



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

E-Verify

JUNE 2009

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

June 2009

Members of the Legislative Audit Commission:

Governor Pawlenty issued an executive order in 2008 mandating that executive branch agencies and certain businesses involved with the state use E-Verify. At your request, OLA evaluated implementation of the Governor's executive order and the response of businesses to E-Verify.

We found that the state has made only limited efforts to implement the order, particularly among executive branch agencies. But most of the businesses we surveyed that participate in E-Verify have found it to be a relatively easy, low-cost system to use.

Our evaluation was conducted by Deborah Parker Junod (manager), with assistance from David Kirchner and Sarah Roberts. We received the full cooperation of the departments of Administration, Management and Budget, and Employment and Economic Development.

Sincerely,

A handwritten signature in black ink that reads "Jim Nobles". The signature is written in a cursive, flowing style.

James Nobles
Legislative Auditor

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Summary

Improvements to E-Verify are still needed, but the businesses we surveyed that use the system are generally satisfied with it.

Major Findings:

- E-Verify is a federal computer system that allows employers to electronically verify that newly hired employees are eligible to work in the United States (p. 2).
- The Governor's 2008 executive order mandating the use of E-Verify has been implemented for two of three targeted employer groups (pp. 4-6).
- The state does not independently confirm that businesses are actively using E-Verify (p. 6).
- In our survey, about 60 percent of state vendors subject to the executive order said they were registered for or actively using E-Verify as of March 2009 (pp. 6-8).
- Most of the Minnesota businesses we surveyed had positive opinions of E-Verify and reported that the cost of using the system was not a significant concern (pp. 9-12).
- Some Minnesota businesses are subject to a patchwork of federal and state E-Verify mandates that have varying terms of inclusion (pp. 12-13).
- The accuracy of E-Verify has improved. Nationally, 93 percent or more of queries result in immediate verification of work-authorization; less than 1 percent result in erroneous determinations that an employee is not eligible to work (pp. 18-20).
- E-Verify will not detect certain types of identity fraud (p. 20).
- The federal government has acknowledged that a substantial number of employers nationwide do not comply with E-Verify program rules designed to prevent discrimination. Minnesota state government has taken few steps to help address this problem, believing it to be a federal responsibility (pp. 21-24).

Recommendations:

- The Governor should consider amending his E-Verify executive order to conform to the federal executive order for federal contractors (p. 13).
- Minnesota state agencies administering the state's E-verify executive order should work with the federal government to make federally-provided training available to Minnesota employers (p. 24).

E-Verify

Congress passed the Immigration Reform and Control Act in 1986 in response to concerns over illegal immigration into the United States. The act made it illegal for individuals and entities to knowingly hire, continue to employ, or recruit for a fee unauthorized workers.¹ It also established a process for employers to verify all newly hired employees' work eligibility. This process includes completion of the federal "Form I-9, Employment Eligibility Verification" and the employer's review of documents provided by the worker to demonstrate employment eligibility.²

To further improve the verification process, Congress established E-Verify to electronically verify the employment eligibility of both U.S. citizens and noncitizens.³ Participation in E-Verify is generally voluntary, although the federal government and some states have legislation or executive orders that require E-Verify use for some or all employers under their jurisdictions. Minnesota joined this group of states in January 2008 when the Governor issued an executive order mandating the use of E-verify for newly hired employees in the State of Minnesota's executive branch and by businesses holding large state contracts. The executive order also encouraged the use of E-Verify by businesses receiving state subsidies.

Following issuance of the Governor's executive order, the Legislative Audit Commission in 2008 directed the Office of the Legislative Auditor (OLA) to evaluate the use of E-Verify in Minnesota. Our evaluation focused on the following issues:

1. How the E-Verify process works;
2. Actions taken to implement the Governor's E-Verify executive order;
3. The experiences of Minnesota businesses that use E-Verify;
4. Available data on E-Verify's outcomes, accuracy, and capacity; and

¹ 8 U.S.C. 1324a(a).

² The Form I-9 is reproduced in Appendix A. The list of acceptable documentation to establish identity and work eligibility is on the second page. The employer must certify on the Form I-9 that it has reviewed the documents presented by the employee and that the documents appear genuine and relate to the individual presenting them. In making their certifications, employers are expected to judge whether the documents presented are obviously counterfeit or fraudulent.

³ The name of the system has changed several times. The original "Basic Pilot" program used PC/modem technology and was available until July 2005. An internet-based system, called the "Web Basic Pilot," was introduced in June 2004. The federal government changed the name to "E-Verify" in 2007.

5. Available information on the effectiveness of E-Verify's rules of use that are designed to prevent discrimination.

THE E-VERIFY PROCESS

E-Verify is a federal computer system that allows employers to electronically verify that newly hired employees are eligible to work in the United States.

E-Verify is an Internet-based system operated by the U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). (USCIS is an agency within the U.S. Department of Homeland Security (DHS).) E-Verify electronically compares information entered on the Employment Eligibility Verification Form I-9 with records contained in SSA and DHS databases to help employers verify the identity and employment eligibility of newly hired employees. (The Form I-9 is reproduced in Appendix A.) According to USCIS, over 117,000 employers representing over 456,000 worksites were registered to use E-Verify as of April 2009. USCIS also estimated that the number of registered employers was growing by about 1,000 per week.

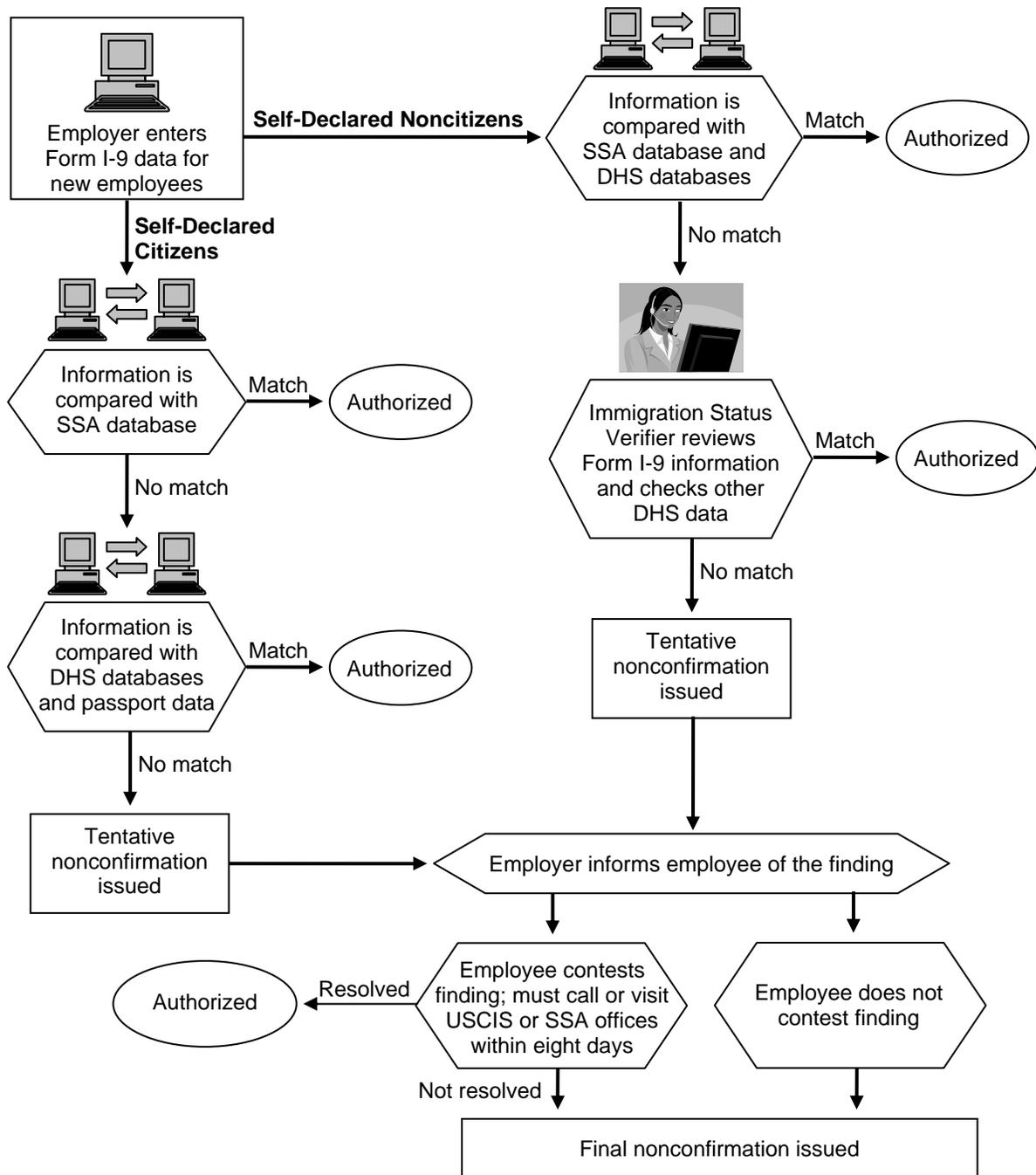
Participating employers are required by E-Verify's rules of use to post, in plain view at all hiring sites, the English and Spanish notice provided by DHS indicating the company's participation in the E-Verify program. The employer also must post a Right to Work poster issued by the federal Office of Special Counsel for Immigration-Related Unfair Employment Practices.

The E-Verify process is illustrated in Figure 1. After completing a Form I-9 for each newly hired employee, an employer participating in the program must query E-Verify's automated system within three days after the employee's start date.⁴ The query is initiated by entering employee information provided on the form into the E-Verify web site, including name, date of birth, social security number, and citizenship status (as declared by the employee). The program then electronically matches that information against information in SSA's Numident database and, if necessary, DHS databases to determine whether the employee is eligible to work.⁵ If the information entered matches the information in SSA and DHS databases, E-Verify electronically notifies the employer within three to five seconds that the employee's authorization to work is confirmed. Those queries that the DHS automated check cannot confirm are referred to USCIS staff, called immigration status verifiers, who check employee information against other DHS data.

⁴ For employers enrolled in E-Verify, any document presented by the employee from Form I-9, list B must have a photograph. Also, if a noncitizen employee presents a Lawful Permanent Resident Card or Employment Authorization Card, the employer must make a copy. E-Verify has a photo screening tool that requires the employer to compare the photo on file with DHS to the copy of the card presented by the employee.

⁵ Through a process known as enumeration, SSA assigns a unique social security number to each individual who meets the requirements for one. Social security numbers are issued to most U.S. citizens at birth. They are also available to noncitizens lawfully admitted to the United States with permission to work. The Numident database contains demographic information on every social security number holder.

Figure 1: The E-Verify Process



SOURCES: U.S. Government Accountability Office, *Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System* (Washington, DC, June 10, 2008), 8; and various program documents from USCIS.

In cases when E-Verify cannot confirm an employee's work authorization status either through the automatic check or the check by an immigration status verifier, the system issues the employer a tentative nonconfirmation of the employee's work authorization status. In these cases, the employers must notify the affected employees of the finding. The employees have the right to contest their tentative nonconfirmations by contacting SSA or USCIS within eight federal working days to resolve any inaccuracies in their records. During this time, employers may not take any adverse actions against the employees, such as limiting their work assignments or pay. If the employee fails to contact USCIS or SSA within the eight-day period, the employee is considered a no-show and E-Verify returns a final nonconfirmation. At this point, the employer should terminate employment.⁶

IMPLEMENTATION OF THE GOVERNOR'S EXECUTIVE ORDER

Governor Pawlenty issued an executive order in 2008 mandating the use of E-Verify by state government agencies and affecting certain businesses involved with the state.

The Governor's executive order on E-Verify covers three groups of employers. First, it requires all hiring authorities in the executive branch of state government to use E-Verify. Second, for state contracts in excess of \$50,000, vendors and subcontractors must certify that, as of the date services will be performed for the state, they have implemented or will be in the process of implementing the use of E-Verify for all newly hired employees in the U.S. who will perform work on behalf of Minnesota. Third, in state procedures for awarding competitive business subsidies, the order mandates use of a scoring incentive that gives preference to businesses using E-Verify.

Implementation Status

Responsibility for implementing the Governor's executive order is divided among three state agencies: The Department of Management and Budget (referred to as Minnesota Management and Budget (MMB)) for the executive branch, the Department of Administration (MDOA) for state vendors, and the Department of Employment and Economic Development (DEED) for recipients of business subsidies.⁷ In evaluating how these agencies have implemented the executive order, we found that:

- **The Governor's executive order mandating the use of E-Verify by some employers has been implemented for two of three targeted employer groups.**

⁶ However, the E-Verify User Manual says that a participating employer can notify DHS that it is not terminating an employee whose employment was not authorized by E-Verify or who did not contest a tentative nonconfirmation.

⁷ The executive order assigned to the Minnesota Department of Employee Relations responsibility for implementing the use of E-Verify by state executive branch agencies. Later in 2008, the functions of the department were folded into the newly-created MMB. In 2009, the legislature officially named the new agency the Department of Management and Budget. For simplicity, our report refers only to MMB.

As of May 2009, Minnesota state government's executive branch agencies were not using E-Verify.

As of May 2009, Minnesota state government's executive branch agencies were not using E-Verify for new hires.⁸ In early 2008, human resources officials at MMB identified several issues that needed to be resolved before executive branch agencies could begin using E-Verify. Thus, they laid out a three-step approach for implementation: (1) establishing a policy on employment verification that applied across state government, (2) developing or acquiring an information system that would serve as a centralized repository of work eligibility data from Form I-9, and (3) actively using E-Verify for new hires in the executive branch of state government.

To date, MMB has only accomplished the first step of its plan, having issued an employment verification policy for state government in April 2008. As of May 2009, the department had identified a vendor but had not yet contracted for the Form I-9 data management system. Progress on the system had stalled pending resolution of several issues, including questions related to the security of the new system and protection of employees' private data. MMB staff could not estimate when the system would be in place allowing executive branch agencies to begin using E-Verify.

For state contracts over \$50,000, MDOA requires vendors to certify that they are complying with federal hiring verification laws and using E-Verify.⁹ (The form used to document this certification is reproduced in Appendix B.) The Governor's executive order was not applied retroactively. State vendors were instructed to certify compliance with the executive order when and if (1) they responded to a solicitation for a new state contract or (2) extended or amended their existing contract after January 29, 2008. Each contractor is obligated to obtain the same certification from any subcontractors doing work for Minnesota. If the contract vendor or subcontractors do not comply, the state reserves the right to determine what action it may take. This action could include, but would not be limited to, cancellation of the contract or suspending or debarring the vendor from state purchasing.

DEED places a similar E-Verify certification requirement on recipients of businesses subsidies, although this requirement goes farther than the Governor's executive order requires.¹⁰ The executive order requires businesses receiving state subsidies to certify compliance with federal hiring verification laws; it does not mandate the use of E-Verify. Nevertheless, DEED officials made a policy decision to require business subsidy recipients to use the system. They based this decision on the belief that E-Verify is an important tool to verify compliance with federal immigration laws; thus, business subsidy recipients should use it for new hires. DEED also wanted to encourage broader use of E-Verify because the

⁸ In 2008, executive branch agencies hired about 7,600 new employees and rehired about 16,400 separated employees.

⁹ As of March 2009, there were about 1,400 state vendors with contracts over \$50,000.

¹⁰ The DEED programs primarily affected by the executive order are the Minnesota Investment Fund, the Job Opportunity Building Zones program, the Agriculture and Economic Development Board programs and the Urban Initiative Program. As of April 2009, 40 recipients of subsidies under these programs were subject to the governor's executive order.

department was tasked with creating a scoring incentive to reward business subsidy applicants that use the system.

For subsidy programs it administers directly, DEED is responsible for obtaining recipients' certifications that they are complying with the order. Other businesses receive subsidy funding through grants from state executive branch agencies or local governments. These businesses certify to the granting state or local government agency that they are using E-Verify for new hires; the granting agencies then relay that certification (or lack thereof) on grant reporting forms submitted to DEED.¹¹

Compliance

Beyond attestations from businesses that they are complying with the Governors' executive order, we found that:

- **As agreed with the Governor, neither MDOA nor DEED independently confirm that businesses are actively using E-Verify or complying with E-Verify rules of use.**

According to MDOA officials, the department does not have the resources to perform comprehensive compliance checks. The department said it does not intend to make independent judgments on employers' compliance with federal immigration laws, including rules of use for E-verify. But, it will follow up if it receives allegations of violations. MDOA said that follow up might include inspection of subcontractor certifications or documentation of participation in E-Verify. It also might include referral to federal immigration authorities. However, as of March 2009, MDOA said it had received no complaints about noncompliance with the executive order.

According to DEED, because the department is not responsible for immigration law compliance, it does not intend to proactively confirm that employers are complying with federal immigration laws, including use of E-Verify. Like MDOA, DEED said it will follow up if it receives allegations of violations.

MDOA officials said that the Governor's executive order does not direct the department to engage in an active compliance role. According to MDOA, department staff discussed the executive order with the Governor's Office before it was issued. MDOA said that it was understood among the parties in those discussions that monitoring of compliance with the executive order would be on an exception basis.

Use of E-Verify by State Vendors

To obtain information from businesses subject to the Governor's executive order, we surveyed a sample of Minnesota vendors identified by MDOA as having new

¹¹ For one business subsidy program, DEED requires businesses to provide a copy of the confirmation e-mail employers receive after registering with E-Verify.

The state does not intend to proactively confirm that businesses are complying with the executive order or using E-Verify properly.

We surveyed state vendors covered by the Governor's executive order.

or newly amended contracts valued over \$50,000 after January 2008.¹² We asked the vendors to complete a short questionnaire about characteristics of their businesses and their use of E-Verify. About 19 percent of survey respondents reported being sole proprietors. As such they would not need to use E-Verify. Among the remaining respondents—vendors with at least one employee—we found that:

- **About 60 percent of surveyed businesses subject to the Governor's E-Verify executive order were registered or actively using the system as of March 2009.**

About 17 percent of vendors with employees said they were actively using E-Verify in January 2008 when the Governor issued his E-Verify executive order. As shown in Table 1, fewer than half of vendors with employees—43 percent—reported actively using the system as of March 2009. Among the active E-Verify users, about 58 percent said that the executive order was partially or fully responsible for their decision to begin using the system.

Table 1: Use of E-Verify Among State of Minnesota Vendors Subject to the Governor's Executive Order, March 2009

Status as of March 2009	Percentage of Vendors
Actively using E-Verify	43%
Registered, but not actively using E-Verify	16
Not Registered for E-Verify or did not answer question	41

NOTE: Percentages are based on 174 respondents reporting at least one employee.

SOURCES: Office of the Legislative Auditor, analysis of state vendor survey, April 2009.

On several grounds, it is not reasonable to expect that all of the surveyed vendors with employees should be actively using the system. About 16 percent of vendors with employees reported being registered for E-verify even though they were not actively using it. (In total, 59 percent of vendors with employees were registered for E-Verify or actively using it as of March 2009.) Some vendors

¹² To conduct the survey, we obtained a list of state contracts valued over \$50,000 from MDOA. The list included contracts for goods and services as well as professional/technical services. Because MDOA did not apply the E-Verify executive order retroactively, the contract list was limited to new contracts or newly amended contracts signed after January 2008. According to MDOA officials, the vendors associated with these contracts should have had an E-Verify certification form on file with the state. From this list of contracts, we identified a list of 1,424 unique vendors. We selected a sample of 303 vendors. MDOA later discovered that some of the vendors were associated with master contracts that may not have been used to provide more than \$50,000 in services for the state. We eliminated master contracts from our sample and selected replacements. Addresses for several of the vendors were out of date, and we successfully mailed 295 surveys. We received 217 responses, for a response rate of 74 percent.

told us that they had not hired anyone in the past year, and therefore had no need to use the system. In addition, language in the executive order states that businesses only need to *begin* the process of participating in E-Verify by the time services are provided to the state. Further, as long as they have not hired new employees who will perform work on behalf of the state, MDOA said it will consider a business not registered for E-Verify to be compliant if the business has submitted an E-Verify certification form to the state.

Nevertheless, some of the surveyed vendors reported being unaware of the E-Verify requirement. In telephone calls to OLA and survey comments, some of the respondents said they did not know what E-Verify was or that they were required to use it. We sent the questionnaire to the official that had signed the E-Verify certification form. If that information was not available to us, we directed the questionnaire to the vendor's human resources manager. Thus, it is reasonable to expect that the questionnaire reached someone knowledgeable about the business's use of E-Verify. And, it is reasonable to conclude that some vendors subject to the Governor's executive order are not taking steps to comply with it.

MINNESOTA BUSINESSES' EXPERIENCES WITH E-VERIFY

We also surveyed members of the Minnesota Chamber of Commerce.

To gain an even broader perspective on the use of E-Verify in Minnesota, we also sent a questionnaire to members of the Minnesota Chamber of Commerce.¹³ We received responses from 205 businesses that reported having at least one employee. As shown in Table 2, about 38 percent of Chamber respondents with

Table 2: Use of E-Verify Among Surveyed Minnesota Chamber of Commerce Members, March 2009

Status as of March 2009	Percentage of Members
Actively using E-Verify	38%
Registered, but not actively using E-Verify	7
Not registered for E-Verify or did not answer question	55

NOTE: Percentages are based on 205 Chamber of Commerce members reporting at least one employee.

SOURCE: Office of the Legislative Auditor, analysis of Chamber of Commerce survey, April 2009.

¹³ Like the vendor survey, the Chamber of Commerce survey was administered online. The Minnesota Chamber of Commerce distributed a cover letter from OLA and the survey instructions by e-mail to human resources contacts at member businesses. The Chamber of Commerce e-mail list included about 930 businesses. Two of the Chamber of Commerce respondents also answered our survey of state vendors. In these cases, we applied the businesses' responses to the vendor survey only. In total, we used 206 responses from Chamber members, one of which was from a sole proprietorship.

employees reported being active users of E-Verify as of March 2009. As with state vendors, this was an increase in use from January 2008. About 22 percent of Chamber respondents reported being active users of E-Verify at that time.

General Opinions of E-Verify

On both the vendor and Chamber of Commerce surveys, we asked respondents actively using E-Verify for their opinions of the system. We found that:

- **Opinions of E-Verify were generally positive among survey respondents actively using the system.**

As shown in Table 3, 89 percent of vendors and 91 percent of Chamber members actively using E-Verify said that it was easy to use. About 80 percent of vendors and 83 percent of Chamber members said that the transition to E-Verify went smoothly. In addition, 42 percent of vendors and 65 percent of Chamber members said they would participate in E-Verify without state or federal mandates to do so.

Among state vendors and Chamber of Commerce members actively using E-Verify, about 90 percent told us that the system was easy to use.

Table 3: Opinions of E-Verify Among Survey Respondents Actively Using the System, 2009

	Percentage of Respondents Agreeing or Strongly Agreeing			
	State Vendors		Chamber of Commerce Members	
	<i>N</i>	Percentage	<i>N</i>	Percentage
The E-Verify system is easy to use.	74	89%	75	91%
The transition to using E-Verify went smoothly for my business.	74	80	76	83
The benefits from using E-Verify outweigh the costs.	74	65	76	63
My company would participate in E-Verify without any state or federal mandates to do so.	74	42	76	64
Use of E-Verify brings added legal exposure to my company.	74	15	76	24
Complying with E-Verify has significantly increased my company's cost of doing business.	74	8	74	11

NOTE: Survey responses are based on 74 state vendors and 78 Chamber of Commerce members that reported being active users of E-Verify as of March 2009. Some Chamber respondents did not answer one or more of the opinion questions.

SOURCE: Office of the Legislative Auditor, analysis of state vendor and Chamber of Commerce surveys, April 2009.

Several businesses commented that E-Verify is a useful tool. For example, a Chamber of Commerce respondent wrote:

Overall, implementing E-Verify for our company was fairly simple. We are part of a larger U.S. organization implementing software for over 12,000 employees. This third-party software will allow for electronic submittal of I-9's and will interface to E-Verify. Once that is in place, it should be a simple process. We do not have any issues complying with the mandates.

Another respondent said:

Overall, I feel that the E-verify system has been beneficial to our business. This system helps us feel confident that employment authorization documentation provided by new hires is legitimate.

And another reported that:

When you do have a tentative nonconfirmation, the system steps you through the process you must follow and actually takes the burden off of the employer. Without this system, if I questioned documentation, it was difficult to tell an employee that I couldn't accept their documents. It was really my word against theirs. With E-Verify, it's coming from DHS & SSA and they know they've been caught and don't really fight it.

But, not all businesses we surveyed were satisfied with E-Verify, finding it time-consuming and sometimes cumbersome.

Of course, not all businesses using E-verify were satisfied with it. Some specific problem areas that surveyed businesses raised in their comments included:

- The logistical difficulty of obtaining and entering data into E-Verify within three days. This is a particular concern to employers who administer E-Verify centrally but have geographically dispersed work sites.
- The process required to communicate and provide a tentative nonconfirmation result is time consuming, and employers must allow time off to resolve the issue. Also, some tentative nonconfirmation cases result from name changes that have not been communicated to SSA. One employer noted that participation in E-Verify motivates individuals to contact SSA to update their records, but that these updates to SSA records do not directly benefit employers.
- The training process required to get started on E-Verify is cumbersome and time-consuming.

Cost of Participation

The federal government does not charge a fee to use E-Verify. Nonetheless, business groups and others have suggested that the internal business costs of participating in E-Verify (personnel, training, technology, etc.) may be a significant burden on participating employers. We found that:

- **The cost of participating in E-Verify was not a significant concern among businesses we surveyed that were actively using the system.**

Most of the E-Verify users in our surveys said there was little or no marginal increase in resources required to use the system.

As shown in Table 3, only 8 percent of vendors and 11 percent of Chamber members actively using E-Verify agreed or strongly agreed that using the system significantly increased their cost of doing business. We also asked E-Verify users to estimate how large an increase in resources was required to participate in the program. As shown in Table 4, most (88 percent of vendors and 80 percent of Chamber members) said there was little or no marginal increase in resources required.

Table 4: Extent of Additional Resources Required to Participate in E-Verify Among Survey Respondents Actively Using the System, 2009

Extent of Additional Resources Required	Percentage of Respondents	
	State Vendors	Chamber of Commerce Members
Little or no increase	88%	80%
Moderate increase	11	18
Significant increase	1	1

NOTE: Percentages are based on 73 state vendors and 76 Chamber of Commerce members that reported being active users of E-Verify as of March and answered this question.

SOURCE: Office of the Legislative Auditor, analysis of state vendor and Chamber of Commerce surveys, April 2009.

We asked for a description of added resources and an estimate of their costs if a survey respondent indicated that participating in E-Verify required a moderate or significant level of additional resources. The type of resource investments reported included staff training, personnel, legal representation, internal compliance audits, and outside vendors. Cost estimates varied. Examples of added employer costs included several hundred dollars for initial start-up costs at the low end to \$10,000 annually for added personnel time at the higher end. Table 5 shows more examples of the resource investments that businesses said they made in order to participate in the E-Verify program.

Table 5: Examples of Additional Resources Required to Participate in E-Verify, 2009

Description of Additional Resources Required to Use E-Verify	Estimate of Associated Costs	Number of Employees Nationwide ^a
Cost of vendor brought in to assist at 250 hiring locations plus additional staff time	\$200,000 initial investment with ongoing vendor costs	39,000
Develop training, develop documentation, deliver training, and spot check locations for compliance. Overnight mailing costs now involved because of the 3-day time limit to enter the data. Our multiple rural locations are not able to meet the standard due to their lack of internet access as well as the confidentiality involved with the data.	One-time cost of \$11,500 for training; \$100 per week ongoing for overnight mail	7,800
Administrative processing time	\$200 per week in labor costs	3,800
Extra training for four staff. Cost of staff time needed to process new hires in E-verify, including the cost of an extra staff person needed half-time for two months to process seasonal hires.	\$5,000 per year	1,100
Staff time for start-up training, conference call, etc. necessary to start using E-Verify	\$500	500
Legal representation and staff training	\$6,000	300

NOTE: Examples were provided by survey respondents reporting that their businesses made either a moderate or significant investment in new resources in order to participate in E-Verify.

^a The questionnaire asked respondents to provide their best estimates of the number of employees. Their responses are rounded in the table.

SOURCE: Office of the Legislative Auditor, analysis of state vendor and Chamber of Commerce surveys, April 2009.

Applicability of Other Mandates

For the most part, participation in E-Verify is voluntary for employers nationwide. However, federal and state mandates require participation by certain groups. We found that:

- **Minnesota businesses may be subject to a patchwork of E-Verify requirements if they do business in other states or with the federal government.**

Minnesota businesses may be subject to the federal E-Verify mandate. Under a June 2008 Presidential executive order, federal contractors must use E-Verify to verify the employment eligibility of (1) all new employees in the U.S. hired

during the contract term and (2) all employees performing work on the contract within the U.S. Implementation of the federal order is scheduled for the summer of 2009. More specifically, the requirement to use E-Verify must be included in federal contracts awarded and solicitations issued after June 30, 2009. The same requirement will apply to subcontracts over \$3,000 if they are for services or construction. Certain contracts are exempt from the rule, including those for less than \$100,000 and those for commercially-available, off-the-shelf items. Contractors subject to the order must enroll in E-Verify within 30 days of the contract award date.

Including Minnesota, 15 states have laws or orders pertaining to E-Verify.

Including Minnesota, 15 states have laws or orders either mandating, encouraging, or prohibiting the use of E-Verify. A list of these states and a summary of their requirements are in Appendix C. Including Minnesota, 13 states have mandated the use of E-Verify, although the specific requirements vary. Missouri, for example, requires the use of E-Verify by all state government entities, other public employers with taxing authority, any businesses receiving a public contract or grant of more than \$5,000 from the state or other covered public employers, and any business receiving a state subsidy. Arizona requires all employers, public and private, to use E-Verify. Georgia's mandate applies to all public employers and all public contractors and subcontractors. Illinois enacted a law *prohibiting* all employers from using E-Verify until the system could resolve 99 percent of tentative nonconfirmation notices within 3 days. A U.S. District Court struck down this part of the law in March 2009 as a violation of the supremacy clause of the U.S. Constitution.

Among surveyed businesses with employees (including those actively using and not using E-Verify), about 37 percent of Minnesota state vendors and 27 percent of Chamber of Commerce members said they will be required to comply with the federal executive order. Small proportions of the state vendors and Chamber members we surveyed reported being subject to other state mandates to use E-Verify, as shown in Table 6.

Various stakeholders said that the patchwork of requirements creates potential problems for businesses. In particular, MDOA officials noted the differences between Minnesota's executive order and the federal executive order because the applicability requirements differ substantially. For example, the participation threshold in Minnesota's order is \$50,000 while the federal threshold is \$100,000. The federal order applies to subcontractors with contracts over \$3,000; Minnesota does not have a subcontractor threshold. The federal government excludes contracts for commercially-available, off-the-shelf products while Minnesota does not.

RECOMMENDATION

The Governor should consider amending the terms of his E-Verify executive order to conform to the executive order for federal contractors.

Immigration policy is largely a federal issue. To reduce burden on Minnesota employers, we think it makes sense for the Governor to consider conforming his E-Verify mandate to that for federal contractors. Roughly one-third of state

vendors and Chamber of Commerce members we surveyed believe they are subject to the executive order for federal contractors.

Table 6: Applicability of Other States' E-Verify Mandates for Surveyed Minnesota Businesses, 2009

States Requiring Employers to Use E-Verify	Percentage of Respondents Reporting That the State Mandate Applies			
	State Vendors		Chamber of Commerce Members	
	N	Percentage	N	Percentage
Arizona	159	8%	131	15%
Colorado ^a	161	7	127	11
Georgia	161	6	127	11
Idaho	158	3	128	9
Mississippi	159	4	129	9
Missouri	160	8	127	9
North Carolina	161	5	127	9
Oklahoma	160	5	125	8
Rhode Island	159	4	126	9
South Carolina	159	4	127	9
Utah	157	3	125	9
States Encouraging Employers to Use E-Verify				
Colorado ^a	161	7	127	11
Tennessee	159	4	126	10
States Prohibiting Employers From Using E-Verify				
Illinois	161	5	131	11

NOTES: At the time we developed our questionnaires, the Nebraska legislature had not enacted its E-Verify law. As a result, we did not include it. State mandate questions were directed only to businesses with employees (174 vendors and 205 Chamber of Commerce respondents). Some respondents skipped particular states and others skipped the question for all states. For each state, the denominator used to calculate the percentage is the number of respondents providing an answer (yes, no, or don't know) regarding the applicability of the state's mandate. If we had calculated percentages based on the total number of survey respondents with employees (a larger number), the percentages would have been somewhat lower.

^a Colorado appears twice in the table because it requires some employers to use E-Verify and encourages others to do so.

SOURCE: Office of the Legislative Auditor, analysis of state vendor and Chamber of Commerce surveys, April 2009.

OUTCOMES, ACCURACY, AND SYSTEM CAPACITY

As various stakeholders consider expanded use of E-Verify, one of the biggest concerns is the accuracy of the work-authorization results the system returns. In this section of the report, we present available data on E-verify query results, the extent to which the system erroneously provides tentative nonconfirmations, and assessments of the system's capacity to handle greater participation by employers. Because E-Verify is a federal system, we relied on federal data sources, including USCIS, the Government Accountability Office (GAO), and Westat, a national consulting firm hired to evaluate E-Verify.

Outcomes

According to a 2007 outside evaluation of E-Verify by the Westat consulting firm,¹⁴

- **From 2005 to 2007, 93 percent of E-Verify queries nationwide resulted in immediate¹⁵ verification of the employee's eligibility to work in the United States.**

Among the 7 percent of cases nationally in which employees were initially found ineligible to work, few successfully contested the finding.

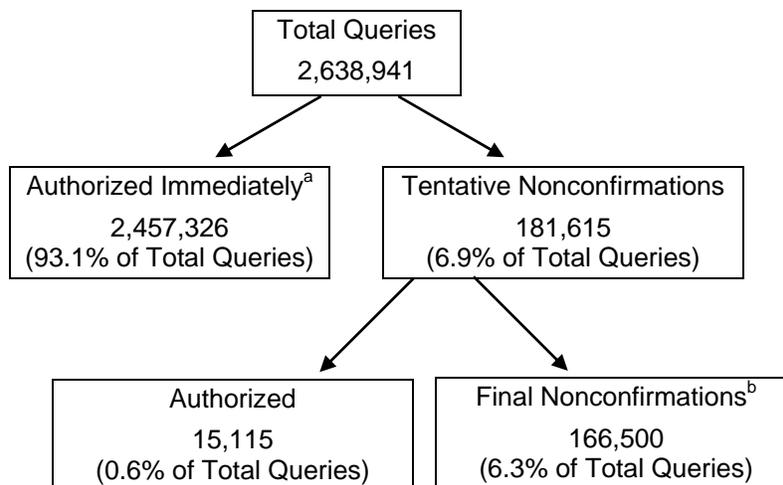
Among about 2.6 million queries made between October 2005 and March 2007, 93 percent returned immediate determinations that employees were authorized to work in the U.S., as shown in Figure 2. The remaining 7 percent of queries resulted in tentative nonconfirmations. Ultimately, few of the employees receiving tentative nonconfirmations successfully contested the finding and were authorized to work in the U.S. (0.6 percent of all queries).

A more detailed analysis of E-Verify results from the same 2007 study showed that the pattern of determinations differed depending on whether the employee attested to being a U.S. citizen or a work-eligible noncitizen. As shown in Table 7, 24 percent of employees who declared themselves to be work-eligible noncitizens received tentative nonconfirmations from E-Verify compared with 4 percent of declared citizens. Declared citizens and noncitizens contested tentative nonconfirmations at about the same rate. But a larger proportion of declared citizens who contested (67 percent) were ultimately found to be authorized to work than declared noncitizens (32 percent).

¹⁴ Westat, *Findings of the Web Basic Pilot Evaluation* (Washington, DC, 2007). GAO "reviewed the scope and methodology used by Westat in conducting the evaluation and, based on this review, found that the report findings were sufficiently reliable to provide a general indication of the types of ways in which employers have used the program." U.S. Government Accountability Office, *Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System* (Washington, DC, June 10, 2008), 3.

¹⁵ By "immediate verification," we are referring to queries returning a work-authorized finding in three to five seconds using the SSA and DHS databases, as well as a small number of queries authorized by a USCIS immigration verifier within 24 hours.

Figure 2: E-Verify Query Outcomes, October 2005 to March 2007



^a By "immediate verification," we are referring to queries returning a work-authorized finding in three to five seconds using the SSA and DHS databases, as well as a small number of queries authorized by a USCIS immigration verifier within 24 hours.

^b It is not possible to establish the definitive reason behind these final nonconfirmations. In addition to a clear determination that a worker is not authorized to work in the U.S., a final nonconfirmation can result if an employer fails to notify the employee of a tentative nonconfirmation or when an employee chooses not to contest a tentative nonconfirmation.

SOURCE: Westat, *Findings of the Web Basic Pilot Evaluation* (Washington, DC, 2007), 46 and 48.

Reasons for nonconfirmation also varied by declared citizenship status. When an employee is not immediately confirmed by SSA as work-authorized, the E-Verify system captures a reason for the tentative nonconfirmation. Westat evaluated reasons for tentative nonconfirmation for the set of employees that went on to receive final nonconfirmations. In these cases, most tentative nonconfirmations had been issued because employees' names, dates of birth, or both did not match what was recorded in federal information systems for the SSN declared. But as shown in Table 8, citizens were less likely than noncitizens to have invalid SSNs or a mismatch on both name and date of birth. According to Westat, these two categories (invalid SSN and mismatch on both name and date of birth) are more likely to indicate that the employee presented false information regarding work-authorization status.

Table 7: Verification Outcomes by Declared Citizenship Status, October 2005 to March 2007

Initial Query Outcomes	Declared Citizens		Declared Noncitizens	
	Number	Percentage	Number	Percentage
Authorized to Work	2,184,107	95.8%	273,219	76.3%
Tentative Nonconfirmation	<u>96,533</u>	<u>4.2</u>	<u>85,082</u>	<u>23.7</u>
Total Queries	2,280,640	100.0%	358,301	100.0%
Outcomes of Tentative Nonconfirmations				
Contested by Employee	14,824	15.4%	16,583	19.5%
Not Contested by Employee	<u>81,709</u>	<u>84.6</u>	<u>68,499</u>	<u>80.5</u>
Total Nonconfirmations	96,533	100.0%	85,082	100.0%
Outcomes of Contested Tentative Nonconfirmations				
Authorized to Work	9,898	66.8%	5,217	31.5%
Not Authorized to Work or Final Nonconfirmation	<u>4,926</u>	<u>33.2</u>	<u>11,366</u>	<u>68.5</u>
Total Contested Nonconfirmations	14,824	100.0%	16,583	100.0%

SOURCE: Westat, *Findings of the Web Basic Pilot Evaluation* (Washington, DC, 2007), 46 and 48.

Table 8: Reasons for Tentative Nonconfirmation by Declared Citizenship Status Among Employees Receiving Final Nonconfirmations, October 2005 to March 2007

Reason for Tentative Nonconfirmation	Percentage of Final Nonconfirmations	
	Declared Citizens	Declared Noncitizens
Invalid Social Security number	5%	19%
Name does not match SSA records	13	8
Date of birth does not match SSA records	17	13
Name and date of birth do not match SSA records	27	61
Other reasons ^a	39	<1

NOTES: The data in this table are limited to cases in which a tentative nonconfirmation was issued following the SSA data match. Percentages do not sum to 100 due to rounding.

^a Among declared citizens, the most common "other" reason is that the employee's Social Security number, name, and date of birth matched SSA records but citizenship could not be confirmed. Westat presumed that the low percentage of noncitizen cases in the "other" category was due to the fact that SSA sends noncitizen cases to USCIS for confirmation of work-authorization status when their information is consistent with the SSA database.

SOURCE: Westat, *Findings of the Web Basic Pilot Evaluation* (Washington, DC, 2007), 51.

Accuracy

Another concern about E-Verify is the extent to which the system returns tentative nonconfirmations in error. Inaccurate nonconfirmations create unnecessary burden for employers, employees, and the federal government. A parallel issue is the extent to which E-Verify authorizes employees who should not be.

Erroneous Tentative Nonconfirmations

Westat's 2007 E-Verify evaluation found that:

- **Enhancements to the original pilot system have improved the accuracy of E-Verify determinations, but some concerns remain.**

Westat analyzed the rate of erroneous tentative nonconfirmations. This rate is defined as the percentage of employees found to be work-authorized at any point in the process who had initially received a tentative nonconfirmation.¹⁶ In an evaluation of E-Verify as first piloted (November 1997 through December 1999), the erroneous tentative nonconfirmation rate was 4.8 percent. Westat reported that the rate had improved to 0.6 percent for the period October 2004 through March 2007.¹⁷

The web-based version of E-Verify implemented in 2005 included more editing features designed to reduce the number of data entry errors made by employers. However, although reduced, Westat reported that the opportunity for data entry errors by employers still exists. For example, a tentative nonconfirmation may result if an employer were to enter an August 5th birthday as "05/08" rather than "08/05."

Although the overall rate of erroneous tentative nonconfirmations reported by Westat in 2007 was fairly low, it was much higher—about 10 percent—among foreign-born citizens. These foreign-born citizens include children born to U.S. citizens living abroad and naturalized citizens. Westat offered the following interpretation of this finding:

At least some of the difference between U.S.-born and foreign-born ever-authorized employees receiving tentative nonconfirmations is that noncitizens have their information verified against both the SSA and USCIS databases. Therefore, noncitizens have two opportunities to receive tentative nonconfirmations—one based on SSA's checking whether the

Recent data show that E-Verify incorrectly determined employees to be ineligible to work in fewer than 1 percent of cases.

¹⁶ Some work-authorized employees do not contest tentative nonconfirmations because their employers do not inform them of the nonconfirmation or because they choose not to do so. Westat did not include these cases in either the numerator or denominator of the erroneous nonconfirmation rate.

¹⁷ The erroneous tentative nonconfirmations are essentially the same group of employees represented in the lower left box of Figure 2.

Form I-9 SSN is consistent with its information on date of birth and name and the other based on the USCIS check comparing the Form I-9 information for A-number against its information on date of birth and name, as well as its information on work authorization. Furthermore, some employers may make more mistakes when entering foreign-sounding names than in entering names with which they may be more familiar, causing more non-matches during the verification process for foreign-born employees.¹⁸

The federal government has addressed inaccuracies related to authorization of foreign-born citizens. Changes in 2008 and 2009 included (1) adding data sources for verifying citizenship (Department of State passport data and USCIS naturalization data) and (2) changes in procedure (adding an automated check to USCIS naturalization databases for all newly hired employees claiming U.S. citizenship who were not automatically authorized during the SSA check).

In 2009, USCIS published more recent outcome data that indicate additional improvement in E-Verify's accuracy. The data were prepared by Westat and reflect queries made from April through June 2008. In this three-month period, 96.1 percent of queries were authorized and 3.9 percent resulted in tentative nonconfirmations. The erroneous tentative nonconfirmation rate was 0.37 percent of queries.

State-level data on E-Verify outcomes were not readily available. As a result, we asked businesses responding to our questionnaires to provide data on the number of queries made, tentative nonconfirmations received, and final nonconfirmations received in 2008 (the question was limited to those businesses that reported using E-Verify for at least 10 months in 2008). The number of queries reported per business ranged to a high of 5,000. However, the number of respondents providing query results was small, and we could not estimate a nonconfirmation rate for survey respondents.

State-level data on E-Verify outcomes and accuracy are not readily available.

Erroneous Authorizations

Errors may also occur if E-Verify authorizes a worker who is in fact not eligible to work in the U.S. The E-Verify program does not include follow-up procedures that would identify invalid findings of work authorization. Hence, it is not possible to systematically quantify the extent to which unauthorized workers have passed E-Verify checks.

Nonetheless, we found that:

- **Federal officials acknowledge that E-Verify is vulnerable to identity fraud.**

¹⁸ Westat, *Findings of the Web Basic Pilot Evaluation* (Washington, DC, 2007), 97.

E-Verify is not likely to detect forms of identity fraud in which the worker has stolen, borrowed, or purchased genuine identity documents.

E-Verify can help employers identify fake documentation, such as a document fabricated with a fake Social Security number. However, E-Verify cannot always help employers detect forms of identity fraud in which the worker has stolen, borrowed, or purchased genuine identity documents.¹⁹

USCIS added a photo screening tool to E-Verify in 2007 to help combat certain types of identity fraud. E-Verify now links to copies of photographs associated with lawful permanent resident cards (“green cards”) and employment authorization documents. If an employee provides one of these documents to demonstrate work eligibility, the employer can enter the card number into E-Verify. The system retrieves a copy of the official photograph that the employer then matches to the photo on the document presented by the employee. The photos should be identical.

According to USCIS officials, the agency has been working to include other photo documentation in E-Verify. For example, USCIS entered into an agreement with the Department of State in December 2008 to share passport data and photographs from the Department of State’s records. (Passport data, but not the photos, were incorporated into E-Verify beginning February 2009.) The agency’s long-term goal is to allow E-Verify photo screening for other identity documents, such as drivers’ licenses, that an employee may present as acceptable Form I-9 documentation.

Capacity

As the federal government and states consider making E-Verify mandatory for more employers, the capacity of E-Verify to handle additional queries is an important consideration. We found that:

- **Federal officials report that E-Verify has the capacity to handle growing enrollment, including mandatory use by employers nationwide.**

Participation in E-Verify has been growing, but at this time it is used for a small proportion of new hires in the U.S. In July 1999, an estimated 1,189 employers had signed up to use E-Verify in its pilot form. In January 2006, 5,272 employers representing 22,710 hiring sites were registered. As of April 2009, enrollment had grown to over 117,000 employers representing 456,000 sites, and about 1,000 employers were signing up for E-Verify each week. Even with this growth in program enrollment, USCIS recently reported that only 14 percent of all new nonagricultural new hires in the U.S. were checked through E-Verify.

According to a 2008 GAO report, a national, mandatory E-verify program would necessitate an increased capacity at both USCIS and SSA to accommodate the estimated 7.4 million employers in the U.S. Under a mandatory system, USCIS estimated that annual employer queries of newly hired employees would average

¹⁹ It is also difficult for E-Verify to detect valid documents obtained by using fraudulent birth certificates or other counterfeited documents.

63 million, compared to 6.6 million queries logged in 2008. GAO reported that USCIS has tested the E-Verify computer system and found that it could process up to 240 million queries per year with the addition of five servers.

ANTIDISCRIMINATION PROVISIONS

In establishing E-Verify, the federal government included various rules of use designed to prevent discrimination, as shown in Table 9. These include using E-Verify to check employment status only after a worker has been hired, informing employees of tentative nonconfirmation findings, and not taking adverse action against employees who choose to contest tentative nonconfirmations. However, in testimony to Congress,²⁰

- **USCIS has acknowledged substantial noncompliance by employers with program rules designed to prevent discrimination.**

In its 2007 evaluation, Westat found substantial noncompliance with E-Verify's rules of use. For example, about one-third of employers surveyed by Westat reported using the system to screen job applicants or to verify employees' work status before the first day of work, both of which are prohibited practices. In addition, some employers took adverse actions against employees while they were contesting tentative nonconfirmations. In this regard, 22 percent of employers in Westat's survey reported restricting the work assignments of employees receiving tentative nonconfirmations, 16 percent reported delaying training, and 2 percent reported reducing pay.

Westat reported that most employers followed proper procedures for notifying employees of tentative nonconfirmations; however, a small proportion did not. For example, 10 percent or less of surveyed employers reported (1) not encouraging employees to contest tentative nonconfirmations, (2) informing employees of the tentative nonconfirmation publicly rather than privately, and (3) failing to provide the tentative nonconfirmation notice in writing.

In recent testimony, the USCIS Deputy Director testified that the agency "is dedicated to reducing E-Verify misuse through employer training, educational outreach, print and electronic resources, and its monitoring and compliance program."²¹ He added that "added expansion of [E-Verify] can only occur after we address the critical issue of employer misuse."²²

Federal officials are concerned that employers are misusing E-Verify, for example, by screening job applicants rather than limiting its use to new hires.

²⁰ Testimony of Acting Deputy Director Michael Aytes, U.S. Citizenship and Immigration Services, before the House Committee on Appropriations, Subcommittee on Homeland Security, April 2, 2009.

²¹ *Ibid.*

²² *Ibid.*

Table 9: E-Verify Rules of Use to Prevent Discrimination

- Employees must be newly hired with a completed Employment Eligibility Verification Form I-9 (referred to hereafter as Form I-9) before the employer can use E-Verify to initiate queries about employees.
- Form I-9 requirements remain the same except that all "List B" identity documents must bear a photograph.^a
- Employers must submit verification queries for newly hired employees no later than the third business day after they start work for pay.
- If an employer discovers it failed to initiate a verification query by the third business day after the employee starts work for pay, it should comply to the extent possible with program requirements immediately by initiating the query.
- Employers may not verify newly hired employees selectively, and must follow E-Verify procedures for all new hires while their company is participating.
- Employers may not request that the employee use certain documentation for Form I-9 or E-Verify purposes.
- Employers may not use E-Verify to discriminate against any job applicant or new hire on the basis of his or her national origin, citizenship, or immigration status.
- Employers may not use the system to pre-screen applicants for employment.
- An employer may not go back to check employment eligibility for employees hired before it signed the Memorandum of Understanding with USCIS and SSA.
- Employers may not use the system to re-verify employment authorization.
- Employers must provide their employees with an opportunity to contest a Tentative Nonconfirmation.
- Employers cannot take any adverse action against an employee based upon E-Verify unless the program issues a Final Nonconfirmation.
- Employees must continue to work during the verification process.

^a "List B" documents that can be used to verify employment status include a state driver's license or ID card, ID cards issued by federal, state, or local government agencies, school ID card, voter registration card, U.S. military card or draft documents, military dependent's ID card, U.S. Coast Guard Merchant Mariner Card, Native American tribal document, or a Canadian driver's license.

Because it is a federal program, responsibility for investigating allegations of discrimination and employer misuse of E-Verify rests with the federal government. We were interested, however, in the extent to which Minnesota employers and Minnesota state government agencies provide training on the antidiscrimination provisions in E-Verify's rules of use. We found that:

- **Over half of the active E-Verify users we surveyed provide specific training on the antidiscrimination provisions of the E-Verify program; Minnesota state government provides little.**

In our questionnaires, we asked businesses that were actively using E-Verify to indicate the type of training they provide to managers, supervisors, and staff directly responsible for the hiring of new employees, the I-9 process, and use of E-Verify. As shown in Table 10, over 70 percent of state vendors and chamber members said that they provide training on the company's hiring procedures and the mechanics of using E-Verify. Smaller proportions (between 50 and 66 percent) provide training on E-Verify's antidiscrimination rules and on immigration issues in the workplace.

Table 10: Training Provided to Staff Responsible for Administering E-Verify, Among Survey Respondents Actively Using the System, 2009

	Percentage of Businesses Providing the Training			
	State Vendors		Chamber of Commerce Members	
	<i>N</i>	Percentage	<i>N</i>	Percentage
General training on the business's hiring procedures	74	70%	73	86%
Training on the mechanics of using E-Verify's online system	74	73	76	76
Specific training on the antidiscrimination requirements of the E-Verify program	74	50	73	66
General training on immigration issues in the workplace, of which E-Verify was a part	74	50	73	60

NOTES: Survey responses are based on 74 state vendors and 78 Chamber of Commerce members that reported being active users of E-Verify as of March 2009. Some Chamber members did not answer some or all of the training questions.

SOURCE: Office of the Legislative Auditor, analysis of state vendor and Chamber of Commerce surveys, April 2009.

The Minnesota Department of Human Rights has not received any complaints regarding E-Verify or employer misuse of the system.

Neither MMB, MDOA, nor DEED provide comprehensive training on E-Verify. According to MMB, the department has not provided any training for state agencies because the executive branch is not yet ready to use E-Verify. MDOA officials said their agency provides guidance to state vendors on Minnesota's requirements but relies on the federal government to answer detailed questions about the system. DEED does not provide direct training either.

In a May 2008 letter to Governor Pawlenty, USCIS offered to work with Minnesota to develop an educational campaign encouraging businesses to use E-Verify. After consulting with the Governor's Office, MDOA did not accept USCIS's offer of assistance. The department said that USCIS's promotional message was not directly relevant to state vendors already required to use the system.

We asked the Minnesota Department of Human Rights if the agency had received any complaints regarding E-Verify or employer misuse of the system. As of May 2009, the Commissioner of Human Rights reported that her agency had not received any complaints from Minnesotans about E-Verify.

RECOMMENDATION

The Minnesota departments of Administration and Employment and Economic Development should work with USCIS to make federally-provided training, outreach, and other resources available to Minnesota employers subject to the Governor's E-Verify executive order.

Preventing the misuse of E-Verify and discrimination against work-eligible persons is of paramount importance. While the number of Minnesota employers subject to the Governor's executive order is relatively small, we think that if the Governor is going to mandate the use of E-Verify, the state should also take reasonable steps to ensure that the system is used properly. This includes taking advantage of resources available from the federal government.

List of Recommendations

- The Governor should consider amending the terms of his E-Verify executive order to conform to the executive order for federal contractors ([p. 13](#)).
- The Minnesota departments of Administration and Employment and Economic Development should work with USCIS to make federally-provided training, outreach, and other resources available to Minnesota employers subject to the Governor's E-Verify executive order ([p. 24](#)).

Federal Form I-9

APPENDIX A

OMB No. 1615-0047; Expires 06/30/09

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
 A noncitizen national of the United States (see instructions)
 A lawful permanent resident (Alien #) _____
 An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - month/day/year)

Employee's Signature

Date (month/day/year)

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature

Print Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: _____	OR	_____	_____	_____
Issuing authority: _____		_____	_____	_____
Document #: _____		_____	_____	_____
Expiration Date (if any): _____		_____	_____	_____
Document #: _____		_____	_____	_____
Expiration Date (if any): _____	_____	_____	_____	_____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
-----------------------------	--

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: _____ Document #: _____ Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
--	-----------------------

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization	
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States	
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of Birth Abroad issued by the Department of State (Form FS-545)	
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Certification of Report of Birth issued by the Department of State (Form DS-1350)	
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal	
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form		5. U.S. Military card or draft record		5. Native American tribal document	
		6. Military dependent's ID card			
		7. U.S. Coast Guard Merchant Mariner Card			
		8. Native American tribal document			
		9. Driver's license issued by a Canadian government authority			
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI		For persons under age 18 who are unable to present a document listed above:		7. Identification Card for Use of Resident Citizen in the United States (Form I-179)	
		10. School record or report card		8. Employment authorization document issued by the Department of Homeland Security	
		11. Clinic, doctor, or hospital record			
	12. Day-care or nursery school record				

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

Minnesota Certification Form

APPENDIX B

State of Minnesota — Immigration Status Certification

By order of the Governor's Executive Order 08-01, vendors and subcontractors MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the *E-Verify* system established by the Department of Homeland Security.

E-Verify program information can be found at <http://www.dhs.gov/ximgtn/programs>.

If any response to a solicitation is or could be in excess of \$50,000, vendors and subcontractors must certify compliance with items 1 and 2 below. In addition, prior to the delivery of the product or initiation of services, vendors MUST obtain this certification from all subcontractors who will participate in the performance of the contract. All subcontractor certifications must be kept on file with the contract vendor and made available to the state upon request.

1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and
2. By the date of the delivery of the product and/or performance of services, the company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

I certify that the company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.

Name of Company: _____ Date: _____
Authorized Signature: _____ Telephone Number: _____
Printed Name: _____ Title: _____

If the contract vendor and/or the subcontractors are not in compliance with the Immigration Reform and Control Act, or knowingly employ persons in violation of the United States immigration laws, or have not begun or implemented the *E-Verify* program for all newly hired employees in support of the contract, the state reserves the right to determine what action it may take. This action could include, but would not be limited to cancellation of the contract, and/or suspending or debaring the contract vendor from state purchasing.

For assistance with the *E-Verify* Program

Contact the National Customer Service Center (NCSC) at **1-800-375-5283** (TTY 1-800-767-1833).

For assistance with this form, contact:

Mail: 112 Administration Bldg, 50 Sherburne Ave. St. Paul, MN 55155

Email: MMDHelp.Line@state.mn.us

Telephone: 651.296.2600

Persons with a hearing or speech disability may contact us by dialing 711 or 1.800.627.3529

State E-Verify Requirements

APPENDIX C

States Requiring the Use of E-Verify

Arizona

Arizona Revised Statutes
23-214 (2007)

- Requires that all employers, public and private, use E-Verify^a
- Does not penalize employers for failing to use E-Verify except that nonparticipating employers cannot receive economic development incentives
- Effective January 1, 2008; loss of economic development incentives can only occur for incentives awarded after September 30, 2008
- Legal challenge rejected September 2008 by the U.S. Court of Appeals for the Ninth Circuit

Colorado

Colorado Revised Statutes
8-17.5-102 (2006, revised
2007 and 2008)

- Mandates use of E-Verify or a separate state employment verification program by all public employers and all public contractors; all other employers must be notified of the opportunity to use E-Verify (discussed below)
- Original law, effective August 7, 2006, mandated use of E-Verify only; revised law, effective May 13, 2008, added the separate state verification program

Georgia

Official Code of Georgia
8-10-91 (2006)

Georgia House Bill 2
(2009)

- Mandates use of E-Verify by all public employers and all public contractors and subcontractors; 2009 amendment requires public employers to post their E-Verify user ID numbers on their websites and requires public contractors to provide their E-Verify user ID numbers in affidavits that become public records
- Effective July 1, 2007 for all public employers and for public contractors and subcontractors with at least 500 employees, effective July 1, 2008 for public contractors and subcontractors with at least 100 employees, and effective July 1, 2009 for all public contractors and subcontractors
- Additional legislation passed in 2009 requires businesses receiving a jobs tax credit to participate in E-Verify

Idaho

Executive Order 2006-40
(2006)

- Requires all executive branch agencies to develop and implement procedures ensuring that new employees are eligible for employment
- The Idaho Division of Human Resources has implemented the executive order by requiring that all new state employees be checked through E-Verify
- Implemented October 1, 2007

Minnesota

Executive Order 08-01
(2008)

- Mandates use of E-Verify by executive branch state agencies and state vendors and subcontractors for contracts over \$50,000
 - Encourages use of E-Verify by recipients of business subsidies, but implementing state agency has chosen to require E-Verify use by subsidy recipients
 - Covered vendors and subcontractors must use E-Verify for all newly hired employees in the United States who will perform work for the State of Minnesota
 - Effective January 29, 2008
-

States Requiring the Use of E-Verify (Continued)

<p>Mississippi Mississippi Code 71-11-3 (2008)</p>	<ul style="list-style-type: none"> • Requires that all employers, public and private, use E-Verify • Private employers failing to use E-Verify could lose business license for one year, have any public contracts cancelled, and be ineligible to bid for any public contract for three years • Effective July 1, 2008 for all public employers, for all public contractors and subcontractors, and for private employers with at least 250 employees; effective July 1, 2009 for private employers with at least 100 employees; effective July 1, 2010 for private employers with at least 30 employees; and effective July 1, 2011 for all employers
<p>Missouri Missouri Revised Statutes 285.530 (2008)</p>	<ul style="list-style-type: none"> • Mandates use of E-Verify by all state employers and all other public employers with taxing authority, by any businesses receiving a public contract or grant of more than \$5,000 from a state employer or a public employer with taxing authority, and by any business receiving a state subsidy • Does not penalize employers for failing to use E-Verify; however, use of E-Verify would automatically preclude penalties for hiring ineligible workers • Effective January 1, 2009
<p>Nebraska Laws of Nebraska LB403 (2009)</p>	<ul style="list-style-type: none"> • Requires the use of E-Verify by all public employers, all public contractors and subcontractors, and all businesses receiving specified state economic development assistance • Effective October 1, 2009
<p>North Carolina North Carolina General Statutes 126-7.1(f) (2006)</p>	<ul style="list-style-type: none"> • Mandates use of E-Verify by all state agencies, state higher education institutions, and local education agencies • Effective January 1, 2007, except effective for local education agencies on March 1, 2007
<p>Oklahoma Oklahoma Statutes 25-1312 and 25-1313 (2007)</p>	<ul style="list-style-type: none"> • Mandates use of E-Verify by all public employers • Requires that all public contractors and subcontractors to use either E-Verify, the Social Security Number Verification Service, or "any other independent, third-party system with an equal or higher degree of reliability;" this portion of the law was challenged as conflicting with federal law and was blocked under a preliminary injunction by a U.S. District Court in June 2008 pending final resolution of the court challenge • Effective for public employers on November 1, 2007; effective for public contractors and subcontractors after July 1, 2008 • Legal challenge based on the state constitution rejected by a district court in February 2009; litigants plan to appeal
<p>Rhode Island Executive Order 08-01</p>	<ul style="list-style-type: none"> • Mandates use of E-Verify by executive branch agencies (excluding agencies headed by separately elected constitutional officers) and by all state contractors and subcontractors, grantees, and vendors • No effective date given; the state Department of Administration began implementation in July 2008, but court challenges delayed full implementation for three months^b • A state court ruled in April 2009 that the Governor had acted within his authority; opponents plan to appeal

States Requiring the Use of E-Verify (Continued)

South Carolina

South Carolina Code of
Laws 41-8 and 8-14 (2008)

- Requires all public employers to participate in E-Verify
 - Requires that all private employers and all specified contractors either participate in E-Verify or employ only workers that hold a valid South Carolina driver's license or identification card^c
 - For businesses that participate in E-Verify, any employee whose eligibility is not verified must be terminated
 - Prescribes civil penalties of \$100 to \$1,000 for private employers that do not comply; no explicit penalties are provided for nonparticipating contractors
 - Effective January 1, 2009 for public employers and specified contractors, subcontractors, and sub-subcontractors of at least 500 employees; effective July 1, 2009 for private employers and specified contractors and subcontractors of at least 100 employees; effective July 1, 2010 for all private employers and all specified contractors, subcontractors, and sub-subcontractors
-

Utah

Utah Code 63G-11-103
(2008)

- Requires all public employers and all public contractors to use E-Verify, the Social Security Number Verification Service, or "an independent third-party system with an equal or higher degree of reliability"
 - Effective July 1, 2009
-

States Encouraging the Use of E-Verify

Colorado

Colorado Revised Statutes
8-2-124 (2008)

- Requires the state Department of Labor and Employment to notify, on a quarterly basis, all employers in the state of the federal law against hiring or continuing to employ an unauthorized alien and of the availability of E-Verify
 - Notification must state that E-Verify is not one hundred percent accurate and that an employee incorrectly flagged as ineligible to work by the E-Verify system has recourses available
 - Notification must also clarify that E-Verify can only be used after a new employee is hired and cannot be used to verify the work eligibility of existing employees
 - Effective August 5, 2008
-

Tennessee

Tennessee Code 50-1-103
(2007)

- Employers that have used E-Verify cannot be found in violation of the state's prohibition on the employment of unauthorized aliens and are not subject to the penalties in state law if unauthorized aliens are found in their workforce
 - Effective January 1, 2008
-

States Limiting the Use of E-Verify

Illinois

820 Illinois Consolidated Statutes 55/12 (2007)

- Prohibits all employers from using E-Verify until system can resolve 99 percent of tentative nonconfirmation notices within 3 days; this part of the law struck down in March 2009 by a U.S. District Court as a violation of the supremacy clause of the U.S. Constitution
 - Prohibits local governments from requiring contractors or licensees to participate in E-Verify
 - Requires employers using E-Verify to follow the system's procedures and notify unverified employees of options available to them
 - Effective January 1, 2008
-

NOTE: Some statutes and executive orders cited above refer to the "Basic Pilot Program" (an earlier name of the program), some refer to "E-Verify", and some refer to an unspecified federal electronic verification system.

^a In this table, unless otherwise noted, "public employer" includes any agency, department, or office of the state or of any political subdivision of the state, such as counties, municipalities, townships, and school districts. "Public contractor" includes any private employer in a contractual relationship with any public employer. We use the terms "state employer" and "state contractor" when the law applies only to state agencies, departments, and offices and not to political subdivisions.

^b In 2008, a Rhode Island court briefly prevented the state from taking adverse action against contractors or vendors for nonparticipation in E-Verify because the state had not provided adequate notice and time for public comment under the state's Administrative Procedures Act.

^c In South Carolina, the requirement to use E-Verify covers all state contractors, subcontractors, and sub-subcontractors where the 12-month value of the contract exceeds \$25,000, and all contractors, subcontractors, and sub-subcontractors working for political subdivisions of the state where the 12-month value of the contract exceeds \$15,000. In addition to hiring only workers that possess a South Carolina license or ID card, employers may hire workers who (a) can demonstrate that they are eligible to obtain a South Carolina license or ID card although they do not have one, or (b) possess a license or ID card from another state whose requirements are at least as strict as those in South Carolina.

SOURCES: National Conference of State Legislatures, *E-Verify Frequently Asked Questions* (Revised January 2009), <http://www.ncsl.org/programs/immig/EVerifyFAQ.htm>, accessed March 13, 2009; and state laws and executive orders as cited above.



May 29, 2009

James R. Nobles, Legislative Auditor
658 Cedar Street
Centennial Office Building, Room 140
St. Paul, MN 55155-1603

Dear Mr. Nobles:

Thank you very much for the opportunity to submit a response to the results of the audit report on E-Verify scheduled for release on June 10, 2009. We wish to extend specific appreciation to you and your staff for the thorough examination of the program and the receptiveness to feedback displayed during the audit.

A review of the report verifies that the Department of Administration has implemented the Governor's Executive Order fully and as intended with respect to state contract vendors. We appreciate the report's detailed description of implementation efforts which entailed many hours of diligent and conscientious work by our Department employees to assure a smooth roll out of the Executive Order. While the report notes that it is reasonable to conclude that some vendors are not complying with the Executive Order despite certifications to the contrary, it is encouraging that the data reflects a marked increase in active users of the system over a short period of time. Our Department remains committed to follow-up on any reported instances of non-compliance.

Although we have not received any requests for training from state vendors, and the training that has been offered by the federal government was promotional in nature rather than instructive, we will explore additional opportunities that may be available from the federal government to assist Minnesota employers with their compliance efforts.

Sincerely,

A handwritten signature in black ink that reads "Sheila M. Reger".

Sheila M. Reger
Commissioner

Commissioner's Office
200 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155
Phone: 651.201.2555 / Fax: 651.297.7909

An Equal Opportunity Employer

June 1, 2009

James R. Nobles, Legislative Auditor
Office of the Legislative Auditor
658 Cedar Street
140 Centennial Office Building
St. Paul, MN 55155-4708

Dear Mr. Nobles:

Thank you for the opportunity to respond to your audit report on E-Verify.

As stated in the report, Minnesota Management and Budget has engaged in a three-step approach for implementation:

- (1) establishing a statewide policy on employment verification to be applied across state government;
- (2) developing or acquiring an information system that would serve as a centralized repository of work eligibility data from Form I-9; and
- (3) actively using E-Verify for new hires in the executive branch.

At the time this OLA report was being researched, step one was completed and step two was in process.

We have made progress in resolving issues in establishing a centralized repository and expect to commence rollout of E-Verify to agencies over the coming summer months.

Sincerely,



Tom J. Hanson
Commissioner

June 1, 2009

Mr. James R. Nobles
Legislative Auditor
First Floor, Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for the opportunity to provide thoughts on the final draft of your report, "E-Verify." Although this report was completed on an accelerated schedule, your office has summarized the topic nicely as it relates to DEED. We also appreciate your office's willingness to include suggestions offered by the department in this final report.

The report notes accurately that DEED has not only complied with the Governor's executive order, but also gone further by requiring recipients of business subsidies to certify that the E-Verify system is being used. The department believes that E-Verify is an important tool for Minnesota employers to independently verify the employment eligibility of their employees. We also encourage E-Verify use by the broader business community because certifying that a company will use the E-Verify system is a condition for receiving a business subsidy. As with other laws, the department will follow up through appropriate channels if allegations of violations are reported. However, the department is not responsible for independently verifying that businesses are complying with federal employment laws.

The report notes one suggestion that pertains to the department:

The Minnesota departments of Administration and Employment and Economic Development should work with USCIS to make federally-provided training, outreach, and other resources available to Minnesota employers subject to the Governor's E-Verify executive order.

We agree that raising awareness of USCIS resources is important, especially for those businesses subject to the executive order. While the department's web site has provided E-Verify information at <http://www.deed.state.mn.us/bizdev/EVerify.htm>, more steps should be taken. DEED will work with the Department of Administration and the U.S. Citizenship and Immigration Services (USCIS) to identify ways to improve the awareness and availability of the federally-provided information and resources to Minnesota employers.

Thank you for your perspectives on this important and timely subject.

Sincerely,



Dan McElroy
Commissioner

Forthcoming Evaluations

Alternative Education Programs, early 2010
Managing State-Owned Land, early 2010
Medical Nonemergency Transportation Services,
early 2010
MnSCU System Office Services and Expenditures,
early 2010
Workforce Programs, early 2010
Public Defender System, early 2010

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Programs*, February 2008
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Substance Abuse Treatment, February 2006
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CriMNet, March 2004
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Education, K-12, and Preschool

Q Comp: Quality Compensation for Teachers,
February 2009
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Charter School Financial Accountability, June 2003

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*Public Health Care Eligibility Determination for
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*Medicaid Home and Community-Based Waiver Services for
Persons with Mental Retardation or Related Conditions*,
February 2004
*Controlling Improper Payments in the Medicaid Assistance
Program*, August 2003
Economic Status of Welfare Recipients, January 2002

Housing and Local Government

Preserving Housing: A Best Practices Review, April 2003
*Managing Local Government Computer Systems: A Best
Practices Review*, April 2002
Local E-Government: A Best Practices Review, April 2002
Affordable Housing, January 2001

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JOBZ Program, February 2008
*Misclassification of Employees as Independent
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Prevailing Wages, February 2007
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Economic Impact of Immigrants, May 2006
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Minnesota State Lottery, February 2004

Transportation

State Highways and Bridges, February 2008
Metropolitan Airports Commission, January 2003

Evaluation reports can be obtained free of charge from the Legislative Auditor's Office, Program Evaluation Division, Room 140 Centennial Building, 658 Cedar Street, Saint Paul, Minnesota 55155, 651-296-4708. Full text versions of recent reports are also available at the OLA web site: <http://www.auditor.leg.state.mn.us>