

The History of Basic Pilot/E-Verify

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Basic Pilot/E-Verify is a voluntary, Internet-based program that allows employers to electronically verify newly-hired employees' employment eligibility by accessing information in databases maintained by the Social Security Administration (SSA) and U.S. Citizenship and Immigration Services (USCIS), a bureau within the U.S. Department of Homeland Security (DHS).¹

■ Pre-Basic Pilot employment eligibility verification systems

On November 20, 1991, President George H.W. Bush signed Executive Order 12781, which authorized the creation of demonstration projects on alternative employment eligibility verification systems.² In response, the former Immigration and Naturalization Service (INS) implemented its first pilot program, the Telephone Verification System (TVS), in March 1992. TVS allowed employers to use a point-of-sale device that communicated by telephone with the INS to verify their employees' employment eligibility. TVS was piloted in two phases from March 1992 until 2000. The first phase involved nine volunteer employers in California, Florida, Illinois, New York, and Texas. The second phase initially involved 235 volunteer employers in the Los Angeles area. In 1996, TVS was expanded in the Employment Verification Pilot (EVP), which included an additional 1,000 employers throughout the U.S.

In 1994, the Commission on Immigration Reform (established by the Immigration Act of 1990) issued an interim report which found that a national computerized registry using data from INS and SSA would be the most promising option for an employment eligibility verification system.³ Following release of the report, INS and SSA formed a working group to determine the technical feasibility of implementing and piloting the commission's recommendations for a national registry. The working group found that the lack of a common identifier between the two agencies made it impossible to build a unified database. However, on February 7, 1995, President Bill Clinton issued a directive to the heads of all executive agencies that included a proposal to develop and test employment

verification methods based on the recommendations of the Commission on Immigration Reform.⁴ INS and SSA then worked together to develop the Joint Employment Verification Pilot (JEVP). The program was piloted in July 1997 in Chicago with 38 volunteer employers. It was never expanded, however, due to the new pilot programs established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).⁵

■ IIRIRA authorizes additional electronic employment eligibility verification programs

The Basic Pilot program is one of three voluntary electronic employment eligibility verification pilot programs that were created under IIRIRA. The other two programs were the Citizen Attestation Pilot (CAP) and the Machine-Readable Document Pilot (MRDP). The Basic Pilot was modeled on the JEVP and was to be piloted in five of the states with the largest estimated populations of undocumented immigrants. The program began operating in California, Florida, Illinois, New York, and Texas in November 1997. It was expanded to Nebraska in March 1999 as a result of "Operation Vanguard," which was an INS operation designed to remove unauthorized immigrant workers from the meatpacking industry.

■ Additional legislative extensions and expansions of Basic Pilot and other programs

The Basic Pilot Extension Act of 2001 extended Basic Pilot, CAP, and MRDP for two more years, until November 30, 2003. In 2003, Congress expanded Basic Pilot to all 50 states and reauthorized it for an additional five years, until November 30, 2008. CAVP and MRDP were terminated on their initial expiration dates in 2003. In September 2008, President George W. Bush signed a continuing resolution that extended E-Verify through March 6, 2009.⁶

■ Executive expansion of Basic Pilot

Among a package of new policies announced by the George W. Bush administration in August 2007, which



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were outlined in a document titled “Improving Border Security and Immigration Within Existing Law,”⁷ were changes to the electronic employment eligibility verification process.⁸ Foremost among these was the “rebranding” of Basic Pilot, which DHS now calls “E-Verify.”

The changes included:

Making Basic Pilot/E-Verify mandatory for new federal contractors and vendors. DHS announced plans to issue regulations to require new contractors and vendors to use Basic Pilot/E-Verify as a condition for being awarded a federal contract. Currently, more than 200,000 companies have contracts with or supply services to the federal government. DHS also announced that it will take immediate steps to modify its “Security Acquisition Manual” by designating a vendor’s participation in Basic Pilot/E-Verify as a positive consideration in evaluating who receives a DHS contract.

Expanding a pilot project “photo screening tool.” The photo-screening tool, which was piloted by a small number of Basic Pilot/E-Verify employers in March 2007, was expanded to all such employers as of September 2007. If when completing the employment eligibility verification process a worker presents a newer employment authorization document (an I-766, commonly referred to as an EAD) or a newer permanent resident card (an I-551) as proof of employment authorization, the employer must use the photo screening tool to compare the photograph on the card with a digital photograph stored in USCIS’s database.

Verifying certain documents with the U.S. State Department. DHS announced that it has plans to verify documents presented by workers against information stored in visa and passport records.

Seeking voluntary access to state motor vehicle databases. DHS announced that it would like states to share driver’s license photographs and records with Basic Pilot/E-Verify in order to combat identity theft. States could decide whether or not to participate in this program. To date, no states have chosen to participate in it.

Requiring all federal agencies to use Basic Pilot/E-Verify. According to an August 2007 Office of Management and Budget memorandum, as of October 1, 2007, all federal departments and agencies are supposed to use Basic Pilot/E-Verify to verify the employment eligibility of all new hires.⁹

Other administrative incentives and expansions:

The U.S. Department of Labor (DOL) issued a guidance letter on November 14, 2007, that “strongly recommends” that State Workforce Agencies (SWAs) use Basic Pilot/E-Verify to verify the employment authorization of noncitizen workers with H-2A temporary

worker visas.¹⁰ DOL plans to enter into a memorandum of understanding with DHS and SSA that would allow a small number of SWAs to use Basic Pilot/E-Verify under a pilot program, with the intent of making it available to all SWAs.

In April 2008, DHS issued an interim rule which allows employers that enroll in Basic Pilot/E-Verify the opportunity to extend the employment of any F-1 student visa-holders (who have a degree in science, technology, engineering, or mathematics) they employ under the Optional Practical Training (OPT) program from 12 to 29 months.¹¹ The issuance of a final rule on this incentive for employers is expected before the end of the current administration.

Finally, on June 6, 2008, President George W. Bush issued Executive Order 13465, which mandates that certain public and private businesses that contract with the federal government use Basic Pilot/E-Verify to verify their employees’ employment eligibility.¹² A proposed rule implementing the order was issued further clarifying that not only would employers be required to check the employment eligibility of all newly-hired employees, but also that of existing employees “assigned to the contract.”¹³

■ States begin requiring employer participation in Basic Pilot/E-Verify

Although the federal government has not made Basic Pilot/E-Verify mandatory for most employers in the U.S., currently 13 states mandate that the program be used by some or all employers in those states. Arizona, Mississippi, and South Carolina require all employers to use the program, while the rest of the states require either state agencies or businesses with state contracts to use the program. These states include Colorado, Georgia, Idaho, Minnesota, Missouri, North Carolina, Oklahoma, Pennsylvania, Rhode Island, and Utah.¹⁴

The only state that has enacted worker-friendly legislation regarding Basic Pilot/E-Verify is Illinois, which enacted laws designed to ensure that when using Basic Pilot/E-Verify, employers respect workers’ privacy rights and do not use the program to engage in discrimination. The state government also has affirmatively stated that no state agencies will use the program because of its inaccuracies and the harm it would do to state workers and employers.¹⁵

■ The future of Basic Pilot/E-Verify

As of September 2008, slightly more than 80,000 employers had registered to use Basic Pilot/E-Verify. This amounts to just over 1 percent of the 7 million employers in the U.S. It is not clear how many of

these registered employers actively use the program, however. As of April 2008, the Government Accountability Office reported that only approximately half of employers registered for the program actively used it.¹⁶ If implemented, the regulations requiring federal contractors to use the program could dramatically increase participation, since there are almost 170,000 businesses nationwide that have federal contracts.¹⁷

Several legislative proposals in the 110th Congress would have made the program mandatory for all employers in the U.S.¹⁸ Some proposals would have re-

quired that the program be applied to all newly-hired employees in the U.S. (in 2007 there were approximately 57.8 million new hires), while others went much farther in mandating that every existing worker be verified by the program (in 2007 there were approximately 154 million people in the workforce). Although none were enacted, they are likely to reappear in the next Congress. More information about federal legislative proposals is available on NILC's website.¹⁹

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Notes

¹ For more information on Basic Pilot/E-Verify, see *Basic Information Brief: DHS Basic Pilot/E-Verify Program* (NILC, Mar. 2008), www.nilc.org/immseplymnt/ircaempverif/e-verify_infobrief_2008-03-13.pdf.

² See 56 FR 59203 (Nov. 22, 1991), amending Executive Order 854 of June 26, 1908, and revoking Executive Order 11339 of Mar. 28, 1967.

³ U.S. Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility* (ISBN 0-16-045373-9, U.S. Govt. Printing Office, 1994). The commission's recommendation is summarized on pp. xii–xviii of the report's executive summary, a copy of which is available at www.utexas.edu/lbj/uscir/exesum94.pdf.

⁴ "Memorandum on Illegal Immigration," 31 *Weekly Compilation of Presidential Documents*, Feb. 7, 1995, 200–04, available from www.gpoaccess.gov.

⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Defense Department Appropriations Act, 1997, Pub. L. 104-208, 110 Stat. 3009-659 (Sept. 30, 1996).

⁶ The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329 (Sept. 30, 2008).

⁷ A copy is available at www.nilc.org/immlawpolicy/misc/dhs-admin_imm_measures_2007-08_10.pdf.

⁸ See "Fact Sheet: Improving Border Security and Immigration Within Existing Law" (The White House, Aug. 10, 2007), www.whitehouse.gov/news/releases/2007/08/20070810.html.

⁹ Memorandum from Stephen S. McMillin, Acting Director, U.S. Office of Management and Budget, "Verifying the Employment Eligibility of Federal Employees," No. M-07-21, Aug. 10, 2007, www.whitehouse.gov/omb/memoranda/fy2007/m07-21.pdf.

¹⁰ See memorandum from Emily Stover DeRocco, Assistant Secretary, U.S. Dept. of Labor, "Clarification of Certain Procedures for Processing H-2A Labor Certification Applications," Foreign Labor Certification Training and Employment Guidance Letter No. 11-07, Change 1, Nov. 14,

2007, <http://wdr.doleta.gov/directives/attach/TEGL/TEGL11-07c1.pdf>.

¹¹ See 73 FR 18944 (April 8, 2008).

¹² See 73 FR 33285–87 (June 11, 2008), amending Executive Order 12989 of Feb. 13, 1996.

¹³ 73 FR 33374–81 (June 12, 2008) at 33377 and 33381.

¹⁴ NILC currently is preparing a chart that will provide summaries of state Basic Pilot/E-Verify–related laws, which will be available from www.nilc.org/immseplymnt/state_local/index.htm.

¹⁵ More information about the Illinois laws, as well as other state and local measures, is available on NILC's "Immigrants & Employment > State & Local: Legislation, Litigation, and Resources" webpage:

www.nilc.org/immseplymnt/state_local/index.htm.

¹⁶ Richard M. Stana, *Testimony Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives: Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System* (GAO-08-729T, Government Accountability Office, May 2008), <http://waysandmeans.house.gov/media/pdf/110/gao5608.pdf>.

¹⁷ See 73 FR at 33377.

¹⁸ The most notable proposals included the Secure America through Verification and Enforcement Act of 2007, or "SAVE Act" (H.R. 4088/S. 2368), and the New Employee Verification Act of 2008 (H.R. 5515). For more information on SAVE, see *Shuler-Tancredo Employment Eligibility Verification System: Poorly Designed, Dangerous for the Economy* (NILC, Apr. 9, 2008),

www.nilc.org/immseplymnt/ircaempverif/shuler_EEVS_2008-02-01.pdf. For more information on the New Employee

Verification Act of 2008, see *Rep. Sam Johnson's "New Employee Verification Act": Another Version of the Shuler-Tancredo Bill* (NILC, May 21, 2008),

www.nilc.org/immseplymnt/ircaempverif/johnson_EEVS_2008-03-21.pdf.

¹⁹ See

www.nilc.org/immseplymnt/ircaempverif/index.htm#bp4.