

THE ARIZONA MANDATORY E-VERIFY EXPERIENCE: EVALUATION FINDINGS

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Prepared by:

Westat
Rockville, Maryland

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EXECUTIVE SUMMARY

1. BACKGROUND

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted in September 1996, established the Basic Pilot Program to test the feasibility and desirability of electronically verifying the work-authorization status of all newly hired employees. The Basic Pilot Program was expanded in scope and extended several times. In June 2004, a Web version of the Basic Pilot Program (later called the E-Verify Program) was implemented, incorporating many improvements growing out of experiences with the original Basic Pilot Program and evaluations of the Basic Pilot Program as well as two additional pilot programs that were terminated.¹ In October 2009, the Program's authorization was extended until September 30, 2012.

Federal legislation and regulations make using the E-Verify Program voluntary for employers other than Federal agencies and Federal contractors meeting specified criteria. However, state legislation and regulations have expanded the mandatory use of E-Verify to employers not covered by the Federal mandates. The most comprehensive of the state laws that had been implemented as of the start of this study in July 2009 was the Legal Arizona Workers Act (LAWA), enacted on July 2, 2007. The law required all Arizona employers to verify new employees through E-Verify starting on January 1, 2008. LAWA prohibits businesses from knowingly or intentionally hiring an "unauthorized alien" after December 31, 2007, by suspending or revoking their business licenses. LAWA did not, however, include penalties for failing to use E-Verify. 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." Subsequent to completion of data collection for this study, a case was filed in the Supreme Court challenging the constitutionality of the state legislation on the grounds that immigration policy is the responsibility of the Federal government and cannot be legislated by states. However, if the Arizona legislation is found to be unconstitutional, the experiences of Arizona employers and workers with the implementation of mandatory enrollment in E-Verify should prove to be instructive to Federal legislators considering implementation of mandatory E-Verify.

Between the enactment and implementation of LAWA, several lawsuits were filed to delay or stop its implementation. At the same time, outreach campaigns to inform employers and workers about the law were begun by Arizona with U.S. Citizenship and Immigration Services (USCIS) providing training and other information about E-Verify. Some of the lawsuits were dismissed and some were appealed; however, none of the lawsuits affected the LAWA implementation date.² In May 2008, additional legislation (HB 2745) that amended and reinforced LAWA was enacted. Among other provisions, the bill clarified that LAWA applies only to employees hired after December 31, 2007, and imposed sanctions on employers that knowingly hire unauthorized workers.³

¹ For additional information about the history of electronic verification, see *Findings of the Web Basic Pilot Evaluation*, September 2007 (<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=89abf90517e15110VgnVCM1000004718190aRCRD&vgnextchannel=832a79bdb1c66210VgnVCM100000082ca60aRCRD>).

² See Appendix B for a chronology of national and Arizona E-Verify legislation and major events.

³ This report does not cover or include any discussion of Arizona's newest immigration laws, SB 1070 or HB 2162, amending SB 1070, enacted in April 2010 after completing data collection for this evaluation. The new law, which amends LAWA, affects Arizona employers by establishing a class 3 felony for employers that fail to use E-Verify to confirm the employment eligibility of its workforce or fail to keep records of verifications (<http://www.azleg.gov/legtext/49leg/2r/summary/s.1070pshs.doc.htm>).

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This evaluation focused on the following:

- Examining the use of E-Verify in a mandatory state, Arizona, to identify its positive and negative impacts and to identify desirable program modifications needed to prepare for any future expansion of a mandatory requirement to additional employers;
- Providing information on how the mandatory Program has been implemented in Arizona;
- Examining the impacts of E-Verify in a mandatory environment on unauthorized employment and the size of the undocumented population, employer burden and satisfaction, and worker rights and discrimination; and
- Comparing the findings of this report in a very general way and, when appropriate and possible, to the findings of the prior national Westat report, *Findings of the E-Verify Program Evaluation*, December 2009.

Finally, the report includes recommendations for future implementation with an emphasis on issues of concern in a mandatory environment.⁴

2. METHODOLOGY

The Arizona case study consisted of a stakeholders meeting, onsite visits in Arizona, and analysis of data in the E-Verify Transaction Database and employer database.

The evaluation team conducted a stakeholders meeting on March 9, 2009, in Phoenix, Arizona, that provided an open forum to identify, discuss, and prioritize topics to be examined in the evaluation. This information was used to gain greater insights into the use of E-Verify in Arizona and to help shape the Arizona data collection instruments. The stakeholders meeting was attended by 55 people representing Arizona employers, corporate employers with offices in Arizona, community-based organizations, and Federal, state, and local governments.

The onsite component, conducted from July through November 2009, included interviews with employers' staff members responsible for the E-Verify process, observation of the employers' verification process, examination of worker records related to the verification process, and interviews with workers, which were usually conducted at the worker's home.

The employer sample was drawn from the E-Verify Transaction Database. To be eligible for the evaluation, an employer had to be located in Arizona, had to conduct E-Verify verifications at the firm rather than the branch level, and had three or more Tentative Nonconfirmation (TNC)⁵ findings during January through May 2009. Designated agents and clients of designated agents were excluded because they were the focus of a special study. Employment or temporary staffing agencies were excluded because their employment practices are different from other employers and they had been studied separately in the prior national survey. All 248 employers meeting the designated criteria were asked to be included in the study, and 126 participated. Nonresponse was primarily due to staff being too busy with other opportunities or employers being unable to spare personnel to participate.

⁴ The national report can be found at: http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf. Please see Chapter II of this report for the limitations of data comparisons between the Arizona and the national reports.

⁵ A TNC is the initial response from E-Verify when a worker's employment authorization cannot be immediately confirmed. There are many possible reasons that a worker may receive a TNC, ranging from employer keying errors to a worker's lack of employment authorization.

A sample of workers with TNCs⁶ was selected for each employer participating in the site visits after the employer agreed to participate in the study. If an employer had more than 20 TNCs, a random sample of 20 workers with TNCs in the period January 1 through May 31, 2009, was selected. Of the 891 selected workers in the final employer sample, 160 workers were interviewed. There were 47 employers (out of 126) for which no workers were interviewed. For most employers, interviews were conducted with one to three of their workers. The inability to locate the sampled workers was the main reason for worker interview nonresponse.

During the employer site visit, the employment-verification-related records of the sampled workers were reviewed and compared with the information found in the Transaction Database. Indications were made of any discrepancies and missing documents. The review also identified any information available in the record that could assist in locating the worker.

The employer and worker interviews were conducted by 12 highly educated and experienced interviewers who were intensively trained. Six of the 12 selected interviewers were bilingual in English and Spanish. A computer-assisted personal interviewing (CAPI) technique was used in which the interviewers asked questions and recorded the answers in a computer-based program. Both English and Spanish versions of the interview protocols were prepared in CAPI.

In addition, trend analyses were conducted using E-Verify databases. In these analyses, Arizona was compared to all states without mandates for the use of E-Verify.

3. FINDINGS

This section highlights key findings in the following four areas:

- Implementation of E-Verify in Arizona;
- Impact of a mandatory E-Verify in Arizona on unauthorized employment and the labor market;
- Employer satisfaction with E-Verify and the impact of E-Verify on employer burden; and
- Worker rights and discrimination.

Generally, percentages and numbers are included for findings that are deemed most important; however, they are provided consistently in the main report.

3.1. Implementation of E-Verify in Arizona

This section provides findings on how employers learned about the Arizona law, employers' reactions to the Arizona law, enrolling in E-Verify, preparing for E-Verify, and transmitting cases to E-Verify.

Mass media and professional associations were the most important information sources for employers' learning about LAWA. Other sources included letters from the Arizona state government,

⁶ Workers with TNCs were selected because they are the only workers who would have been likely to be aware of or have experiences with E-Verify.

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the website of the Arizona state government, company lawyers, and USCIS outreach, marketing, and webinars.

When asked about the information they *initially* heard about E-Verify from other employers, professional organizations, and the media, employers reported they heard more negative and neutral comments than positive comments. Unlike employers that volunteer to use E-Verify because they have received positive information about it and/or are familiar with its benefits, in a mandatory environment employers might be more susceptible to hearing or receiving negative information.

Some employers attempted to find out more information about LAWA from USCIS; most of these employers found the information helpful or very helpful. Even though most Arizona employers knew LAWA was a state law, some employers reported attempting to find out more information about the new law, primarily from the USCIS website and the USCIS helpline. Thus, USCIS should anticipate more calls to the USCIS customer service line and an increased use of the USCIS website as other states undertake mandatory implementation of E-Verify.

When asked about their initial reaction to LAWA, almost half of the employers (58 of 126) agreed with the law, but some of those that agreed with the law also expressed concerns about it. Concerns included the time it would take to use the Program, the difficulty of finding workers to hire, and how the law would be enforced (48 out of 58).⁷

The rate at which Arizona employers first enrolled in E-Verify increased beginning at the time LAWA was passed in July 2007. Enrollment increases began with LAWA's passage, continued for several months thereafter to peak in January 2008, the first month of implementation, and then leveled off at a rate substantially above the prelegislation rate. Prior to passage of LAWA, an average of 11 employers enrolled per month; after implementation, 4,245 employers enrolled in January 2008.

In contrast to the Arizona trend, enrollment in nonmandatory states⁸ generally showed a slow, steady increase in the number of new enrollees each month except for an increase in the month after LAWA was passed. This suggests the possibility that the passage of LAWA may have led to increased attention to E-Verify in other states, resulting in the subsequent increase in the rate at which employers began signing up to use E-Verify. It may also reflect USCIS outreach efforts in states other than Arizona.

Some employers (one-third) enrolled in E-Verify before they were required to do so in order to prepare for the mandatory implementation date.

The most frequent reason given by employers for not signing up for E-Verify prior to January 1, 2008, was that they did not know about the Program (43 of 81). Other reasons cited by employers for not enrolling early included that they were not required to register until January 1, 2008, little or no hiring was being done at that time, they were using a different work-authorization program, and they had heard negative feedback on the Program from other employers or the media.

⁷ These concerns reflect the three most frequently mentioned ones. There were other concerns about the law that are described in the main report. Respondents could choose more than one response.

⁸ Nonmandatory states exclude the two states that at the time data were collected for this study required the use of E-Verify for all of their employers (i.e., Arizona and Mississippi). Also excluded from nonmandatory states are seven states that require the use of E-Verify for some or all public employers and their contractors (i.e., Colorado, Georgia, Missouri, Nebraska, Oklahoma, Rhode Island, and Utah). For additional explanation, see Chapter II.

Due to the need to train Arizona employers about the E-Verify Program so they could properly comply with all its requirements, some companies in Arizona took advantage of both the required USCIS training (i.e., tutorial, mastery test, user's manual) and other training available to them from USCIS and outside vendors.

Although enactment of LAWA spurred enrollment in E-Verify, transmission of cases to E-Verify did *not* show dramatic increases until the law was implemented (from 5,745 to 81,000 cases per month).

A majority of Arizona employers with new hires are estimated not to have transmitted cases to E-Verify in June 2009. However, most new hires are estimated to have been processed through E-Verify. The difference between the usage frequencies for employers and transmissions can be attributed to large employers more frequently participating in E-Verify than small employers and to large employers transmitting more cases, on average, to E-Verify than small employers.

3.2. Impact of a Mandatory E-Verify Program in Arizona on Unauthorized Employment and the Labor Market

This section provides findings on the opinions of Arizona employers and workers about the impact of LAWA on unauthorized employment, the impact of E-Verify on the size of the undocumented population in Arizona, factors influencing the efficacy of a mandatory E-Verify in reducing unauthorized employment in Arizona, and the effects of E-Verify on the labor market.

The majority of employers interviewed in this study expressed the opinion that unauthorized employment in Arizona has been reduced substantially because of LAWA.

More than a third of interviewed workers said they knew people who had moved from Arizona to Mexico or planned to do so as a result of E-Verify.

About a third of interviewed workers said they would advise an unauthorized worker to move to a state that did not mandate E-Verify.

Community leaders and officials at the Arizona stakeholders meeting also reported anecdotally that some workers who were not work authorized were leaving Arizona to pursue employment in states where E-Verify is not mandated. A number of participants indicated that migration out of Arizona was occurring because of the implementation of LAWA.

Many of the interviewed workers (61 of 160) who had received TNCs reported they were noncitizens without authorization to work in the United States at the time their cases were submitted to E-Verify. A number of interviewed workers reported that they had used fraudulent documents in their attempt to obtain employment.

Arizona employers appear to terminate workers receiving Final Nonconfirmations (FNCs) more promptly than national employers. Most Arizona employers also promptly terminate the employment of workers who receive a TNC finding and decline to contest.

Not all employment opportunities in Arizona are with employers participating in E-Verify, allowing unauthorized workers to obtain employment without committing identity fraud. There are employers, especially smaller employers, that do not participate in E-Verify even though they are mandated to do so. These employers include those that are not aware of the LAWA requirements as well

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as “off the book” employers or employers that decide for other reasons not to use E-Verify. Workers may also become self-employed because neither the Form I-9 nor E-Verify requires them to be screened under this circumstance.

Most employers (80 of 126) thought that E-Verify had affected their industry to a great or moderate extent. Much of the variation in employers’ views of the impact of E-Verify on their industries is attributable to whether the employers were in one of the industries that employ a high percentage of unauthorized workers. The most commonly reported impact of E-Verify on employers’ industries was that it was now harder to find workers (46 of 80). Employers also reported experiencing higher worker turnover (12 of 80), needing to use additional resources (11 of 80), and hiring fewer unauthorized workers (6 of 80).

It is important to note that the effect of mandatory employment verification in most states other than Arizona may be less extreme, because Arizona had a relatively high rate of unauthorized workers in its workforce in 2008 (an estimated 9.8 percent compared to a national rate of 5.4 percent).

3.3. Employer Satisfaction With E-Verify and the Impact of E-Verify on Employer Burden

This section provides findings on various facets of E-Verify and challenges and burdens such as the prohibition of prescreening, the three-day rule, and dealing with TNCs.

As was the case in the last national study, the majority of employers reported they experienced few problems when they called the USCIS customer service and helplines or contacted the Social Security Administration (SSA). In addition, almost all of the employers were satisfied with the training they received about E-Verify from USCIS, and most employers indicated that the E-Verify Program has sufficient edit checks.

When asked about their experiences in connecting to the E-Verify system, some Arizona employers reported having the same problems that employers reported in the national study. These included problems with passwords, system unavailability, making connections to the E-Verify system, and the system timing out.

The majority of Arizona employers (79 of 125) said that they would continue using the E-Verify Program even if participation were not mandatory. Reasons that employers would continue using E-Verify were that it made them feel confident that they were hiring only authorized workers, it enabled them to stay “out of trouble” with enforcement agencies, it made them feel legally protected and gave them peace of mind, and it was an easy-to-use, quality program. The thirty-six employers that reported they would not continue using the Program said that the extra workload/burden placed on the employer was too great, they considered it to be unfair or ineffective, and that not using it would give everyone who wanted to work the opportunity to do so.⁹

Nearly half of employers with a branch office in a state other than Arizona use E-Verify for workers at out-of-state branches.

The majority of employers (85 of 126) were very concerned about losing their business licenses if they did not participate in E-Verify or if they were found to have hired unauthorized workers.

⁹ The remaining 10 employers were not sure whether they would continue using E-Verify.

As was true in the last national study, not being permitted to use E-Verify with job applicants was frequently cited as creating burdens for employers. Of the 71 employers that thought prescreening should be permitted, most employers (62 of 71) indicated that prescreening would save the employer time and money.

When asked for ways to cut employer costs of losing workers not found work authorized while still protecting worker rights, the most frequent cost-cutting suggestion was to permit prescreening.

As was true in the national study, many employers (49 of 126) reported that it was difficult to consistently enter the Form I-9 information into E-Verify within the required time period.

Employers that enter cases into E-Verify for workers hired at other locations were especially likely to encounter problems entering data into E-Verify within three days of hire. Employers do not necessarily use E-Verify at the same site that they hire workers; they may, for example, hire workers at a satellite office or at a construction site without computer facilities, or a headquarters or branch office may enter cases into E-Verify for multiple establishments.

As was true in the national study, some employers (27 of 90 reporting workers who contested) indicated that the process of workers contesting TNCs is burdensome for their company. Employers cited the problem of the time and resources devoted to dealing with their TNC cases, including the costs of managing and resolving cases, and of hiring, training, and losing workers.

Additionally, some employers (37 of 126) reported problems with trying to promptly notify workers of TNCs, which would add to the burdens caused by the process of workers contesting TNCs.

Employers cited difficulties with notifying workers of TNCs promptly, such as the worker was offsite and difficult to reach, the worker had a schedule outside of regular hours such as weekends or evenings or was on vacation or sick leave, and the employer was unable to reach the worker because of missing or inaccurate contact information.

Consistent with national results, employers were more likely to consider loss of staff a burden than they were to consider contesting TNCs a burden. As was true in the national study, employers reported frequently losing their training investment when employment was terminated because of E-Verify.

Another frequent financial cost attributable to E-Verify reported by employers was having to pay other employees to work overtime while they were short-handed. Of the 108 (of 126) employers reporting having to fire a worker, having a worker who could not be hired, or having a worker quit because of an E-Verify finding, 44 reported costs for overtime pay because of the loss of workers due to E-Verify. In addition, some employers (29 of 108) said their hiring costs had increased due to the need to hire replacements for workers terminated because of E-Verify findings.¹⁰

3.4. Worker Rights and Discrimination

This section provides findings on notifying applicants about the use of E-Verify, use of prescreening, protection of worker rights during the TNC process, and the impact of mandatory E-Verify on unintentional discrimination. It includes comparisons of data collected in Arizona in late 2009 with data collected in the national evaluation in spring 2008.

¹⁰Included in the 108 employers were 30 who reported staff turnover was not a problem, and those 30 were not asked the questions about financial burden. In addition to the 29 employers reporting hiring costs, five employers also reported other financial burdens not mentioned here.

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Fewer Arizona employers were prescreening than had been the case among the national employers in the last evaluation (14 percent compared to 25 percent). At least some of the Arizona employers that were prescreening clearly understood that it is not allowed.

It appears that both Arizona and national employers participating in E-Verify usually inform job applicants that they did not get a job because of problems with their SSA or USCIS documents.

Although the majority of Arizona employers thought prescreening job applicants should be permitted, a sizable minority (33 of 126) said that prescreening should not be permitted because it would be discriminatory or unfair.

Based on responses from workers, it appears that Arizona employers were more likely than employers in the national onsite study to inform their workers of TNCs (68 percent compared to 58 percent) and to inform them in private.

Arizona workers appear to be more likely than national workers (69 compared to 49 percent) to be given referral letters by their employers. However, there were few differences between Arizona and national employers in informing workers wishing to contest TNCs that they would lose their jobs if they did not contact SSA or USCIS to resolve the TNC (83 percent and 85 percent, respectively).

Neither Arizona nor national study employers always permitted workers to continue working during the time they were contesting TNCs (29 and 28 percent, respectively). However, Arizona employers appear to have been less likely than national employers to delay training until employment authorization was confirmed (8 percent compared to 15 percent).

The erroneous TNC rate for Arizona employers as compared to employers in nonmandatory states indicates that the erroneous TNC rate was probably not affected by the implementation of mandatory verification.

Almost all Arizona workers contesting SSA or USCIS TNCs were able to resolve their problems quickly and they reported lower costs¹¹ for contesting TNCs than those in the national study (75 percent compared to 41 percent).

4. SUMMARY OF RECOMMENDATIONS

The categories used to present the study findings are also used in the following summary of recommendations.

Recommendations regarding improving implementation of E-Verify in mandatory environments:

- **USCIS should continue to develop partnerships with professional associations to provide accurate information to employers that have been or will be mandated to use E-Verify.** Since professional associations were a frequent source of information about E-Verify in Arizona, it is important that USCIS continues its effort to partner with professional associations. It is especially important to reach organizations that target small businesses, chambers of commerce, and businesses and immigrant groups that historically

¹¹Cost information provided by workers related to resolving TNCs is subjective and based on recall since workers do not necessarily keep or refer to cost records in answering questions. Additionally, workers may not be aware of all the costs they have incurred. For example, persons who lost income because they were not hired after they received TNCs when an employer prescreened them using E-Verify may never be told why they were not hired.

hire or work with significant numbers of undocumented workers. USCIS should work collaboratively with these organizations to launch national, regional, and local media campaigns, briefings, and question-and-answer sessions that address employers' lack of knowledge about E-Verify and its requirements.

- **Careful attention also needs to be paid to the use of the mass media to disseminate accurate information about the Program.** The mass media were found to be an important source for employers' learning about mandatory LAWA. However, since many Arizona employers had heard either nothing or negative things about E-Verify, additional media campaigns are needed to address such employers' concerns about the time it takes to use E-Verify and the associated burdens of using it.
- **SSA and USCIS need to continue their efforts to plan for the implementation of new mandatory programs.** USCIS should be prepared for sharp increases in helpline calls and visits to the USCIS website to locate information about the Program immediately after such legislation is passed or executive order is issued. Sharp rises in the volume of transmissions should be expected at the time that the mandatory use of E-Verify is implemented. SSA also needs to plan for increased calls and visits to their field offices and to ensure that they are able to handle workers' questions about E-Verify and to communicate with workers in a language they understand.
- **USCIS needs to continue to reengineer the E-Verify website through extensive and systematic usability testing with different types of employers to make it more responsive to new E-Verify users' questions and information needs.** Under a mandatory use of E-Verify, more employers will turn to the USCIS website and customer service helplines to respond to their questions about the Program. USCIS should continue its development of training to address the needs of many more and different types of users by designing web-based training modules, videotapes, and/or webinars.

Recommendations regarding expansion of a mandatory E-Verify program:

- **Since the mandatory use of E-Verify appears to be achieving the desired impact of reducing unauthorized employment and the size of the undocumented population in Arizona, decision makers should consider the possibility of expanding the use of E-Verify to other states or the nation, as is currently under discussion.** However, this discussion will need to take into account other impacts of mandatory E-Verify, including its impact on worker rights and discrimination and the costs associated with implementation. Decision makers also need to keep in mind that there are inherent limitations in the ability of E-Verify to detect identity fraud.
- **USCIS should test and evaluate ways to make it more difficult for workers without employment authorization to find work.** The following changes to E-Verify should be considered and, where feasible, tested and evaluated to determine the relative benefits from the changes in light of all of the Program's goals:
 - **Identity fraud:** The expansion of the Photo Screening Tool to include documents used by all workers is a way of reducing identity fraud.

EXECUTIVE SUMMARY

- **Delay of employment during the contesting period:** Employers could be required to verify the employment-authorization status of workers prior to allowing them to start work.¹²
- **Self-employment:** Business owners could be required to be verified by the licensing agency or another designated entity when they obtain or renew their business licenses.
- **Employment with employers not using E-Verify:** The primary way that can be used to combat employers' not using E-Verify is through strong legislation and enforcement.
- **A number of employers, especially those entering data for workers at a different location, reported finding it difficult to enter all worker information within three workdays of hire.** It is suggested that USCIS consider extending the deadline for entering information from three to five workdays after a worker begins work for pay or accepts a position for pay if verification prior to the start of work is not implemented.

Recommendations regarding worker rights and discrimination:

- **This study showed that the average impact of E-Verify on workers did not increase in Arizona. However, since many more workers are verified in a mandatory program, the overall impact of E-Verify on employment-authorized workers would increase.** Therefore, there is a continuing need to improve E-Verify by implementing Program changes designed to reduce the potential harm to workers, including:
 - Continuing and expanding outreach and training efforts to explain worker rights and employers' responsibility in protecting them;¹³
 - Providing outreach to workers that emphasizes the importance of changing their SSA and USCIS records when they change their names or their citizenship/work-authorization status; and
 - Having employers input worker addresses in E-Verify and USCIS using this information to directly inform workers of TNCs and how to contest them. (This would be in addition to the employer using information on the Form I-9 to contact the worker.)

¹² Such a change would require legislative action; however, USCIS could do a pilot test without such legislation.

¹³ It should be noted here that on March 17, 2010, USCIS announced new civil rights initiatives for E-Verify that included two new videos for employers and employees, a dedicated hotline to respond to employee inquiries, and a Memorandum of Agreement between USCIS and the U.S. Department of Justice, Civil Rights Division.

CHAPTER I. BACKGROUND

1. INTRODUCTION

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted in September 1996, established the Basic Pilot Program to test the feasibility and desirability of electronically verifying the work-authorization status of all newly hired employees. The Basic Pilot Program was expanded in scope and extended several times. In June 2004, a Web version of the Basic Pilot Program (later called the E-Verify Program) was implemented, incorporating many improvements growing out of experiences with the original Basic Pilot Program and evaluations of the Basic Pilot Program as well as two additional pilot programs that were terminated.¹⁴ In October 2009, the Program's authorization was extended until September 30, 2012.

Federal legislation and regulations make using the E-Verify Program voluntary for employers other than Federal agencies and Federal contractors meeting specified criteria. However, state legislation and regulations have expanded the mandatory use of E-Verify to employers not covered by the Federal mandates. The most comprehensive of the state laws that had been implemented as of the start of this study in July 2009 was the Legal Arizona Workers Act (LAWA), enacted on July 2, 2007. The law required all Arizona employers to verify new employees through E-Verify starting on January 1, 2008. LAWA prohibits businesses from knowingly or intentionally hiring an "unauthorized alien" after December 31, 2007, by suspending or revoking their business licenses. LAWA did not, however, include penalties for failing to use E-Verify. 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." Subsequent to completion of data collection for this study, a case was filed in the Supreme Court challenging the constitutionality of the state legislation on the grounds that immigration policy is the responsibility of the Federal government and cannot be legislated by states. However, if the Arizona legislation is found to be unconstitutional, the experiences of Arizona employers and workers with the implementation of mandatory enrollment in E-Verify should prove to be instructive to Federal legislators considering implementation of mandatory E-Verify.

Between the enactment and implementation of LAWA, several lawsuits were filed to delay or stop its implementation. At the same time, outreach campaigns to inform employers and workers about the law were begun by Arizona, with U.S. Citizenship and Immigration Services (USCIS) providing training and other information about E-Verify. Some of the lawsuits were dismissed and some were appealed; however, none of the lawsuits affected the LAWA implementation date.¹⁵ In May 2008, additional legislation (HB 2745) that amended and reinforced LAWA was enacted. Among other provisions, the bill clarified that LAWA applies only to employees hired after December 31, 2007, and imposed sanctions on employers that knowingly hire unauthorized workers.¹⁶

¹⁴ For additional information about the history of electronic verification, see *Findings of the Web Basic Pilot Evaluation*, September 2007 (<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=89abf90517e15110VgnVCM1000004718190aRCRD&vgnextchannel=832a79bdb1c66210VgnVCM100000082ca60aRCRD>).

¹⁵ See Appendix B for a chronology of national and Arizona E-Verify legislation and major events.

¹⁶ This report does not cover or include any discussion of Arizona's newest immigration laws, SB 1070 or HB 2162, amending SB 1070, enacted in April 2010 after completing data collection for this evaluation. The new law, which amends LAWA, affects Arizona employers by establishing a class three felony for employers that fail to use E-Verify to confirm the employment eligibility of its workforce or fail to keep records of verifications (<http://www.azleg.gov/legtext/49leg/2r/summary/s.1070pshs.doc.htm>).

This evaluation focused on examining the use of E-Verify in a mandatory state, Arizona, to identify its positive and negative impacts and to identify desirable program modifications needed to prepare for any future expansion of a mandatory requirement to additional employers. This report provides information on how the mandatory Program has been implemented in Arizona. It also examines the impacts of E-Verify in a mandatory environment on unauthorized employment and the size of the undocumented population, employer burden and satisfaction, and worker rights and discrimination. When appropriate and possible, the findings of this report will be compared in a very general way to the findings of the prior national Westat report, *Findings of the E-Verify Program Evaluation*, December 2009. Finally, the report includes recommendations for future implementation with an emphasis on issues of concern in a mandatory environment.¹⁷

This report includes information collected through:

- In-person interviews with employer staff and workers with cases submitted to E-Verify in Arizona who received Tentative Nonconfirmation (TNC) findings;
- Record reviews of worker verification files; and
- Analysis of transaction data collected in conjunction with operating the Program.

2. THE DESIGN OF E-VERIFY

This chapter discusses the E-Verify Program as it existed as of May 2010 when the data analyses were completed. For the sake of simplicity, the process described is for “regular employers” that constitute approximately 90 percent of E-Verify users.¹⁸

2.1. Enrolling in E-Verify

The first step toward using the E-Verify system is to enroll online to use the Program. During this enrollment process, the employer prints out a copy of a Memorandum of Understanding (MOU) agreeing to adhere to E-Verify program requirements (see Appendix C).

Once the employer has signed and submitted the MOU electronically, the employer’s program administrator¹⁹ must complete an online tutorial and pass a mastery test before being granted access to the verification system or being able to enroll additional users. All other E-Verify users must also complete the tutorial and pass the mastery test before their user names and passwords will be issued to grant them access to the system.²⁰ The tutorial covers both how to use the online verification system and the employer’s responsibilities under the Program, including the proper ways of handling the various

¹⁷ The national report can be found at: http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf. Please see Chapter II of this report for the limitations of data comparisons between the Arizona and the national reports.

¹⁸ Special types of employers, such as Designated Agents, who use a modified version of program procedures, were excluded from this study.

¹⁹ The program administrator is the person who has responsibility for handling passwords and other administrative tasks related to E-Verify for the employer.

²⁰ The mastery test consists of 31 multiple-choice and true/false questions about the requirements and correct procedures for using E-Verify. Users must answer 22 questions correctly (71 percent) to pass the test. Once the mastery test has been successfully completed, the employer is granted access to the verification system.

verification outcomes and the need to post a notice of the employer's participation in E-Verify where job applicants can see it.

2.2. The Form I-9 Verification Process

The starting point for verifying cases under E-Verify is the existing Form I-9 process used by all employers, including those *not* enrolled in E-Verify. When workers are hired, they are required to complete Section 1 of the Form I-9 and provide the employer with documentation of their identity and work-authorization status. Depending on the worker's citizenship or immigration status, a wide variety of documents are acceptable for these purposes (see Appendix D). However, when workers present List B and C documents, employers participating in E-Verify may only accept documents from List B that have a photograph. In Section 1 of the Form I-9, the worker records personal information, attests to citizenship status, and signs the form.

The employer completes Section 2 of the form, recording the type of documents presented as proof of identity and work authorization, the document number(s), and any expiration dates on immigration documents. It is mandatory for workers hired by employers participating in E-Verify to provide a Social Security number (SSN) on the Form I-9. After reviewing the documents presented by the worker, the employer records the date of hire. The employer also signs the Form I-9 to certify having examined the documents presented by the worker and finding them to appear valid and to appear to belong to the person presenting them. Under the Form I-9 process, the verification responsibility rests solely with the employer. Depending on the employer's familiarity with various immigration and other documents and skills in the detection of fraudulent identity and employment eligibility documents, a worker without employment authorization may or may not be denied employment; similarly, an employer unfamiliar with a particular document may erroneously assume that the worker presenting the unfamiliar document is not work authorized.²¹

Finally, employers must retain completed Forms I-9 for all workers for 3 years after the hire date, or 1 year after the date the worker is terminated, whichever is later. For more detailed information about the Form I-9 process, see the *Handbook for Employers, Instructions for Completing Form I-9*.²²

2.3. The E-Verify Verification Process

This section provides an overview of the E-Verify verification process. The process is presented as a series of phases that cases²³ may go through. Where appropriate, differences between processes for workers claiming to be citizens and those claiming to be noncitizens are specified.

2.3.1. Phase 1: Data Entry

The first step in the E-Verify process consists of employers' inputting workers' information from the Form I-9 into the E-Verify system.²⁴ The Form I-9 data entered include the worker's name, date of birth,

²¹ The employer is prohibited from asking the worker for additional documentation than provided; assuming that the worker has provided documentation consistent with the Form I-9 process and the documentation appears to be valid and to belong to the worker.

²² <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD>.

²³ A case refers to a specific hiring event, i.e., a query sent by a specific employer to check the employment eligibility of a specific worker at a specific point in time. During the database cleaning process, multiple records for a given case are merged or deleted.

and SSN; attested citizenship status; Alien or Nonimmigrant Admission Number (for noncitizens); type of document(s) presented with the Form I-9 and certain document numbers; and any document expiration dates for immigration documents. If an immigration document with a photograph is used by the worker for verification purposes, the employer is also required to photocopy it. After the employer electronically submits the information, all cases go to the automatic verification step.

2.3.2. Phase 2: Automatic Verification

Immediately after the employer submits the Form I-9 information to E-Verify, the Social Security Administration (SSA) database is checked automatically against the employer-input information. The first step of the automatic verification process is the same for all workers—the Form I-9 information is checked against SSA information to determine if a valid SSN was submitted and, if so, if the SSN, name, and date of birth match SSA’s records. If the case information and SSA information *are not* consistent, the case is sent to Phase 3 (Pre-Tentative Nonconfirmation check, or Pre-TNC check). If the case information and SSA information *are* consistent, the next step is determining whether Federal records show that the worker has employment authorization. This employment-authorization check differs for workers attesting on the Form I-9 to be citizens and those attesting to be noncitizens.

2.3.2.1. Workers Attesting to Be Citizens

For workers attesting to be U.S. citizens, the SSA database is checked to determine if SSA records show that the person has permanent work authorization. If SSA records *can* confirm employment authorization for the worker, the E-Verify system issues a finding that the worker is work authorized. If SSA information *cannot* verify that the worker has permanent work authorization, USCIS and Department of State databases²⁵ are checked to determine whether the worker is a naturalized citizen. If these databases confirm that the worker is a naturalized citizen, the system issues a finding that the worker is work authorized.

If E-Verify issues a finding that the citizen is work authorized, the employer is electronically notified and no further effort on the part of workers, employers, or Federal staff is required other than the requirement that employers close these cases and retain the required verification information with their Form I-9 files. If the E-Verify system cannot confirm work authorization, the case proceeds to Phase 3 (Pre-TNC check).

2.3.2.2. Workers Attesting to Be Noncitizens

If the worker attests to being a noncitizen on the Form I-9 and his/her SSN, name, and date of birth match SSA’s records, the case is sent to USCIS to be electronically checked against the USCIS Verification Information System (VIS) database. The VIS database contains information from several Department of Homeland Security (DHS) databases. If USCIS can confirm that the worker is work authorized and DHS files contain a copy of a document used by the worker that contains a photograph of the worker, the case proceeds to Phase 5 (Photo Tool). If USCIS can confirm that the worker is work authorized but DHS files

²⁴ The description here assumes manual data input, which is, by far, the most common input process; however, there are also options available for electronic abstractions from electronic Forms I-9 or employer databases. It also assumes that employers follow E-Verify procedures, which, as discussed in this report, is not always the case.

²⁵ U.S. passport data are checked only if the worker presents a U.S. Passport.

do not contain a copy of a document used by the worker that contains a photograph of the worker, the employer is immediately notified electronically through the E-Verify system that the worker is authorized to work. If USCIS cannot verify that the worker is employment authorized, the case proceeds to Phase 3 (Pre-TNC check) described below.

2.3.3. Phase 3: Pre-TNC Check

If the automated match cannot confirm that Form I-9 information is consistent with Federal information and that the worker is employment authorized, the system immediately asks the employer to recheck the data input. This is referred to as a pre-TNC check (see Exhibit I-1). If the employer submits changed information, the revised information is checked, using the same automated procedures described above. The next step immediately following the pre-TNC check may differ for workers attesting on the Form I-9 to be citizens and those attesting to be noncitizens, as described below.

2.3.3.1. Workers Attesting to Be Citizens

If the employer does not submit changed information or if the changed information still does not permit verification of the worker's employment-authorization status, an SSA Tentative Nonconfirmation (TNC) is issued and the citizen case goes to Phase 6 (TNC).

2.3.3.2. Workers Attesting to Be Noncitizens

If SSA information and Form I-9 information for a noncitizen are not consistent after the employer has had an opportunity to revise the information input into E-Verify, an SSA TNC is issued to the noncitizen. If the case has already been transferred to USCIS for verification and USCIS cannot confirm work authorization after the employer has had an opportunity to revise the information, E-Verify indicates to the employer that the "verification is in process" and the case is automatically sent to Phase 4 (USCIS Secondary Review).

2.3.4. Phase 4: USCIS Secondary Review

The USCIS secondary check is performed by a Management Program Assistant (MPA). The MPA searches DHS databases to determine whether work-authorization status can be confirmed using additional information—a process that typically takes a day or less from receipt of the electronic information to a decision on whether USCIS can confirm work-authorization status without requiring worker action. If the MPA is able to confirm work authorization, the employer is notified that the worker is employment authorized. If the MPA does not have sufficient information to confirm work-authorization status, a TNC is issued and the case proceeds to Phase 6 (TNC).

2.3.5. Phase 5: Photo Tool Check

When a case enters the Photo Tool phase, a copy of the DHS document with the photograph is provided electronically to the employer. In cases where the employer finds that the photo on the immigration document matches the photo provided in the E-Verify response, the E-Verify system confirms to the

employer that the worker is employment authorized. If the employer finds that the photo on the immigration document presented by the worker does not match the photo provided in the E-Verify response, the case is sent to Phase 6 (TNC).

2.3.6. Phase 6: TNC

When neither the automated check or, for noncitizens, a secondary review, is able to confirm that the worker is employment authorized, a TNC is issued. Employers are then required to provide the affected worker with a system-generated written notification of the finding and give the worker the opportunity to contest it. Workers are required to indicate on the written notification whether or not they wish to contest TNC findings and to sign the notification letter. Employers are supposed to retain a copy of the signed notice in the file.

When workers say they do not want to contest the TNC, the case goes directly to Phase 7 (Final Nonconfirmation, or FNC). When workers say they wish to contest TNCs, employers are instructed to record the referral date in E-Verify by selecting the “referral” button. The E-Verify system then provides a referral form that explains the worker’s rights and responsibilities during the contesting period and includes case-specific information about how to correct the discrepancy. Workers then have eight Federal working days to contact SSA or USCIS to resolve the discrepancy. If an SSA TNC is issued, workers other than certain naturalized citizens must go to an SSA field office. If a USCIS TNC is issued, the worker is instructed to contact USCIS by telephone and, if requested to do so, fax copies of documents to USCIS.²⁶ As of May 2008, naturalized citizens who have received an SSA TNC because SSA did not confirm their citizenship status may either visit an SSA field office or call USCIS to resolve the TNC.

If the worker contacts SSA or USCIS within eight Federal working days but the Federal government cannot resolve the case within 10 Federal working days, SSA or USCIS places the case “in continuance” until it can be resolved. This may happen, for example, when SSA needs to see an original birth certificate to confirm citizenship but the worker needs to request a copy of the birth certificate by mail from the issuing source.

While the TNC is being contested, employers may not take adverse actions against workers based on the issuance of the TNC. Prohibited adverse actions include not hiring the worker, firing the worker, not allowing the worker to work until the TNC is resolved, delaying training, assigning different work, or reducing pay while contesting.

If the worker successfully resolves the TNC, the employer is informed that the worker is employment authorized. If the worker does not successfully contest the TNC, the case proceeds to Phase 7 (FNC).

2.3.7. Phase 7: FNC

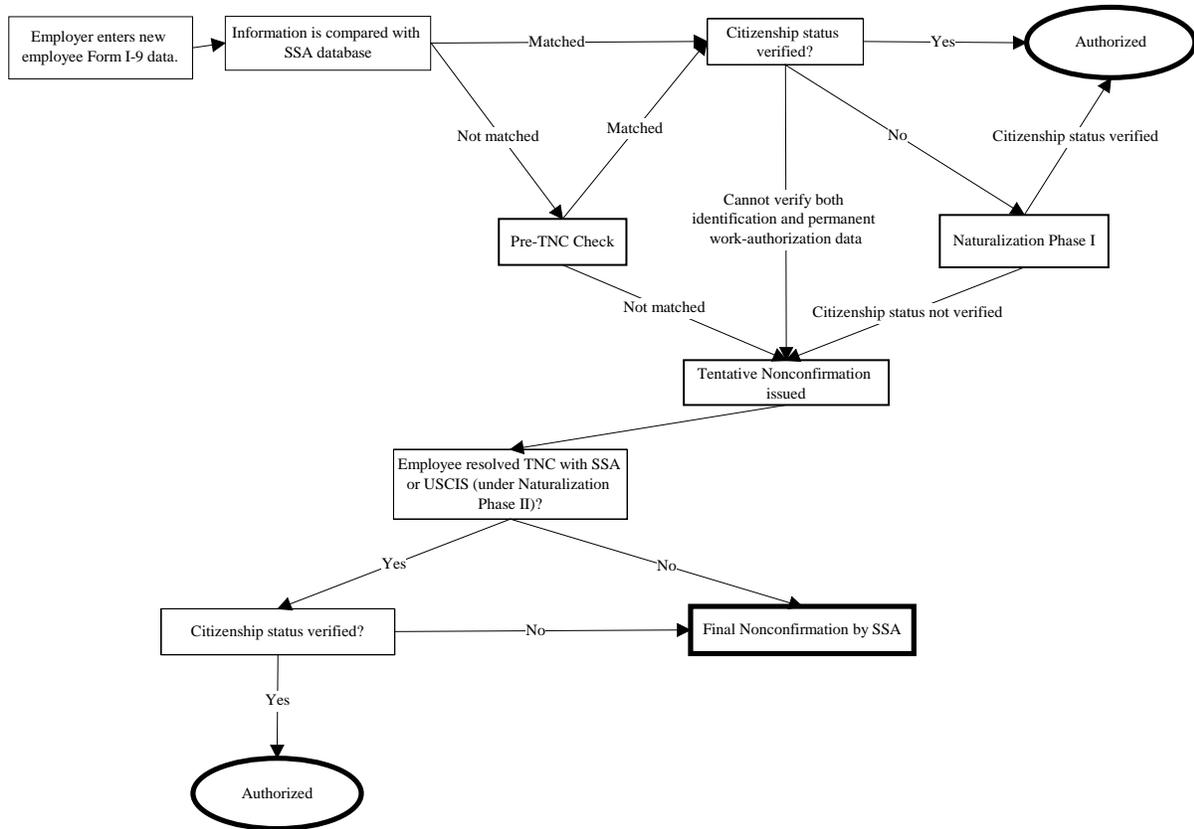
If workers indicate they do not wish to contest TNC findings, their cases are classified as Final Nonconfirmations (FNCs). If they indicate they want to contest but do not follow through by contacting SSA or USCIS to correct the discrepancy in their records, their cases are considered “no shows” after 10 Federal working days and FNCs are issued.

²⁶ Although workers are given eight Federal working days to resolve TNCs, in accordance with the IIRIRA legislation, workers who contact USCIS on the ninth or 10th day after referral may be able to resolve their cases before an FNC is issued.

When the system issues FNCs, employers then must terminate the employment of these workers to comply with the law. If employers do not terminate the employment of workers who cannot be verified as work authorized, they are required by law to notify USCIS that they are continuing to employ the worker.

The major steps of the E-Verify verification process are illustrated in Exhibits I-1 and I-2.

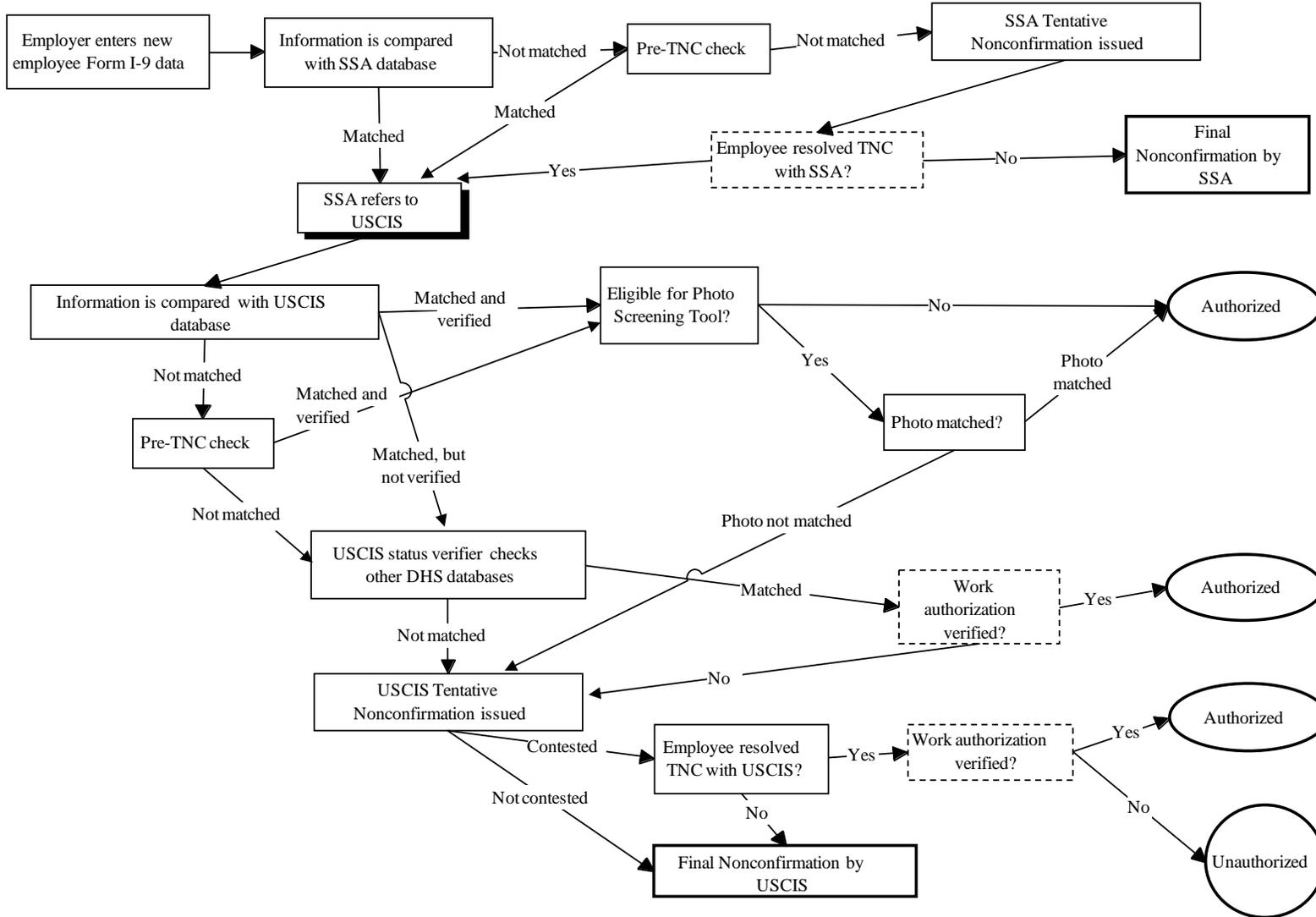
Exhibit I-1. Verification Process for Persons Attesting to Be U.S. Citizens on Form I-9 ²⁷



NOTE: This is the process that was in effect on June 30, 2010.

²⁷This chart does not include the passport check.

Exhibit I-2. Verification Process for Persons Attesting to Be Noncitizens on Form I-9



NOTE: This is the process that was in effect on June 30, 2010.

3. REPORT ORGANIZATION

Chapter I describes the purpose of the study, the E-Verify Program at the time this report was prepared, and the organization of the report. Chapter II describes the quantitative and qualitative research methods used in this report. Chapter III discusses the implementation of E-Verify in Arizona, Chapter IV presents findings on the impact of E-Verify on unauthorized employment, Chapter V provides information on employer burden and satisfaction, and Chapter VI discusses the impact of E-Verify on worker rights and discrimination. Chapter VII provides conclusions and recommendations.

Appendices are included at the end of this report. Appendix A provides the status of state legislation related to E-Verify. Appendix B contains a chronology of national and Arizona E-Verify legislation and major events. Appendix C provides a copy of the MOU that employers must review and sign prior to enrolling in the Program. The Form I-9 is contained in Appendix D and the agenda for the Arizona Stakeholders Meeting appears in Appendix E. Data collection instruments used in the evaluation are provided in Appendices F through H. Appendix I contains supplemental information about the research methodology used in the study. The glossary is located in Appendix J.

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CHAPTER II. RESEARCH METHODS

1. OVERVIEW

The Arizona case study had two components: an onsite study and analysis of data in the E-Verify Transaction Database. The site visits consisted of the following elements:

- Interviews with employers' staff members responsible for the E-Verify process;
- Observation of the employers' verification process;
- Examination of worker records related to the verification process;
- Interviews with workers, which were usually conducted at the worker's home;
- Discussions with a broad array of stakeholders at a meeting in Phoenix, Arizona, on March 9, 2009;
- Online focus groups of employers;
- E-Verify transaction and employer databases; and
- Other Federal data sources.

Standard research and quality control procedures were used in this qualitative study to assure the quality of the data. These procedures included training of data collection and data processing staff and data cleaning based on consistency and range checks.

2. STAKEHOLDER MEETING

The evaluation team conducted a stakeholders meeting on March 9, 2009, in Phoenix, Arizona, which provided an open forum to identify, discuss, and prioritize topics to be examined in the evaluation (see Appendix E for the meeting agenda). This information was used to gain greater insights into the use of E-Verify in Arizona and to help shape the Arizona data collection instruments.

The stakeholders meeting was attended by 55 people representing Arizona employers, corporate employers with offices in Arizona, community-based organizations, and Federal, state, and local governments. Initial discussion topics and recommendations for stakeholder meeting attendees were obtained through a series of online focus groups and through telephone interviews with an attorney and representatives of community-based organizations. A report from the stakeholders meeting was prepared and distributed to each attendee in May 2009.



3. ONSITE VISITS

3.1. Sample Selection and Recruitment

3.1.1. Employer Sample

The employer sample was drawn from national databases, referred to in this report as the Transaction Database, which capture data from E-Verify transactions. The sampling database was limited to the 3,135,500 E-Verify transactions that occurred from January through May 2009 for 43,060 employers. To be eligible for the study, employers that submitted cases to E-Verify during this time period needed to meet a series of criteria, which reduced the final sample of eligible employers to 248. The following criteria for eligibility were applied:

- Employers were located in Arizona, which reduced the sample to 328,992 E-Verify cases for 11,596 employers.
- Designated Agents that only verified the employment eligibility of workers for other companies were excluded because they will be the focus of a special study in a later phase of the E-Verify evaluation.
- Clients of Designated Agents were excluded because they will also be the focus of a special study in a later phase of the evaluation.
- Employment or temporary staffing agencies were excluded because their employment practices are different from other employers, and they were studied separately in the prior national evaluation.
- Employers had three or more Tentative Nonconfirmation (TNC) findings during January through May 2009. Among regular employers, 698 met this criterion, and among Designated Agents that use E-Verify for their own workers, 46 did so.
- Employers (regular and Designated Agents that use E-Verify for their new hires) conducted E-Verify verifications at the firm level rather than at individual branches.

All 248 employers meeting the designated criteria were asked to participate. Although the selected sample represented all employers meeting the above criteria, it does not represent all E-Verify employers because of the restrictions on the scope of the sample.

Among the 248 eligible employers, 126 participated in the onsite study. The two most frequent reasons given by employers for not participating were that company staff were too busy or they could not spare the personnel to cover the needs of the site visit. (In Section 3.4, we discuss the extensive efforts made to contact employers and obtain their cooperation.) Appendix I compares information about the employers responding to this study, sampled employers and workers, and the Transaction Database.

3.1.2. Worker Sample

A sample of workers with TNCs²⁸ was selected for each employer participating in the site visits after the employer agreed to participate in the study. If an employer had more than 20 TNCs, a random sample of 20 workers with TNCs in the period January 1 through May 31, 2009, was selected.

Of the 891 selected workers in the final employer sample, 160 workers were interviewed. There were 47 employers (out of 126) for which no workers were interviewed. For most employers, interviews were conducted with one to three of their workers.

The inability to locate the sampled workers was the main reason for worker interview nonresponse. Worker contact information either was missing or incorrect on the Form I-9 or other documentation, and accurate updated information was unavailable from the employer, tracing services, or neighbors. One employer told project staff their workers could not be interviewed; no attempt was made to contact these workers because of concern they might be fired. Because of the low employer and worker response rates and the narrow definition of employer eligibility, the selected workers cannot be considered representative of all workers with cases submitted to E-Verify and receiving TNCs either in Arizona or nationally.

The selected workers in the final sample constituted the sample for the record review as well. Record reviews were conducted for 785 of the 891 selected workers. Part of the record review process included interviewers comparing case information in the Transaction Database to information in the worker verification records on file at the employer sites.²⁹

3.2. Onsite Instrument Design and Development

Three data collection instruments were prepared for use in the onsite study: an employer interview protocol, a worker interview protocol, and a record review form (see Appendices F, G, and H).

3.2.1. Interview Protocols

Development of the instruments for the onsite interviews started with a review of the onsite protocols used in the last national evaluation. Modifications were made in light of the primary research goal of this study to focus on the impacts of E-Verify in a mandated environment, input from stakeholders, and experiences with the previous onsite interviews. Many new questions were added concerning the impact of the Arizona requirement that employers use E-Verify for all workers hired beginning January 1, 2008. All EV-STAR (E-Verify SSA Tentative Nonconfirmation Automated Response System) questions and some questions on the Photo Screening Tool were deleted because these program features were examined in depth for the national evaluation (see *Findings of the E-Verify Program Evaluation*, December 2009).

The employer and worker interview protocols in the previous evaluation consisted of open-ended questions. The interviewers then wrote summaries of the information obtained, which were later reviewed and coded for analytic purposes. For the Arizona study, most of the questions were converted to a closed-ended format with the response categories consisting of the codes generated in the prior evaluation. In addition, a computer-assisted personal interviewing (CAPI) technique was used in which the interviewers

²⁸Workers with TNCs were selected because they are the only workers who would have been likely to be aware of or have experiences with E-Verify.

²⁹More details about the record review are in Section 3.2.2.



asked questions and recorded the answers in a computer-based program. CAPI allowed the data to immediately be entered into an electronic database and provided automated edit checks and skip patterns that reduced the errors resulting from missing questions that should be asked and asking questions that are not relevant for a particular set of responses. Both English and Spanish versions of the employer and worker interview protocols were prepared in CAPI. Additionally, hard copy versions of the worker protocol were prepared in both English and Spanish to accommodate workers who expressed a preference for a traditional paper-and-pencil questionnaire.

Incorporated into the employer protocol was a brief set of questions for the interviewer to answer if interviewers were provided an opportunity to observe the employer using E-Verify. The questions included whether they were able to observe the employer processing a case through E-Verify and, if so, what activities they observed, where the E-Verify password was stored, and the number of attempts made to connect to E-Verify. Interviewers also recorded where the E-Verify notice/poster was located in the office.

3.2.2. Record Review

A record review form was designed to obtain as much information as possible about the experiences of each worker during the contesting process and the employer's compliance with relevant E-Verify procedures. It was also used to capture any information available in the record that could assist in locating the worker.³⁰ The electronic record review form was essentially the same as the form used in the prior evaluation with a few minor revisions that reflected changes in the documents reviewed such as the addition of a new citizenship status code on the Form I-9. These forms were individualized for each sampled worker by providing the following prefilled information from the Transaction Database:

- Worker name;
- Social Security number (SSN);
- Hire date;
- Citizenship status;
- Whether the worker contested the TNC finding;
- Date of the referral letter; and
- Worker's final case resolution status.

The interviewer compared this information to the worker record provided by the employer to verify that the correct worker's record had been provided. Interviewers were instructed to indicate whether the information in the worker's record was consistent with the information in the Transaction Database and, if not, to describe any discrepancies, including missing documents, in the space provided on the record review form.

³⁰ Records consisted of the Employment Eligibility Verification form (Form I-9) for the worker, as well as any attached photocopies of documents presented, E-Verify transaction records, copies of any notices of the worker's intent to contest a TNC finding, and any referral letters in the file.

3.3. Interviewer Selection, Training, and Monitoring

The interviews were conducted by 12 highly educated and experienced interviewers who were intensively trained. Seven of the field interviewers and the supervisor had participated in the prior national evaluation. Six of the 12 selected interviewers were bilingual in English and Spanish.

The selected field interviewers had an intensive four-day training session. The field interviewer supervisor, who was also a supervisor for the prior evaluation, received a separate training for 1.5 days prior to the interviewer training in addition to participating in the interviewer training. The interviewer training session started with an in-depth explanation of the evaluation goals and methodology, concentrating on the site visit component of the study. This introduction to the evaluation also included an overview of the E-Verify Program and a demonstration of the E-Verify online tutorial. The CAPI and observational protocols were carefully reviewed with the interviewers, and role-playing exercises gave them an opportunity to practice the interviewing techniques they would use. The interviewers also had opportunities to practice using the record review form. The Westat Field Staff Assurance of Confidentiality of Survey Data statement and policy was emphasized during the training. Interviewers were required to read and sign the policy, so they understood that violating the pledge was sufficient grounds for disciplinary action, including dismissal.

During the data collection period, interviewers were monitored in several ways. They had weekly conference calls with the field supervisor to discuss productivity, problems finding workers, and contact strategies for maximizing response rates. The home office supervisor and qualitative task leader also had a weekly call with the field supervisor, who provided status reports and updated the team on potential problems and possible solutions to data collection and logistical issues. The field supervisor provided additional feedback and discussed problems and strategies through e-mail with interviewers.

3.4. Data Collection

All eligible employers were included in the recruitment activities (see Section 3.1.1 for information on the employer sample). The initial contact with the employers was an e-mail requesting their participation with an attached letter from U.S. Citizenship and Immigration Services (USCIS) endorsing the study and asking for their cooperation. The e-mail was followed by a recruitment telephone call.

In preparation for recruiting employers to participate in the onsite study, experienced Westat recruiters were trained to use a screener to identify eligible employers and were provided with responses to frequently asked questions on the E-Verify Program evaluation. Most of recruiters that conducted similar work on the last national evaluation were available to recruit for the Arizona study. The recruiters encouraged employers to participate in the study in a variety of ways, including telling them the following:

- As an employer in the first state in which E-Verify is mandatory, they can offer their perspectives on how the Program is working for them.
- Their feedback on the Program will help USCIS understand what is going well and what problems or concerns they have about the Program in order to help improve it.
- Each employer brings their unique perspectives to the Program, so their participation as a small (or medium-sized, or large) employer is important.



- The E-Verify Memorandum of Understanding (MOU) states that employers should cooperate with any evaluations of the Program.

The recruiters also reassured employers that the site visit was not an audit of their procedures, and the information they provided would be kept confidential to the extent allowable by law. Several strategies were used to solicit optimum participation from employers, including assigning a different recruiter to cases in which an employer indicated they did not want to participate but that the interviewer did not consider to be a hard refusal (i.e., the interviewer thought the employer might consent after some gentle coaxing). Employers might tell one recruiter they did not have time to participate, but then later consent to participate due to recruitment by a different interviewer who connects with them based on the region of the country they came from, tone of voice, or style that is more or less assertive, or happens to contact the employer at a more convenient time.

The site visits were conducted from July through November 2009. The first step in the site visit was to interview the employer's primary contact person for E-Verify, that is, the person most knowledgeable about the employer's use of E-Verify. The primary contact person(s) also identified and invited other company staff members involved in the E-Verify process to participate in the interview as appropriate. The contact person(s) was asked questions about the verification process at the company. Once the interviewing of company staff was completed, the interviewers observed as much of the verification process as was feasible. They also determined whether the E-Verify poster was displayed in a prominent place that was clearly visible to prospective workers, as required by the E-Verify Program.

During the employer site visits, the interviewers collected employer application packets if they were on display in the employers' offices. The 38 packets collected were sent back to Westat, where they were examined for references to E-Verify and the Form I-9. The purpose in collecting this information was to get a sense of whether some employers were providing information about using E-Verify in the application packets in lieu of or in addition to posting the information where job applicants could view it.

During the employer site visit, the interviewer reviewed the employment verification-related records of the workers identified for the record review component of the onsite study. (Information on the worker sample is presented in Section 3.1.2.)

Subsequent visits to the company were made, as needed, to complete the record review, clarify information obtained during the record review or the employer interviews, and/or to interview workers still working for the establishment if the employer was willing and able to provide a suitable interviewing environment.³¹

Workers were initially located by a locating service on the basis of worker name, date of birth, and SSN. This service provided contact information for approximately half of the workers selected for record review and interview. The most recent contact information obtained from the locating service was uploaded to the laptops used by the interviewers prior to conducting the record reviews. During the record review process, interviewers recorded available information from the Form I-9 and any other address sources, such as copies of driver's licenses presented as proof of identity included in the workers' Form I-9 files. Interviewers could compare the contact information on the Form I-9 and other sources with information supplied by the locating service, as it was difficult to determine which address was most recent and some records contained no current address information. Finally, while interviewers were in the

³¹ Interviewers only asked about interviewing on site at the close of the interview if employers seemed generally cooperative.

field, they attempted to trace workers by talking to neighbors or landlords when feasible.³² The interviewers also used a website called NetDetective to trace workers.

Once interviewers located workers, they contacted them either by telephone or in person to schedule an appointment. In the telephone introduction, interviewers identified themselves, described the purpose of the interview, established the study's legitimacy, and guaranteed confidentiality. To facilitate introduction at the door, interviewers wore an identification badge and handed the study brochure to the person answering the door. To encourage participation, respondents were offered a \$25 incentive to complete the interview.

Most interviews were conducted in the sampled workers' homes, at the onsite study establishment, or in person at another agreed-upon site. About 12 interviews were conducted over the telephone, because the worker either had moved to another state or lived in an area that the interviewer was not comfortable visiting and an alternative location could not be identified for the interview. Telephone interviews also were conducted when a bilingual interviewer was not available to go to the worker's home, when the worker refused an in-person visit but agreed to do a telephone interview, or when the worker wanted to do the interview during the initial contact telephone call. In some cases, when a worker had moved from the area and was living in an area close to another interviewer, the interview was transferred to the closer interviewer.

An in-person interview was chosen as the primary data collection strategy for workers because of the complexity of some of the questions, the need to show examples of the I-9 and other forms, the low education level of a significant proportion of workers, and the limited English proficiency of some workers in the sample. Bilingual interviewers conducted the interviews with Spanish-speaking respondents whenever possible and estimated that they conducted 94 interviews in Spanish. During the in-person interview, a trained interviewer asked workers about their experience in applying for the job with the E-Verify employer, how their paperwork was processed, and how any problems encountered during employment verification were resolved. The workers' demographic characteristics were also collected. The onsite study followed procedures and management structures designed to ensure the data collected were of the highest quality.

4. E-VERIFY TRANSACTION DATA

Two key data sources for this report were the employer database, an electronic record of information the employer inputs when enrolling in E-Verify, that may be subsequently modified based on additional information from the employer, and the Transaction Database, an electronic record of all data entered into E-Verify by employers and of all changes and outcomes that are entered during the verification process.³³ As noted above, these databases were used to select employers for the field data collection. They also provided valuable information used in data analyses in this report. No sampling was performed for these analyses, and thus sampling error is not a concern; however, the possibility of measurement error exists because the USCIS and SSA data provided from employer verification transactions contained some errors due, for example, to employer input errors. Although the data were cleaned, it is not possible to rectify all errors.

³² The topic of the interview was not discussed with persons other than the respondent because of the confidential nature of the study.

³³ This section provides a broad overview of the Transaction Database. Additional detail is provided in Appendix I.



4.1. Trend Analyses Using the Transaction Database

The E-Verify Transaction Database for the web-based E-Verify system has information of interest going back as far as 2004.³⁴ To ensure that an adequate number of cases were available for the trend analysis, these analyses were restricted to data from January 2006 onward. Also, because the number of transactions varied considerably from one day to another, the data were “smoothed” by being aggregated into monthly time series.

Time series data can be analyzed using a number of different approaches and techniques; some techniques are geared toward identifying long-term trends in growth or decline, often with the goal of generating reliable forecasts of future trends. Other types of analysis are designed to detect sudden shifts in the mean level of otherwise relatively stable data, perhaps in conjunction with some type of external intervention such as changes in laws or public policy. The latter was the focus of this analysis. This report examines whether there are time points that represent potentially meaningful shifts in the data, such as when the Legal Arizona Worker’s Act (LAWA) was enacted or when it went into effect (see Appendix B for a timeline of E-Verify events).

The primary intent of the analyses for this study was to differentiate change points that are meaningful rather than random fluctuations. Such change points are noted in the text and the graphs where there was an 80 percent or greater chance that a specific point represented a structural shift in the data. In many cases, the significance level associated with identified change points was considerably higher (e.g., 90 percent and higher), but the 80 percent criterion was adopted in order to avoid excluding other potentially significant changes.

Eight states other than Arizona had strong legal requirements promoting the use of E-Verify at the time of the study. Including these states in the comparison group of nonmandatory states would make it more difficult to measure the impact of the new Arizona law. Therefore, this analysis excluded from the comparison trend data all states that (as of June 2009):

- Required **all** their employers to use E-Verify (i.e., Mississippi), and
- Required all public employers **and** their contractors to use E-Verify (i.e., Colorado, Georgia, Missouri, Nebraska, Oklahoma, Rhode Island, and Utah).³⁵

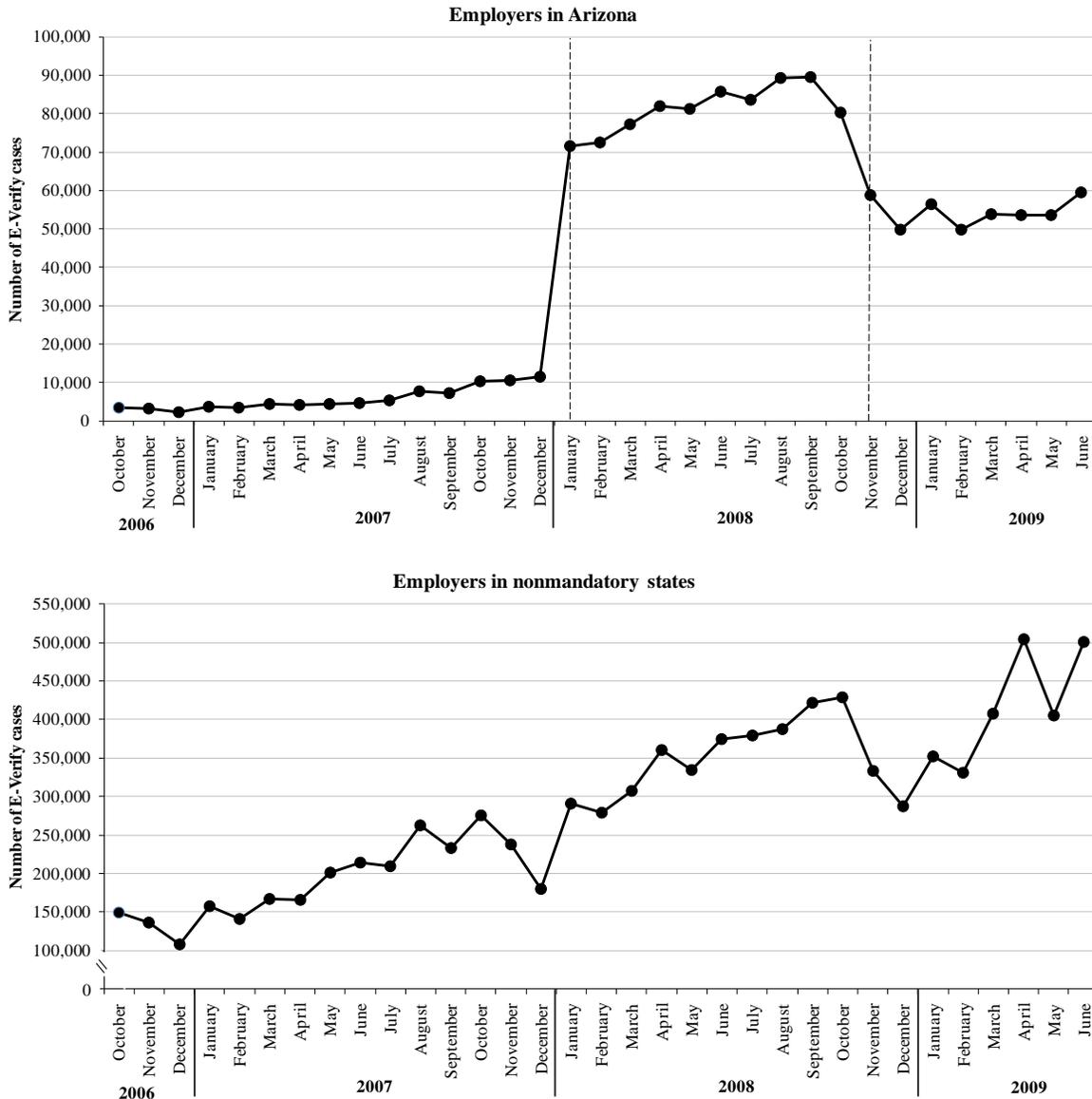
Exhibit II-1 shows how the time trends are displayed in this report. The solid line represents raw data points, while the vertical dashed lines indicate particular time points where analyses suggested a significant change in the data. This example shows the volume of cases transmitted to E-Verify over time from Arizona employers (top) and nonmandatory states (bottom). The black line shows the estimated trend and how it increased and decreased over time; in the top chart, the two dashed lines show that in Arizona, there appeared to be significant jumps in this rate in January 2008 and a significant drop in November 2008. The bottom chart shows that while the number of cases submitted by employers in nonmandatory states grew steadily, there were no particular time points associated with a significant shift in this pattern. Comparisons of trends in Arizona and in the nonmandatory states do not provide conclusive evidence that differences between Arizona and the nonmandatory states are attributable to LAWA, because other factors, such as differences in labor markets may affect the trends. The analyst, therefore, must consider the plausibility that observed differences can be attributed to LAWA. In the

³⁴ Prior to 2004, Basic Pilot information was available on a separate database.

³⁵ Excluding these nine states from the national data reduces the total case volume being analyzed by approximately 25 percent, and the number of active employers by 47 percent (from 63,000 to about 33,500). State laws concerning E-Verify were obtained from USCIS, Verification Division’s monthly report, June 30, 2009, the ending date of the trend analysis.

example, it is reasonable to believe that the one month increase in Arizona from approximately 10,000 to 70,000 cases (a seven-fold increase) at the start of LAWA compared to the national change from approximately 300 to approximately 1,000 (between a three and four-fold increase) is attributable to the start of LAWA.

Exhibit II-1. Trend in the Number of Cases Transmitted to E-Verify: October 2006–June 2009



SOURCE: E-Verify Transaction Database.



The erroneous TNC rate is used in this report as an indicator of inaccuracy in initial findings for employment-authorized workers. It is defined as the percentage of workers who are ever found to be work authorized by E-Verify who first receive a TNC. This rate underestimates the inaccuracy rate for authorized workers since it does not include an estimate of the number of employment-authorized workers who receive a TNC but do not contest it either because they were not informed of the TNC or were informed but chose not to contest. The number of workers in this category cannot be estimated with sufficient precision for use in the trend analyses in this report.

4.2. Comparison to *Findings of the E-Verify Program Evaluation, December 2009*

A number of analyses in this report compare information from the current evaluation with similar information obtained in the last national evaluation. The national data were obtained from a Web survey of E-Verify employers, onsite interviews of employers and some of their workers that received TNCs, and reviews of verification records of workers.³⁶ Data collection for the national study was conducted from March through July 2008. The interviews for this report were conducted a little over a year later, from July through November 2009. Because of the difference in timeframes plus some differences between the two studies in their definitions of employers eligible for the evaluation, question wording, and data collection methodology used, the data from these two studies are not completely comparable. It is possible, however, to use the prior study results to get a general sense of whether there are differences between Arizona employers and workers nationally. Statistical tests of significance are not appropriate in analyzing these data and caution must be taken not to place too much emphasis on minor differences between the results of the studies.

³⁶The methodology used in the national study is described in *Findings of The E-Verify Program Evaluation*, December 2009 (http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf).

CHAPTER III. IMPLEMENTATION OF E-VERIFY IN ARIZONA

1. INTRODUCTION

As the first state in the country to mandate the use of E-Verify by all employers, Arizona provides an opportunity to examine practical issues to help the Federal government, other states, and employers better prepare for the expansion of a mandated E-Verify Program. Exploring some of the key issues encountered by employers in transitioning from voluntary to mandatory E-Verify may aid the Federal government and employers in understanding the total effect of the mandatory use of E-Verify as well as planning for similar transitions in the future. This chapter focuses on Arizona employers' experiences in making this transition. The specific topics addressed in this chapter include the following:

- How employers learned about the Arizona law;
- Employers' reactions to the Arizona law;
- Enrolling in E-Verify;
- Preparing for E-Verify; and
- Transmitting cases to E-Verify.

Data analyzed in this chapter are from the Transaction Database and the onsite employer interviews.³⁷

2. EMPLOYER INFORMATION ABOUT THE ARIZONA LAW

2.1. How Employers Learned About the Arizona Law

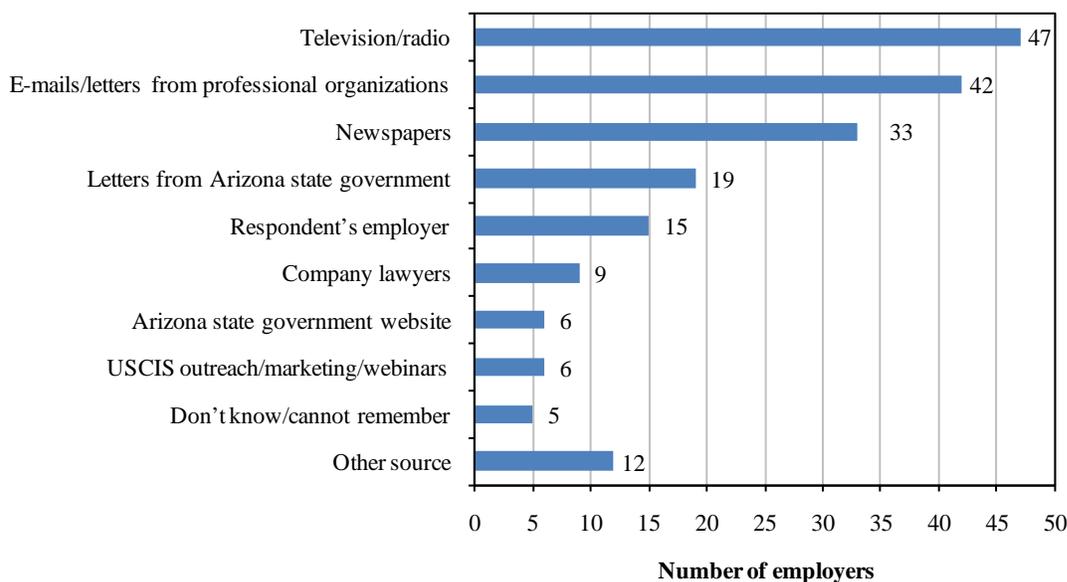
There were a large number of both formal and informal efforts made to make Arizona employers aware of the Legal Arizona Workers Act (LAWA) and their responsibilities for implementing it. This section discusses the sources and types of information employers actually used to learn about LAWA. Analyses are based on all 126 employers interviewed for this study unless otherwise reported.

Mass media and professional associations were the most important information sources for employers' learning about LAWA. As shown in Exhibit III-1, 47 of the 126 employers interviewed said they learned about LAWA from television or radio, 42 reported learning about it from e-mails or letters from professional organizations (e.g., Society for Human Resource Management), and 33 employers said they learned about the new law from newspapers. Other sources included letters from the Arizona state government, the website of the Arizona state government, company lawyers, and U.S. Citizenship and

³⁷See Chapter II for a discussion of the Transaction Database and employer onsite data.

Immigration Services (USCIS) outreach, marketing, and webinars.³⁸ USCIS is currently working with professional organizations to ensure accurate information is disseminated to employers about E-Verify.

Exhibit III-1. Sources of Information About the Legal Arizona Workers Act



NOTE: Sum does not add to total number reporting because respondents could choose more than one response.
SOURCE: Onsite Interviews of Employers.

Most Arizona employers were able to distinguish LAWA, the state law, from E-Verify, the federally operated program. The majority (108) of employers reported that when they learned about LAWA, they understood that it was an Arizona state law, and even more employers (121) understood that E-Verify is a program run by the Federal government.

Some employers attempted to find out more information about LAWA from USCIS; most of these employers found the information helpful or very helpful. Even though most Arizona employers knew LAWA was a state law, 36 of the employers reported attempting to find out more information about the new law, primarily from the USCIS website and the USCIS helpline. Only a few employers turned to law firms and outside vendors. Thus, USCIS should anticipate more calls to the USCIS customer service line and an increased use of the USCIS website as other states undertake mandatory implementation of E-Verify. Of the 36 employers that reported attempting to find out more information about LAWA from USCIS, the majority (26 employers) found the information helpful or very helpful, and nine found the information somewhat helpful. Only one employer found the information about LAWA from USCIS not at all helpful.

³⁸USCIS outreach included presentations, conferences, and webinars. From October 2007 through September 2008, USCIS held eight presentations and conferences in Arizona and conducted approximately 29 webinars with government agencies, businesses, and community-based organizations. From October 2008 through September 2009, USCIS held five presentations and conferences in Arizona and conducted 36 webinars. Most outreach activities were conducted at the request of worker groups, employers, or other associations. USCIS marketing in Arizona included advertisements on the radio, in print media, online, and on billboards.

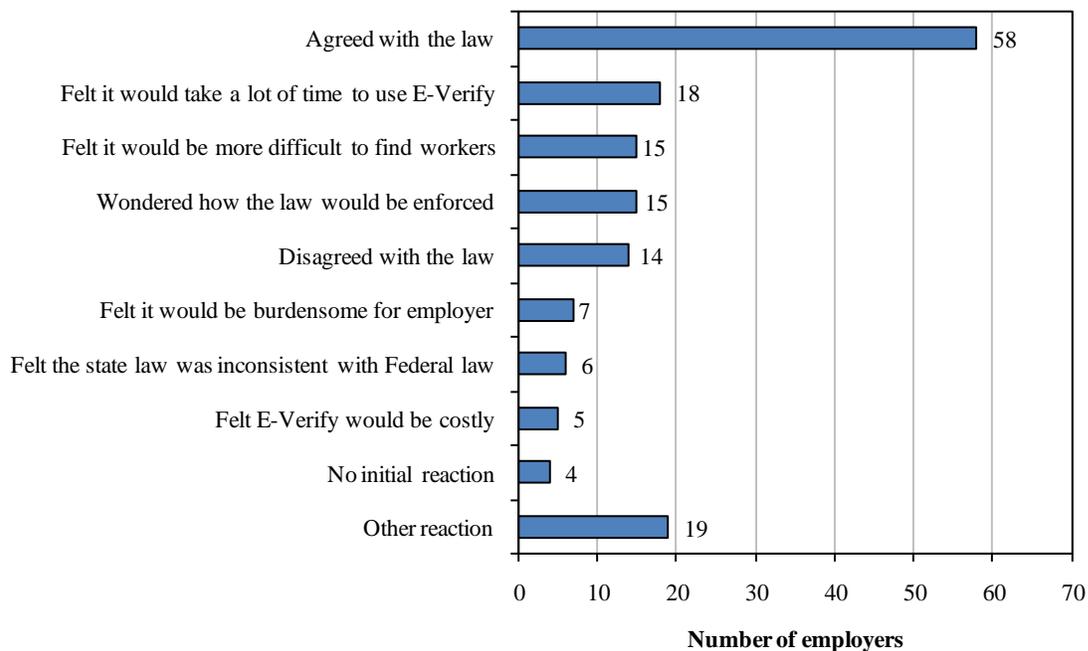


2.2. Employer Reactions to LAWA

To learn how employers perceived LAWA and their challenges to implementing it, this section presents employers’ initial reactions to hearing about the law as well as what they initially heard about the E-Verify Program from other sources.

When asked about their initial reaction to LAWA, almost half of the employers agreed with the law, but some of those that agreed with the law also expressed concerns about it. Fifty-eight employers reported they agreed with the law, while 14 employers disagreed with it (Exhibit III-2). Forty-eight employers also expressed concerns about the challenges E-Verify might introduce, including the time it would take to use the Program, the difficulty of finding workers to hire, and how the law would be enforced.

Exhibit III-2. Initial Reactions to the Legal Arizona Workers Act



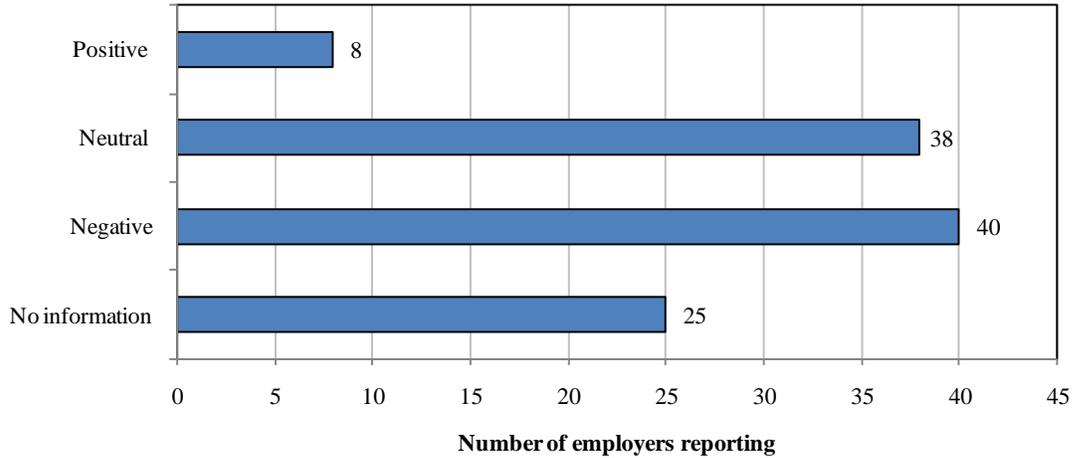
NOTE: Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Employers.

When asked about the information they initially heard about E-Verify from other employers, professional organizations, and the media, employers reported they heard more negative and neutral comments than positive comments. As shown in Exhibit III-3, 40 of the employers reported they initially heard negative information about E-Verify, 38 heard information that could be categorized as neutral, eight reported hearing positive comments, and almost a quarter (25 employers) indicated that they had not heard anything about E-Verify prior to signing the Memorandum of Understanding (MOU). Unlike employers that volunteer to use E-Verify because they have received positive information about it and/or are familiar with its benefits, in a mandatory environment employers might be more susceptible to hearing or receiving negative information and/or no information about the Program.



Exhibit III-3. Initial Information That Employers Heard About the E-Verify Program



NOTE: Exhibit excludes employers that did not respond to the question, or gave a nonspecific response, or answered they did not know.

SOURCE: Onsite Interviews of Employers.

Some employers that heard negative things about E-Verify reported they heard it would be costly and would “make hiring individuals very difficult.” Other employers heard that it would be “an invasion of privacy,” it would place an unfair burden on employers, and it would make it difficult to remain competitive with companies that continued to hire workers who were not authorized to work.

The 38 employers that heard neutral information about E-Verify cited hearing factual information, including:

- E-Verify was a program run by the Federal government;
- The Program would be mandatory for all Arizona employers; and
- The law would take effect on January 1, 2008.

The eight employers that initially heard positive comments about E-Verify reported hearing it would be “a useful tool” and would help protect employers from hiring workers who were using fraudulent documents.

3. ENROLLING IN E-VERIFY

In analyzing Transaction Database time trend data on enrollment in E-Verify, it is useful to keep the following dates in mind (see Appendix B for a more comprehensive timeline of Arizona legislation and national trends):



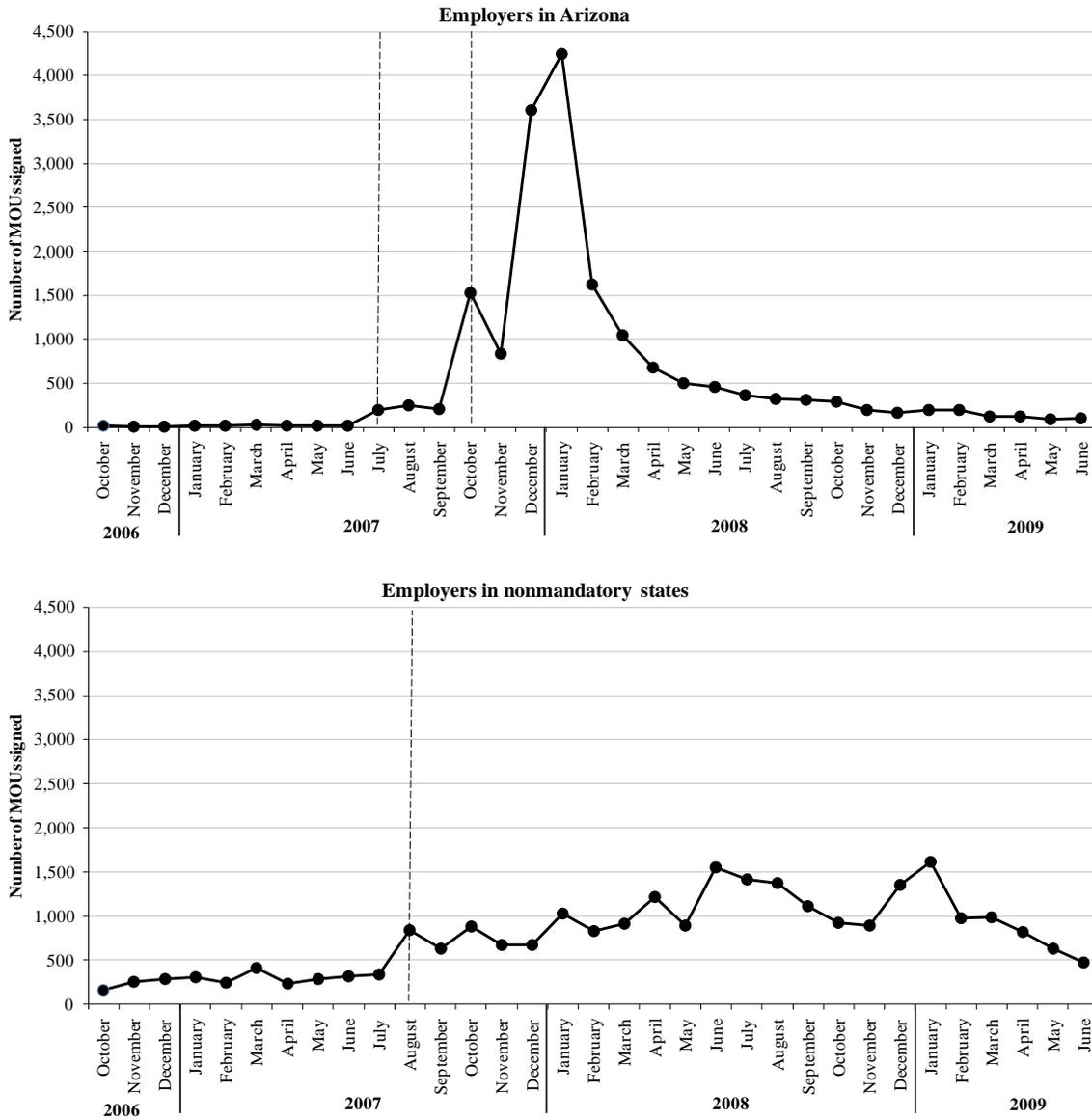
- **July 2007**—passage of legislation mandating that all Arizona employers use E-Verify (LAWA);
- **October 2007**—Federal outreach campaign in Arizona;
- **January 2008**—implementation of LAWA; and
- **May 2008**—national implementation of new procedures for verifying the citizenship status of naturalized citizens, which greatly reduced the erroneous Tentative Nonconfirmation (TNC) rate (see *Findings of the E-Verify Program Evaluation*, released December 2009).

The rate at which Arizona employers first enrolled in E-Verify increased beginning at the time LAWA was passed in July 2007. Enrollment increases began with LAWA’s passage, continued for several months thereafter, and then leveled off at a rate substantially above the prelegislation rate. As seen in the graph at the top of Exhibit III-4, the number of Arizona employers signing MOUs each month before enactment of legislation was relatively small and fairly flat. On average, 11 Arizona employers signed E-Verify MOUs each month prior to July 2007. Beginning in July 2007, the number of MOUs signed each month grew, reaching a peak in January 2008, the first month of LAWA implementation, of 4,245 MOUs signed. After January 2008, the number of new E-Verify MOUs signed by Arizona employers each month began to drop consistently, reaching a relatively stable rate of around 110 new MOUs each month—a rate substantially above the pre-enactment rate of 11.³⁹

³⁹Counts of overall MOUs were log-transformed for purposes of statistical analysis. This results in the identification of change points associated with especially large (e.g., order of magnitude) changes in enrollment rates; however, the analysis of untransformed data identifies the same change points, in addition to several others (e.g., drops in November 2007 and increases in December 2007). Changes in patterns of enrollment for different industries and business sizes were similar to the overall pattern of enrollment change for both transformed and untransformed data.



Exhibit III-4. Trend in the Number of Employers Enrolling in E-Verify: October 2006–June 2009



NOTE: Counts of overall MOUs were log-transformed for purposes of statistical analysis. This results in the identification of change points associated with especially large (e.g., order of magnitude) changes in enrollment rates. However, the analysis of untransformed data identifies the same change points, in addition to several others (e.g., drops in November 2007 and increases in December 2007). There are no additional changes detected for employers from nonmandatory states when examining untransformed data. (See Section 4 in Chapter II for a more detailed explanation of these charts.)

SOURCE: E-Verify Transaction Database.



In contrast to the Arizona trend, MOU signatures in nonmandatory states⁴⁰ generally showed a slow, steady increase in the number of new MOUs signed each month except for an increase in the month after LAWA was passed. From October 2006 through July 2007, the number of MOUs signed each month by nonmandatory states was approximately 284 (bottom of Exhibit III-4). In August 2007, one month after the initial increase in MOUs began in Arizona, the rate showed a significant upward shift to 836 MOUs; after that, the series appeared to level off at a higher rate, with an average of around 986 MOUs signed each month. This suggests the possibility that the passage of LAWA may have led to increased attention to E-Verify in other states, resulting in the subsequent increase in the rate at which employers began signing up to use E-Verify. It may also reflect USCIS outreach efforts in states other than Arizona.

Outreach to employers also appears to have stimulated E-Verify enrollment. The increase in enrollment corresponds to the time period immediately following the beginning of E-Verify outreach campaigns in Arizona (September 2007), with a sharp climb in MOUs signed from September 2007 (207 new MOUs) through October 2007 (1,527 new MOUs).

The enrollment pattern of industries with a high percentage of undocumented workers was similar to other industries in Arizona. For Arizona employers in industries with a large percentage of undocumented workers, there was a small jump in enrollment in July 2007. Due to sample size considerations, this jump was only marginally significant, but it was followed by a significant jump in October 2007. For employers in other industries, the enrollment rate increased significantly in July 2007 when LAWA was passed and in October 2007 following Arizona E-Verify outreach campaigns. Thus, the overall pattern of enrollment for both industries with a higher percentage of undocumented workers and other industries was very similar to the overall pattern in enrollment.

The enrollment pattern of small and large businesses in Arizona followed very similar patterns. As with the overall pattern of enrollment, both small (e.g., less than 100 workers) and large businesses (e.g., 500 or more workers) had generally similar patterns, with sharp jumps in enrollment taking place in July 2007 and October 2007.

Some employers enrolled in E-Verify before they were required to do so in order to prepare for the mandatory implementation date. Almost a third of interviewed employers (38 of 126) signed up for E-Verify before they were required to do so (i.e., before January 1, 2008), with the majority of these employers citing that they wanted to be prepared when the law went into effect (Exhibit III-5). Other employers indicated they signed up early to ensure their workforce was legal and because E-Verify was an easy and inexpensive way to check on work authorization.

⁴⁰Nonmandatory states exclude the two states that at the time data were collected for this study, required the use of E-Verify for all of their employers (i.e., Arizona and Mississippi). Also excluded from nonmandatory states are seven states that require the use of E-Verify for some or all public employers and their contractors (i.e., Colorado, Georgia, Missouri, Nebraska, Oklahoma, Rhode Island, and Utah). For additional explanation, see Chapter II.



Exhibit III-5. Reasons Arizona Employers Reported for Enrolling in E-Verify Before January 1, 2008

Reason for early enrollment	Number of employers reporting reason
To be ready for mandatory implementation date	30
To ensure workforce was legal	5
Easy and inexpensive way to check on work authorization	2
To be in compliance	1
Don't know	1
Other	2
Total number of respondents	38

NOTE: Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Employers.

The most frequent reason given by employers for not signing up for E-Verify prior to January 1, 2008, was that they did not know about the Program. Eighty-one of the interviewed employers enrolled in the Program on or after January 1, 2008. Of these, more than half (43) reported they did not enroll before January 1, 2008, because they did not know about E-Verify. Other reasons cited by employers for not enrolling early included:

- They were not required to register until January 1, 2008;
- Little or no hiring was being done at that time;
- They were using a different work-authorization program; and
- They had heard negative feedback on the Program from other employers or the media.

4. PREPARING FOR E-VERIFY

4.1. Training

Due to the need to train all Arizona employers about the E-Verify Program so they could properly comply with all its requirements, some companies in Arizona took advantage of both the required USCIS training (i.e., tutorial, mastery test, user's manual) and other training available to them from USCIS and outside vendors. This section explores the types of training Arizona employers used to train their staff, what staff received the training, the length of the training, and any suggestions employers had about improving the training they received.

Before they can enter worker information into E-Verify, users must take the E-Verify tutorial that explains the E-Verify procedures that employers are supposed to follow, including how to enter case information, handle TNCs, and refer workers to either the Social Security Administration or USCIS. Users must then correctly answer 22 of 31 questions (70 percent) on the mastery test in order to pass the test and be allowed to use E-Verify.

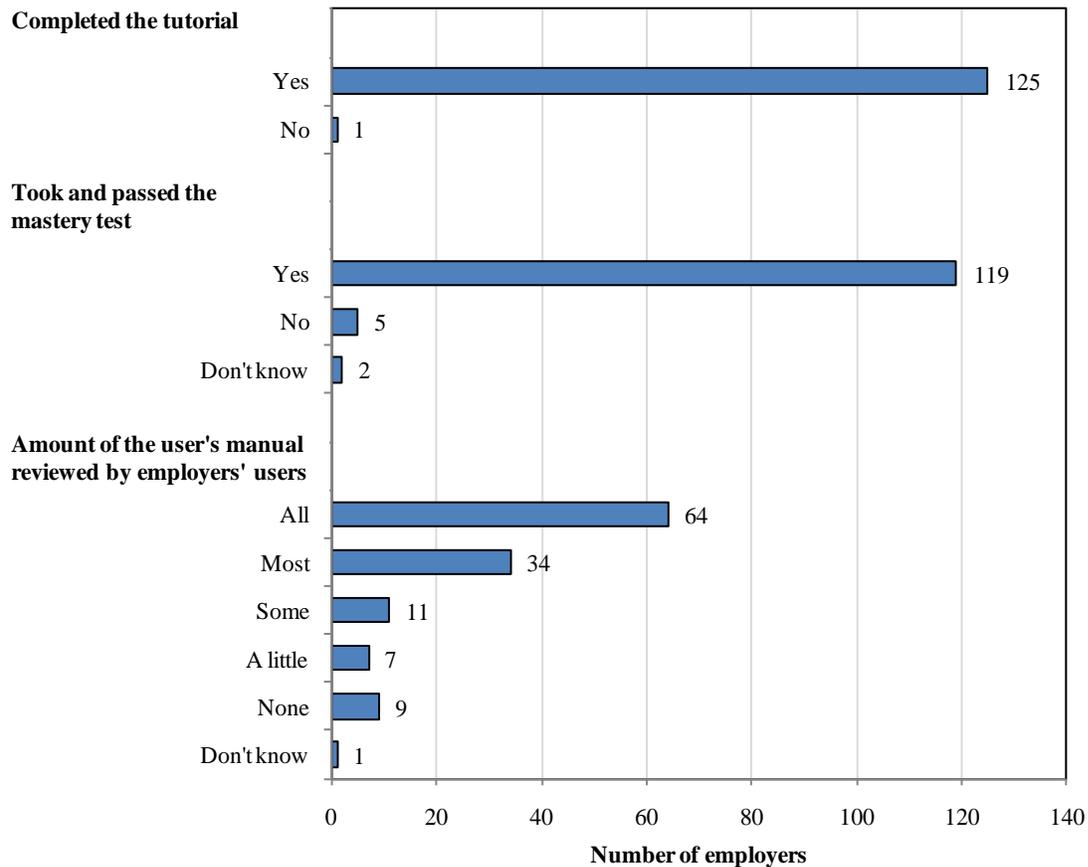
Nearly all E-Verify users followed the training procedures by taking the E-Verify tutorial. Users at all but one of the 126 interviewed employers completed the E-Verify tutorial (Exhibit III-6).



Users at most, but not all, employers took and passed the E-Verify mastery test. Most of employers (119) reported their users took and passed the E-Verify mastery test, with only five employers reporting they had users that did not complete it because they experienced problems with it (e.g., too long or timed out while the user was taking it). However, the employers with users that did not pass the mastery test could not use E-Verify unless employers had multiple users who shared passwords.

Users at about half of the employers also reviewed the entire E-Verify user’s manual, which they are instructed to read as part of their training. Sixty-four employers reported their users had reviewed the entire E-Verify user’s manual. Thirty-four employers had users that reviewed most of the manual, 11 employers reported their users had reviewed some, seven employers said their users had reviewed a little, and nine employers said their users had not reviewed the manual at all.⁴¹ Those that had reviewed a little or none of the manual may be at a disadvantage in understanding all the E-Verify procedures, which are covered more comprehensively in the manual than in the tutorial or mastery test.

Exhibit III-6. Employers’ Report of E-Verify Training Procedures



SOURCE: Onsite Interviews of Employers.

⁴¹One employer was unsure of how much of the E-Verify user’s manual had been reviewed.



Some employers participated in training beyond the required tutorial and mastery test found on the E-Verify website. A small number of employers (14) participated in webinars or other training provided by USCIS, while a slightly larger number of employers (23) participated in E-Verify-related training provided by a contractor or outside vendor. This outside training focused on legal requirements, E-Verify set-up and procedures, LAWA, record-keeping/filing, and discrimination issues. In a mandatory environment, training needs would increase substantially and perhaps be offered by a wider variety of vendors.

The majority of employers reported that one or two people in the company were trained to use E-Verify (Exhibit III-7). Of the 96 employers that reported that one or two people in the company were trained to use E-Verify, 44 employers had between 20 and 99 workers and 39 had between 100 and 499 workers. Fewer employers indicated that three or more staff members were trained to use E-Verify. Most staff were trained to use E-Verify after January 1, 2008, when LAWA went into effect.

Exhibit III-7. Number of Employer Staff Trained to Use E-Verify

Number of staff trained in E-Verify	Number of employers reporting number of staff trained	Number of employers reporting that all staff were trained on or after 1/1/2008	Number of employers reporting at least one staff member was trained before 1/1/2008
One staff member	58	56	2
Two staff members	38	33	5
Three staff members	16	10	6
Four or more staff	14	9	5
Total number of respondents	126	108	18

SOURCE: Onsite Interviews of Employers.

Over half of the employers reported that higher level staff in headquarters and branch offices also had received training on how to use E-Verify. Seventy-one employers reported that other staff at their companies received training on E-Verify whether or not they eventually became users. Forty-nine employers reported that either all or some of their human resources staff in the company headquarters were trained on how to use E-Verify, and 13 employers reported that all or some of their human resources staff in the branch offices were trained on how to use E-Verify. Nineteen employers said that other staff, such as the branch or office manager, administrative staff, president or vice president of the company, or owner, were also trained on how to use E-Verify, which suggests some of these individuals might have taken the training to understand how the Program works on a more general level rather than taking the training because they actually planned to use the Program. The primary sources for training these staff members were the E-Verify tutorial and mastery test. Training of these staff members is especially important because they are in positions that set policies and procedures on hiring, training, retention, and related Human Resources issues that can affect how well the employer is able to comply with E-Verify requirements.

Slightly over half of employers reported it took two hours per person to be trained to use E-Verify. Exhibit III-8 shows that the length of time spent training staff (users and nonusers) in their company ranged from two hours to more than eight hours, with a little over half of employers (68) reporting it took two hours to train each staff member, and almost a third (37) indicating it took three to eight hours to train each staff member.



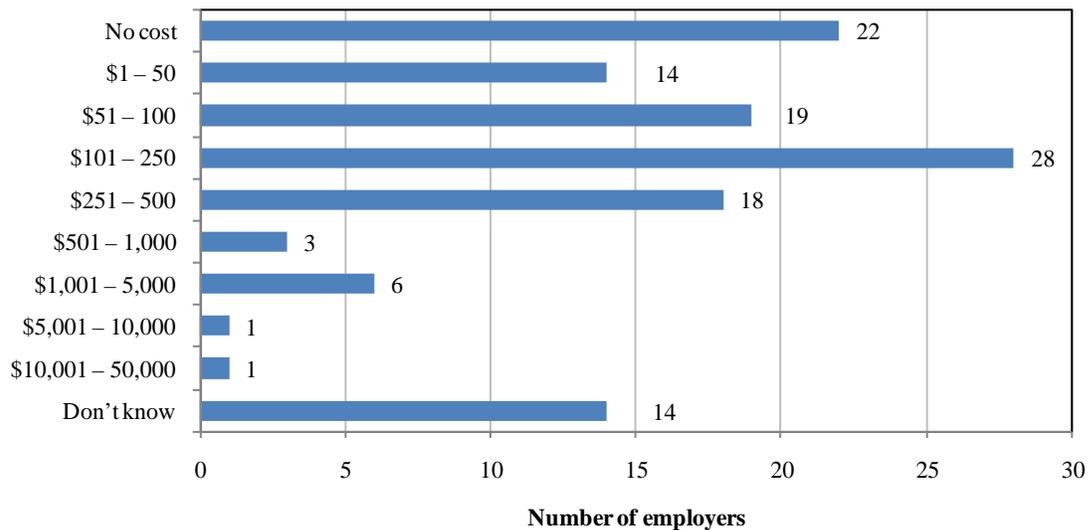
Exhibit III-8. Length of E-Verify Training Time Per Person

Length of training time	Number of employers reporting time
Two hours	68
Three to eight hours	37
More than eight hours	19
Don't know	2
Total number of respondents	126

SOURCE: Onsite Interviews of Employers.

Most employers reported that the total cost of training their staff to use E-Verify was \$500 or less. Among employers, 101 reported that total training costs ranged from no cost to \$500 (Exhibit III-9). However, 11 employers reported training costs ranging from \$501 to \$50,000, perhaps reflecting the number of people trained, the type of training, and the length of time reported for conducting training.

Exhibit III-9. Cost to Train Staff in E-Verify, as Reported by Employers



SOURCE: Onsite Interviews of Employers.

Some employers experienced challenges with the tutorial. A small number of employers (11) reported that the tutorial was too long, was difficult to understand, or timed out while they were completing it. Employers cited solving these problems by reading the tutorial in increments or only reading the summary pages of the tutorial (if they felt it was too long), reading the tutorial several times (if they felt it was difficult to understand), or signing back into the system (if they experienced timeouts).

4.2. Other Preparations for E-Verify

The majority of employers reported no problems with enrolling in E-Verify, setting up, or hiring new staff in preparation for the mandatory implementation. Among employers, 115 reported no problems enrolling in the Program, and 109 reported that they did not have to set up equipment or hire new staff in preparation for using the Program. However, a small number of employers (15) reported purchasing computers, copiers, or fax machines; adding or updating Internet access; or hiring new staff in



order to set up E-Verify at their companies. Thus, these employers incurred some initial set-up costs. An additional seven employers had problems re-enrolling in E-Verify, including problems creating a password and problems with the length of the tutorial. These employers indicated they solved these problems by calling the E-Verify helpline or re-enrolling for the Program.

5. TRANSMITTING CASES TO E-VERIFY

Although enactment of LAWA spurred enrollment in E-Verify, transmission of cases to E-Verify did not show dramatic increases until the law was implemented. Exhibit III-10 (top) shows the volume of E-Verify cases submitted by Arizona employers.⁴² There was a significant upward shift in the number of cases transmitted to E-Verify in January 2008. Prior to January 2008, Arizona employers transmitted an average of 5,745 cases per month—a volume that grew slowly from October 2007 through December 2007. In January 2008 when LAWA went into effect formally, there was a sharp increase to over 81,000 cases transmitted per month, on average. The data also show a significant drop in cases transmitted beginning in November 2008, to a little over 54,000 cases per month.

Although it is difficult to identify the reasons for the November 2008 drop in the number of cases transmitted to E-Verify, it is reasonable to conclude that some of the decline is related to a combination of two factors: an Arizona ballot initiative to abolish LAWA, and the State of Arizona's economic conditions, especially the smaller number of new hires. In November 2008, Proposition 202, also referred to as the Stop Illegal Hiring Act, was placed on the Arizona ballot. The initiative would have abolished the mandatory use of E-Verify and would have exempted thousands of Arizona employers from LAWA.⁴³ Although the initiative did not pass, some Arizona employers might have delayed verifying new hires through the Program during November and December. (The results were unofficial pending an official canvass on December 1, 2008.) Additionally, according to the *Arizona Workforce Informer*, the number of new hires in the state fell from 455,321 in the third quarter of 2008 to 417,448 in the fourth quarter of 2008—an 8 percent decrease.⁴⁴ However, this decrease is much smaller than the 33 percent decrease in E-Verify cases being submitted. By comparison, the number of cases submitted by employers in the nonmandatory group of states grew at a relatively steady rate throughout the time period January 2008 through November 2008 (Exhibit III-10, bottom). Although there were slight changes in case volume at similar times to the Arizona cases, these changes were not identified as significant.

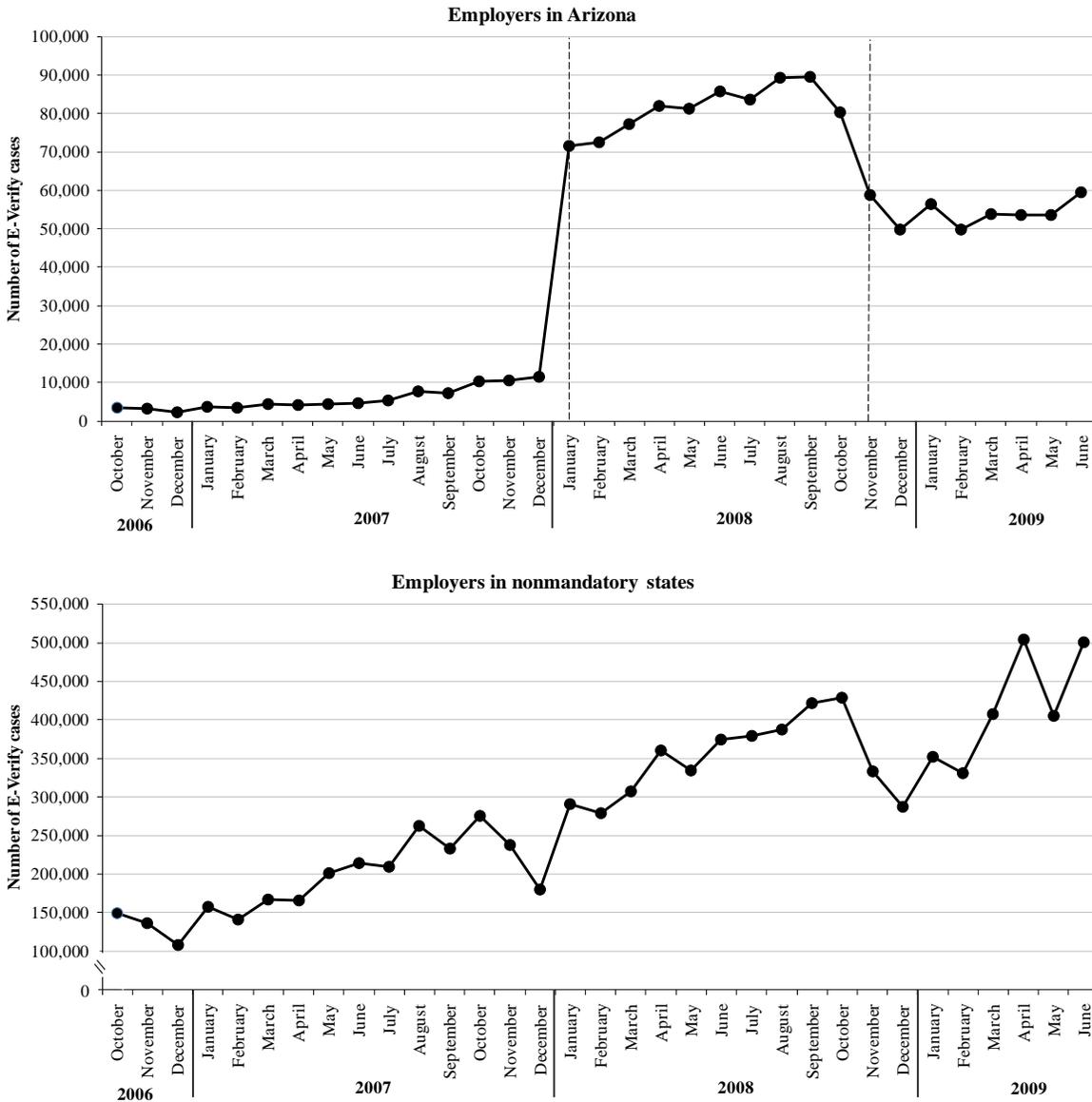
⁴² A case refers to a specific hiring event, i.e., a query sent by a specific employer to check the employment eligibility of a specific worker at a specific point in time.

⁴³ See <http://www.numbersusa.com/content/news/october-24-2008/fraudulent-arizona-prop-202-would-enable.html>.

⁴⁴ See <http://lehd.did.census.gov/led/datatools/qwiapp.html>.



Exhibit III-10. Trend in the Number of Cases Transmitted to E-Verify: October 2006–June 2009



SOURCE: E-Verify Transaction Database.

Changes in the volume of cases transmitted to E-Verify did not differ by the industry or size of employers. Among Arizona employers, there were no significant differences in the patterns of change in the number of cases transmitted for employers from industries with a large percentage of undocumented workers and employers from other industries; there were also no differences between patterns of change in the number of cases transmitted for smaller and larger employers.

A majority of Arizona employers with new hires are estimated not to have transmitted cases to E-Verify in June 2009. According to information from the U.S. Census Bureau, there were approximately 143,000 employers in Arizona in 2007.⁴⁵ Assuming that 18 percent of these employers had

⁴⁵ See the 2007 County Business Patterns (<http://censtats.census.gov/cgi-bin/cbpnaic/cbpsect.pl>).



new hires in June 2009,⁴⁶ approximately 26,000 Arizona employers had new hires in that month. Since there were only about 6,300 Arizona employers that transmitted cases to E-Verify in June 2009,⁴⁷ approximately three-fourths of Arizona employers that should have been using E-Verify in Arizona are estimated not to have been doing so, though some Arizona employers may have had cases transmitted from other sites or from Designated Agents not located in Arizona. Similarly, some cases for Arizona workers may be submitted by establishments or Designated Agents not located in Arizona.

Most new hires are estimated to have been processed through E-Verify. It appears that as many as three-quarters of new hires in Arizona had cases transmitted to E-Verify in June 2009.⁴⁸ The difference between the usage frequencies for employers and transmissions can be attributed to large employers more frequently participating in E-Verify than small employers and to large employers transmitting more cases, on average, to E-Verify than small employers (see Exhibit III-11).

Exhibit III-11. Arizona Employer Enrollment in E-Verify and Case Transmissions, by Establishment Size

Employer size (number of workers)	Number of Arizona employers enrolled in E-Verify	Approximate percentage of employers in size group enrolled in E-Verify	Number of cases transmitted to E-Verify in June 2009	Average number of cases transmitted per employer
1 to 19	4,081	3.4%	8,686	2.1
20 to 99	4,698	26.5%	15,271	3.3
100+	2,817	78.9%	40,678	14.4
Total	11,596	8.3%	64,635	5.6

SOURCE: E-Verify Transaction Database.

6. CONCLUSIONS

This chapter presented findings relevant to Arizona employers' transition to a mandatory use of E-Verify to help identify issues that the Federal government and others might consider in an expanded mandatory environment. The major findings of the chapter are:

- Many employers had not heard of LAWA prior to its January 1, 2008, implementation date and much of the information they had heard was negative.

⁴⁶ See Steven J. Davis (http://www.aeaWeb.org/annual_mtg_papers/2007/0105_0800_0101.pdf) for information on the percentage of U.S. employers with new hires. The percentage of employers in Arizona with new hires may, of course, differ from this; however, the evaluation team was unable to locate state-specific estimates.

⁴⁷ There are also undoubtedly some additional Arizona employers that are establishments of a larger company that has signed an MOU covering their establishments in Arizona and elsewhere.

⁴⁸ The estimate of new hires in Arizona should be considered a rough approximation at best. The Job Openings and Labor Turnover Survey (JOLTS) does not publish estimates at the state level. To obtain a rough estimate of the number of new hires, the evaluation team assumed that the percentage of new hires in Arizona was proportional to the number of paid workers in the country. (Bureau of Labor Statistics, Job Openings and Labor Turnover: June 2009 (http://www.bls.gov/news.release/archives/jolts_08122009.pdf) and U.S. Census Bureau, 2007 County Business Patterns (<http://censtats.census.gov/cgi-bin/cbpnaic/cbpsect.pl>)).



- Mass media and professional associations were the main sources of information about E-Verify used by Arizona employers prior to signing the MOU, with additional information sought from USCIS websites and customer service helplines.
- Although the usage patterns reveal that there was a dramatic rise in employer enrollment in the Program after the enactment of LAWA, a similar rise in the transmission of cases to the Program did not occur until January 2008, when LAWA went into effect.

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CHAPTER IV. IMPACT OF A MANDATORY E-VERIFY PROGRAM IN ARIZONA ON UNAUTHORIZED EMPLOYMENT AND THE LABOR MARKET

1. INTRODUCTION

One of the primary goals of E-Verify is to reduce unauthorized employment. Earlier evaluations⁴⁹ have pointed out that as long as the Program is only used in a small percentage of hires, its impact on unauthorized employment will be limited because workers who cannot find employment with an E-Verify employer will still have available a large number of non-E-Verify employers that they can approach for employment. As discussed in Chapter III, the volume of cases for Arizona increased dramatically when the Legal Arizona Workers Act (LAWA) mandating use of E-Verify was implemented in January 2008—from approximately 5,700 per month prior to January to approximately 60,000 in June 2009—a 10-fold increase. Although the analysis of E-Verify usage indicated that not all new hires in Arizona are screened using E-Verify, it is clear that a substantial percentage of them are.

This chapter addresses the following questions related to the impact of LAWA in reducing unauthorized employment:

- What are the opinions of Arizona employers and workers about the impact of LAWA on unauthorized employment?
- What has been the impact of E-Verify on the size of the undocumented population in Arizona?
- What factors influence how effective mandatory E-Verify has been in reducing unauthorized employment in Arizona?
- What have the effects of E-Verify been on the labor market?

In examining these questions, it is important to note that the effect of mandatory employment verification in most states other than Arizona may be less extreme, because Arizona had a relatively high rate of unauthorized workers in its workforce in 2008 (an estimated 9.8 percent compared to a national rate of 5.4 percent).⁵⁰

⁴⁹ *Findings of the E-Verify Program Evaluation*, December 2009 (http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf).

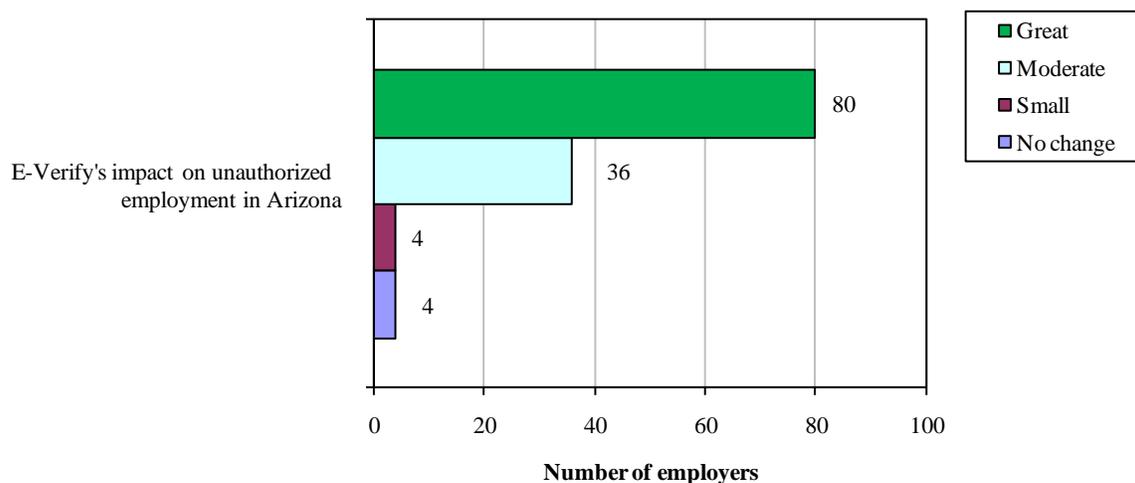
⁵⁰ Jeffrey S. Passel, Senior Demographer, Pew Hispanic Center, and D'Vera Cohn, Senior Writer, Pew Research Center, *A Portrait of Unauthorized Immigrants in the United States*, 4.14.2009 (<http://pewhispanic.org/reports/report.php?ReportID=107>).

2. OPINIONS ABOUT THE IMPACT OF LAWA ON UNAUTHORIZED EMPLOYMENT IN ARIZONA

This section addresses the question of whether it appears that making E-Verify mandatory has led to a reduction in unauthorized employment in Arizona. The opinions of the employers and workers who have been experiencing the transition from a nonmandatory program to a mandatory program provide some insights into the extent to which this is the case.⁵¹

The majority of employers interviewed in this study expressed the belief that unauthorized employment in Arizona has been reduced substantially because of LAWA. One-hundred twenty-four of the 126 employers reported an opinion on this issue. Of these 124 employers, 80 reported LAWA had a great impact on unauthorized employment in Arizona and another 36 thought it had a moderate impact (Exhibit IV-1). When asked to explain how E-Verify has had an impact on unauthorized employment, 53 reported that fewer workers without authorization were employed. Another 23 employers thought there were fewer authorized workers available to work, presumably because it was easier for authorized workers to obtain employment since employers are prohibited from hiring unauthorized workers under LAWA.

Exhibit IV-1. Employers’ Opinions on How E-Verify Has Had an Impact on Unauthorized Employment in Arizona



NOTE: Two employers were uncertain of the extent to which E-Verify had an impact on unauthorized employment in Arizona. SOURCE: Onsite Interviews of Employers.

Although workers were not asked directly about the impact of LAWA on unauthorized employment, their responses to related questions indicate that they also have seen a reduction in unauthorized employment. One-hundred eighteen of the 160 workers expressed an opinion about whether LAWA was a good law. Thirty-five (of the 118 workers) responded they thought it was good primarily because it prevents people who are not authorized to work from taking jobs away from those who are. Among those saying the law was not good, the most frequent reason, expressed by 53 workers,

⁵¹Future studies planned by the U.S. Citizenship and Immigration Services will use econometric analyses to obtain further insights into this issue; such analyses are not within the scope of this study.

was that “it denies jobs to hard-working people,” which presumably occurs because it makes it harder for unauthorized workers to find employment.

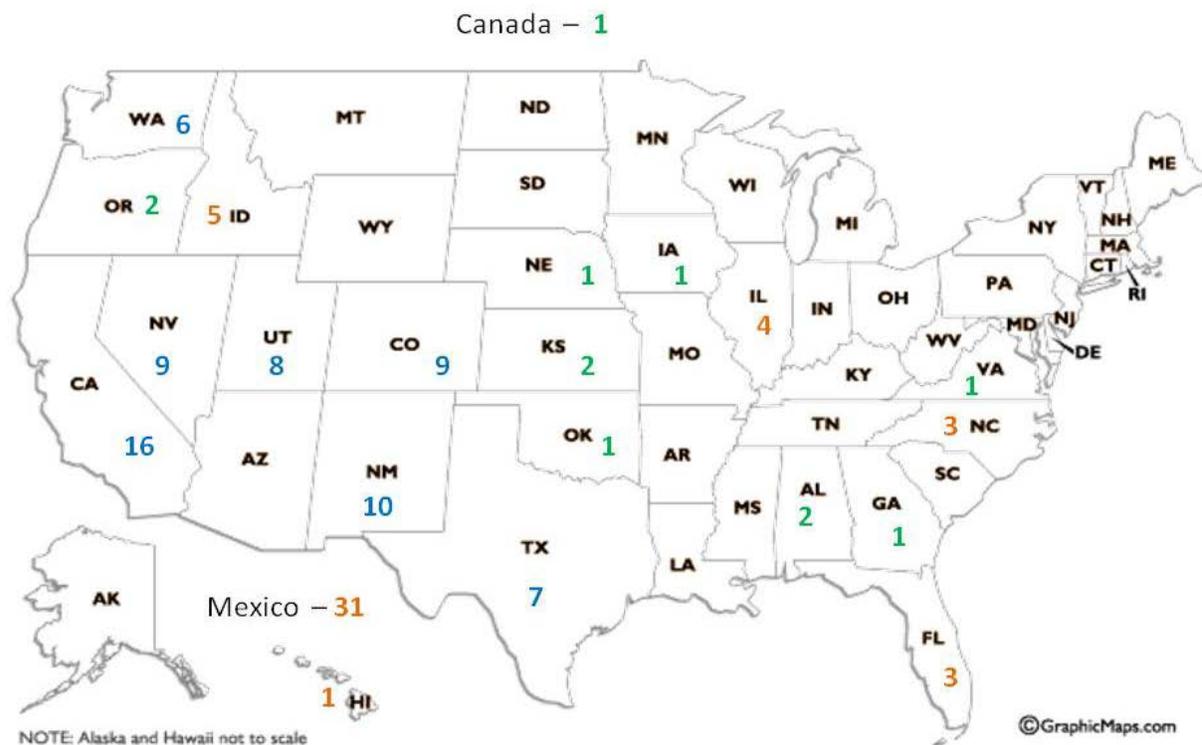
3. IMPACT OF E-VERIFY ON THE SIZE OF THE UNDOCUMENTED POPULATION IN ARIZONA

Immigration researchers often point out that a major reason for unauthorized immigration to the United States is that people want to obtain jobs that are better than the jobs they could obtain in their home countries.⁵² Thus, it is reasonable to believe that a mandatory E-Verify Program would lead to a decrease in the size of the undocumented population. This section examines whether there is information from the case study that suggests this has happened in Arizona.

More than a third of interviewed workers said they knew people who had moved from Arizona to Mexico or planned to do so as a result of E-Verify. Among the 159 workers responding to a question about whether they knew people who had left Arizona or planned to do so because of E-Verify, 67 reported that they did.⁵³ Of these, almost all workers (61) said that these individuals had left Arizona or planned to leave Arizona after January 1, 2008, when LAWA went into effect. Although many of these workers were moving elsewhere in the United States, especially the states bordering Arizona, 31 of the interviewed workers knew of others who were planning to move to Mexico (Exhibit IV-2). It is not possible to estimate how large the population of workers leaving the United States is from this information since a given immigrant moving could be known by multiple people and, conversely, a given respondent could know multiple people leaving. Nevertheless, workers shared their perceptions about why people they knew were leaving Arizona, which strongly suggest that at least some unauthorized workers left the United States in the face of mandatory use of E-Verify in Arizona. Presumably, a higher number would leave if fewer jobs not subject to E-Verify screening were available in other states.

⁵²See, for example, Immigration Policy Center, American Immigration Council, *Focusing on the Solutions: Employment Verification: Repairing our Broken Immigration System*, Washington, DC, November 12, 2009 (http://www.immigrationpolicy.org/sites/default/files/docs/Employment_verification_Solution_111209.pdf).

⁵³One worker was unsure of whether he or she knew anyone who had left Arizona or planned to leave Arizona as a result of E-Verify.

Exhibit IV-2. Places That People Moved to or Planned to Move to as a Result of E-Verify in Arizona, by Number of Workers Reporting Location

NOTES: Workers could select more than one response. Six of the workers responding that they knew people who had left Arizona or planned to leave Arizona were unsure of where these people moved.

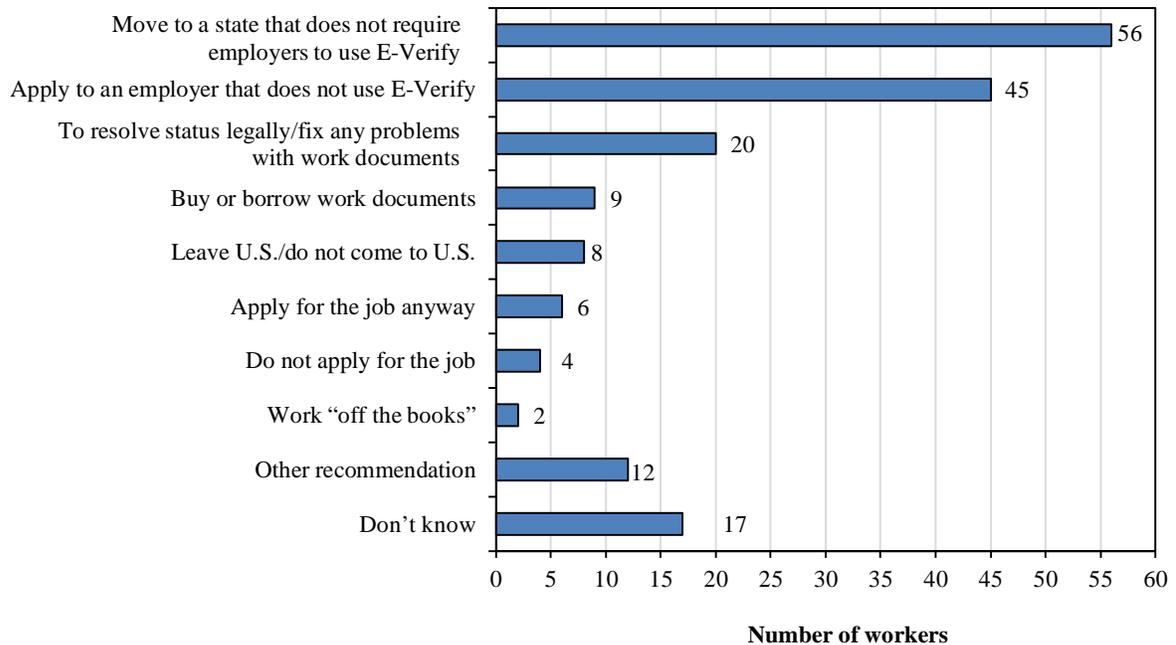
SOURCE: Onsite Interviews of Workers.

Community leaders and officials at the Arizona stakeholders meeting also reported anecdotally that some workers who were not work authorized were leaving Arizona to pursue employment in states where E-Verify is not mandated. A stakeholders meeting was held on March 9, 2009, in Phoenix, Arizona, by the U.S. Citizenship and Immigration Services (USCIS) Office of Policy and Strategy and Westat. A number of participants indicated that migration out of Arizona was occurring because of the implementation of LAWA.

An indirect indication that LAWA is decreasing the size of the undocumented population in Arizona is that over a third of the workers interviewed would advise an unauthorized worker to move to a state that does not mandate the use of E-Verify. As shown in Exhibit IV-3, 56 of the 159 respondents to the question about what they would advise a person without employment authorization to do said that they would advise them to move to a state that does not require employers to use E-Verify.⁵⁴ Not only does this indicate that these workers would advise unauthorized workers to leave the state, it also implies that they would advise unauthorized workers considering coming to the United States to avoid Arizona.

⁵⁴Seventeen workers responded that they did not know what they would advise a person without work authorization to do.

Exhibit IV-3. Worker Recommendations to People Who Are Not Authorized to Work in the United States



NOTE: Sum does not add to total number reporting because respondents could select more than one response.

SOURCE: Onsite Interviews of Workers.

Expansion of mandatory use of E-Verify to all states would presumably make it more effective in reducing unauthorized employment and undocumented immigration. The above analyses make it clear that it is highly likely that LAW A has indeed led to a reduction in the undocumented population in Arizona. It is reasonable to believe that if the option of moving to a state without mandatory E-Verify participation did not exist, a portion of the undocumented population would leave the country.

Moreover, a study from the Public Policy Institute of California (PPIC) confirms that LAW A decreased the size of the undocumented population in Arizona. Using data from the Pew Hispanic Center reports by Jeffrey Passel and D’Vera Cohn, independent estimates by Robert Warren, and the Department of Homeland Security reports by Hoefler et al., PPIC researchers found that the population of noncitizen Hispanic immigrants in Arizona—a high proportion of whom are unauthorized immigrants—fell by roughly 92,000 persons, or approximately 17 percent, over 2008–2009, because of LAW A. They conclude that this decline was greater than those observed in comparison states and was not caused by the recession.⁵⁵

⁵⁵ Public Policy Institute of California, *Lessons from the 2007 Legal Arizona Workers Act*, March 2011, p. 19 (http://www.ppic.org/content/pubs/report/R_311MLR.pdf), and p. 2 (http://www.ppic.org/content/pubs/other/311MLR_appendix.pdf).

4. FACTORS AFFECTING THE IMPACT OF E-VERIFY ON UNAUTHORIZED EMPLOYMENT

4.1. Identity Fraud

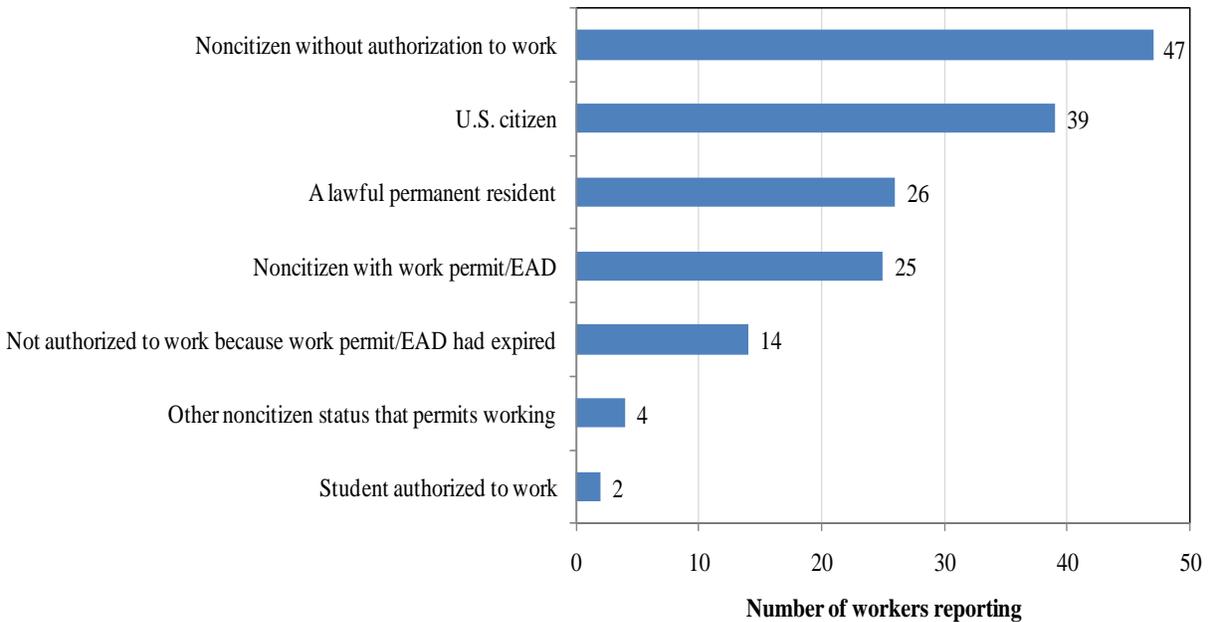
As discussed in previous evaluation reports,⁵⁶ E-Verify was not designed to prevent identity fraud. If a worker presents documents that contain information about a real work-authorized person and if the documents appear to be valid, neither E-Verify nor the Form I-9 process is likely to detect the identity fraud. However, not all fraud is identity fraud, and E-Verify is capable of identifying other types of fraud. The framers of LAW A were aware of the potential use of identity fraud to circumvent E-Verify and therefore added provisions that were later strengthened in the amendments to LAW A effective May 2008 that made such actions as obtaining, manufacturing, possessing, or using identifying information of another person and knowingly accepting the identity of a real or fictitious person for the purposes of obtaining employment a felony. Since use of such documents is not always readily detected, it is unclear how effective these provisions will be at reducing identity fraud in employment verification in Arizona.

Many of the interviewed workers who had received Tentative Nonconfirmations (TNCs) reported they were noncitizens without authorization to work in the United States at the time their cases were submitted to E-Verify. Although it is reasonable to believe that unauthorized workers are less likely than authorized workers to cooperate with the study and some unauthorized workers are presumably reluctant to tell an interviewer that they are not work authorized,⁵⁷ 61 of the 160 interviewed workers identified themselves as noncitizens without authorization to work or as having had expired work permits or Employment Authorization Documents (EADs) at the time they applied to their employers (Exhibit IV-4).

⁵⁶ Findings of the E-Verify Program Evaluation, December 2009 (http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf).

⁵⁷ See Chapter II for a discussion of why this is the case.

Exhibit IV-4. Workers’ Reported Work-Authorization Status at the Time They Applied for the Job With the Sampled Employer



NOTE: Two workers were unsure of their work-authorization status at the time they applied for the job, and one worker declined to answer.

SOURCE: Onsite Interviews of Workers.

A number of interviewed workers reported that they had used fraudulent documents in their attempt to obtain employment. Forty-seven of the 160 workers who indicated they were noncitizens without authorization to work indicated they purchased, borrowed, and/or made the documents they showed to the employer. Since these workers received TNCs, they presumably used documents that did not have information about real work-authorized persons or their documents included fraudulent photographs. Only nine of 159 workers said that they would recommend the worker buy or borrow work documents when asked a question about what they would advise a person unauthorized to work in the United States. Since these workers said they would tell this person to make sure the information in the documents describes a real person and that the picture looks like him or her, it appears that these workers have learned how E-Verify works. It is likely that over time, knowledge about how E-Verify works will increase among undocumented workers and those that help them obtain work. To the extent that this does happen, the effectiveness of E-Verify in identifying workers without employment authorization will decline.

The future successful use of identity fraud for obtaining work is, of course, limited by the availability and cost of documents that are likely to result in E-Verify findings of “work authorized.” The nine workers who said they would tell a person who was not authorized to work to buy or borrow documents estimated the cost as being between \$100 and \$1,000. Six of these workers said that the cost to buy or borrow work documents was between \$200 and \$499, one worker said the cost was between \$100 and \$199, and another worker said the cost was between \$500 and \$999. Seven of these workers indicated that it was hard to buy or borrow such documents (as opposed to being very easy, easy, or very hard). The fact that LAWA increased the legal penalties in Arizona for “knowingly obtaining, manufacturing, recording, possessing or using any personal identifying information of another person, with the intent to obtain employment” may be one reason that obtaining such documents is not easy.

4.2. Employers' Prompt Termination of Employment Under E-Verify Procedures

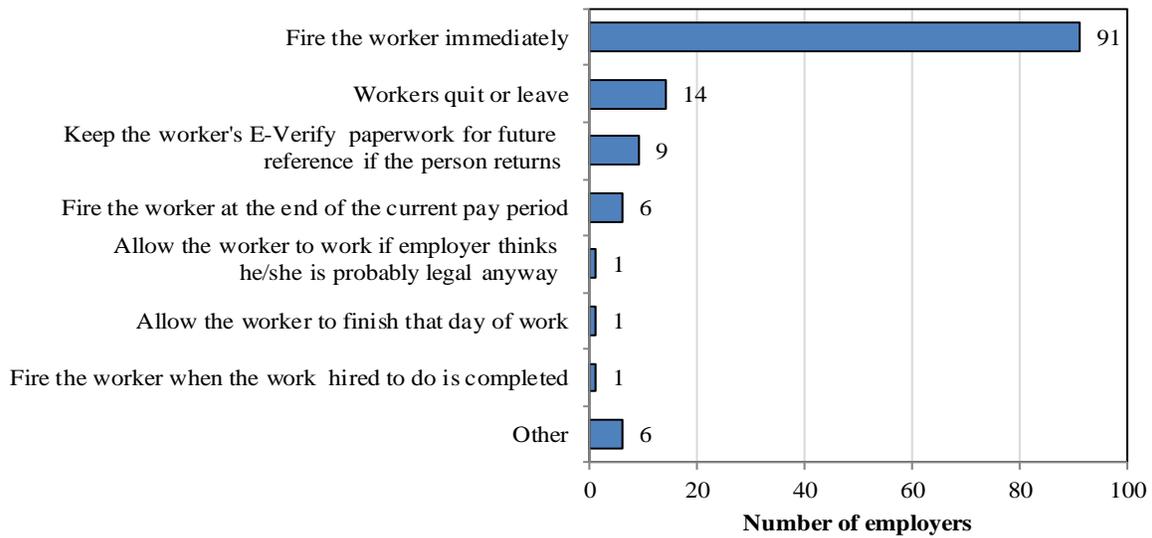
The identification of unauthorized workers only leads to a reduction in unauthorized employment if their employment is terminated or, in the case of workers screened prior to the start of work, is never started. For workers who have started work, prompt termination of employment is critical to reducing the length of time unauthorized workers are employed. Employers in a mandatory environment where it is difficult to find new workers may be more likely to postpone terminating workers than would other employers. On the other hand, employers in a mandatory environment may be more compliant than other employers because of the greater possibility of sanctions being enforced.

Arizona employers appear to terminate workers receiving Final Nonconfirmations (FNCs) more promptly than national employers. Of the 99 employers that reported terminating workers who received an FNC or not found work-authorized finding, two-thirds reported terminating workers within one to two hours of receiving the finding, and 27 employers terminated worker's employment at the end of the day that the finding was received.⁵⁸ This is somewhat faster than was observed in the national Web survey in which only half of the employers reported terminating employment within a day.

Most Arizona employers also promptly terminate the employment of workers who receive a TNC finding and decline to contest. As shown in Exhibit IV-5, 91 employers (out of 125) reported that if a worker decided not to contest his or her TNC status, they fire the worker immediately, which is consistent with E-Verify requirements. One employer said the worker is allowed to finish that day of work, six employers reported firing the worker at the end of the current pay period (estimated to range from one day to one week), and one employer reported firing the worker after the work or project the worker was hired to do was completed (estimated at one day). This is consistent with responses from the workers; of the 71 workers who reported they were notified of their TNC finding but did not contest, 57 workers said that their employer either fired or did not hire them.

⁵⁸ Because of methodological differences between the national study and the current study, strict statistical comparisons are not feasible; however, both studies can be used to get a general sense of the situation. In this case, it is clear that in Arizona as well as the rest of the nation, only a small minority of employers report not terminating workers who receive Final Nonconfirmation (FNC) or not found work-authorized findings.

Exhibit IV-5. Actions Reported by Employers When a Worker With a TNC Decides Not to Contest



NOTE: Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Employers.

4.3. Alternate Employment Opportunities

Not all employment opportunities in Arizona are with employers participating in E-Verify, allowing unauthorized workers to obtain employment without committing identity fraud. As discussed in Chapter III, there are employers, especially smaller employers, that do not participate in E-Verify even though they are mandated to do so. These employers include employers that are not aware of the LAWA requirements as well as “off the book” employers or employers that decide for other reasons not to use E-Verify. Workers may also become self-employed, because neither the Form I-9 nor E-Verify requires them to be screened under that circumstance.⁵⁹ The ongoing opportunities for employment with non-E-Verify employers in Arizona is presumably reflected in the fact that when asked what they would recommend to someone not authorized to work in the United States, 45 out of 159 workers would tell the person to apply to an employer that does not use E-Verify.⁶⁰ In the future, increasing awareness of E-Verify on the part of employers may decrease the availability of legitimate jobs that are not subject to E-Verify screening. On the other hand, more opportunities may arise for other types of employment with non-E-Verify employers as they and workers adjust to LAWA. For example, employers may decide to hire more “off the books” workers if they face difficulty in hiring legal workers for positions traditionally employing many undocumented workers.

⁵⁹ Estimates by PPIC researchers suggest that LAWA caused a drop in wage and salary employment of Hispanic noncitizens by approximately 56,000 while noncitizen Hispanic self-employment increased by about 25,000. See Public Policy Institute of California, *Lessons from the 2007 Legal Arizona Workers Act*, March 2011, pp. 24-25 (http://www.ppic.org/content/pubs/report/R_311MLR.pdf).

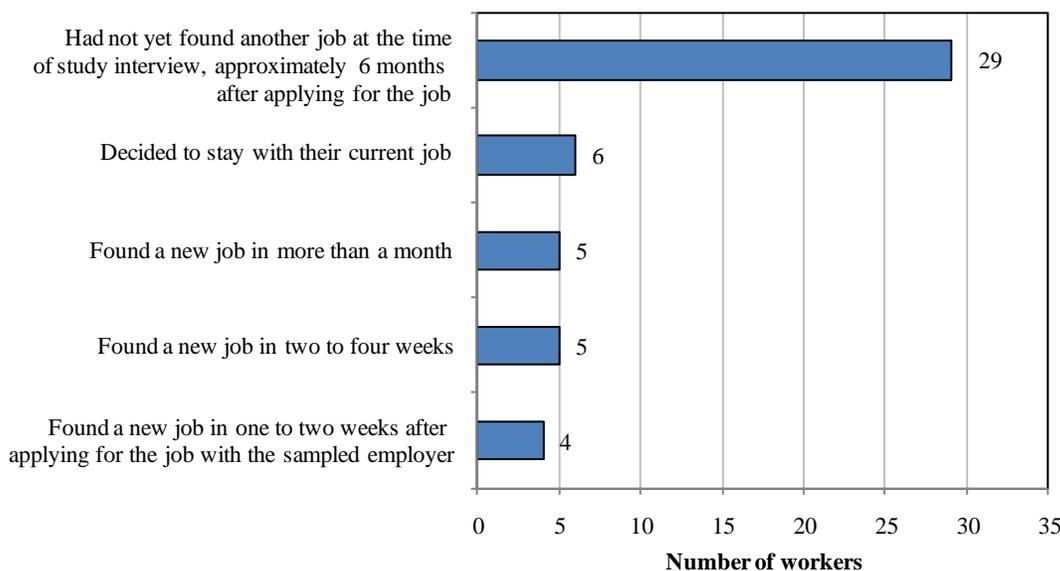
⁶⁰ Seventeen workers responded that they did not know what they would advise a person who is unauthorized to work in the United States.

4.4. Time to Get a New Job

As discussed in the last comprehensive report, the impact of E-Verify on unauthorized employment is, in part, a function of how long workers whose employment has been terminated remain unemployed. It is reasonable to expect that unauthorized workers will find it harder to find new employment in a mandatory environment than in an environment where there are many jobs that can be obtained from nonmandatory employers.

It appears that the length of time to find a new job after applying with the sampled employer was longer in Arizona than was true for workers interviewed in the last national evaluation; however, this may be due to factors other than E-Verify. Of the 49 workers who were not working for the sampled employer at the time of the interview, well over half (29) had not found a new job approximately six months after applying for the job with the sampled employer⁶¹ (Exhibit IV-6). It might have taken Arizona workers longer to find a new job in part due to the difference in Arizona’s unemployment rate in 2009 compared to 2008. The seasonally adjusted unemployment rate in Arizona during the time of the Arizona data collection (July – November 2009) averaged about 10.2 percent compared to an average unemployment rate of 5.4 percent during the data collection for the last national evaluation (see *Findings of the E-Verify Program Evaluation*, December 2009).⁶²

Exhibit IV-6. Length of Time to Find a New Job After Applying With the Sampled Employer



SOURCE: Onsite Interviews of Workers.

In the last evaluation, workers with TNCs who were not offered jobs were asked how long it took them to find jobs. That question is not strictly comparable to what was asked in this study; however, in the last study, less than one-quarter (7) of the 38 workers who reported they had been prescreened and not offered a job, and who also reported the length of time it took them to find an alternate job, said that it had taken

⁶¹These 49 workers may or may not have worked for the employer.

⁶²See *Arizona Workforce Informer*, a product of the Office of Employment and Population Statistics in the Arizona Department of Administration, at <http://www.workforce.az.gov/pubs/labor/laus-sa00-09.pdf>.

four or more months to find a new job.⁶³ Although not conclusive, this suggests that the expansion of E-Verify increased the time it took unauthorized workers to find new employment.

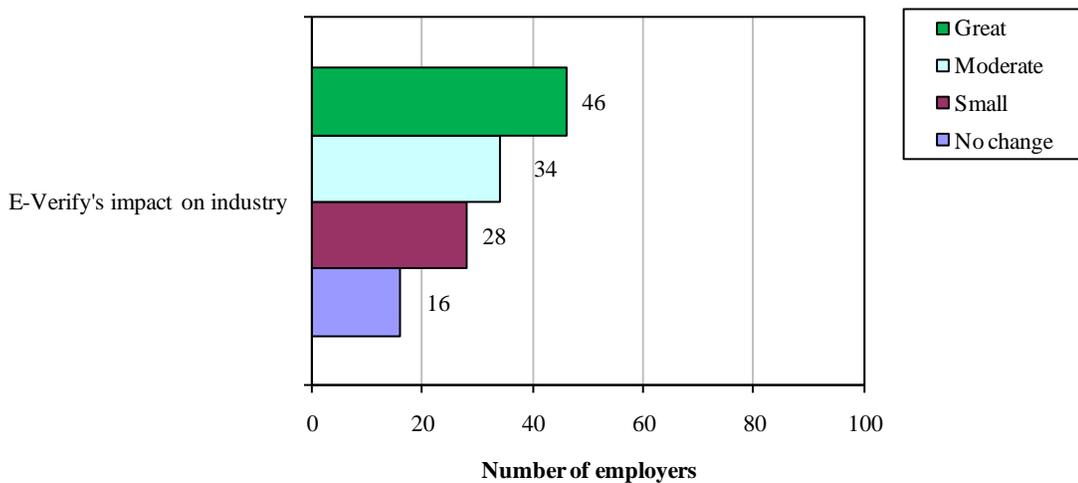
5. EFFECTS OF REDUCED UNAUTHORIZED EMPLOYMENT ON LABOR MARKET

5.1. The Role of Industry

It is well known that unauthorized employment varies significantly among industries. It is, therefore, reasonable to expect that employers in different industries have had different experiences with LAWA’s effect on their labor markets.⁶⁴

Most employers thought that E-Verify had affected their industry to a great or moderate extent; however, some employers reported that it had had a small or no impact. As shown in Exhibit IV-7, employers were divided on their opinions regarding the extent to which E-Verify had affected their industry. At one extreme, 46 of 126 employers reported that E-Verify affected their industry to a great extent; at the other extreme, 16 employers thought there had been no change in their industry due to E-Verify.

Exhibit IV-7. Employers’ Opinions on How E-Verify Affected Their Industry in Arizona



NOTE: Two employers were uncertain of the extent to which E-Verify had an impact on their industry.

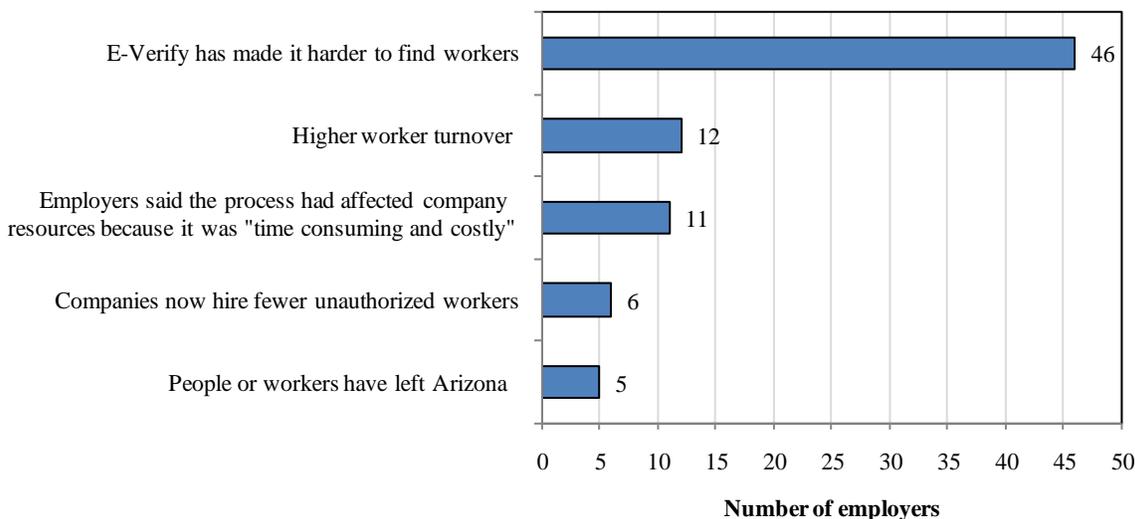
SOURCE: Onsite Interviews of Employers.

The most commonly reported impact of E-Verify on employers’ industries was that it was now harder to find workers. As shown in Exhibit IV-8, of the 108 employers that thought that E-Verify had had some impact on their industry, more than a third (46) thought that E-Verify had made it harder to find workers, with one employer, for example, stating, “the pool of eligible workers is smaller.”

⁶³ In the last evaluation, the question was only asked of workers who said they were prescreened. However, there is no reason to believe that the length of time differs substantially between prescreened workers and other workers.

⁶⁴ See Exhibit I-2 in appendix I for the industry classification used in this report.

Exhibit IV-8. Reasons Employers Reported for Saying That E-Verify Had Had an Impact on Their Industry

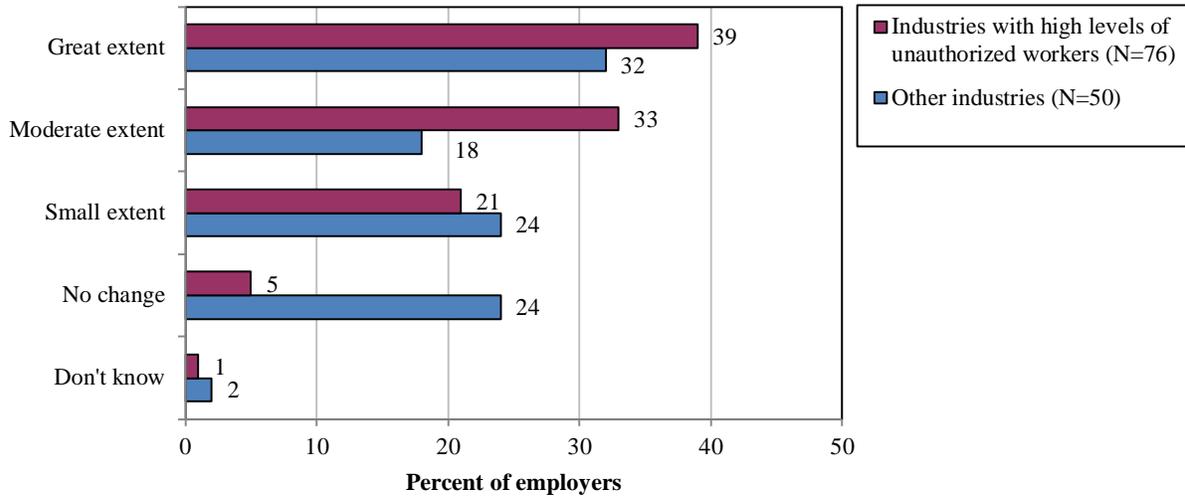


NOTES: Based on responses by the 108 employers that reported that E-Verify had had some impact on their industry; miscellaneous responses provided by fewer than five employers are not included. Sum does not add to total number reporting because respondents could choose more than one response.
SOURCE: Onsite Interviews of Employers.

Much of the variation in employers' views of the impact of E-Verify on their industries is attributable to whether the employer was in one of the industries that employs a high percentage of unauthorized workers. Not surprisingly, only 5 percent of employers in industries with high levels of unauthorized employment saw no impact of E-Verify on their industry compared to 24 percent of employers in other industries (Exhibit IV-9).⁶⁵

⁶⁵ The difference is statistically significant at the .05 level.

Exhibit IV-9. Comparison of Industries With High Levels of Unauthorized Employment With Other Industries on the Extent to Which Employers Believe That E-Verify Has Affected Their Industry



NOTE: Industries that are likely to employ undocumented workers include: Agriculture, Forestry, Fishing and Hunting (NAICS=11), Mining (NAICS=21), Construction (NAICS=23), Food Manufacturing (NAICS=311), Services to Building and Dwellings (NAICS=5617), and Food Services (NAICS=722).

SOURCE: Onsite Interviews of Employers.

6. CONCLUSIONS

The mandatory E-Verify Program in Arizona appears to have reduced both unauthorized employment and the undocumented population. In the process, especially in industries that have traditionally employed large numbers of undocumented workers, it has resulted in making it more difficult for employers to fill job vacancies.

Although a mandatory E-Verify has had the intended impact on unauthorized employment, there are still ways that workers without employment authorization can find work in Arizona:

- They can commit identity fraud to obtain employment by borrowing or buying documents with information about a work-authorized person.
- They can work for employers using E-Verify during the time that it takes the employer to enter information into E-Verify and during the contesting period.
- They can become self-employed, since E-Verify is not used for self-employed workers.
- They can obtain employment with legitimate employers that are not using E-Verify, even though its use is mandated, or with “off-the-books” employers.

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CHAPTER V.

EMPLOYER SATISFACTION WITH E-VERIFY AND THE IMPACT OF E-VERIFY ON EMPLOYER BURDEN

1. INTRODUCTION

One of the goals of the E-Verify Program is to prevent undue burden on employers. It is reasonable to expect that the burden of E-Verify will be greater, on average, when the Program is mandated than when it is not, simply because employers that face special challenges in implementing the Program do not have the option of terminating participation. For the same reason, satisfaction with the Program can be expected to be lower, on average. This chapter examines information Arizona employers provided about how satisfied they are with E-Verify and their views of the burdens of using the Program. Where possible, information obtained from this study is compared with information from the last national evaluation of E-Verify. Although methodological differences between the two studies preclude statistically precise comparisons, it is possible to get a general sense of the relative satisfaction and burden associated with E-Verify in Arizona and in the nation.

This chapter discusses employer communication with the U.S. Citizenship and Immigration Services (USCIS) and Social Security Administration (SSA), training, and the user-friendliness of the E-Verify system. The challenges and burdens examined include concerns about the loss of business licenses, prescreening, the three-day rule, and dealing with Tentative Nonconfirmations (TNCs). Unless otherwise noted, 126 employers responded to the questions asked.

2. SATISFACTION

2.1. Employer Communication With USCIS and SSA

As was the case in the last national study, the majority of employers reported they experienced few problems when they called the USCIS customer service and helplines or contacted SSA. Similar to what was reported in the last evaluation report,⁶⁶ most employers said they were satisfied with the communications with USCIS and SSA. This level of satisfaction probably resulted from USCIS' strong presence in Arizona (i.e., they conducted Webinars and other E-Verify training in Arizona between September 2007 and January 2008). Presumably, SSA staff were also prepared for the potential increase in worker referrals resulting from LAWA. More specifically:

- Of the 20 Arizona employers that reported contacting SSA with worker or case-specific questions or general E-Verify questions, 15 (75 percent) said that the SSA field office staff were familiar with E-Verify and were able to help the employers all or most of the time. In the previous evaluation, 57 of 74 employers (77 percent) were similarly satisfied. Thus, in both studies approximately three-quarters of the employers reported positive interactions with SSA. One might speculate that making E-Verify mandatory in the state would lead to

⁶⁶ *Findings of the E-Verify Program Evaluation*, December 2009 (http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf).

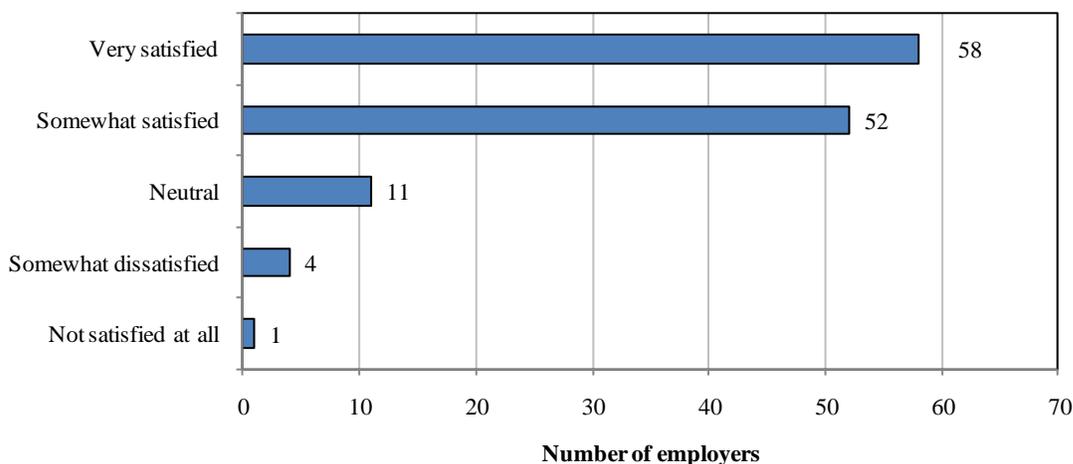
an increase in the awareness of E-Verify among SSA staff that would lead to an improvement in employer satisfaction, but the level of satisfaction remained about the same.

- During the Arizona onsite interviews, 68 of 82 employers (83 percent) that used the USCIS technical helpline and 60 of the 65 employers (92 percent) that used the program helpline reported no problems. In the prior national evaluation, 84 of 103 employers (82 percent) reported overall satisfaction with communication with USCIS.

2.2. Training

Almost all of the employers were satisfied with the training they received about E-Verify from USCIS. Of the 126 employers responding to a question about satisfaction with E-Verify training (i.e., tutorial, mastery test, user’s manual, webinars), 110 (87 percent) were satisfied with the training and five (4 percent) were not satisfied (Exhibit V-1). The high percentage of satisfied employers may well reflect improvements and additions to the training materials since 2008, when only 70 of 95 employers (74 percent) were satisfied and 25 (26 percent) were not satisfied with the training.⁶⁷

Exhibit V-1. Level of Employer Satisfaction With Training Provided by USCIS



SOURCE: Onsite Interviews of Employers.

2.3. Data Entry

Most employers indicated that the E-Verify Program has sufficient edit checks. Of the 126 employers that responded to a question about the sufficiency of edit checks in E-Verify, 106 employers reported that E-Verify has sufficient edit checks to help prevent them from making mistakes.

⁶⁷In late 2010, the USCIS Verification Division revised the E-Verify user’s manual to make it more user-friendly and plans to simplify and streamline the E-Verify tutorial in 2011.

2.4. Connecting to the System

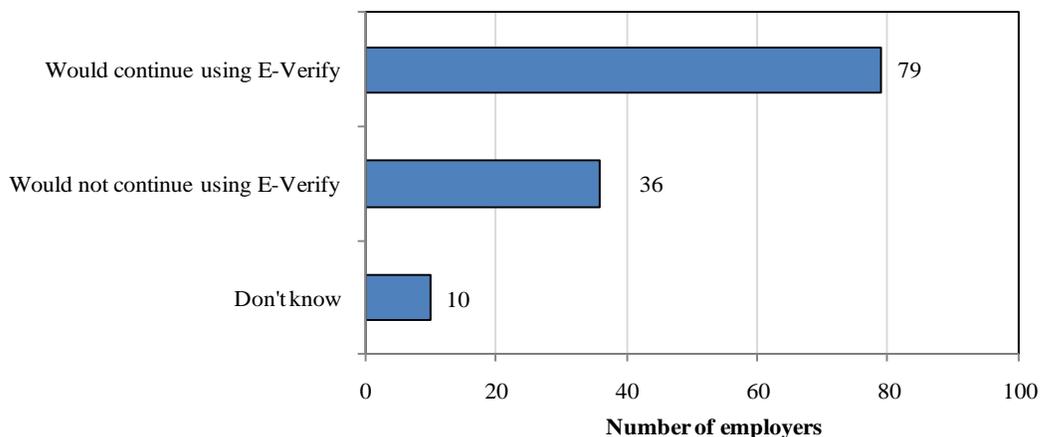
When asked about their experiences in connecting to the E-Verify system, some employers reported having the same problems that employers reported in the national study. Twenty-five Arizona employers reported having problems making connections to the E-Verify system, with 16 employers reporting that the site was sometimes not available; others had problems with their passwords and with the system timing out.⁶⁸ A small number (six employers) reported these problems have continued and that in order to resolve them, they called the E-Verify helpline or reset their passwords. Of the 52 employers observed using the E-Verify system, 12 employers had to make two or more attempts to connect to the system. In the national study, 49 of the 105 onsite employers also reported being dissatisfied with user-friendliness, with more dissatisfied employers citing system unavailability as an issue.

2.5. Indirect Indicators of Satisfaction

Employers were asked a number of questions that provide some general insights into their overall satisfaction with E-Verify, even though the questions do not directly address the issue of how satisfied the employer is with the Program. These questions, discussed in this section, cover whether the employer would continue to use E-Verify even if the Program were not mandatory and what advice they would give to employers in other states that might be considering making E-Verify mandatory. In addition, employers with branch offices in other states were asked if they would use E-Verify for workers outside of Arizona.

The majority of employers said that they would continue using the E-Verify Program even if participation were not mandatory. When asked if they would continue using E-Verify if the mandatory law requiring Arizona employers to use E-Verify was repealed, 79 employers said they would continue using E-Verify, 36 stated they would not continue using it, and 10 employers were not sure whether they would continue using it (Exhibit V-2).⁶⁹

Exhibit V-2. Employers' Positions on Continuing to Use E-Verify If the Mandatory Law Was Repealed



SOURCE: Onsite Interviews of Employers.

⁶⁸ No further specifics were provided regarding connectivity or site unavailability problems. Employers were only asked what they perceived were technical problems and were unaware that the “timing out” problem is actually a USCIS Office of Technology security requirement.

⁶⁹ One employer refused to answer.



Of the 79 employers that would continue using E-Verify, 40 gave the reason of feeling confident that the company was hiring only authorized workers, 11 said they were staying “out of trouble” with enforcement agencies, seven said they were feeling legally protected and having peace of mind, and six said E-Verify was an easy-to-use, quality program. Some of the other reasons cited included less turnover of workers and help with identity fraud.⁷⁰

For the employers that would not continue using the Program, the reason cited by the majority of these employers (20 of 36) was that the extra workload/burden placed on the employer was too great. Some of the other reasons given included that it was unfair or ineffective and that not using it would give everyone who wanted to work the opportunity to do so.

When asked what advice they would give to employers in other states that might be considering making E-Verify mandatory, the majority of employers made positive statements about E-Verify; however, some employers made negative statements. Of the 100 employers expressing an opinion about E-Verify, 76 offered positive opinions such as they would recommend that employers use the Program; it is a good tool to use and is effective; it allows employers to ensure that they are hiring authorized workers; and the Program is easy to use. Examples of opinions from the 24 employers that mentioned something negative include they would tell employers not to use E-Verify; the Program caused more work for the employer and/or created a burden on the employer in terms of time and cost; they should fight against their states’ making E-Verify mandatory; the Program is ineffective; and there are no penalties for employers that did not use the Program or used it incorrectly.⁷¹ The other 26 employers either had no opinion or proffered advice that was not clearly negative or positive.

Nearly half of employers with a branch office in a state other than Arizona use E-Verify for workers at out-of-state branches. Of the 25 employers with a branch office in another state, six of the employers said they conduct E-Verify queries at their Arizona-based offices for all new hires company-wide (i.e., for workers at both the Arizona office and out-of-state branch offices), and six said their branches in other states use E-Verify at the branch (Exhibit V-3). Ten employers said they do not use E-Verify to check new hires at out-of-state branches because there is no requirement to do so; it would be too much of a hassle; out-of-state branches already use a verification method other than E-Verify; and no administrative staff work at out-of-state branches.

Exhibit V-3. Use of E-Verify by Employers With Branch(es) Outside of Arizona

Use of E-Verify by employers with branches outside of Arizona	Number of employers reporting
E-Verify is used for Arizona workers only; it is not used for workers at out-of-state branch offices	10
E-Verify is used by both Arizona and out-of-state branch office(s)	6
All E-Verify queries are conducted in Arizona for workers at both Arizona and out-of-state branch(es)	6
Don't know	3
Total number of respondents	25

NOTE: Question was asked only of employers that reported having a branch office in a state other than Arizona.

SOURCE: Onsite Interviews of Employers.

⁷⁰Employers could select more than one response.

⁷¹At the time of data collection, the Legal Arizona Workers Act (LAWA) included no enforcement mechanism for employers that were not using E-Verify or that were using E-Verify improperly. As of March 31, 2010, Arizona introduced SB 1403, which would make violation of this law punishable in court.

3. BURDENS

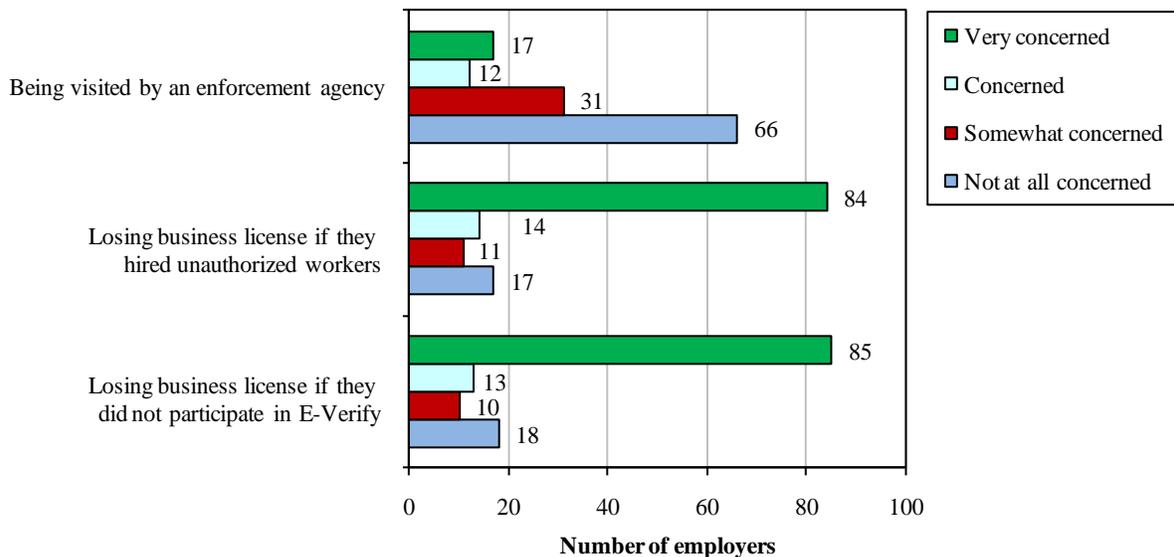
3.1. Loss of Business Licenses

LAWA, as amended on March 31, 2010, by SB 1403, imposes penalties on employers who are found knowingly or intentionally hiring or employing unauthorized workers, which can lead to suspension or revocation of an employer’s business license. It also requires employers to use E-Verify to ensure the employment authorization of new hires.

The majority of employers were very concerned about losing their business licenses if they did not participate in E-Verify or if they were found to have hired unauthorized workers. When asked about the extent to which they were concerned about losing their business license if they did not participate in E-Verify, 85 of 126 employers indicated that they were very concerned (Exhibit V-4). Employers were also asked how concerned they were about losing their business license if they were found to have hired unauthorized workers and 84 reported being very concerned.

The majority of employers were not concerned about being visited by an enforcement agency. When asked how concerned they were about being visited by one of the enforcement agencies (such as the U.S. Immigration and Customs Enforcement) as a result of participating in E-Verify, over half of the employers (66 out of 126) reported they were not at all concerned. In focus groups and discussions with employers during prior evaluations, some employers incorrectly assumed or heard that participation in E-Verify exempted them from worksite enforcement.

Exhibit V-4. Employers’ Level of Concern Over Losing Their Business License and Being Visited by an Enforcement Agency



SOURCE: Onsite Interviews of Employers.

3.2. Prescreening

The E-Verify authorizing statute prohibits use of the Program for prescreening job applicants. Employers have reported this prohibition to be burdensome because they have to pay and train new hires during the period that they contest TNCs and then frequently have to terminate their employment if they are not work authorized.

As was true in the last national study, not being permitted to use E-Verify with job applicants was frequently cited as creating burdens for employers. The majority of interviewed Arizona employers thought prescreening job applicants in the E-Verify Program should be permitted. Of the 126 employers asked their opinion about prescreening, over half (71) stated that they think prescreening should be permitted. When asked why, most employers indicated that prescreening would save the employer time and money (62 out of 71 employers, or 87 percent). For example, one employer stated, “it would eliminate having to hire and pay workers while waiting for them to take care of their paperwork, which the majority of them do not do.” These results are consistent with the national results reported in the last evaluation where 66 percent of the respondents to the Web survey said they wanted the E-Verify system to be used by all employers to prescreen applicants before they are hired or start working.

When asked for ways to cut employer costs of losing workers not found work authorized while still protecting worker rights, the most frequent cost-cutting suggestion was to permit prescreening. Among the 34 employers that expressed an opinion about how to reduce employer costs related to the loss of workers, 24 employers (71 percent) said to allow prescreening (Exhibit V-5). For example, one of the 24 employers that suggested allowing prescreening said that, “allowing companies to use it [E-Verify] as a screening tool [prior to hiring] would reduce hiring costs.”

Exhibit V-5. Employer Suggestions for Changing E-Verify to Reduce the Cost of Losing Workers Not Found Work Authorized While Protecting Worker Rights

Employer suggestions for changing E-Verify	Number of employers reporting
Allow prescreening	24
Shorten contesting period	3
Extend contesting period	1
Give workers information to become legal	1
Unions should E-Verify workers	1
Restructure work permits	1
Reduce DHS response time	1
Allow complex names (e.g., hyphenated or multiple last names)	1
Expand types of documents used in Photo Screening Tool	1
Government-sponsored training to identify fraudulent documents	1
Total	34

NOTES: Question was asked only of the 34 employers that reported having suggestions for changing E-Verify to reduce the cost of losing workers not found work authorized while protecting worker rights. Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Employers.

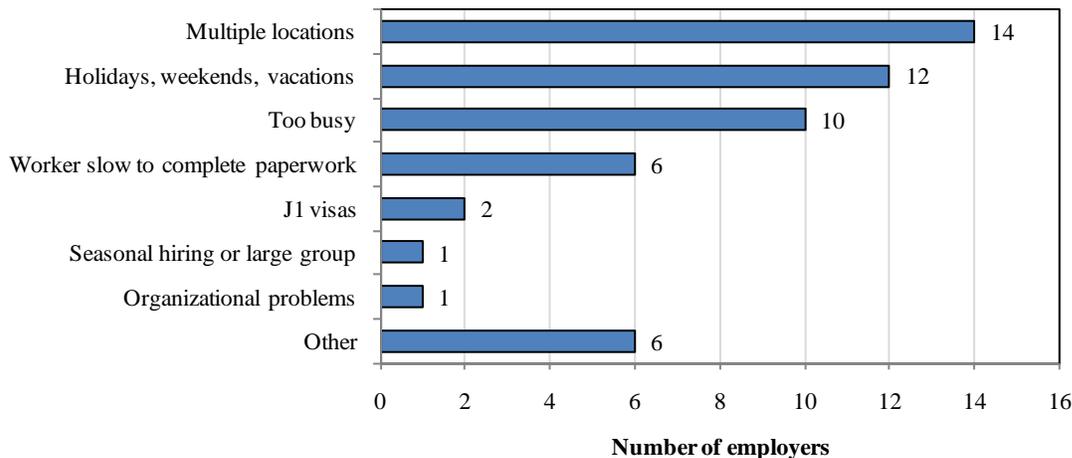
3.3. The Three-Day Rule

E-Verify procedures require that employers submit worker data to E-Verify no later than three days after an employee begins work for pay or has accepted an offer of employment and the Form I-9 is completed. This requirement has been cited as a burden because many employers find it impossible to comply with the rule due to staffing or logistical issues. On the other hand, some employers have noted that the longer the period to use E-Verify the longer they must pay and train workers that they ultimately must let go if they are unable to confirm employment authorization.

As was true in the national study, many employers reported that it was difficult to consistently enter the Form I-9 information into E-Verify within the required time period. Of the 126 employers interviewed, 49 found that entering cases into E-Verify within three Federal working days, as required by E-Verify, was sometimes challenging. In the national onsite study, 26 employers suggested that the three-day requirement be lengthened to one or two weeks.

Employers that enter cases into E-Verify for workers hired at other locations were especially likely to encounter problems entering data into E-Verify within three days of hire. Employers do not necessarily use E-Verify at the same site that they hire workers; they may, for example, hire workers at a satellite office or at a construction site without computer facilities, or a headquarters or branch office may enter cases into E-Verify for multiple establishments. Among the 49 employers saying that they have problems meeting the three-day rule, 14 explained that the problem was due to hiring at multiple locations (Exhibit V-6). As one employer explained, “This office is in Phoenix. If we have a job in a remote location, managers don’t always get me the paperwork I require on time. The I-9 form may not be filled out properly, and we send it back and forth. More time is lost.”

Exhibit V-6. Reasons Employers Gave for Finding it Challenging to Enter Data Into E-Verify Within Three Federal Work Days



NOTE: Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Employers.

Other obstacles to promptly entering information into E-Verify included hiring workers when no one was available to enter information and competing demands on the time of staff entering data into E-Verify. Among the 49 respondents to the question of why they found it challenging to enter cases within the allotted three-day period, 12 employers said that they had problems entering information

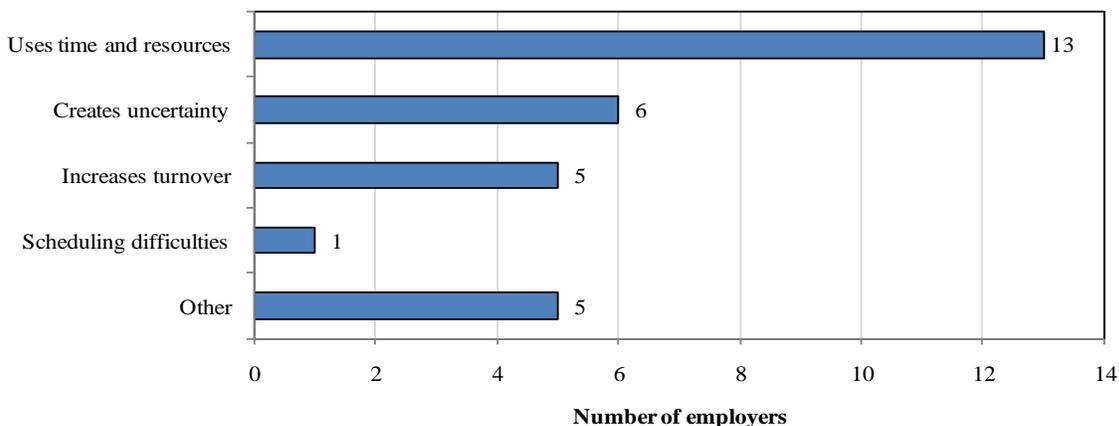
promptly for workers hired on holidays, weekends, and during employer staff vacations. Another frequently cited reason for not entering data into E-Verify in a timely fashion was that staff was too busy.

3.4. Contesting Tentative Nonconfirmations

As a result of following TNC procedures, employers may need to devote resources to entering and monitoring cases in the E-Verify system, may face increased turnover and replacement costs when workers with TNCs quit or decline to contest, and may have to choose between overtime pay for existing employees or adjusting their work timetables after losing new hires with TNCs.

As was true in the national study, some employers indicated that the process of workers contesting TNCs is burdensome for their company. Among the 90 Arizona employers⁷² that reported at least one of their workers had contested a TNC, 27 said that the worker-contesting process “causes problems for their company.” As shown in Exhibit V-7, 13 employers cited the problem of the time and resources devoted to dealing with their TNC cases, including the costs of managing and resolving cases, and of hiring, training, and losing workers. Six employers stated that the uncertainty of whether workers would contest or contest successfully created a problem because they could not hire a replacement until they knew definitively that a worker had contested unsuccessfully, or the period for contesting TNCs had expired. Similar experiences were reported in the last evaluation.⁷³

Exhibit V-7. Problems Reported by Employers That Are Caused by the Process of Workers Contesting TNCs



NOTES: Question was asked only of employers that reported that the TNC contesting process for workers has caused problems for the employer. Sum does not add to total number reporting because respondents could choose more than one response. SOURCE: Onsite Interviews of Employers.

Additionally, some employers reported problems with trying to promptly notify workers of TNCs, which would add to the burdens caused by the process of workers contesting TNCs. Thirty-seven employers cited difficulties with notifying workers of TNCs promptly, for reasons such as the worker was offsite and difficult to reach, the worker had a schedule outside of regular hours such as weekends or

⁷² Employers that prescreened were excluded from this analysis.

⁷³ Differences in questions asked precluded direct comparison of frequencies between the two studies.

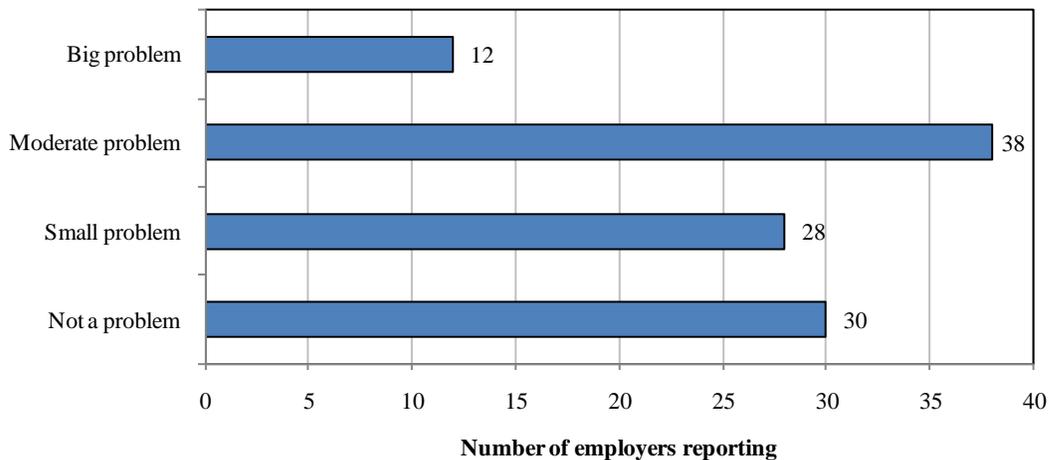
evenings or was on vacation or sick leave, and the employer was unable to reach the worker because of missing or inaccurate contact information.

3.5. Staffing

Employers report that they face staffing issues because of E-Verify since they must replace workers that quit because they receive TNCs and do not choose to contest or that must be fired under E-Verify rules. The increase in staff turnover results in an increased burden and cost to employers.

Consistent with national results, employers were more likely to consider loss of staff a burden than they were to consider contesting TNCs a burden. Out of 108 respondents to a question about whether staff turnover was a problem for them, 78 said it was a problem, 12 said that it was a big problem, while 38 found it to be a moderate problem (Exhibit V-8). In the last evaluation, staff losses were also found to be a greater burden for employers than were the costs of contesting TNCs.

Exhibit V-8. Extent to Which Employers Reported That Additional Staff Turnover Due to E-Verify Findings Was a Problem for Their Company



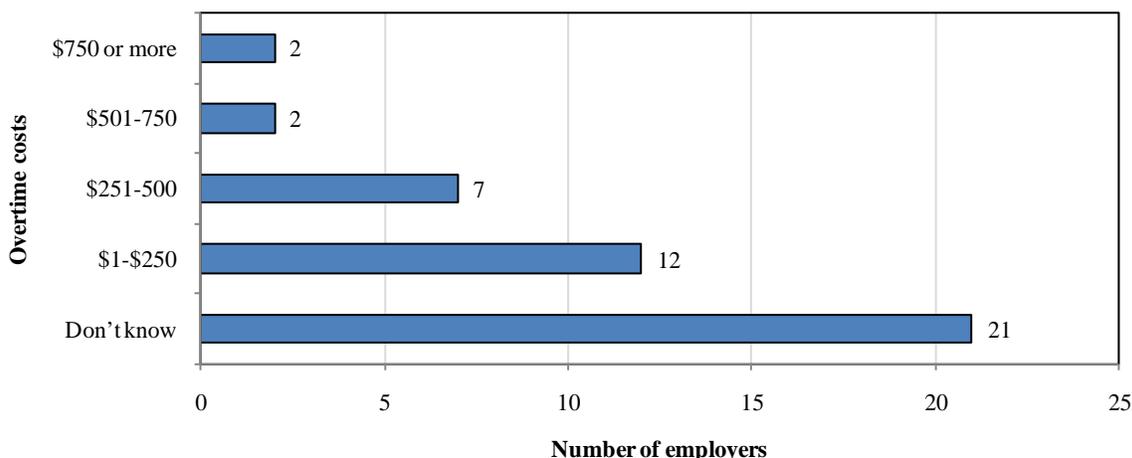
NOTE: This question was asked only of the 108 employers that reported having to fire a worker, having a worker who could not be hired, or having a worker quit because of an E-Verify finding.

SOURCE: Onsite Interviews of Employers.

As was true in the national study, employers frequently lost their training investment when employment was terminated because of E-Verify. Since site visits were only done for employers with three or more TNC cases within a five-month period, it is not surprising that almost all (108 out of 126) employers reported that they have had to fire a worker, had a worker who could not be hired (they were prescreening job applicants), or had a worker quit because of an E-Verify finding. The majority of these 108 employers (68) said they had incurred costs associated with already having trained these workers. In the national study, loss of training costs was also mentioned frequently by employers.

Another frequent financial cost attributable to E-Verify reported by employers was **having to pay other employees to work overtime while they were short-handed**. Among the 108 respondents asked about the impacts of staff turnover, 44 reported costs for overtime pay because of E-Verify. These employers reported that they spent between \$4 and \$700 more than if they were able to pay workers regular wages;⁷⁴ the median difference reported was \$250 (Exhibit V-9). A number of employers in the national study also reported incurring additional overtime costs.

Exhibit V-9. Employers’ Estimate of How Much More They Spent in Overtime Pay Because of the Loss of Workers Due to E-Verify



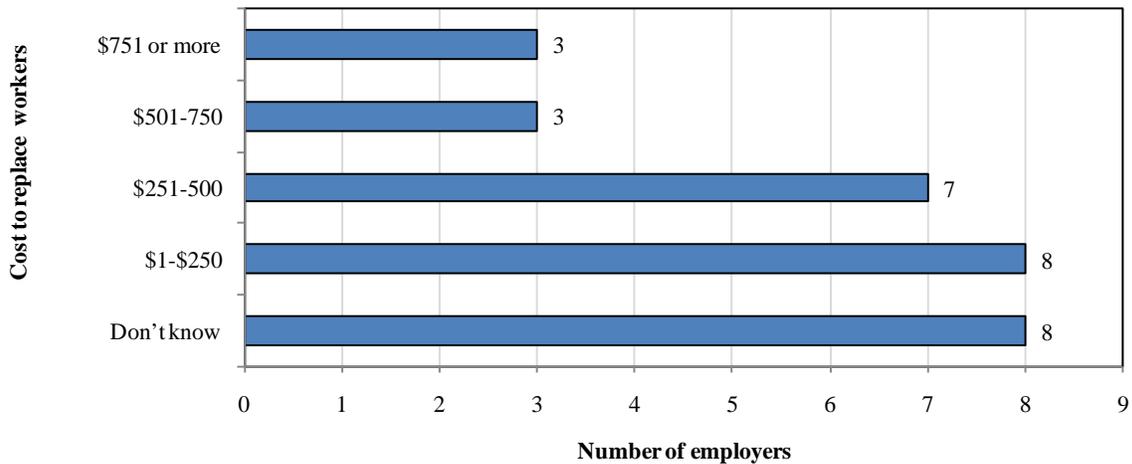
NOTE: Question was asked only of employers that reported having to pay other workers to work overtime while they were short-handed.

SOURCE: Onsite Interviews of Employers.

Some employers said their hiring costs had increased due to the need to hire replacements for workers terminated because of E-Verify findings. Of the 108 employers that reported having to fire a worker, having a worker who could not be hired, or having a worker quit because of an E-Verify finding, 29 employers said that they had increased hiring costs due to E-Verify. Reported costs for these employers ranged from \$50 to \$1,500 per worker, with a median of \$350 (Exhibit V-10). A less frequent cost cited by employers was that of having to initially screen more job applicants due to the number of workers who would not be employed due to E-Verify.

⁷⁴ Two outliers reported this cost at over \$1,500.

Exhibit V-10. Employers’ Cost to Replace Workers Terminated Due to E-Verify



NOTE: The question was asked only of the 29 employers that reported their hiring costs have changed because of the need to hire replacements for workers terminated because of E-Verify findings.
SOURCE: Onsite Interviews of Employers.

A small number of employers experienced other financial burdens when their company lost workers who quit or were fired because of E-Verify findings. Seventeen employers reported costs due to changes in planning, such as delays of construction and scheduling work; the cost of materials not returned by these workers, such as equipment and uniforms; and the expense of additional recruitment and training. Three employers said it was burdensome to lose the skills and knowledge of a strong worker. “If they were a really good worker, it stinks to have to let them go, but we have to follow through.” Two employers complained that losing workers led to extra paperwork.

Some employers also reported nonfinancial burdens associated with loss of workers due to E-Verify. Six employers of the 108 that had experienced losing a worker or applicant because of E-Verify reported that having staffing shortages was stressful and put a burden on the supervisor to get the work done.

4. ADDITIONAL EMPLOYER SUGGESTIONS FOR DECREASING THE BURDEN OF USING E-VERIFY

In addition to suggestions related to prescreening and the three-day rule, employers offered a large number of other suggestions for decreasing their burden, which were generally similar to suggestions noted in the last evaluation report.⁷⁵

- Cover other topics in trainings (provided by either USCIS or an outside contractor or vendor) such as the TNC process, worker identification documents, timeframes for entering information into E-Verify and for resolving TNCs, the definition of new hire and rehire, how to handle complex names, and the Form I-9 process (33 employers).

⁷⁵Employers could select more than one response to this question.

- Reduce the frequency that passwords need to be changed and ease restrictions on creating passwords (12 employers).
- Provide more information/help on how to handle TNCs (10 employers).⁷⁶
- Make the Program mandatory for all 50 states (seven employers).
- E-mail notifications of case updates or changes to the system (six employers).⁷⁷
- Update SSA and USCIS databases and improve communication between the two agencies (five employers).
- Expand the Photo Screening Tool to include all types of documents that may be presented by workers (four employers).
- Make the process for entering worker names simpler (three employers).
- Shorten workers' eight-day period in which workers go to SSA or contact USCIS to contest a TNC (three employers).

A small number of employers also offered suggestions to improve employer communication with SSA and USCIS. Among the seven employers that offered suggestions to improve communication with SSA and USCIS, three recommended more training for SSA field office staff, with one employer mentioning that it was discouraging talking to SSA because “the expectation when calling is I will not get help.” Three other employers recommended having staff who could speak to employers about specific worker cases as well as having staff who could speak more languages. One employer recommended having one person at either agency who could act as a liaison and “go between the two agencies when issues arise.”

5. CONCLUSIONS

The mandatory use of E-Verify by Arizona employers does not seem to have had a negative impact on typical employer satisfaction with the Program, as had been feared. Arizona employers reported about the same level of satisfaction as reported in the last national evaluation. Similarly, most of the challenges and burdens reported by Arizona employers are the same as those reported in the national evaluation, including both financial and nonfinancial aspects of adhering to the three-day rule, not being allowed to prescreen, TNCs, and staffing. However, just under two-thirds of Arizona employers said they would continue using E-Verify if it were not mandatory, which seems to indicate that changes are needed to make the Program more satisfactory and less burdensome to employers in a mandatory program.

⁷⁶Recently, videos that address how to handle TNCs became available on the USCIS website to employers. Employers may also sign up for webinars on the USCIS website to obtain general information on E-Verify procedures, including how to handle TNCs.

⁷⁷The USCIS Ombudsman recommended that USCIS develop and add a tickler/calendar system in E-Verify that alerts E-Verify users via e-mail and outside of the E-Verify system of cases that require action. See page 2, (http://www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf)

CHAPTER VI.

WORKER RIGHTS AND DISCRIMINATION

1. INTRODUCTION

Previous evaluations of the E-Verify Program have examined the extent to which worker rights and discrimination are affected by the Program. These reports have concluded that the use of E-Verify makes some employers more confident in their ability to determine which foreign-born workers are employment authorized, thereby making it more likely that they will hire these workers in an E-Verify environment. However, these analyses have also pointed to ways that the Program has created problems for employment-authorized foreign-born workers resulting in unintentional discrimination, since foreign-born workers are more likely to have erroneous Tentative Nonconfirmations (TNCs) than are U.S.-born workers and because there are burdens associated with having erroneous TNCs. Although some of the burden of E-Verify on workers, e.g., the need to resolve TNCs with the Social Security Administration (SSA) or U.S. Citizenship and Immigration Services (USCIS), is inherent in the Program, much of the Program's burden is attributable to employers' violating E-Verify procedures designed to protect workers' rights.

The last evaluation report indicated that employers in Arizona seemed to be slightly less compliant overall with the E-Verify procedures than employers in other states. This difference might indicate a lower level of compliance among employers forced to use the Program. However, it is possible that the difference is attributable to differences in employers' characteristics, especially the high percentage of employers in Arizona that have recently enrolled in E-Verify. This chapter addresses the question of how compliant Arizona employers were with procedures designed to protect worker rights in spring 2009, over a year after the start of mandatory E-Verify. It also examines whether there was a change in the erroneous TNC rate in Arizona attributable to making E-Verify mandatory and whether the financial and nonfinancial costs for workers of getting an erroneous TNC differ in a mandatory environment from what was experienced in a nonmandatory environment.

Much of this chapter relies on comparisons of data from Arizona employers and workers collected in late 2009 with the data collected in the last national evaluation in spring 2008. As explained in Chapter II, there are sufficient methodological differences as well as timeframe differences between the two studies to preclude analyses of statistical significance; however, it is possible to get some "ballpark" estimates that provide insight into the likely impact of E-Verify on workers' rights and discrimination.

The report uses the erroneous TNC rate (i.e., the number of TNCs received by workers determined to be work authorized at some point in the verification process) as an imperfect indicator of the "true" rates for each of these groups, even though, as discussed in Chapter II, this rate underestimates the rates that would be obtained if the actual work-authorization status were known for these workers.

1.1. Protection of Worker Rights

In addition to job applicants being notified that the employer uses E-Verify, the primary worker rights specified in E-Verify are for workers to:

- Be screened using E-Verify only after being hired;

- Be properly notified of any TNCs received;
- Be properly referred to SSA or USCIS if they wish to contest the TNC; and
- Not be subject to any adverse actions by employers during the contesting period.

2. THE IMPACT OF MANDATORY E-VERIFY ON EMPLOYER COMPLIANCE WITH E-VERIFY PROCEDURES DESIGNED TO PROTECT WORKERS’ RIGHTS

2.1. Notifying Applicants About the Use of E-Verify

Employers are required to either post the E-Verify participation poster in an area where job applicants would notice it or attach it to job application packets.

Generally, more Arizona employers reported displaying the E-Verify participation poster in an area where job applicants would notice it or including this information in their application packets than was reported by employers nationally in the prior study. Over half the employers (66 out of 126) reported that they displayed the E-Verify poster on a wall or bulletin board at the entry to the company, while 32 employers posted it on a wall or bulletin board in the reception area of the Human Resources department (Exhibit VI-1). Five employers said they included it in application packets, and only four employers reported that they do not display the E-Verify poster. Although not directly comparable to the results from the Arizona study, in the national study about 60 percent of the 82 (out of 109) employers whose poster locations were able to be observed by the interviewers displayed them in an area that was visible by job applicants.⁷⁸

Exhibit VI-1. Employers’ Reported Locations of E-Verify Participation Poster

Location of poster	Number of employers reporting location
Posted on wall/bulletin board at entry to company	66
Posted on wall/bulletin board in reception area of Human Resources department	32
Posted on employee notice board with other Federal Human Resources requirements	28
Attached to application form	5
Explained verbally to applicants	5
Hiring locations	5
Other	18
Did not display poster	4
Total number of respondents	126

NOTE: Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Employers.

⁷⁸ These data are not directly comparable because employers in the national study were not asked about displaying the E-Verify participation poster; the poster location was only observed by the interviewers. Additionally, the E-Verify procedures were changed between the two studies to require employers to either display the poster or include information on the use of E-Verify in job application packets.

2.2. Prescreening

Employers enrolled in E-Verify, both nationally and in Arizona, are required to use E-Verify for all new hires and are not allowed to use E-Verify to screen job applicants to determine whether they are authorized to work *before* they have been offered a job and have accepted it. The intent of this E-Verify provision is to ensure that employment-authorized job applicants who erroneously receive TNCs are not denied opportunities to compete fairly for available jobs.

Fewer Arizona employers were prescreening than had been the case among the national employers in the last evaluation. Reviews of worker verification records in the Arizona study indicated that 16 of 118⁷⁹ (14 percent) onsite study employers had used E-Verify to determine the work-authorization status of one or more workers prior to their hire date. A similar review in the national study indicated that at least 27 of the 108 (25 percent) onsite study employers had prescreened workers.

It does appear, however, that at least some of the Arizona employers that were prescreening clearly understood that it is not allowed. During onsite visits, interviewers were instructed to obtain application packets only when they were comfortable asking employers if they could have one. Employer application packets were examined for references to the E-Verify Program, copies of Forms I-9, and/or instructions for completing them. Of the 38 packets collected, three packets referred to the Form I-9, and two of these packets showed that employers were using E-Verify to prescreen applicants. For example, one packet included a statement saying the “State of Arizona mandates we screen applicants for employment eligibility using E-Verify.” Another company’s packet stated “as required by Department of Homeland Security, we E-Verify all employee applicants.” These two employers also responded in their respective interviews that prescreening job applicants should be permitted.

It appears that both Arizona and national employers participating in E-Verify usually inform job applicants that they did not get a job because of problems with their SSA or USCIS documents. Of the 31 job applicants interviewed in Arizona who did not receive a job offer, 23 applicants were given reasons for not being hired: 18 were told that there were problems with their documents or SSA/USCIS records; six were told that they were not authorized to work in the United States, and two were given some other reason that they did not get the job.⁸⁰ The last national report indicated that of the 12 (of 108) employers that reported prescreening job applicants, 10 reported notifying job applicants of TNC findings. Although these results are not directly comparable, it is clear that notifying prescreened workers of TNCs often occurs.

Although the majority of Arizona employers thought prescreening job applicants should be permitted, a sizable minority said that prescreening should not be permitted because it would be discriminatory or unfair. Of the 126 employers interviewed, 33 employers said that permitting prescreening would be discriminatory or unfair.

2.3. Protection of Worker Rights During the Tentative Nonconfirmation Process

Because some workers who receive TNCs are, in fact, authorized to work, E-Verify procedures give workers the right to contest TNCs; however, the E-Verify procedures for contesting rely heavily on employer actions. For workers to contest TNCs, employers participating in E-Verify must provide

⁷⁹ There is no record review information for the other eight onsite study employers.

⁸⁰ Workers could select more than one response.

workers with written notification about their TNC findings and an explanation of the notice, determine if the workers wish to contest the findings, provide workers who wish to contest with information about how to contest, and not take adverse actions against workers during the time they are contesting. When employers do not follow the correct E-Verify procedures, workers' rights are violated. This section explores the question of whether employers in Arizona are following these procedures correctly.

2.3.1. Tentative Nonconfirmation Notification

One of the first E-Verify protections of worker rights is for employers to notify workers if they receive an E-Verify TNC and to explain how to correct the problem if workers wish to contest. Although there is no required timeframe for this notification, employers are expected to undertake it promptly.

It appears that Arizona employers were more likely than national employers to inform their workers of TNCs. Of the 160 Arizona workers interviewed, 109 (68 percent) said that the employer had notified them of a problem with their documents.⁸¹ In the last national sample, approximately 233 of 403 workers (58 percent) said they were notified by their employer.

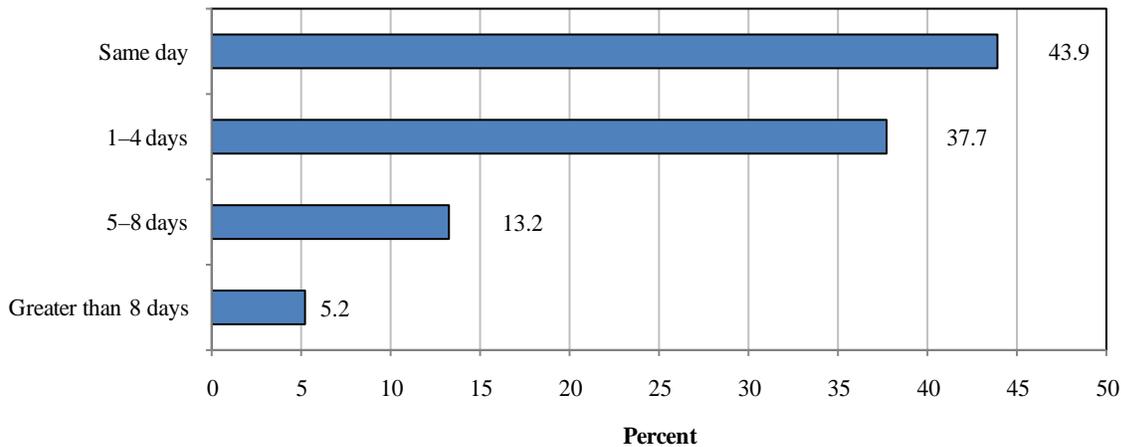
The Arizona record review corroborated workers' reports that employers may not have always notified them of TNCs. Of the 522 Arizona worker verification records reviewed that contained TNC notices, 207 (40 percent) were not signed. However, there are possible reasons why TNC notices would not be signed by workers other than the worker was not informed of the TNC: employers may not have required workers to sign when notifying them; workers may have refused to sign the notice or left before employers could ask them to sign; workers may have signed a different copy of the notice and employers filed the copy without a signature; or employers may have realized that the TNC was caused by a data entry or other error that they corrected without indicating on the Transaction Database that the original submission was an invalid query.

Although most workers in Arizona who are informed of having received TNCs are notified promptly, they appear to be less likely to be notified on the same day than were workers in the national sample. Among the 310 workers⁸² with an employee-signed TNC notice in Arizona, 136 workers (44 percent) signed the notice on the same day that the TNC was issued (Exhibit VI-2). The results of a similar analysis in the national report indicated that 221 of 352 TNCs (63 percent) were signed on the same day that they were issued.

⁸¹ One hundred workers reported they were notified about a problem with their documents and an additional nine workers said they were shown or given a copy of the TNC notice or had the contents of the notice explained to them by their employer or a translator, which was considered notification for these purposes.

⁸² An additional five workers had also signed a TNC notice; however, these workers are not included in the total since their notices did not have the TNC issuance date.

Exhibit VI-2. Percent of Workers Who Signed TNC Notice, by Number of Days Between TNC Notice Issuance and Worker Signing Notice



NOTE: Total does not include the five workers who did not have TNC issuance dates.
 SOURCE: Record review of Form I-9 and related records.

In both the Arizona and national studies, close to half of the workers receiving a TNC notice reported that employers explained the contents of the notice to them. In addition to providing written notice to workers, employers are required to explain the notice to the worker. Seventy-five of 160 workers (47 percent) interviewed in Arizona reported that the employer explained the contents of the TNC notice to them. Among the 225 workers in the national study who commented on whether the notice was explained to them, 104 (46 percent) said they received an explanation of the TNC notice.

Arizona employers appear to be more respectful of workers’ privacy in informing them about their TNCs than employers in the national study. When asked questions about whether they were told about their TNC situation privately, 15 of 109 workers (14 percent) said that their employers told them about their TNC in an area where others could hear (10 workers), told other workers about the TNC (three workers), or posted a list of workers with TNCs (two workers). In the national study, 33 of 140 workers (24 percent) who commented on whether they were notified of the TNC in private reported that they had not been notified in private.

2.3.2. Referral of Workers to the Social Security Administration or U.S. Citizenship and Immigration Services

As a second step, employers are required to refer workers who choose to contest the TNC to either SSA or USCIS to correct the discrepancy. It is important that employers provide the referral letter to the worker as soon as they initiate the referral in the E-Verify system because the eight-day period for the worker to resolve the problem begins at that time. Delays mean that the time workers have to fix the problem is shortened and may impinge on their rights if the referral is not done quickly.

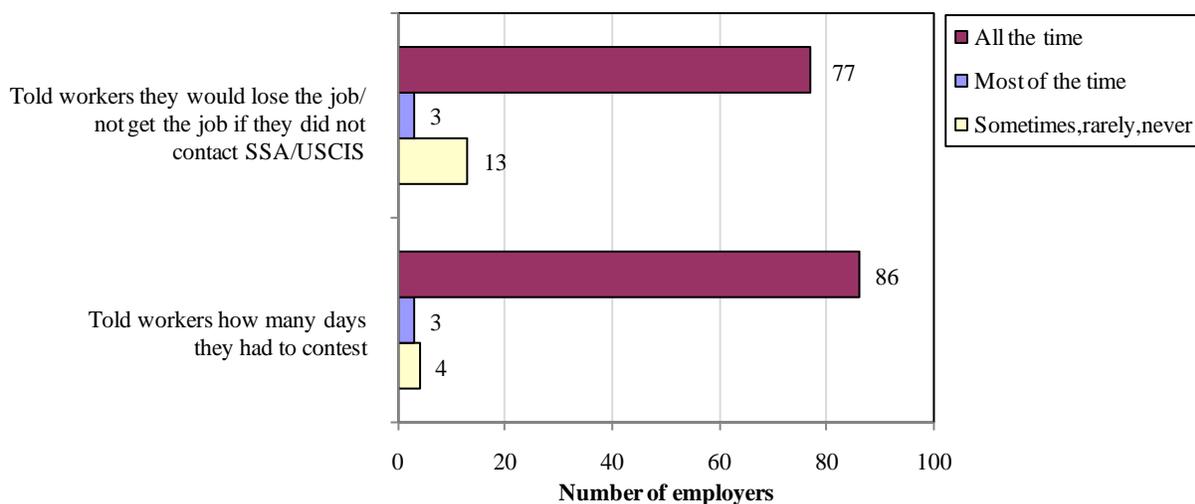
Arizona workers appear to be more likely than national workers to be given referral letters by their employers. Of the 38 workers in Arizona who chose to contest their TNC finding, 26 (69 percent)

reported that the employer gave them a referral letter,⁸³ and all but one of these workers said the employer explained the information in the letter. This is higher than what was observed in the national study, in which approximately 46 of 94 workers (49 percent) reported having received a letter.

Most, but not all, employers in both the Arizona and the national study inform workers wishing to contest TNCs that they would lose their jobs if they did not contact SSA or USCIS to resolve the TNC. In Arizona, 77 of 93 employers (83 percent) said they always told workers that they would lose their jobs if they did not contact SSA or USCIS to resolve the TNC (Exhibit VI-3). In the national study, 63 of 74 onsite study employers (85 percent) reported that they told workers this. The 16 Arizona employers that said they did not always tell workers gave several reasons for not doing so, including that they thought it was against the law or too threatening, that it was the worker’s responsibility to know, or that they did not know they had this responsibility.

In both the Arizona and the national study, almost all onsite study employers discussed timeframes for contesting TNCs with their workers. As shown in Exhibit VI-3, 89 of 93 Arizona employers said they told workers all or most of the time how many days they had to contest, but four employers reported they sometimes or never gave workers this information. This is similar to what was found in the national study, in which two of 98 onsite employers said that they never told workers how long they have to contest.

Exhibit VI-3. Employers’ Report on How Often They Informed Workers They Would Lose or Not Get a Job If They Did Not Contact SSA/USCIS and How Often They Informed Workers of the Number of Days They Had to Contest



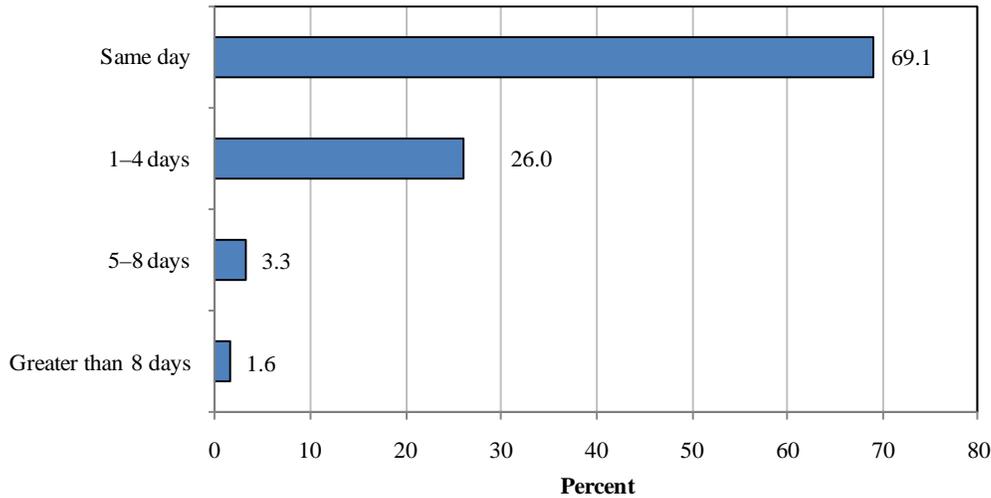
SOURCE: Onsite Interviews of Employers.

Most Arizona workers are referred in the system to SSA or USCIS the same day that they sign the referral letter. Workers have up to eight Federal business days to visit the SSA office or call Department of Homeland Security (DHS) to contest the finding, and this time begins when the employer refers the worker’s case in the system (i.e., indicates in the E-Verify system that the worker chose to contest the finding). The employer is required to provide the referral letter at this time. Based on the record review, the majority of workers signed the SSA and USCIS TNC referral letters the same day employers referred them in the system. As shown in Exhibit VI-4, among the 123 workers with a signed referral letter, 85

⁸³ One worker was unsure if he or she received the referral letter.

workers (69 percent) signed the letter on the same day of issuance. Workers who signed the letter several days after it was issued had very limited time to contact SSA or USCIS, which may have made it difficult for these workers to correct the TNC finding in a timely fashion.

Exhibit VI-4. Percent of Workers Who Signed TNC Referral Letter, by Number of Days Between TNC Referral Letter Issuance and Worker Signing Letter



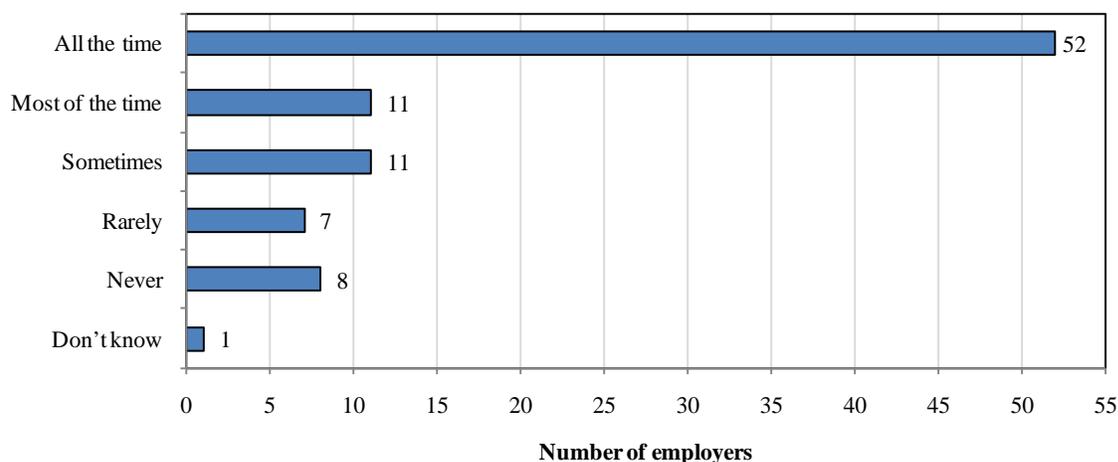
SOURCE: Record review of Form I-9 and related records.

2.3.3. Adverse Actions

One of the goals of E-Verify is to protect workers’ rights, especially during the time that TNCs are being contested. Under the Memorandum of Understanding (MOU), employers may not fire, suspend, delay training, withhold or decrease pay, or take any other adverse action against workers while they contest a TNC with SSA or USCIS. Use of E-Verify in a mandatory environment where there are additional penalties for employer noncompliance—such as suspension or loss of a business license for knowing or intentional hiring of unauthorized workers—makes it conceivable that employers could be less likely to hire workers they believe might be unauthorized. However, if these workers receive TNCs, employers might be more likely to protect their rights and not take adverse actions against them to avoid these penalties.

Neither Arizona nor national study employers always permitted workers to continue working during the time they were contesting TNCs. Although differences in questions asked in the two studies makes it difficult to compare their results, it is interesting to note the similarity between the number of Arizona and national employers reporting that they did not let workers continue to work while they contested TNCs. As shown in Exhibit VI-5, of the 90 Arizona employers reporting on allowing workers to continue employment while resolving TNCs, eight said they never let workers continue working while resolving a TNC and 18 said they do so rarely or sometimes (29 percent overall). Among the 99 onsite employers in the national study, 28 (28 percent) reported not letting workers continue employment while they were contesting.

Exhibit VI-5. Frequency With Which Employers Allow Workers to Continue Employment While Resolving Their TNC



NOTE: Question was asked only of employers that reported they did not use E-Verify before hiring workers and that they had at least one worker who had contested a TNC.

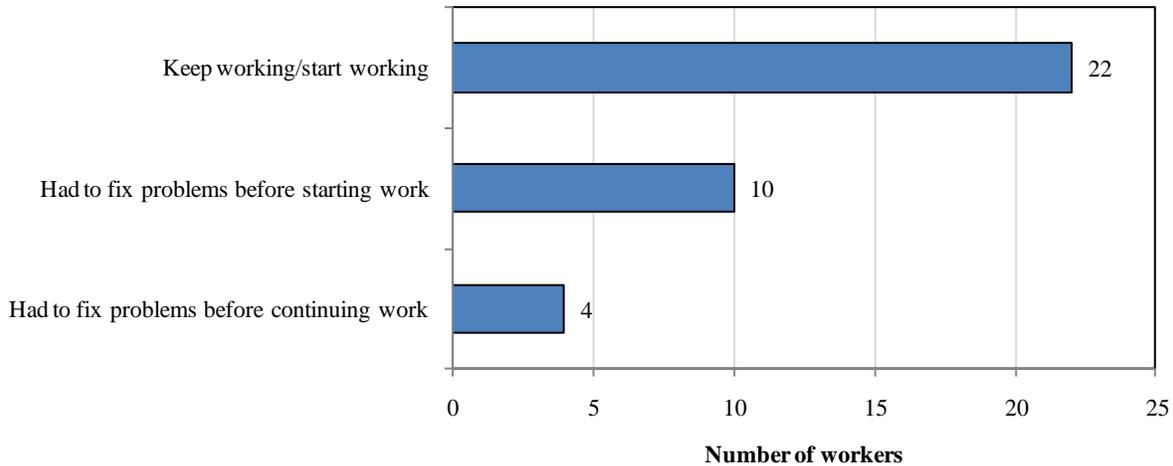
SOURCE: Onsite Interviews of Employers.

Arizona employers appear to have been less likely than national employers to delay training until employment authorization was confirmed. Among the 90 Arizona employers discussing whether they delayed training while awaiting employment authorization, seven (8 percent) reported at least sometimes delaying training. The percentage of national employers that reported delaying training until employment authorization was confirmed was 15 percent.

The Arizona worker interviews confirmed that taking adverse actions against workers while they contest TNCs is not rare. Exhibit VI-6 shows that of 36 workers contesting a TNC, 14 workers said they had to resolve their problem before starting or continuing work. Ten workers said their employer postponed training until the problem was resolved, which means these workers also had adverse actions taken against them as a result of contesting a TNC. However, more importantly, three workers reported being fired by their employer as a result of the TNC, and three said they were not hired.⁸⁴

⁸⁴ Because employers are required to use E-Verify on new hires only, the 10 workers who reported having to resolve their problem before starting work suggest that their nine unique employers were prescreening workers. Similarly, the three workers who reported not being hired suggest that their employers were prescreening workers and were therefore in violation of E-Verify procedures.

Exhibit VI-6. Worker Reports Regarding Whether Employer Allowed Them to Keep Working or Start Working or Whether They Were Told by Employer to Fix Problems Before Starting or Continuing Work



NOTES: Question was asked only of workers who reported contesting the TNC and did not decline a job offer from the employer; because employers are required to use E-Verify on new hires only, the fact that 10 workers reported having to fix their problem before starting work suggests that their nine unique employers were prescreening workers and were therefore in violation of E-Verify requirements.
 SOURCE: Onsite Interviews of Workers.

3. THE IMPACT OF MANDATORY E-VERIFY ON UNINTENTIONAL DISCRIMINATION

Prior evaluations have found that E-Verify leads to unintentional⁸⁵ discrimination, because erroneous TNC rates are higher among work-authorized foreign-born workers *and* because erroneous TNCs result in additional burdens for employment-authorized workers. This study was conducted to determine whether mandatory use of E-Verify affects the erroneous TNC rate⁸⁶ or the size of the burdens facing authorized workers and, thereby, has an impact on the level of unintentional discrimination.

3.1. The Impact of Mandatory E-Verify on the Erroneous Tentative Nonconfirmation Rate

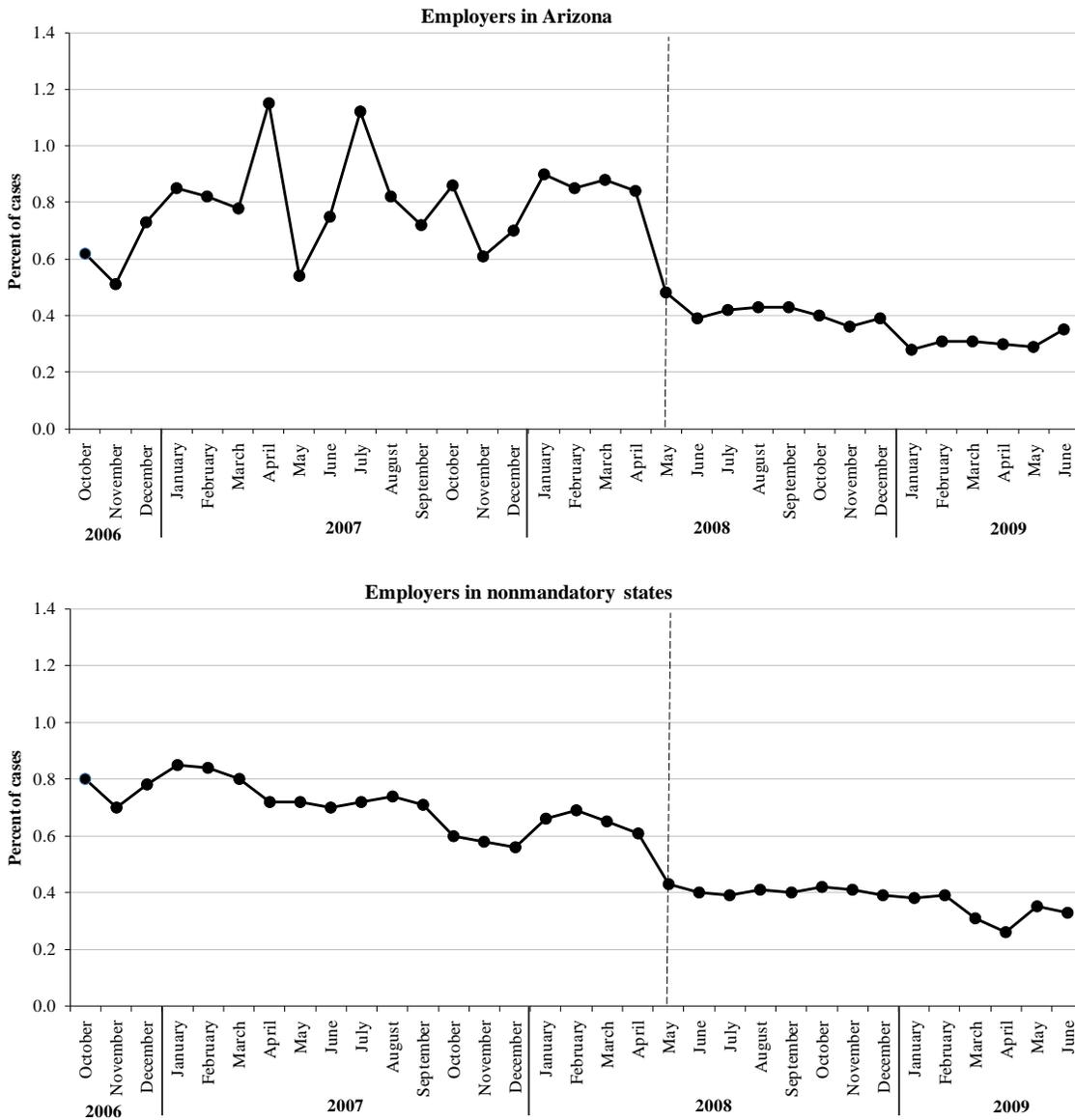
The erroneous TNC rate for Arizona employers as compared to employers in nonmandatory states indicates that the erroneous TNC rate was probably not affected by the implementation of mandatory verification. The erroneous TNC rate for both Arizona employers and employers from nonmandatory states show similar patterns of change over time (Exhibit VI-7). Although there was some level of variability in these rates for both Arizona and the nonmandatory states, the analysis showed that

⁸⁵ Unintentional employment discrimination occurs if unfavorable treatment of protected groups occurs without the employers’ realizing that their actions may harm one or more member(s) of a protected group. In the case of E-Verify, unintentional discrimination occurs when members of a protected group have a higher probability of receiving TNCs than other groups do *and* there are negative consequences for workers receiving TNCs.

⁸⁶ The percentage of authorized workers who receive TNCs at any point during the verification process is known as the erroneous TNC rate, regardless of the reason the TNC was issued, which may be the result of a worker, employer, and/or government error.

the only significant changes were the expected erroneous TNC rates coinciding with implementation of additional checks of USCIS naturalization data beginning in May 2008.⁸⁷

Exhibit VI-7. Trend in the Percent of Cases Receiving Erroneous TNCs: October 2006–June 2009



SOURCE: E-Verify Transaction Database.

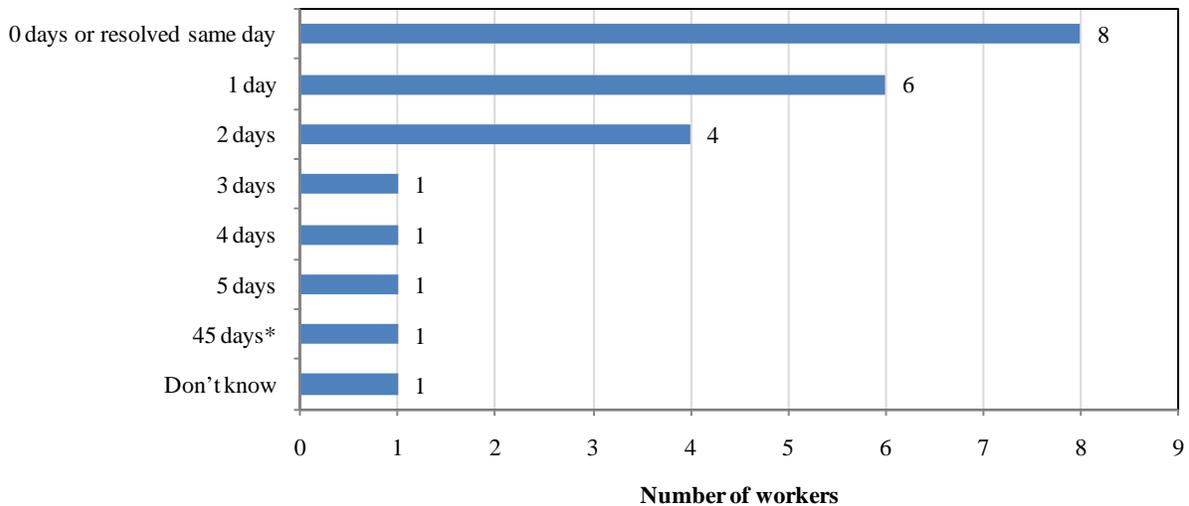
⁸⁷ See Chapter II for information about how to interpret this type of graph.

3.2. The Impact of Mandatory E-Verify on Workers’ Burdens and Costs Associated With Tentative Nonconfirmations

Workers contesting SSA TNCs must visit a local SSA field office to resolve discrepancies, while those contesting USCIS TNCs are instructed to call a toll-free number and might have to fax copies of documents. One purpose of the Arizona study was to determine whether mandatory use of E-Verify by employers in a geographic area such as Arizona could increase workload and overburden SSA and/or USCIS capabilities for dealing with TNCs and therefore affect workers’ ability to efficiently resolve the problems leading to TNCs. Another purpose of the study was to determine whether Arizona workers were more fearful about resolving TNCs because they are more aware of the Program or because they feel they have fewer alternative employment options.

Almost all Arizona workers contesting SSA or USCIS TNCs were able to resolve their problems quickly. As shown in Exhibit VI-8, most workers were able to resolve their problems within two days of contacting SSA. Additionally, 11 of 14 workers⁸⁸ contacted USCIS by phone, and nine were able to resolve their problems with one phone call; the remaining two workers had to call back with additional information.

Exhibit VI-8. Days Reported by Workers to Resolve SSA TNC



*This worker reported not having the required documents, so the contesting period includes waiting for copies of a birth certificate and Social Security card.

NOTE: Question was asked only of workers who reported contesting and resolving a TNC through SSA.

SOURCE: Onsite Interviews of Workers.

Almost all Arizona workers contesting TNCs were able to contact SSA or USCIS and resolve their problems easily. Of the 38 workers who contacted SSA or USCIS to resolve TNCs, 32 recalled that the process of contacting SSA or USCIS was either easy or very easy, while the remaining six workers said they found the process difficult or very difficult. These six workers explained that their answers were based on the need to go to the SSA office during their work hours (three workers), transportation to the SSA office (one worker), having to get child care (one worker), not having the required documents to

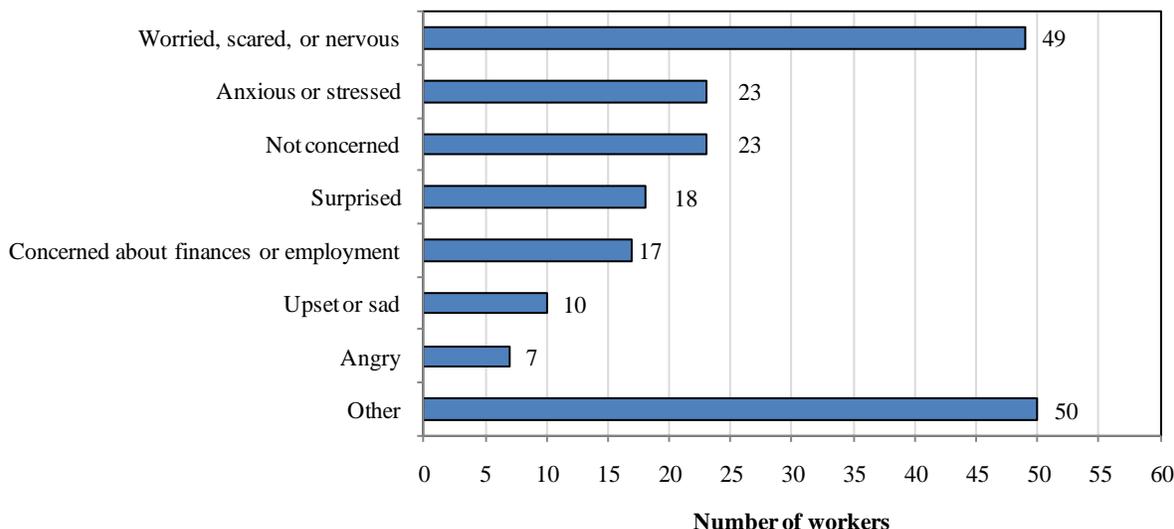
⁸⁸ Four workers went to a USCIS office; all four reported they were able to speak with USCIS officials that day, and three waited an hour or less.

contest the TNC (one worker), and long wait times (one worker). All but one contesting worker reported that SSA and USCIS officials treated them with respect.

Arizona workers reported lower costs⁸⁹ for contesting TNCs than those in the national study. Close to three-quarters (22) of the 30 Arizona workers who talked about their experiences contesting TNCs said that they incurred no direct costs for contesting. This is considerably higher than the 41 percent (47 of 115 workers) in the national study who reported that they had no costs associated with resolving their TNC findings. Eight Arizona workers reported costs including faxing documents to USCIS, parking, gas for long distance driving to SSA or USCIS offices,⁹⁰ and requesting a copy of a birth certificate. Consistent with the national report, most Arizona workers who faced costs for contesting their TNC reported that the total cost of these activities was \$50 or less.

Workers in Arizona and those in the national study reported approximately the same level of concern about receiving TNCs. Arizona workers who reported having the TNC notice explained, shown, or given to them by their employer were asked how they felt about their TNC situation or document problem, and close to half (49 of 109, or 45 percent) reported feeling worried, scared, or nervous (Exhibit VI-9). This is approximately the same as what was observed in the last national report, in which 83 workers of the 181 workers (46 percent) who commented on their reaction to receiving a TNC reported that they were scared, nervous, tense, angry, irritated, or annoyed.

Exhibit VI-9. Worker Reactions to TNC Situation or Problem With Documents



NOTES: Question was asked only of workers who reported having the TNC notice explained, shown, or given to them by their employer. Sum does not add to total number reporting because respondents could choose more than one response.

SOURCE: Onsite Interviews of Workers.

⁸⁹ Cost information provided by workers related to resolving TNCs is subjective and based on recall since workers do not necessarily keep or refer to cost records in answering questions. Additionally, workers may not be aware of all the costs they have incurred. For example, persons who lost income because they were not hired after they received TNCs when an employer prescreened them using E-Verify may never be told why they were not hired.

⁹⁰ Workers are instructed to call a USCIS toll-free phone number rather than to visit a USCIS office to resolve TNCs.

4. CONCLUSIONS

A key focus of this study was to determine whether mandatory use of E-Verify in a state such as Arizona would change employer compliance with the requirements of the Federal E-Verify law that is designed to protect worker rights and, in particular, if it would make them less compliant. The hypothesis that the Legal Arizona Workers Act (LAWA) might reduce compliance was based on the concern that employers that are required to participate in E-Verify may be less invested in complying with its procedures, including those that protect worker rights, than employers that volunteer to participate in the Program.

Although the studies are not strictly comparable, the patterns of Arizona employers in protecting worker rights and not engaging in verification-related discriminatory practices appear to be generally similar to the results from employers nationally as reported in the last evaluation study released in December 2009. Both studies found that while most employers generally follow the requirements for protecting worker rights when they verify employment authorization through E-Verify, some employers are engaging in practices that impinge on worker rights and that may increase verification-related discrimination against authorized workers.

The study also showed that the costs and burdens that employment-authorized workers in Arizona had were similar to or less than those for workers in the national study. Furthermore, making E-Verify mandatory has not had a significant impact on the erroneous TNC rate. These observations lead to a conclusion that making E-Verify mandatory does not appear to significantly increase unintentional discrimination, on average.

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CHAPTER VII.

CONCLUSIONS AND RECOMMENDATIONS

1. INTRODUCTION

The major research questions discussed in this report are how well was mandatory E-Verify implemented in Arizona and what are the impacts of a mandatory E-Verify on unauthorized employment, employer burden, and worker rights and discrimination. This chapter highlights and synthesizes the major findings in the report and then provides recommendations associated with the findings.

2. CONCLUSIONS

This section highlights the major findings in the report from a somewhat different perspective than the preceding chapters. It provides an overview of the major E-Verify strengths and ongoing challenges facing the Program. Since the information from the case study portion of this report was obtained from interviewing employers and workers that are not representative of all employers and workers in the state, conclusions based on these interviews must be viewed as suggestive rather than definitive. Although information obtained from the Transaction Database can be viewed as statistically sound, there may be differences in the types of employers enrolled in Arizona compared to those in nonmandatory states that contribute to observed differences.

2.1. Implementation of E-Verify in Arizona

2.1.1. Strengths

The majority of Arizona employers in the case study reported no problems with enrolling in E-Verify, setting up, or hiring new staff in preparation for the mandatory implementation. Among the 126 employers interviewed for the Arizona case study, 115 reported no problems enrolling in the Program, and 109 reported that they did not have to set up equipment or hire new staff in preparation for using the Program.

Virtually all employers completed the E-Verify tutorial and mastery test, as required by E-Verify. In addition to completing the tutorial and mastery test, about half reviewed the E-Verify user's manual in its entirety as they are instructed to do as part of their training. Many employers also participated in training beyond the tutorial, mastery test, and user's manual. Training often included higher level staff in headquarters and branch offices, whether or not they planned to use it.

The dramatic increase in the enrollments of Arizona employers subsequent to the enactment of the Legal Arizona Workers Act (LAWA) point to the success of the State of Arizona, U.S. Citizenship and Immigration Services (USCIS), professional associations, and others in making Arizona employers aware of LAWA and its implications for them.

Almost half of the employers agreed with the law at the time they signed the Memorandum of Understanding (MOU).

CONCLUSIONS AND RECOMMENDATIONS

2.1.2. Challenges

Many employers were unaware of LAWA prior to its implementation. Of the 126 employers interviewed, 43 reported that they did not enroll before January 1, 2008, because they did not know about the law. Since the employers interviewed were all enrolled in the Program and were disproportionately large employers that are presumably more likely to have broad contacts than small employers, it is likely that the percentage of employers unaware of LAWA at the time of implementation actually was much greater than this. This may help explain why it appears that only around one-third of employers, screening approximately three-quarters of new hires, were enrolled in E-Verify as of June 2009.

The efforts by USCIS and advocates of mandatory E-Verify were not totally successful in providing employers with the message that E-Verify would benefit them. Only eight of the 86 employers that reported on the nature of the information about E-Verify that they had heard from the media, other employers, and professional associations before signing an MOU reported hearing positive things about E-Verify compared to 40 hearing negative information and 38 hearing neutral information.

2.2. Impact of a Mandatory E-Verify Program in Arizona on Unauthorized Employment and the Labor Market

2.2.1. Strengths

The mandatory E-Verify Program in Arizona appears to have reduced unauthorized employment. Of the 124 employers reporting an opinion of the effect of E-Verify on unauthorized employment, 80 reported it had a great impact on unauthorized employment and another 36 thought it had a moderate impact. When asked to explain how E-Verify has had an impact on unauthorized employment, 53 reported that fewer workers without authorization were employed and another 23 employers thought there was a smaller number of authorized workers available, presumably because it was easier for them to obtain employment with fewer unauthorized workers in the labor market.

Mandatory E-Verify also appears to have reduced the size of the undocumented population. Among the 159 workers responding to a question about whether they knew people who had left Arizona or planned to do so because of E-Verify, 67 reported that they did. Of these, almost all workers (61) said that these individuals had left Arizona or planned to leave Arizona after January 1, 2008, when LAWA went into effect, including 31 of the interviewed workers who knew of others moving or planning to move to Mexico.

Arizona employers appear to terminate workers not contesting Tentative Nonconfirmations (TNCs) or receiving Final Nonconfirmations (FNCs) more promptly than national employers. Out of 125 employers responding to a question on their procedures when workers decided not to contest their TNC status, 91 reported they fire the worker immediately. Of the 99 employers that reported terminating workers who received an FNC or not found work-authorized finding, two-thirds reported terminating workers within one to two hours of receiving the finding. This is somewhat faster than was observed in the national Web survey, in which only half of the employers reported terminating employment within a day.

The impact of E-Verify on unauthorized employment may increase as more employers become aware of the Program and enroll in it. Since it appears that there are employers that are still learning about LAWA and the requirement that they register for it, it is reasonable to believe that the percentage of employers using E-Verify will increase over time.

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2.2.2. Challenges

Although mandatory E-Verify appears to have had the intended impacts on unauthorized employment, there remain ways that workers without employment authorization, at least in theory, can find work in Arizona. Workers without employment authorization can still find work in Arizona in the following ways:

- They can commit identity fraud to obtain employment by borrowing or buying documents with information about a work-authorized person.⁹¹
- They can work for employers using E-Verify during the time that it takes the employer to enter information into E-Verify and during the contesting period.⁹²
- They can become self-employed, since E-Verify is not required for self-employed workers.⁹³
- They can obtain employment with legitimate employers that are not using E-Verify or with “off-the-books” employers.⁹⁴

E-Verify has made it difficult for some employers to fill job vacancies. Especially in industries that have traditionally employed large numbers of undocumented workers, E-Verify has resulted in making it more difficult for employers to fill job vacancies. Of the 108 employers that thought that E-Verify had had some impact on their industry, more than a third (46) thought that E-Verify had made it harder to find workers, with one employer, for example, stating, “The pool of eligible workers is smaller.”

2.3. Impact of Mandatory E-Verify on Employer Burden and Satisfaction

2.3.1. Strengths

The mandatory use of E-Verify by Arizona employers does not seem to have had a negative impact on average employer satisfaction with the Program. Arizona employers reported about the same level of satisfaction as reported in the *Findings of the E-Verify Program Evaluation*, December 2009.

The mandatory use of E-Verify has not seemed to increase the level of challenges and burdens reported by Arizona employers. The level of challenges and burdens resulting from using E-Verify are also similar to those reported in the previous evaluation. Challenges and burdens include both financial

⁹¹ See Chapter IV, Section 4.1: Forty-seven of the 160 workers who indicated they were noncitizens without authorization to work said that they purchased, borrowed, and/or made the documents they showed to the employer.

⁹² In the *Findings of the E-Verify Program Evaluation*, December 2009, one employer reported that after indicating they would contest, employees worked until their contesting period was up (or the first pay day, whichever came first) and then did not return to work.

⁹³ *The Handbook for Employers: Instructions for completing Form I-9 (M-274)* provides the following information on self-employed individuals: “A self-employed person does not need to complete a Form I-9 on his or her own behalf unless the person is an employee of a business entity, such as a corporation or partnership.” See p. 38 of the handbook, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD>.

⁹⁴ Several Arizona case study employers reported that they knew some of their competitors were not using E-Verify and were paying unauthorized workers less money. Similarly, a worker indicated that he was paid “cash under the table” before the employer told him he needed to check on his work status through E-Verify. Additionally, the Migration Policy Institute noted that according to media reports in the *Arizona Republic* and the *Tucson Citizen*, unauthorized immigrants have responded to LAWA, in part, by moving from the formal to the informal labor market (see <http://www.migrationinformation.org/Feature/display.cfm?ID=846>).

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and nonfinancial aspects of not being allowed to prescreen job applicants, adhering to the three-day rule for using E-Verify, handling TNCs, and dealing with staffing turnover.

2.3.2. Challenges

Although the majority of Arizona employers said they would continue using E-Verify if it were not mandatory, approximately a third of the employers said they would not continue using it in this situation. Just under two-thirds of Arizona employers said they would continue using E-Verify if it were not mandatory; most of the one-third of employers that said they would not continue using it cited the extra workload placed on them in time and resources.

2.4. Worker Rights and Discrimination

2.4.1. Strengths

Arizona employers are apparently doing a better job in protecting worker rights and not engaging in verification-related discriminatory practices than employers nationally. Almost all of the comparisons between Arizona and national employers indicated that Arizona employers were either similar to or better than national employers in protecting worker rights and avoiding verification-related discriminatory practices.

The erroneous TNC rate for employment-authorized workers did not appear to be affected by the implementation of mandatory verification. Both Arizona employers and employers from nonmandatory states show similar patterns of change over time in the erroneous TNC rate for authorized workers.

Almost all Arizona workers contesting SSA or USCIS TNCs were able to resolve their problems quickly and easily. Most workers were able to resolve their problems within two days of contacting SSA, and most of the workers who contacted USCIS by phone were able to resolve their problems with one phone call. Of the workers who contacted SSA or USCIS to resolve TNCs, all but one contesting worker reported that SSA and USCIS officials treated them with respect.

2.4.2. Challenges

Some Arizona employers, like their national counterparts, are engaging in practices that impinge on worker rights and that may increase verification-related discrimination against authorized workers. These practices include firing, temporarily laying off, or delaying training of workers during the time they are permitted to contest TNCs.

2.5. Overall Conclusion

The primary conclusion of the Arizona study is that a mandatory use of E-Verify appears to be effective in reducing unauthorized employment and the size of the undocumented population without increasing the erroneous TNC rate for employment-authorized workers, the average burden on employers, or the rate of employer noncompliance with procedures designed to protect worker rights. However, there are still unauthorized workers employed in Arizona, employers that are not fully satisfied with the Program and/or

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find it burdensome, and employers that do not adhere to the E-Verify procedures designed to protect worker rights and minimize verification-related discrimination.

3. RECOMMENDATIONS

This section presents recommended changes to the E-Verify Program based on the evaluation. Some of these recommendations were presented in previous evaluations; others have been implemented since data collection and before the report was completed or are currently in the process of being implemented.

3.1. Improving Implementation of E-Verify in Mandatory Environments

- **USCIS should continue to develop partnerships with professional associations to provide accurate information to employers that have been or will be mandated to use E-Verify.** Since professional associations were a frequent source of information about E-Verify in Arizona, it is important that USCIS continues its effort to partner with professional associations. It is especially important to reach organizations that target small businesses, chambers of commerce, and businesses and immigrant groups that historically hire or work with significant numbers of undocumented workers. USCIS should work collaboratively with these organizations to launch national, regional, and local media campaigns, briefings, and question-and-answer sessions that address employers' lack of knowledge about E-Verify and its requirements, and to counteract inaccurate perceptions of the Program, such as it takes a lot of time to use and is too burdensome.
- **Careful attention also needs to be paid to the use of the mass media to disseminate accurate information about the Program.** The mass media and professional associations were found to be the primary ways that employers learned about mandatory LAWA. Since many Arizona employers had heard either nothing or negative things about E-Verify, additional media campaigns are needed to address such employers' concerns about the time it takes to use E-Verify and the associated burdens of using it.
- **SSA and USCIS need to continue their efforts to plan for the implementation of new mandatory programs.** USCIS should be prepared for sharp increases in helpline calls and visits to the USCIS website to locate information about the Program immediately after such legislation is passed or executive order is issued. Sharp rises in the volume of transmissions should be expected at the time that the mandatory use of E-Verify is implemented. SSA also needs to plan for increased calls and visits to their field offices and to ensure that they are able to handle workers' questions about E-Verify and to communicate with workers in a language they understand.
- **Continue to re-engineer the E-Verify website through extensive and systematic usability testing with different types of employers to make it more responsive to new E-Verify users' questions and information needs.** Under a mandatory use of E-Verify, more employers will turn to the USCIS website and customer service helplines to respond to their questions about the Program. USCIS should continue its development of training to address the needs of many more and different types of users by designing web-based training modules, videotapes, and/or webinars.

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3.2. Expansion of a Mandatory E-Verify Program

Making E-Verify mandatory should be seriously considered by the Federal government or other states wishing to curtail unauthorized employment. Since the mandatory use of E-Verify appears to be achieving the desired impact of reducing unauthorized employment and the size of the undocumented population in Arizona, decision makers should consider the possibility of expanding the use of E-Verify to other states or the nation, as is currently under discussion. However, this discussion will need to take into account other impacts of mandatory E-Verify, including its impact on worker rights and discrimination, and the costs associated with implementation. Decision makers also need to keep in mind that there are inherent limitations in the ability of E-Verify to detect identity fraud and should be aware that E-Verify by itself can only reduce, not eliminate unauthorized employment.

USCIS should test and evaluate ways to make it more difficult for workers without employment authorization to find work.⁹⁵ The following changes to E-Verify should be considered and, where feasible, tested and evaluated to determine the relative benefits from the changes in light of all of the Program's goals:

- **Identity fraud:** Incorporating fingerprints or other biometric checks into the Form I-9 and E-Verify process would make identity fraud more difficult; however, there are many practical and privacy concerns about instituting such a program. The expansion of the Photo Screening Tool to include documents used by all workers is an alternative way of reducing identity fraud.
- **Delay of employment during the contesting period:** Employers could be required to verify the employment-authorization status of workers prior to allowing them to start work.⁹⁶
- **Self-employment:** Business owners could be required to be verified by the licensing agency or another designated entity when they obtain or renew their business licenses.
- **Employment with employers not using E-Verify:** The primary way that can be used to combat employers' not using E-Verify is through strong legislation and enforcement.

3.3. Employer Burden and Satisfaction

Based on employer interviews, the most important way to further decrease employer burden would be to permit prescreening. As discussed above, the evaluation team recommends looking at the feasibility of a program to require screening prior to the start of work.

A number of employers, especially those entering data for workers at a different location, reported finding it difficult to enter all worker information within three workdays of hire. It is suggested that USCIS consider extending the deadline for entering information from three to five workdays after a worker begins work for pay or accepts a position for pay if verification prior to the start of work is not implemented.

⁹⁵ For more complete discussions of these options, see *Findings of the E-Verify Program Evaluation*, December 2009 (http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf).

⁹⁶ Such a change would require legislative action; however, USCIS could do a pilot test without such legislation.

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In addition to suggestions related to prescreening and the three-day rule, employers offered a large number of other suggestions for decreasing their burden. Other suggestions for changes to E-Verify were made by employers, included expanding the topics covered in training, reducing the frequency that passwords need to be changed and easing restrictions on creating passwords, and e-mailing notifications of case updates or changes to the system.⁹⁷

3.4. Worker Rights and Discrimination

This study showed that the average impact of E-Verify on workers did not increase in Arizona. However, since many more workers are verified in a mandatory program, the overall impact of E-Verify on employment-authorized workers would increase. There is, therefore, a continuing need to improve E-Verify by implementing Program changes designed to reduce the potential harm to workers, including:

- Continuing and expanding outreach and training efforts to explain worker rights and employers' responsibility in protecting them;⁹⁸
- Providing outreach to workers that emphasizes the importance of changing their SSA and USCIS records when they change their names or their citizenship/work-authorization status;
- Considering having employers input worker addresses in E-Verify and using this information to directly inform workers of TNCs and how to contest them; and
- Continuing efforts to decrease the percentage of authorized workers who receive TNCs.⁹⁹

3.5. Additional Research

USCIS is currently sponsoring additional research on mandatory E-Verify to increase knowledge of the impacts of E-Verify in Mississippi as well as Arizona and a customer satisfaction survey. As noted above, research will be needed to evaluate any pilot programs implemented to strengthen E-Verify. It would also be of interest to obtain more information on the impact on how workers adapt, including how many continue working with fraudulent documents, how many work for noncompliant employers or in under-the-table employment, and how many leave the country or migrate to another state that does not mandate E-Verify. Additional research on the impact of E-Verify on unemployment rates, worker shortages, and related issues would also be prudent as mandatory use of the Program is expanded.

⁹⁷The USCIS Ombudsman recommended that USCIS develop and add a tickler/calendar system in E-Verify that alerts E-Verify users via e-mail and outside of the E-Verify system of cases that require action. See page 2, (http://www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf).

⁹⁸It should be noted here that on March 17, 2010, USCIS announced new civil rights initiatives for E-Verify that included two new videos for employers and employees, a dedicated hotline to respond to employee inquiries, and a Memorandum of Agreement between USCIS and the U.S. Department of Justice, Civil Rights Division.

⁹⁹A number of more specific recommendations to decrease the number of authorized workers who receive TNCs are discussed in the last evaluation report. They are not repeated here because they do not directly relate to findings in this report.

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