

# Facts about the IMAGE Program

## *ICE Mutual Agreement between Government and Employers*

January 2007

### ■ What is IMAGE?

The ICE Mutual Agreement between Government and Employers (IMAGE) program is a joint government and private sector initiative that was introduced in July 2006 by the Dept. of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) to help employers “self-police” with respect to complying with the federal immigration law’s prohibition against hiring workers who are ineligible to be employed in the United States. The IMAGE program was started in response to an April 1999 Government Accountability Office (GAO) report entitled *Significant Obstacles to Reducing Unauthorized Alien Employment Exist*, which noted the high percentages of unauthorized workers employed in certain industries.

IMAGE is voluntary for employers. According to ICE, employers that participate in IMAGE can reduce unauthorized employment and the use by workers of fraudulent identity documents by implementing IMAGE’s “best hiring practices.” As part of IMAGE, ICE and U.S. Citizenship and Immigration Services (USCIS) provide employers with education and training in proper hiring practices, fraudulent document detection, use of the Basic Pilot employment eligibility verification program<sup>1</sup> and antidiscrimination procedures.

### ■ What are IMAGE’s “best hiring practices”?

1. Use the Basic Pilot for all hiring.
2. Establish an internal training program, with annual updates, on how to manage completion of Form I-9 employment eligibility verification, how to detect when fraudulent documents are being presented during the I-9 process, and how to use the Basic Pilot.
3. Permit the I-9 and Basic Pilot process to be conducted only by individuals who have received IMAGE-approved training — and include a secondary review as part of each employee’s employment eligibility verification to minimize the potential for a single individual to subvert the process.
4. Arrange for annual I-9 audits by an external auditing firm or a trained employee not otherwise involved in the I-9 and Basic Pilot process.
5. Establish a self-reporting procedure for reporting to ICE any violations or discovered deficiencies.

<sup>1</sup> For more information on the Basic Pilot program, see BASIC INFORMATION BRIEF: DHS BASIC PILOT PROGRAM, [www.nilc.org/immsemplymnt/ircaempverif/eev006.htm](http://www.nilc.org/immsemplymnt/ircaempverif/eev006.htm).



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6. Establish a protocol for responding to “no-match” letters received from the Social Security Administration (SSA).<sup>2</sup>
7. Establish a “tip line” by which employees can report activity relating to the employment of unauthorized workers, and a protocol for responding to employee tips.
8. Establish and maintain safeguards against use of the employment eligibility verification process for unlawful discrimination.
9. Establish a protocol for assessing the adherence to the “best practices” guidelines by the company’s contractors and subcontractors.
10. Submit an annual report to ICE to track results and assess the effect of participation in IMAGE.

### ■ What are IMAGE’s requirements?

Employers seeking to participate in IMAGE must first agree to submit to an I-9 audit by ICE and to verify the Social Security numbers of their current employees via the Social Security Number Verification System (SSNVS).<sup>3</sup> The program also requires that employer participants use the Basic Pilot, which is administered by USCIS, to screen all new hires for employment eligibility.

Employers are required to establish an internal training program covering topics such as the I-9 process, fraudulent identity documents, and Basic Pilot procedures. IMAGE requires that only trained employees be allowed to complete the I-9 for employees and verify their work eligibility through the Basic Pilot. Employers also are required to establish a secondary review process to ensure that no single individual subverts the process.

Additionally, participant employers are required to have semiannual I-9 audits conducted by a neutral party and establish a self-reporting procedure to inform ICE of violations or deficiencies. Employers also must establish a protocol for responding to SSA “no-match” letters.

Finally, ICE requests that IMAGE participants establish a “tip line” by which employees can report violations or deficiencies. Employers with 50 or more employees are required to designate a compliance officer to ensure that employment practices are in accordance with IMAGE guidelines.

Once a year, IMAGE participants must report to ICE the number of employees discharged and denied employment as a result of participating in IMAGE, must identify any major organizational changes that resulted from participation, and must update their company’s contact person. IMAGE participants are required to immediately report to ICE the discovery or allegations of any substantive criminal violations.

### ■ What is the benefit to employers of participating in IMAGE?

When they enroll in IMAGE and implement the program’s “best hiring practices,” participants are deemed “IMAGE certified” by ICE — a distinction that the Dept. of Homeland Security (DHS) predicts will become the industry standard for employers seeking to comply with

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<sup>2</sup> For more information about SSA “no-match” letters, *see* TOOLKIT FOR ORGANIZERS: SOCIAL SECURITY ADMINISTRATION’S (SSA’S) “NO-MATCH” LETTERS, [www.nilc.org/immsemplymnt/SSA\\_Related\\_Info/index.htm#nomatchltrs](http://www.nilc.org/immsemplymnt/SSA_Related_Info/index.htm#nomatchltrs)

<sup>3</sup> For more information, *see* BASIC INFORMATION BRIEF: SOCIAL SECURITY NUMBER VERIFICATION SERVICE (SSNVS), [www.nilc.org/immsemplymnt/IWR\\_Material/Attorney/Basic\\_Info\\_SSNVS.pdf](http://www.nilc.org/immsemplymnt/IWR_Material/Attorney/Basic_Info_SSNVS.pdf).

federal immigration law. DHS plans to use IMAGE as a guide in shaping future worksite enforcement policy and legislation.

### ■ What concerns exist about IMAGE?

IMAGE raises a number of questions and concerns that advocates for workers must monitor closely. The program's requirement that employers verify their employees' Social Security numbers through the SSNVS and verify their employment eligibility through the Basic Pilot are of particular concern. Workers' advocates have long distrusted the accuracy of the SSA and DHS databases and have known that some unscrupulous employers abuse these programs. Various government reports have been issued that support the finding that DHS and SSA databases contain inaccurate and outdated information, which result in employment-eligible workers being denied employment.<sup>4</sup> Advocates must also be on the lookout for instances of employers "prescreening" workers (before hiring them), or using the Basic Pilot or SSNVS selectively. Workers often suffer adverse employment actions based on tentative nonconfirmations and because employers do not inform workers of their rights to contest tentative nonconfirmations.

Because government databases are not completely accurate, workers, unions, organizers, and other workers' advocates will need to educate themselves about Basic Pilot and the SSNVS procedures, as well as the steps workers can take to challenge erroneous "failed verifications" and how to advocate on behalf of workers so they are not wrongly fired or suspended.

Employers could also use the IMAGE program to undermine employees' rights by signing up for the program in the midst of an ongoing union organizing campaign or when their employees have otherwise exercised their workplace rights. Unscrupulous employers may knowingly hire undocumented workers, but then enroll in the IMAGE program when they want to fire or retaliate against employees or otherwise discourage them from claiming their rights. Moreover, employers that repeatedly have violated labor and employment law could easily be deemed "IMAGE certified," since IMAGE does not screen participants out based on their labor violations track record.

Workers who have reason to believe that an employer is using IMAGE and the government databases to prescreen workers for employment eligibility prior to hire, or workers who have suffered adverse employment actions because of IMAGE, should be encouraged to file a complaint with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). The OSC is a government agency that enforces the antidiscrimination provisions of the Immigration Reform and Control Act of 1986, 8 U.S.C. section 1324b. Charge forms are available by telephone or through OSC's website, [www.usdoj.gov/crt/osc](http://www.usdoj.gov/crt/osc). Workers may call the OSC's toll-free hotline at 800-255-7688 or 800-237-2515 (TDD for hearing impaired). An automated employer hotline is also available: 800-255-8155 or 800-362-2735 (TDD). The OSC provides assistance and written outreach materials in multiple languages. The OSC is not part of DHS.

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<sup>4</sup> For more on this, see THE BASIC PILOT PROGRAM: NOT A MAGIC BULLET, [www.nilc.org/immsemplymnt/ircaempverif/basicpilot\\_nomagicbullet\\_2007-01-11.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/basicpilot_nomagicbullet_2007-01-11.pdf).