

Westat Evaluation of the E-Verify Program: USCIS Synopsis of Key Findings and
Program Implications
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1. BACKGROUND

A. What is E-Verify?

E-Verify is a free nationwide program currently used by over 180,000 employers at over 675,000 worksites as the best available tool to help employers determine whether their employees are authorized to work in the United States. After registering for E-Verify, employers submit information for newly-hired employees¹ from the Form I-9 (SSN, name, date of birth, and citizenship status, and if relevant, A-number or I-94 number) to E-Verify, where it is checked against information in Social Security Administration (SSA) and Department of Homeland Security databases as appropriate, over a secure Internet connection. If the employee information can be automatically verified, an authorization notification is issued to the employer through the system. If the employee's records require additional manual review, a tentative nonconfirmation (TNC) is issued. Employees have the right to contest TNCs by visiting an SSA office or calling USCIS and must be allowed to continue working without penalty while the issue is resolved. If a TNC is not contested, or if the issue cannot be resolved, the finding becomes a final nonconfirmation (FNC), and the employer should terminate employment.

B. Who performed this independent evaluation?

The evaluation discussed in this report was conducted by Westat, a Rockville, Maryland-based social science research firm under contract to USCIS. The evaluation was managed by the USCIS Office of Policy and Strategy, independent of the E-Verify program office, which is run by the USCIS Verification Division.

C. Have independent evaluations of E-Verify been previously conducted?

Yes, legacy Immigration and Naturalization Service first contracted for an independent review of E-Verify in June 1998 (published in 2002) with Temple University and Westat, and USCIS has conducted several independent evaluations since then. Additionally, Westat completed a second review of E-Verify in 2007. All reports conducted by Westat have been made public by the agency as well as shared with members of Congress since release of the first report in 2002. To find the 2002 and other past E-Verify reports, go to the USCIS.gov homepage > RESOURCES > Reports & Studies.

D. Why is an independent evaluation necessary?

¹ Federal contractors can choose to verify their current workforce, within certain requirements.

As USCIS continues to improve and expand E-Verify, feedback from all of our stakeholders, including independent evaluators, has been invaluable and serves as a benchmark against which to measure our progress. The independence of the evaluation is important for several reasons. It ensures confidentiality for participants who answer survey questions, which makes them more likely to give truthful answers about their policies and actions related to the E-Verify program. It provides Congress and other stakeholders with a non-biased assessment of the program and prevents a conflict of interest in the findings. It also allows valuable double-checking of program statistics, system operations, and informational materials. The evaluation team approaches the program from an outside, objective vantage point and can give important feedback on how the system works from an outsider's perspective.

E. Does USCIS plan to continue evaluating the E-Verify program?

Yes. USCIS places great importance on both independent and internal evaluation of E-Verify to improve the program. Initiatives to continue evaluation of the program include:

- Contracting with Westat for two years of targeted evaluations;
- Contracting with the University of Arizona's Center of Excellence for Border Security and Immigration and the Federal Consulting Group to examine the E-Verify program in a mandatory environment (Arizona); and
- Studying possible ways to help further detect and deter identity fraud in E-Verify, such as the biographic verification and biometric techniques in E-Verify.

Some recommendations for research would require legislative authorization, (e.g., a test pilot requiring employers to query E-Verify prior to employment) and therefore cannot be pursued at this time. E-Verify is considering studying whether seasonal trends affect E-Verify results and the value of an expedited mismatch resolution process for employees.

F. On what data is this report based?

The evaluation used several sources of data from September 2007 to June 2008, including a stakeholder conference, interviews with Federal staff and contractors, system testing, employer focus groups, a Web survey of 2,320 E-Verify program employers, in person interviews with 109 E-Verify employers and 424 of their workers who had received TNCs, record reviews for 1,246 workers who received TNCs, and E-Verify program transaction and registration data. For the first time, the evaluation also created models to estimate ranges for the E-Verify program's total accuracy and inaccuracy rates and separate rates for both authorized and unauthorized workers.

G. Why did Westat develop models to make estimates?

The most basic question addressed in this report relates to accuracy of the E-Verify program data. Ideally, calculations of system accuracy would be based on the true

employment authorization status of the workers verified, so that their true status could be compared with the E-Verify program finding. If this information were available, calculating accuracy and inaccuracy rates would be a simple ratio of the E-Verify program finding to the total number of workers with that status. However, since it is not available, it was necessary for Westat to use estimates of the number of workers in each status. The Westat evaluation team used models to develop estimates of these numbers. The model supplements the information in the Transaction Database² by making a number of assumptions, informed, where possible, by the available literature and/or the empirical results found in the evaluation.

H. Why are the statistics in the Westat report different than the statistics reported by the E-Verify program on its website and in Congressional testimonies?

The statistics are different because they relate to different time periods. The Westat report's statistics are based on the time period of April through June 2008. The statistics on our website and that we have cited in testimonies are from a more recent time period (July through September 2008). The Westat report found that 96.4 percent of all cases were found work authorized immediately or within 24 hours (i.e., automatically) and 0.5 percent were found work authorized after employees contested an initial data mismatch. The remaining 3.1 percent of cases were found unauthorized either because the employees did not contest, said they were going to contest and did not follow through, were not aware that they could contest, or contested and were found unauthorized. These statistics cover the time period of April through June 2008. However, USCIS has worked with Westat to produce updated statistics for the subsequent quarter (July through September 2008), during which 96.9 percent of all cases were determined to be work authorized immediately or within 24 hours and 0.3 percent were found work authorized after contesting. The remaining 2.8 percent of cases were found unauthorized. We plan to post even more current statistics in spring 2010.

2. THE REPORT'S FINDINGS AND RECOMMENDATIONS

A. What are the most significant findings and recommendations of the report?

The evaluation studied E-Verify program performance between September 2007 and June 2008 to determine the extent to which E-Verify is successfully meeting its stated goals of reducing the employment of unauthorized workers, protecting privacy and workers' civil liberties, reducing discrimination, and preventing undue burden on employers. The report found that E-Verify has made significant progress towards meeting each of these goals, specifically finding that:

- Employer compliance with program procedures has increased;
- E-Verify reduces discrimination against foreign-born workers in the hiring process;

² Transaction Database – data generated by the E-Verify program during the verification process.

- Employers are generally satisfied with the program and feel it is non-burdensome;
- The efficiency and timeliness of the system has improved;
- The number of employers who voluntarily participate in the program has increased; and
- Protections for workers' privacy and civil rights have been strengthened.

The Westat report found that E-Verify has grown rapidly since its inception; there has been an eightfold increase in the number of queries run from 2005 to 2008. In FY09, 8.5 million queries were run and an average of 1,000 employers enrolled each week. Westat found that employers using E-Verify were generally satisfied with the program and indicated that it was not burdensome (99 out of 104 employers report being generally satisfied).

The report estimated the program's total "accuracy" and "inaccuracy" rates (i.e., how consistent were the responses with the person's actual work authorization status) for the first time, finding that 96 percent of all E-Verify initial responses were consistent with the person's work authorization status, and that the remaining 4.1 percent³ inaccuracy rate was primarily due to identity fraud. Looking just at the group of authorized workers, Westat found that over 99 percent of that subset of E-Verify cases are initially found to be employment authorized – a resounding affirmation of the accuracy and efficiency of the system.

The report makes a series of recommendations related to further reducing the employment of unauthorized workers, strengthening privacy and civil liberties protections, reducing discrimination, and preventing undue burden on employers. USCIS has already addressed many of these recommendations through system enhancements made since June 2008, which are discussed in more detail below. Other initiatives, which address the majority of the remaining recommendations, are already underway.

B. What is USCIS's reaction to the findings and recommendations in the report?

We always welcome feedback and suggestions for improvements to E-Verify from all sources, which is why we requested the evaluation. We appreciate the report's affirmation of the significant progress E-Verify has made over the past several years towards achieving all of its goals, including the findings that 96 percent of all E-Verify cases – and over 99 percent of authorized workers – received a correct initial finding.

USCIS has already implemented or is planning to implement over two-thirds of the primary recommendations that relate to program improvements. Several of the remaining recommendations are aimed at informing future policy-making and require legislative changes. The recommendations that we have addressed since June 2008, as a part of our work to continuously improve E-Verify, include:

³ The two numbers total more than 100 due to rounding.

- Further reducing the tentative nonconfirmation rate for naturalized and derivative citizens by adding Department of State passport data;
- Increasing the percentage of cases for all categories of employment authorized workers that are automatically resolved as employment authorized, thereby decreasing the percentage of successfully resolved tentative nonconfirmations; and
- Launching the Compliance Tracking and Management System (CTMS) to monitor and improve employer compliance with the requirements of the E-Verify program.

In addition, many ongoing USCIS efforts to improve the E-Verify program align with recommendations made in the report, such as enhancing program monitoring and compliance with additional behaviors and enhanced fraud-detecting algorithms, expanding employer outreach, and exploring the use of biometrics. Initiatives to further improve E-Verify include:

- Deploying a self-check function to allow citizens and noncitizens to check their E-Verify response before being hired;
- Conducting extensive nationwide outreach to inform employees working for employers that uses E-Verify of their rights;
- Improving the employer registration process by checking information provided by a registering company against a commercial data source to ensure employer legitimacy;
- Expanding the E-Verify Photo Tool;
- Working with state Departments of Motor Vehicles to share driver's license data; and
- Continuing to study program performance and engage all stakeholders for invaluable feedback on improving E-Verify.

3. ADDITIONAL INFORMATION ON THE WESTAT ESTIMATES OF E-VERIFY'S ACCURACY RATE

A. How did Westat further break down its estimate E-Verify's accuracy and inaccuracy rates?

USCIS is very proud of Westat's finding that an estimated 96 percent of all E-Verify initial responses were consistent with the person's work authorization status. As described above, the evaluation used model-based estimates to determine when the E-Verify initial responses were consistent and inconsistent with workers' actual work-authorization status. Graph 1 below illustrates the further break down of Westat's estimates as follows:

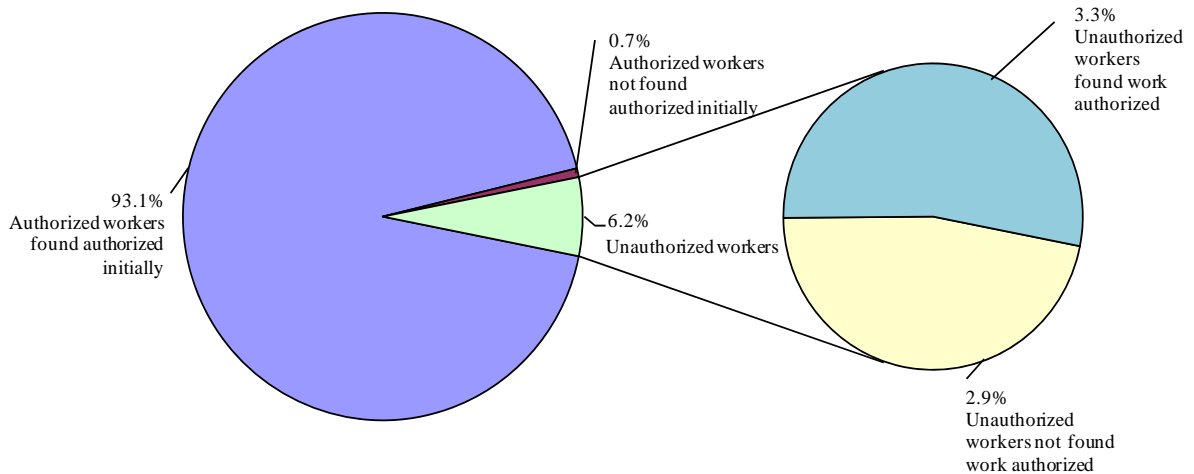
96 percent of initial responses were consistent with employment eligibility status:

- (1) 93.1 percent⁴ of all E-Verify cases involved authorized workers who were initially found to be employment authorized; and
- (2) 2.9 percent of all E-Verify cases involved unauthorized workers who received final nonconfirmations.

4.1 percent of initial responses were inconsistent with employment eligibility status:

- (3) 0.7 percent of all E-Verify cases involved authorized workers who were not initially found to be employment authorized (e.g., because of out-of-date SSA records, employer input errors, or an employer’s failure to notify the employee of a tentative nonconfirmation); and
- (4) Primarily due to identity fraud, 3.3 percent of all E-Verify cases involved unauthorized workers who were found to be employment authorized.

Graph 1 - Estimated Consistency Between Initial E-Verify Finding and True Work-Authorization Status



SOURCE: Model-based estimates using data from the E-Verify Transaction Database.

B. Does Westat’s estimated inaccuracy rate for authorized workers mean that that many authorized workers lose their jobs because of E-Verify errors?

It is important to keep in mind that over 99 percent of authorized workers are initially found to be employment authorized in E-Verify. Westat estimates that 0.8 percent⁵ of all authorized workers are flagged as a mismatch because of a discrepancy between the data provided by the employee and the government’s records. These individuals have eight days to follow up with the government to update their information; their employers are legally required to provide them with the opportunity to contest and may not terminate them until that process is complete. As more recent USCIS research has indicated, the majority of authorized workers who are initially flagged as mismatches

⁴ Total calculations may vary because of rounding values.

⁵ This statistic, 0.8 percent of all authorized workers, relates to the 0.7 percent of all workers (authorized and unauthorized) in Graph 1 that are authorized workers not found authorized initially.

(the 0.8 percent statistic) are able to successfully contest a tentative nonconfirmation and are accurately found as employment authorized.

USCIS is working to decrease the number of initial mismatches for authorized workers by adding new data sources, improving helper text to decrease typos, and strengthening data-matching criteria.

C. How does Westat’s estimated inaccuracy rate⁶ for unauthorized workers (the 3.3% in Graph 1) relate to the 54 percent statistic in the Westat report?

Westat estimates that overall, E-Verify queries result in an accurate response 96 percent of the time and an inaccurate response 4.1 percent of the time. But only 6.2 percent of all E-Verify queries relate to unauthorized workers. Westat estimates that, primarily due to identity fraud, approximately half (54 percent with a plausible range of 37 to 64 percent) of *unauthorized* workers run through E-Verify receive an inaccurate finding of being work authorized. As a result, the 54 percent statistic relates only to the 6.2 percent figure, as shown in Graph 1 above, and means that of all E-Verify queries, only approximately 3.3 percent are for unauthorized workers that were incorrectly found work authorized.

D. Is the E-Verify program preventing unauthorized employment? What is USCIS doing to detect even more unauthorized workers and cases of identity fraud?

Yes, E-Verify is detecting unauthorized employment in hundreds of thousands of cases, although there is more work yet to be done. E-Verify accurately detects the status of unauthorized workers almost half of the time. While not perfect, it is important to note that E-Verify is much more effective than the Form I-9 verification process used by employers not using the program. In addition, we believe that E-Verify also deters many unauthorized workers from even applying for jobs with participating employers, although we cannot quantify the amount of this deterrence.

Even though unauthorized workers received an Employment Authorized response in 3.3 percent of all E-Verify cases, strengthening E-Verify’s ability to better detect and deter identity fraud is a priority. USCIS is adding more photographs to the system, working to partner with states on data-sharing initiatives to prevent identity fraud, and developing methods for finding and preventing stolen identities from being used in the system, as described in more detail below.

The E-Verify program currently includes a Photo Tool that limits identity fraud. The Photo Tool returns system photographs of workers presenting USCIS-issued permanent residence (“green”) cards and employment authorization documents. By matching photograph in the E-Verify program with the identification the worker presents, the employer can confirm that the document has not been altered. This feature has vetted over 300,000 photos with employers and detected more than 1,000 instances of fraudulent immigration documents. In FY10, USCIS is adding U.S. passport

⁶ Inaccuracy rate - The inaccuracy rate is equivalent to the term “error rate” encountered in research literature.

photographs to the Photo Tool and is working to add visa photographs. We also are close to announcing a pilot agreement with a state to add its drivers license data, which could be a first step before adding its drivers license photographs.

In the report, Westat recommends discontinuing the Photo Tool. USCIS disagrees with this recommendation. The Photo Tool is an essential part of USCIS's strategy to combat identity fraud and Westat found that 97 percent of employers either agreed or strongly agreed that the Photo Tool was easy to use. Another reason that Westat recommended discontinuing the Photo Tool was that it was only available for new hires with immigration documents, which is why the program is seeking to include other photos, such as U.S. passport photos.

USCIS's continuing efforts to address identity fraud in E-Verify also include:

- Strengthening program monitoring and compliance by expanding the number of behaviors monitored for misuse and the amount of compliance assistance provided to employers and creating mechanisms for locking Social Security Numbers detected in possible identity fraud;
- Instituting a Data Analytics System to automate the analysis of E-Verify transaction data and serve as a force multiplier for program Monitoring and Compliance efforts; and
- Deploying a self-check function to allow citizens and noncitizens to check their E-Verify response before being hired, which could also allow individuals to lock and unlock their SSNs for E-Verify purposes.

In addition, on April 3, 2009, an interim final rule took effect that no longer accepts expired documents for the Employment Eligibility Verification Form I-9, which has improved the security of the verification process and reduced potential for identity fraud.

4. ADDITIONAL INFORMATION ON EMPLOYER COMPLIANCE

A. What is USCIS doing to increase employer compliance with the requirements of the program?

USCIS has established a Monitoring and Compliance Unit to identify and provide corrective assistance to employers who are not properly following the E-Verify program procedures, and will also provide referrals to U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) for employers who egregiously misuse the E-Verify program system. This unit was under development during the evaluation period but is now operational, having developed and instituted several standard operating procedures for specific types of program misuses.

The report found that employer compliance has increased, and USCIS continues to work to further reduce incidents of noncompliance. Since June 2009, USCIS has sent

over 1,600 compliance assistance letters to employers to address detected patterns of possible misuse. Noncompliance increases the risk of unauthorized employment and verification-related discrimination. USCIS is working to detect program misuse, such as:

- Failing to notify employees of a tentative nonconfirmation and their right to contest the finding;
- Circumventing training requirements on proper use of the program;
- Verifying non-new hires (e.g., screening job applicants or existing employees); and
- Failing to terminate employees with final nonconfirmations.

5. ADDITIONAL INFORMATION ON E-VERIFY INITIATIVES TO REDUCE DISCRIMINATION

A. What did Westat find about E-Verify-related discrimination?

In the report, Westat found E-Verify reduces discrimination against foreign-born workers in the hiring process, and that program accuracy, as measured by the erroneous TNC rate for workers eventually found authorized, has improved considerably. However, the report also found that although the erroneous TNC rate has been reduced, naturalized U.S. citizens and foreign-born workers are still more likely to incorrectly receive TNCs than are U.S.-born workers.

B. What is USCIS doing to reduce discrimination and protect civil rights in the E-Verify process?

In addition to monitoring employer use of E-Verify, USCIS is taking the following steps to decrease discrimination and protect civil rights:

- Continuing to decrease the number of workers who must follow-up with the government to update their records. This is achieved through improving algorithms and other data-matching techniques, and the addition of other data sources, such as international student data and data on individuals with temporary humanitarian status.
- Developing a portal for employees to check their own work authorization independent of their employer.
- Launching a bilingual training video that employers, employees, and advocates can use to learn about employee rights.
- Validating employer data in the enrollment process to ensure that the program is not misused by unauthorized entities.
- Launching an employee hotline for workers who are run through E-Verify to call for support and assistance about their case.
- Continuing to expand and strengthen monitoring techniques to identify instances where E-Verify may be used for pre-screening, selective verification of workers, or when employees may not be informed that they were run through E-Verify.

- Establishing a Memorandum of Agreement with the Department of Justice Office of Special Counsel for Unfair Immigration-Related Employment Practices to facilitate discrimination case referrals and data sharing to protect employee rights.

USCIS, in conjunction with other government agencies and non-governmental organizations, is also working to identify other strategies to better educate employees on their rights under the E-Verify program.

C. During the time period of the Westat study, what groups were most likely to receive a TNC? What changes has E-Verify made since that time?

Workers attesting to being noncitizens on the Form I-9 are more likely to receive erroneous TNCs (2.1 percent) than are workers attesting to being U.S. citizens (0.3 percent.) Work-authorized, foreign-born workers (which includes naturalized citizens) are more likely to require additional verification than are U.S.-born workers. In fact, naturalized U.S. citizens are the most likely group to receive an erroneous TNC – 3.2 percent received an erroneous TNC in April to June 2008, compared to 0.1 percent of native-born U.S. citizens and 2.1 percent of noncitizens. The disparity in TNC rates between native and foreign-born U.S. citizens and between U.S.-born and foreign-born workers have both decreased over time, as indicated in the report. This improvement is in large part because of changes made for processing naturalized citizens following the last evaluation, described as phases one and two below.

USCIS has worked with SSA on a three-phased plan to reduce the erroneous TNC rate for naturalized citizens. The first two phases have been completed. In the first phase, USCIS instituted a system change so that prior to SSA issuing a TNC, the E-Verify system checks the verification request against the USCIS database of naturalized citizens. In the second phase, the two agencies changed the SSA TNC notice to include an option for naturalized citizens to call USCIS to correct the record. This prevents the employee from having to physically go to a local SSA office. Additionally, in February 2009 passport data was added to E-Verify, resulting in a reduction of the TNC rate for naturalized citizens. These enhancements also reduced the overall mismatches for naturalized and derivative citizens by 40 percent and decreased walk-ins to SSA by 56 percent. The third phase, in which the feasibility of USCIS updating the SSA database with a constant feed of information on newly naturalized citizens is being explored, is still underway.

Other USCIS actions to reduce erroneous tentative nonconfirmations include:

- Instituting a typo “pre-check” page to prevent inaccurate submissions;
- Adding Real Time Arrival data in May 2009; and
- Instituting a check for European date format in December 2009.

D. Why do naturalized U.S. citizens have more mismatches in E-Verify?

Historically, SSA and USCIS databases were not built for verification purposes or to share information between the two agencies. The SSA database includes information provided by the SSN owner the last time that person visited an SSA field office or submitted information to ask for a card to be created. When an immigrant naturalizes, there is no automatic process for notifying SSA of his or her new citizenship status. Currently, the person needs to contact SSA to update his or her records to reflect his or her new U.S. citizenship. USCIS and SSA are exploring a series of actions to improve this process. Such options range from increased SSA presence at naturalization ceremonies, notices to new citizens of the need to update their SSA records, and the potential for future electronic sharing of information between USCIS and SSA.

6. ADDITIONAL INFORMATION ON PROTECTING PRIVACY AND WORKERS' CIVIL LIBERTIES

A. According to Westat, how well does E-Verify protect workers' privacy and civil liberties?

Westat found that SSA and USCIS have taken care to protect the privacy of the workers with information submitted to E-Verify. The evaluation found little increased risk of misuse of the E-Verify program information by Federal employees. As the findings outline, SSA and USCIS take measures to ensure the security of all of their databases, including E-Verify. Employers who wish to use E-Verify must sign a Memorandum of Understanding with the Federal government and each employer has access only to the cases it submits. Each person using the system also has an individual user identification number and password that must be changed regularly. The E-Verify program also has a privacy branch that monitors privacy rights and recommends privacy policies.

B. What more is USCIS planning to do to further protect privacy?

In FY10, USCIS will begin checking employer registrations against a commercial data source to ensure the legitimacy of employers who register with the E-Verify program. This enhancement will help prevent the unauthorized use of E-Verify that could harm employees and others.

The evaluation found instances of employers not consistently conveying information about TNCs to employees in private settings as required by the program. While the need to preserve confidentiality during the E-Verify process is already emphasized in the E-Verify User Manual and Tutorial, USCIS is developing additional materials outlining employer responsibilities and employee rights that emphasize the need for employers to protect passwords and keep all E-Verify results private.

7. ADDITIONAL INFORMATION ON PREVENTING UNDUE BURDEN ON EMPLOYERS

A. How many employers use E-Verify? According to Westat, are they satisfied?

Currently over 180,000 employers use E-Verify at over 675,000 worksites. Westat found that employers using E-Verify were generally satisfied with the program and indicated that it was not burdensome (99 out of 104 employers report being generally satisfied). The program has and continues to improve employer satisfaction, including the following enhancements that were taken prior to or during the Westat evaluation:

- Significantly expanding the customer call center in 2008;
- Revising the E-Verify website to make it easier for employers to locate online resources;
- Updating the online Employer User Manual;
- Adding announcement banners to the E-Verify screen to notify employers of upcoming changes; and
- Expanding employer outreach.

B. What has E-Verify done to improve the user-friendliness of the system since the time period covered by the report?

USCIS is constantly working to improve the user-friendliness of the E-Verify system. We are now providing forgotten passwords through an automated system and have taken many other actions since the Westat study took place, including:

- In FY09, the program streamlined some of its registration pages to make the process simpler and easier to navigate and understand;
- In FY08 and FY09, the program reached out to users to help develop and validate a new set of terms for E-Verify to use to make day-to-day use easier to understand;
- In FY09, E-Verify launched a separate registration process for Federal contractors so they could manage their accounts and notify the Department of Homeland Security of which option they selected to be in compliance with the E-Verify contractor regulation; and
- In FY09, the program conducted 125 live presentations, attended 15 conferences, and conducted 140 live Webinars reaching more than 3500 employers through our free, online Webinars that new and current employers can register for on our E-Verify website.

In addition, this year, USCIS plans to unveil an upgraded version of E-Verify that will make the user experience easier by adding a case alert system, options to enter documents that may expire and require reauthorization, and tips for navigating the system and closing cases. Finally, USCIS continues to improve the E-Verify Tutorial and User Manual.

8. GENERAL ADDITIONAL INFORMATION

A. Where can employees go to learn more about their rights under E-Verify?

For more information on employee rights under E-Verify, go to <http://www.uscis.gov/e-verify> and click on “For Employees” in the menu on the left.

B. Where can I find a copy of the E-Verify Westat report?

For a copy of the report, go to uscis.gov/e-verify and click on the link “program Highlights” in the menu on the left. Scroll down to “Additional Information” and click on “Findings of the E-Verify Program Evaluation (December 2009).”