employer questioned whether a mandatory program could be enforced.** This focus group participant said that "the government cannot [en]force the laws we have now that prohibit people from entering the country illegally."

In contrast, other employers were supportive of mandating participation.

- **Some liked a mandatory program so nonparticipants would not have a competitive advantage.** A focus group participant noted that "it makes a level playing field if all hotels are doing E-Verify. I don't have to worry about the fact I'm not going to get qualified candidates because they're scared of the process." A survey respondent said: "As long as the process is the same for everyone, then the loopholes discovered by people who are not

authorized to work will also be foisted on everyone, thereby not penalizing any one group of employers for wrongly hiring workers."

- **Some also questioned the value of making geographic distinctions.** One focus group participant commented that there are unauthorized workers using fraudulent documentation in every state so a mandatory verification program should be required in all areas (though that employer opposed mandating participation for small employers).

- **One survey respondent mentioned the hope of merging all mandated worker background checks and reporting into a single process.** It suggested that E-Verify "replace all the state-wide newly hired programs out there used to fight child support skippers."[35]

Some employers expressed the opinion that E-Verify by itself would not address the immigration issue. These employers believe they are complying with the current laws as well as they can and they are the ones burdened along with the undocumented workers for a failure on the part of the Federal government to enact comprehensive immigration reform. One employer commented:

> When I first opened and I asked if they were citizens, they all answered yes and had work histories years in this town with other companies. I felt confident that these large companies knew far more than me about this. Then when they later felt bad and told me the truth I was informed by our inconsistent government that I could not ask to see their Social Security number nor fire them because of this. So this is good except it should be used before they are hired so they do not go home happy about a job and use this to rent or buy things on credit that they need and then it all comes crashing down. It makes me the villain, me the one who will be fined, etc. I forget, will clemency come next week or next election or—well—you get the idea. We do not keep them out—we feed them, we provide medical care, we educate, but do not let them work. They have tax numbers and all have paid taxes and the pay is equivalent to others.

Some employers viewed a mandatory program as diverting a government responsibility to businesses. One employer commented: "At the moment, the laws required to verify employment are simple. Making too many steps that are mandatory would be cumbersome. Bottom line, there are better ways to curb illegal immigration than trying to make the burden of the employers go up."

Some doubted whether E-Verify was really necessary given that there are other ways of identifying unauthorized workers. "If a company accepted a fraudulent Social Security card say, for example, because it appeared genuine on the surface, they would receive a "mismatch letter" anyway from Social Security and at that point the employee would be directed to go to Social Security and return with something that verified the number they initially provided.[36] Either way, it would catch up with an

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[35] The nonuser was referencing a Federal requirement that all employers submit information on new hires to their state to more effectively locate noncustodial parents and establish and enforce child support orders. See http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/nhreporting/nhreporting.htm#generalissues.

[36] This may depend on whether the number is invalid, fails to match the name, or the employee has assumed the identity of someone with a correctly matched name and number, and on how long one waits for the fraud to be identified.

employee providing a false Social Security card that appears to be real when hired. As long as a company is following the law and I-9 guidelines to the best of their ability, they should not be made to participate in a potential time-consuming program and made to feel like they are under a microscope."

Another objection was based on the fear of the impact of making errors. "I feel strongly that the program should not be mandatory. There are too many data entry errors that could occur considering there would be multiple parties involved in the verification process. If a mismatch did occur, the process involved through E-Verify is too time-consuming and also may attach a stigma to an employee that is perfectly legal."

2.2. Relationship Between Support/Opposition and Employer Characteristics

The greater the percentage of new hires who are short term or temporary, the less likely employers are to support a mandatory program. Among employers with no new short-term or temporary workers, 52 percent supported a mandatory program, compared with 39 percent among those for whom more than 40 percent of the new hires were short-term or temporary (Exhibit V-2). No clear pattern emerged with regard to other employer characteristics. With regard to industry type, the differences were too small to be meaningful. A larger difference appeared with respect to size, with medium-sized employers giving higher support than either small or large employers (54 percent versus 41 percent of small employers and 37 percent of large employers); however, the lack of a consistent pattern as employer size increases suggests that other factors must be important.

Exhibit V-2. Percent of Nonusers Favoring a Mandatory Internet Verification Program, by Employer Characteristics
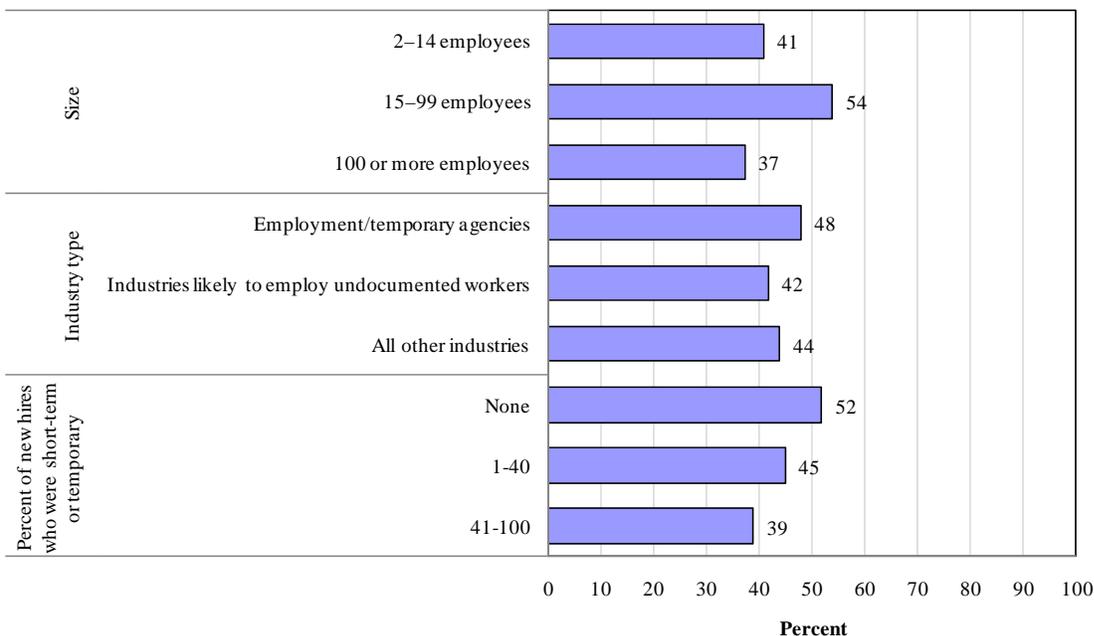
NOTE: Number of respondents = 2 to 14 employees, 66; 15 to 99 employees, 102; 100 or more employees, 119; employment/temporary help agencies, 54; industries likely to employ undocumented workers, 89; all other industries, 144; no short-term/temporary new hires, 85; 1-40 percent short-term/temporary new hires, 82; 41-100 percent short-term/temporary new hires, 77.

SOURCE: Employer Nonuser Survey.

2.3.   Other Opinions About E-Verify

Nonusers' opposition to mandating participation in E-Verify should not be interpreted as opposition to the Program itself. In fact, the case study participants expressed several positive opinions about E-Verify.

- Essentially all (95 percent) agreed that a mandatory E-Verify/verification program would be beneficial if it provides help in identifying fraudulent documents (Exhibit V-3).

- About four-fifths (79 percent) said a mandatory program would decrease the number of undocumented immigrants working in the United States.

- Many also saw a benefit if the program resulted in eliminating the paper Form I-9 (71 percent).

- Very few (13 percent) saw a mandatory program as unfairly targeting undocumented immigrants who must work.

Nonusers' opposition instead was with the idea of mandating E-Verify for all employers: most (62 percent) said the Program would not be useful to some types of employers.

Exhibit V-3. Case Study Participants' Opinions on E-Verify in General
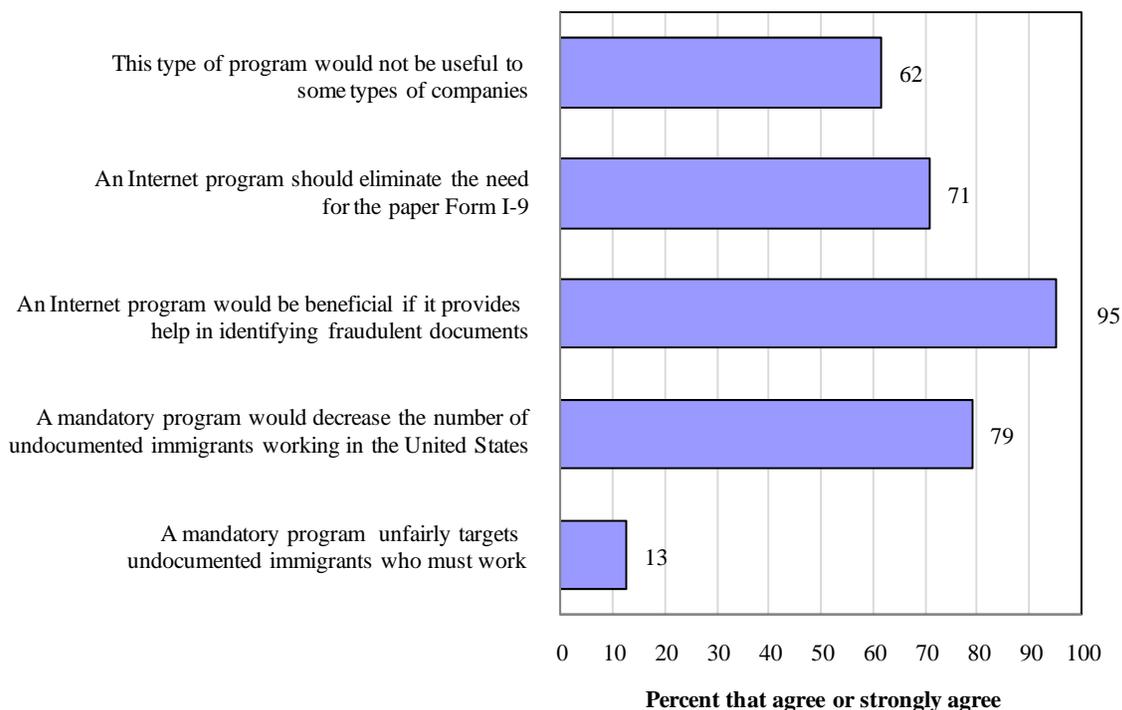
NOTE: Number of respondents = 507.
SOURCE: Employer Nonuser Survey.

Employers that participated in the focus groups mentioned that identity fraud was a problem. One employer said she usually examines picture IDs, which generally help in identifying the worker. Another employer (from the hotel industry) commented that she "never had a problem with picture IDs, but [falsified] Social Security cards and passports are rampant."[37] One employer provided a different perspective about identity fraud saying: "I don't really worry about it because again, I'm filling out my I-9, I'm doing what I'm supposed to do as an employer, I'm doing it in good faith."

Several employers commented on the prospect of E-Verify replacing the paper Form I-9.[38] One commented: "Eliminating (or at least simplifying) the I-9 form might be good as it would 'switch' one process for another, and not adding and increasing time spent on the verification process. A suggestion would be a reference number that's given and needs to be tracked by the employer (on a simplified I-9 form)." Another complained that the paper I-9 made it harder to coordinate work across multiple offices, while an electronic form could be shared more easily. Some employers in the focus groups also indicated they would be more likely to use E-Verify/a verification program if such participation eliminated the need to use the paper Form I-9. Otherwise, it seemed redundant to them to use both methods for verification.

3.   POSSIBLE PROGRAM CHANGES

Nonusers were asked about potential new features of E-Verify to determine which features were desirable. All of the proposed changes received more support than opposition, typically by a large amount. In particular, four received support by more than 90 percent of the case study participants who provided an opinion (Exhibit V-4):

- 95 percent support the increased use of technology to identify fraudulent documents;

- 95 percent support allowing a formal appeal by an employer and/or employee;

- 93 percent support allowing verification of job applicants before a hiring decision is made; and

- 92 percent support increasing the use of technology to verify identity.[39]

Only one statement received substantial opposition, with 36 percent against requiring verification of all employees (rather than just the newly hired); still, roughly two-thirds of the case participants favored such a change.

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[37] This comment reflects the respondent's own experience and perceptions. Quantifying the extent of fraud is difficult since it may not always be detected. The FTC reported that one type of fraud, identity theft, was the number one complaint for 2009 in its Consumer Sentinel Network. See: http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2009.pdf.

[38] This is consistent with a recommendation of the Citizenship and Immigration Services Ombudsman that the paper Form I-9 be replaced for employers who voluntarily use E-Verify. See http://www.dhs.gov/xlibrary/assets/uscis_response_cis_ombudsman_recommendation_38.pdf.

[39] The first and last of these four are highly similar but can have different applications. An example of using technology to identify fraudulent documents is the use of the Photo Screening Tool to identify whether immigration documents have been altered. An example of using technology to verify identity could be the use of biometrics such as encrypted digital fingerprints that are stored in a database. The survey did not provide specific definitions or give examples of each. Respondents may not have had specific examples in mind, but rather may have provided their general thoughts about the concepts.

In deciding which, if any, employer suggestions should be implemented, employers' preferences should be considered in light of other, potentially competing, priorities. For example, some means of identifying fraudulent documents or verifying identity can raise privacy concerns, and current procedures prohibiting verification of job applicants are based on discrimination concerns.

Exhibit V-4. Case Study Participants' Level of Support for Possible New Features of E-Verify

Percent that support or strongly support
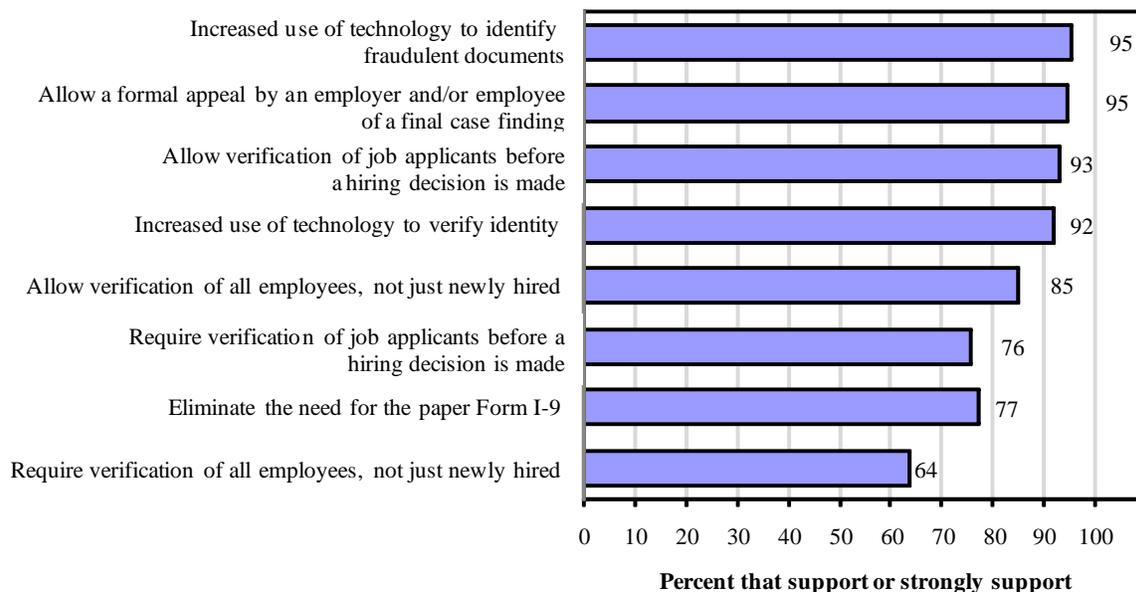
NOTE: Number of respondents = 506.
SOURCE: Employer Nonuser Survey.

Participants in the focus groups particularly commented on allowing verification of job applicants before a hiring decision is made:

- An employer from a placement agency indicated that it would like to use E-Verify for screening job applicants because it would not want to place a person who later received a Tentative Nonconfirmation (TNC).[40] If a person receives a TNC, the employer would not want to allow the person to start work because the person may not complete his or her paperwork and the client could be upset if the person was not authorized to work.

- Another employer said it "seems like you go through whole hiring process, telling other applicants you have already filled the position and find out they are not legal to work seems backwards."

- Another said, "if E-Verify is used to verify status that people are legal to work in the U.S., why isn't it required prior to hire? You could hire someone, run a check within three days and on third day find out they are not legal. Then I'd have to fire them. This should be a

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[40] See section 2 of Chapter 1 for the definition of a TNC.

> prerequisite pre-hire not post-hire. And then you pay them and have a W-2 for them for one or two days of work; it's a lot of work for the employer."

4. CHANGES TO EMPLOYERS' CURRENT PRACTICES

In addition to commenting on E-Verify, the case study participants were also asked what would improve their current processes for verifying the employment authorization of workers.

The case study participants again showed strong support for a program such as E-Verify. Roughly half (48 percent) said an Internet work-authorization verification program would improve their verification process (Exhibit V-5).[41]

The other change receiving wide support was an electronic Form I-9 (43 percent). Less frequently, case study participants indicated that their verification process would be improved through the availability of Internet access where hiring decisions are made (23 percent), photo-matching (13 percent), and additional staff (12 percent). One focus group participant whose medium-sized company has a substantial number of foreign-born workers indicated that using E-Verify would be less work for them than using the Form I-9.

Exhibit V-5. What Would Improve the Task of Verifying Employment Authorization of Workers
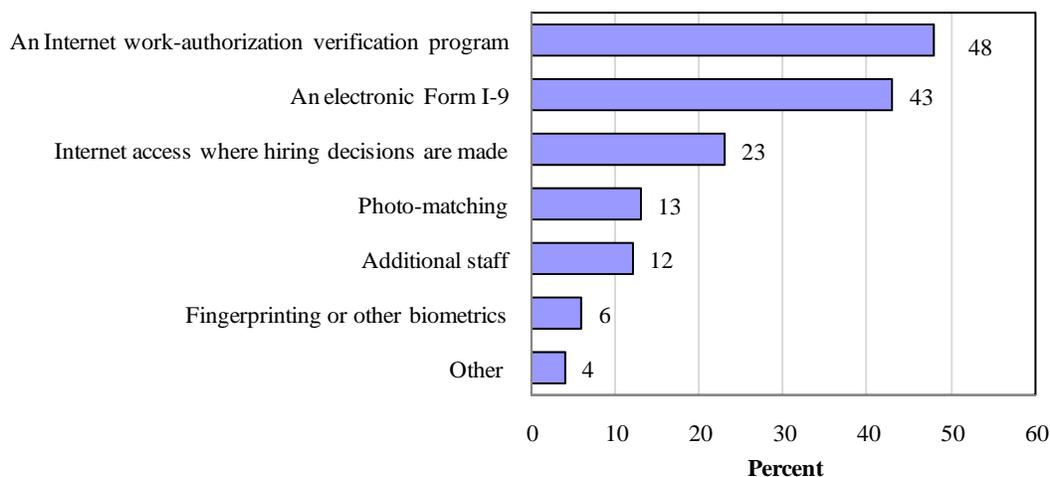
NOTES: Number of respondents = 379. Sum does not add to 100 percent because nonusers could provide more than one response.

SOURCE: Employer Nonuser Survey.

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[41] The survey question did not specify "E-Verify" because nonusers who were not familiar with E-Verify may not have been aware that E-Verify is an Internet work-authorization verification program.

CHAPTER VI. SUMMARY AND RECOMMENDATIONS

1.   INTRODUCTION

This chapter provides an overview of the major findings from the preceding sections of the report, followed by recommendations for expanding the use of E-Verify.

2.   SUMMARY OF FINDINGS

2.1.   Familiarity With E-Verify

- **Most nonusers were not familiar with the E-Verify Program.** When asked about E-Verify, 63 percent of the case study participants reported they were not familiar with the Program. Of the respondents that were familiar with E-Verify, the most commonly reported sources of information about E-Verify were information from professional associations, media coverage or advertisements, and government materials or publications.

2.2.   Barriers to Using E-Verify

- **The most frequently cited reason for reluctance to using E-Verify was that there was no perceived benefit.** Nonusers felt that there was no reason to make the transition when they already had effective verification procedures.

- **The second most frequently cited reason was that E-Verify seemed too costly or time-consuming to use.** Also, many said that the transition to a new system would be too difficult or disruptive. Large employers and those including temporary help or employment agencies were more likely to express concerns about time constraints and costs.

- **Roughly one-fourth of case study participants cited difficulties such as insufficient skilled personnel, and roughly one-tenth of small businesses (which form 89 percent of all employers nationally) lacked appropriate computer resources.**

- **Nonusers sometimes complained about the length of the tutorial and the need to review a lengthy manual prior to using the Program.**

- **Though processing the I-9 also has a three-day deadline, some nonusers complained about the requirement to input information about new hires into E-Verify within three workdays of hire.** Among nonusers, especially those representing small businesses, there were concerns about adhering to the three-day requirement. Some businesses described themselves as a "one-person shop," lacking additional staff to assist with completing the verification process when they had competing demands at the office or faced conflicts with illness or vacation schedules.

2.3. Current Verification Procedures

- **Over 80 percent of case study participants reported using the Form I-9 as part of their typical verification procedures; they almost always used the hardcopy rather than the electronic version of the document.** Roughly half reported checking references, asking appropriate questions in the application form, and conducting background checks as part of their verification procedures.

- **Nonusers differed on the definition of "newly hired employee."** The primary split was between those who defined a new hire as a person who has started work and those who considered a new hire to be a person who has accepted a job offer but has not started to work yet.

2.4. Opinions on a Mandatory E-Verify or Internet Verification Program

- **A majority of case study participants (58 percent) opposed a mandatory E-Verify or Internet verification program.** Employers especially opposed a mandatory program if a large proportion of their workers were short term or temporary.

- **There was strong support for some of the concepts underlying E-Verify if participation were voluntary.** When asked what would improve the task of verifying workers' employment authorization, almost half of the case study participants reported that an Internet work-authorization verification program would be helpful. Participants reported agreement that an Internet verification program would be beneficial if it assisted with identifying fraudulent documents, decreased the number of undocumented immigrants working in the United States, and eliminated the need for the paper Form I-9.

- **Although the data are based on only a small number of cases, there appear to be substantial numbers of employers who plan to enroll in E-Verify in the future, and also substantial numbers who would not participate unless there is a mandate.** Of those who responded, roughly one-fourth definitely planned to use E-Verify and roughly one-third did not intend to use it unless mandated to do so.

2.5 Potential Changes to E-Verify

Nonusers supported a number of changes to E-Verify.

- More than 90 percent of the case study participants supported increasing the use of technology to identify fraudulent documents and to verify identity, allowing a formal appeal by an employer and/or employee, and allowing verification of job applicants before a hiring decision is made.

- Also, 85 percent supported allowing verification of all employees, and not just those who were newly hired employees.[42]

3. RECOMMENDATIONS

3.1. Awareness of E-Verify

- **Since the primary barrier to participation in E-Verify appears to be a lack of awareness of the Program, USCIS should increase its outreach efforts.** While most employers were unaware of E-Verify, they tended to show support for the concepts behind E-Verify. One might also note that employers often mentioned learning of E-Verify through sources other than government publications, such as professional associations. Thus, it may be helpful to seek additional outlets for providing communications about E-Verify such as working with professional associations.

3.2. Other Barriers to Participation

- **USCIS should look for ways of addressing the perceptions that participating in E-Verify would provide no benefit and would be costly to employers.** For example, some employers would like assurances that participating in E-Verify would protect them from legal liability. Also, E-Verify might look for opportunities to reduce burden further and appropriately communicate the actual time required to use E-Verify (since the perception of burden is sometimes based on experiences with other government agencies).

3.3. Changes to E-Verify

- **Since several potential changes to E-Verify received high support, adopting some of the changes might both improve the Program's popularity and increase participation rates.** The changes that received high support were increasing the use of technology to identify fraudulent documents, allowing a formal appeal by an employer and/or employee of a final case finding, allowing verification of job applicants before a hiring decision is made, increasing the use of technology to verify identity, allowing verification of all employees, requiring verification of job applicants before a hiring decision is made, and eliminating the need for a paper Form I-9. One proposed change, requiring verification of all employees rather than just the newly hired, received strong support but also was the only change to receive substantial opposition; currently that option is only available to Federal contractors. The potential benefit of these changes should be weighed against potentially competing concerns such as protecting privacy and avoiding discrimination. Additionally, any changes should be tested and evaluated prior to full implementation.[43] Some of these changes also require new legislation in order to be implemented.

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[42] However, 36 percent opposed *requiring* verification of all employees.

[43] See *Findings of the E-Verify Program Evaluation*, December 2009, pp. 237-240, for more specifics regarding establishing a pilot program.

3.4. Mandatory Participation

- **It appears that E-Verify can obtain substantially increased participation without it being mandated, but that many employers will not participate without a mandate.** If a mandate is adopted, special attention should be given to the potential for burden that would be imposed. E-Verify may be less applicable to businesses that are unlikely to hire unauthorized workers due to their location or industry, and to very small businesses, which reported that they often hire only U.S. citizens (perhaps family members or persons known to them) and rarely hire new employees.

APPENDIX A.

STATUS OF STATE LEGISLATION RELATED TO E-VERIFY AS OF NOVEMBER 30, 2010

APPENDIX A.
STATUS OF STATE LEGISLATION RELATED TO E-VERIFY AS OF NOVEMBER 30, 2010

State	Current requirement			Pending legislation[1]		
	State employees	State contractors	All employers	State employees	State contractors	All employers
Arizona	✔	✔	✔			
Colorado		✔		✔		
Connecticut				✔	✔	
Delaware				✔	✔	
Georgia	✔	✔				
Idaho	✔					
Illinois				✔	✔	✔
Kansas				✔	✔	
Louisiana				✔	✔	
Massachusetts				✔	✔	✔
Michigan				✔	✔	
Minnesota	✔	✔				✔
Mississippi	✔	✔	✔			
Missouri	✔	✔				
Nebraska	✔	✔				
New Jersey				✔	✔	✔
New York				✔	✔	
North Carolina	✔				✔	✔
Ohio				✔	✔	✔
Oklahoma	✔	✔				
Pennsylvania				✔	✔	✔
Rhode Island	✔	✔				✔
Tennessee				✔	✔	✔
Utah	✔	✔	✔			
Virginia[2]	✔					
West Virginia						✔
Wisconsin				✔	✔	

[1]Pending legislation bills introduced may or may not be enacted or passed.
[2]Legislation goes into effect December 1, 2012.

NOTE: Four states adopted legislation that influences the use of E-Verify without mandating participation. Arkansas forbids state agencies and contractors from hiring illegal workers. South Carolina requires that all employers within the state check the employment eligibility of new hires using E-Verify or by checking a new hire's state driver's license. Pennsylvania forbids state agencies and contractors from hiring illegal workers and provides that E-Verify participation protects public contractor employers from prosecution. Tennessee suspends an employer's business license if they knowingly hire an unauthorized alien and provides that E-Verify participation protects employers from prosecution.

SOURCE: USCIS, Verification Division, E-Verify State Legislative Updates, November 2010.

APPENDIX B.

SURVEY QUESTIONNAIRES

NOTE: Because the skip patterns on the Web survey increased the complexity of the questionnaire, the mail version was simplified. Some questions on the Web survey were not included on the mail questionnaire, and the skip patterns were largely removed. Both versions of the questionnaires are provided here.