

Department of Homeland Security **Office of Inspector General**

U.S. Immigration and Customs Enforcement's Worksite Enforcement Administrative Inspection Process





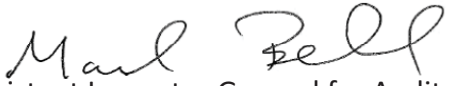
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Washington, DC 20528 / www.oig.dhs.gov

FEB 11 2014

MEMORANDUM FOR: James Dinkins
Executive Associate Director
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

FROM: Mark Bell 
Acting Assistant Inspector General for Audits

SUBJECT: *U.S. Immigration and Customs Enforcement's Worksite
Enforcement Administrative Inspection Process*

Attached for your information is our final report, *U.S. Immigration and Customs Enforcement's Worksite Enforcement Administrative Inspection Process*. We incorporated the formal comments from U.S. Immigration and Customs Enforcement's (ICE) Office of Management and Administration in the final report.

The report contains three recommendations aimed at improving ICE's implementation of its worksite enforcement strategy through the administrative inspection process. Your office concurred with two recommendations. Based on information provided in your response to the draft report, we consider recommendation 1 open and unresolved. As prescribed by the *Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for this recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of this recommendation. Until your response is received and evaluated, this recommendation is considered open and unresolved.

Recommendations 2 and 3 are open and resolved. Once your office has fully implemented the open recommendations, please submit a formal closeout request to us within 30 days so that we may close the recommendations. The request should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.



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Please email a signed PDF copy of all responses and closeout requests to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact John E. McCoy II, Deputy Assistant Inspector General for Audits, at (202) 254-4100.

Attachment



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Abbreviations

BFC	Burlington Finance Center
DHS	Department of Homeland Security
FFMS	Federal Financial Management System
FY	fiscal year
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
IRCA	<i>Immigration Reform and Control Act of 1986</i>
NIF	Notice of Intent to Fine
OIG	Office of Inspector General
WSE	worksite enforcement



Executive Summary

U.S. Immigration and Customs Enforcement (ICE) is responsible for an effective worksite enforcement strategy to protect critical infrastructure, target employers who violate employment laws, and protect employment opportunities for the Nation's lawful workforce. In 2009, ICE revised its worksite enforcement strategy to prioritize identifying employers who knowingly hire illegal workers, arresting and removing illegal workers, and using all available civil and administrative tools to penalize and deter illegal employment. From fiscal years 2009 through 2012, Congress allocated about \$531 million to fund and implement ICE's worksite enforcement strategy. Over that same period, ICE's Homeland Security Investigations directorate conducted about 9,140 administrative inspections and issued about \$31.2 million in civil fines to employers. The audit objective was to determine whether ICE is meeting the requirements of the *Immigration Reform and Control Act of 1986* through the administrative inspection process for its worksite enforcement strategy.

Generally, ICE's worksite enforcement administrative inspection process met the requirements of the *Immigration Reform and Control Act of 1986*. However, ICE's Homeland Security Investigations directorate has not adequately monitored or evaluated the performance or outcomes of implementing its administrative inspection process through the worksite enforcement strategy. Specifically, ICE's Homeland Security Investigations' headquarters did not adequately oversee the field offices to ensure that they were consistent in issuing warnings and fines, and some field offices issued significantly more warnings than fines. The directorate also negotiated fines with employers, in some cases substantially reducing the amounts. Homeland Security Investigations' inconsistent implementation of the administrative inspection process, plus the reduction of fines, may have hindered its mission to prevent or deter employers from violating immigration laws. The directorate has not analyzed the effect of these differences in implementation or sufficiently determined whether implementation has improved compliance. In addition, field offices did not always document their actions adequately and did not maintain accurate and up-to-date administrative inspection data, making it more difficult to verify employers' compliance. As a result, ICE's Homeland Security Investigations directorate may have difficulty fully analyzing the impact of its administrative inspection process through the worksite enforcement strategy. Because it is able to inspect only a small percentage of employers, the Homeland Security Investigations directorate should maximize the value of each administrative inspection by ensuring that it conducts the inspection process effectively.

We made three recommendations to improve ICE's implementation of its worksite enforcement strategy through the administrative inspection process. ICE did not concur with recommendation 1 and concurred with recommendations 2 and 3.



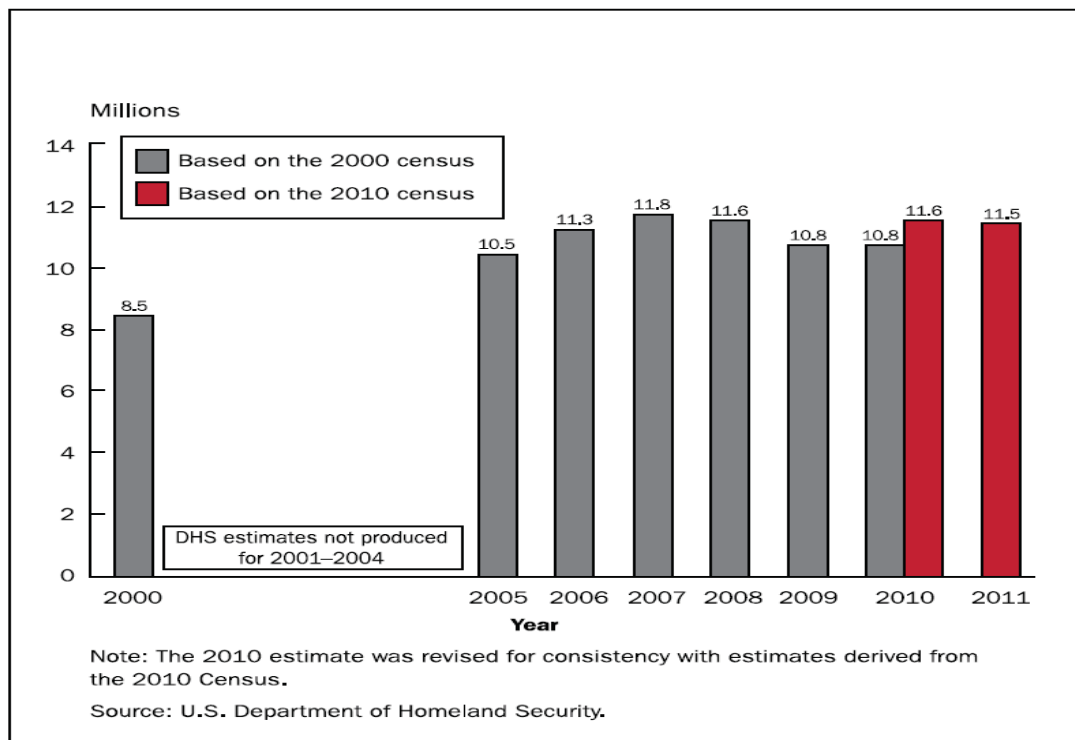
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Background

According to the Department of Homeland Security (DHS), in January 2011, there were an estimated 11.5 million unauthorized immigrants in the United States. According to the Pew Research Center, unauthorized workers made up an estimated 5.2 percent, or 8 million, of the United States workforce in March 2010.¹ Unauthorized immigrants are foreign-born individuals who are neither citizens nor legal residents of the United States. Most unauthorized immigrants either enter the United States illegally or are admitted temporarily and stay past the date that they are required to leave. To gain employment, unauthorized workers may present fraudulent identity-related documents or use another person's identity. ICE enforces immigration laws related to employment of unauthorized workers, as well as laws dealing with human trafficking, alien smuggling, and document fraud. ICE also imposes criminal and civil sanctions on employers who violate immigration laws. Figure 1 shows the number of unauthorized immigrants estimated to be in the United States in 2000 and from 2005 through 2011.

Figure 1. Unauthorized Immigrant Population in the United States: 2000 and 2005–2011



¹ The Pew Research Center conducts public opinion polling, demographic research, media content analysis, and other empirical social science research.



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Congress passed the *Immigration Reform and Control Act of 1986* (IRCA), which prohibits employers from employing individuals whom they know are not authorized to work in the United States. Under IRCA, it is illegal for an employer to knowingly hire and continue to employ unauthorized workers. In addition, employers are required to verify the identity of newly hired employees and their eligibility to work in the United States. The act also established criminal and civil sanctions and fines for employers who do not comply with the law.

Since November 1986, employers have been required to obtain a completed U.S. Citizenship and Immigration Services Form I-9, *Employment Eligibility Verification*, for each newly hired employee to verify identity and employment authorization documents, such as a United States passport or driver's license and an employment authorization card. Appendix C contains a sample I-9 form and a list of acceptable documents for establishing personal identity and employment authorization.

ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration. The Component had a fiscal year (FY) 2012 budget of approximately \$6 billion, primarily devoted to two operational directorates: Homeland Security Investigations (HSI) and Enforcement and Removal Operations. HSI is responsible for investigating domestic and international activities related to the illegal movement of people and enforcing United States customs and immigration laws. To reduce illegal employment and protect opportunities for the lawful workforce, HSI enforces IRCA requirements through its worksite enforcement (WSE) strategy. Figure 2 shows that HSI's Domestic Investigations received about \$531 million in funding from FYs 2009 through 2012 to implement WSE activities.

Figure 2. Funding of HSI's Domestic Investigations, FYs 2009–2012

Year	Amount*
2009	\$126.5
2010	\$134.7
2011	\$134.7
2012	\$134.6
Total	\$530.5

Source: Congressional reports.

*Amounts in millions.

On April 30, 2009, HSI announced a revised WSE strategy focusing on employers who knowingly hire unauthorized workers, rather than on large-scale enforcement actions that target illegal workers almost exclusively. Of the more than 6,000 WSE-related



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arrests made in 2008 under the previous strategy, only 135 were arrests of employers. Under the current WSE strategy, ICE continues to focus on criminal prosecution, but also makes efforts to use all available civil and administrative tools, such as inspections, fines, and outreach to penalize and deter illegal employment. Under the previous strategy, from FYs 2003 through 2008, as a result of its administrative inspections, ICE imposed fines totaling \$1.5 million. Under the current strategy, from FYs 2009 through 2012, ICE imposed fines totaling \$31.2 million.

In 2010, there were 5.7 million companies with employees in the United States.² HSI does not conduct random administrative inspections. Rather, its priority is to protect the Nation's critical infrastructures and key resources by identifying and removing unauthorized workers who have access to sensitive facilities and information. There are 18 principal critical infrastructure sectors: Agriculture and Food; Banking and Finance; Chemical; Commercial Facilities; Communications; Critical Manufacturing; Dams; Defense Industrial Base; Emergency Services; Energy; Government Facilities; Healthcare and Public Health; Information Technology; National Monuments and Icons; Nuclear Reactors, Materials and Waste; Postal and Shipping; Transportation Systems; and Water.

HSI's WSE strategy focuses on enforcement, compliance, and outreach to ensure that employers comply with IRCA. Enforcement includes criminal prosecution of violating employers, and compliance includes administrative inspections that may result in civil fines. HSI also conducts outreach through the ICE Mutual Agreement between Government and Employers program. This audit focused on the compliance aspect of the WSE strategy.

Under the WSE strategy, HSI meets the requirements of IRCA by conducting administrative inspections of employees' I-9 forms. Field offices initiate administrative inspections when they receive a tip line complaint or through an HSI headquarters initiative. The inspection process begins when HSI serves a Notice of Inspection compelling an employer to produce I-9 forms for all employees. HSI personnel then inspect the I-9 forms and classify violations as either technical or substantive, based on the seriousness of the errors or omissions. Technical violations include failing to ensure that an individual has provided all personal information on the I-9 form, such as a maiden name, address, and birth date. Substantive violations include one or more instances of an employee failing to present an I-9 form, and an employer failing to review and verify required documentation. In addition to reviewing paperwork for

² The U.S. Census Bureau provides annual data on employers, the latest of which are from 2010, through its Statistics of U.S. Businesses and Business Dynamics Statistics. The Bureau of Labor Statistics at the U.S. Department of Labor provides quarterly data on gross job gains and losses through its Business Employment Dynamics.



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violations, if HSI personnel determine that an employer's workforce includes unauthorized workers, they must notify the employer and take the necessary legal or administrative actions, such as issuing a Notice of Suspect Document.

Administrative inspections result in one of the following dispositions:

- **Compliance:** No technical or substantive violations in paperwork and no unauthorized workers are identified, or technical paperwork violations are corrected in a timely manner (adjusted compliance).
- **Warning:** Violations are identified, but there is the expectation of future compliance by the employer.
- **Fine:** The employer has not acted in good faith and has substantive paperwork violations (usually, more than 50 percent of I-9 forms include substantive errors), which warrant a fine.

HSI has a process for imposing civil fines on employers who violate IRCA. ICE's Office of Chief Counsel at each field office may authorize a reduction of a Notice of Intent to Fine (NIF) by 10 percent without concurrence from the agent in charge of the field office (Special Agent-in-Charge). Employers may negotiate a fine reduction greater than 10 percent with concurrence from the Office of Chief Counsel and the Special Agent-in-Charge. Employers may also request an appeal hearing with the Administrative Law Judge at the United States Department of Justice. The field office or Administrative Law Judge issues a final order to the employer, and the fine collection process begins. HSI personnel send a final order with the assessed fine amount to the Burlington Finance Center (BFC), which tracks and collects the fines. Employers who experience financial hardship may seek to further negotiate the payment terms or final order amount.

HSI performed approximately 9,140 administrative inspections from FYs 2009 through 2012 and issued about \$31.2 million in fines to employers who violated immigration laws.



Results of Audit

Generally, ICE's WSE administrative inspection process met the requirements of the *Immigration Reform and Control Act of 1986*. However, HSI has not adequately monitored or evaluated the performance or outcomes of implementing its administrative inspection process. Specifically, HSI headquarters did not adequately oversee the field offices to ensure that they were consistent in issuing warnings and fines, and some field offices issued significantly more warnings than fines. HSI also negotiated fines with employers, in some cases substantially reducing the amounts. HSI's inconsistent implementation of the administrative inspection process, plus the reduction of fines, may have hindered its mission to prevent or deter employers from violating immigration laws. HSI has not analyzed the effect of these differences in implementation or sufficiently determined whether warnings and fines have improved compliance. In addition, field offices did not always document their actions adequately and did not maintain accurate and up-to-date administrative inspection data, making it more difficult to verify employers' compliance. As a result, HSI may have difficulty fully analyzing the effect of its administrative inspection process through the WSE strategy. Because it is able to inspect only a small percentage of employers, HSI should maximize the value of each administrative inspection by ensuring that it conducts the inspection process effectively.

Worksite Enforcement Administrative Inspections

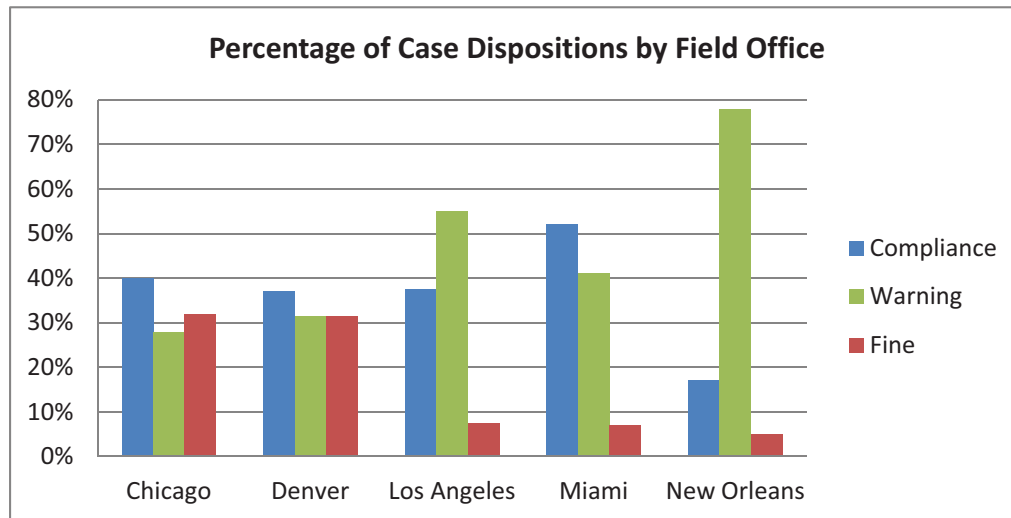
In analyzing the results of 692 administrative inspections conducted by five field offices from January 2009 to August 2012, we determined that some offices issued more warnings than other offices. The analysis showed that about 31 percent of Denver and Chicago field offices' inspections resulted in fines and approximately the same amount resulted in warnings. In the same period, about 7 percent of the inspections from Los Angeles, Miami, and New Orleans field offices resulted in fines. In contrast, these three field offices issued warnings for 55 percent, 41 percent, and 78 percent of inspections, respectively. Figure 3 shows the results of inspections—compliance, warnings, and fines—from these five field offices.



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Figure 3. Results of Administrative Inspections at Five Field Offices – January 2009 to August 2012



Source: DHS Office of Inspector General, based on WSE Consolidated Monthly I-9 Inspection Tracking Sheets.

HSI Oversight and Evaluation of Administrative Inspections

HSI headquarters did not provide sufficient oversight to ensure that its field offices conducted WSE administrative inspections consistently, and its performance measures were not adequate to evaluate the results of inspections. Two field offices developed and implemented internal practices that are not included in ICE guidance, which may have caused the offices to issue more warnings than fines. Yet, HSI did not monitor the field offices' practices in carrying out administrative inspections to make certain that personnel were complying with ICE guidance when making determinations on warnings and fines. Without adequate oversight and monitoring of the inspection process and proper evaluation of its outcomes, it may be difficult for HSI to determine how effective this portion of the WSE strategy is in preventing and deterring employers from violating immigration laws.

HSI headquarters did not provide sufficient oversight to ensure its field offices complied with ICE guidance when issuing warnings and fines. In 2008, ICE headquarters issued a *Guide to Administrative Form I-9 Inspections and Civil Monetary Penalties*. The guide included circumstances in which HSI personnel should issue warnings and those in which they should issue NIFs. However, two of the field offices that we reviewed established internal practices to make these determinations. In addition to potentially increasing the number of warnings,



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some field offices may have issued warnings when, according to ICE guidance, it may have been more appropriate to issue fines.

For example, the Miami field office created an internal practice to determine whether to issue a warning, which may have resulted in it issuing more warnings than fines. From FY 2009 through August 2012, the field office conducted 194 administrative inspections. Seven percent of the inspections resulted in fines; 41 percent resulted in warnings. Miami personnel said that when deciding whether to issue a warning or a fine, they considered the viability of the business and the character of the owners. If the potential fine was substantial and threatened the employer's ability to remain in business, they would consider issuing a warning rather than a fine.

The Los Angeles field office also established an internal procedure to determine whether to issue a warning or fine. From FY 2009 through August 2012, this field office conducted 147 administrative inspections. About 7 percent resulted in fines, and about 55 percent resulted in warnings. In some cases, personnel issued a warning when the potential fine amount was less than \$10,000, unless they identified egregious violations or repeat offenses during a re-inspection. Specifically, 2 of the 29 administrative inspections files we reviewed showed that HSI personnel issued warning notices to employers because the potential fine would have been less than \$10,000. ICE guidance does not include a dollar threshold for issuing a warning rather than a fine. Furthermore, at other field offices, we found instances of employers receiving fines rather than warnings for potential fines of \$10,000 or less.

According to the ICE guide, "Generally, when more than 50% of the Forms I-9 inspected exhibit substantive errors without regard to whether or not those errors resulted in the hire of unauthorized aliens, the case agent or auditor should seek a NIF." However, at the Los Angeles field office, we identified a case that resulted in a warning being issued even though the I-9 form error rate was 80 percent.

HSI's performance measures were not adequate to evaluate the results of WSE administrative inspections. In April 2013, the Department issued its *FY 2012–2014 Annual Performance Report*, which includes its performance measures and applicable results. The report included three measures pertaining to the WSE strategy. However, HSI retired two measures and replaced them with one, which alone is not sufficient to monitor the effectiveness of the strategy.

HSI headquarters did not effectively oversee field office personnel to ensure that



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they issued administrative fines and warnings uniformly, nor did it assess the results of administrative inspections to determine the effect of its WSE strategy. Thus, ICE may have been hampered in its ability to prevent immigration law violations, meet the requirements of IRCA, and protect the rights of legal workers.

Negotiation and Reduction of Fines

Although NIFs may lead to a final order for a civil fine, fine amounts can be negotiated and substantially reduced. When a field office determines the number of violations based on the results of an administrative inspection, it calculates the fine and issues an NIF. Title 8 of the *Code of Federal Regulations* Section 274a.10 established a fine range from \$110 to \$1,100 per violation for employers who fail to complete, retain, or present I-9 forms for inspection. The Office of Chief Counsel at a field office may authorize a reduction of the NIF by 10 percent; reductions of more than 10 percent may also be negotiated with the concurrence of the field office's Special Agent-in-Charge. Employers who experience financial hardship may seek to further negotiate the payment terms or final order amount.

HSI's negotiation of fines with employers led, in some cases, to substantial reductions in the fine amount. Although negotiating and reducing fine amounts is legal, the knowledge that fines can be significantly reduced may diminish the effectiveness of fines as a deterrent to hiring unauthorized workers. However, HSI has not analyzed how reductions in fines affect either employers' compliance or the rates of recidivism.

As shown in figure 4, from FY 2009 through 2012, negotiations and settlements with employers reduced NIFs from \$52.7 million to \$31.2 million in final orders, an average reduction of 40 percent. In the same period, 793 of the 1,174 final orders issued, about 68 percent, were reduced. Of the 793 reduced final orders, about 28 percent were reduced by more than half. For example, one employer's fine was reduced from \$4.87 million to \$1.05 million—a 78 percent reduction. Another employer's fine was reduced from \$4.04 million to \$1.25 million—a 69 percent reduction.



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Figure 4. Worksite Enforcement Fines Submitted to the Burlington Finance Center, FYs 2009–2012

Fiscal Year	Final Orders Received	Initial NIF Amount*	Final Order Amount*	Reduction in Fine From NIF to Final Order	
				Amount in Millions	%
2009	52	\$1.59	\$1.03	\$0.56	35%
2010	237	\$12.98	\$6.96	\$6.02	46%
2011	385	\$16.30	\$10.46	\$5.84	36%
2012	500	\$21.85	\$12.72	\$9.13	42%
Total	1,174	\$52.72	\$31.17	\$21.55	--

Source: BFC, as of September 28, 2012.

*Amounts in millions.

Administrative Inspection File Documentation

HSI field office personnel did not always maintain adequate file documentation to support administrative inspection results. Therefore, HSI headquarters did not always have adequate or reliable documentation on the status of administrative inspections and re-inspections, making it more difficult to verify employers' compliance. We identified incomplete and missing information on notices provided to employers, inconsistent levels of documentation among field offices, and data on the status of inspections that was not updated.

A review of 149 administrative inspection files from the five field offices showed that some key documentation in the files was incomplete or missing. For example, at the Los Angeles field office, 12 (41 percent) of the 29 files did not contain evidence that HSI personnel checked records to verify employment eligibility. Also, according to ICE guidance, warning notices must include a date for re-inspection of the employer. However, 48 (74 percent) of the 65 warning notice files we reviewed at the five field offices did not contain re-inspection dates. Field offices are required to re-inspect employers to ensure they comply with immigration laws after receiving notice that they were in violation. Because re-inspection dates were not documented, we could not determine, and HSI headquarters cannot be assured, that the field offices met this requirement.

HSI headquarters allowed the field offices a high degree of autonomy, which led to differing documentation of processes for administrative inspections within the same geographic area. In addition to incomplete or missing inspection file



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documentation, there were also inconsistencies in the adequacy of documentation between principal and subordinate field offices in the same geographic region. At the five regional sites, there was a greater occurrence of missing documentation in inspection files at the subordinate field offices.

Reporting on Administrative Inspections and Fines

The information systems that HSI uses to track administrative inspections and fines were not accurate or up to date. HSI personnel use TECS to track administrative inspections, and BFC personnel use the Federal Financial Management System (FFMS) to maintain fine information.³ The systems were not accurate or current because HSI and BFC did not record the information in a timely and consistent manner. In addition, field offices did not comply with HSI headquarters instructions for updating WSE Consolidated Monthly I-9 Inspection Tracking Sheets, known as WSE monthly reports. HSI uses the WSE monthly reports to capture field offices' information on administrative inspections. As a result, HSI may have reported and disseminated inaccurate data on its administrative inspections, and it did not have reliable data that could be used to help assess the impact of the strategy.

DHS *FY 2012–2014 Annual Performance Report* includes the dollar value of fines assessed for employers with I-9 form violations, but ICE did not accurately report this measure. The report indicated that HSI assessed approximately \$29.8 million in fines for FY 2012. However, BFC-generated fine data showed that HSI actually assessed about \$12.7 million in administrative fines and thus overstated the reported measure by approximately \$17.1 million.

Although the field offices recorded information on the status and results of administrative inspections in TECS, the offices did not update the system regularly because ICE guidance allowed them discretion in the timeframes for updating. For this reason, when extracting data, HSI could not always be assured that the field offices' information on the status of inspections was correct and up to date.

BFC recorded information on collection of fines in FFMS; however, information on renegotiated fines was not always accurate. For example, a BFC report on fine collection from FYs 2011 through 2012 is overstated because the original fine

³ TECS, formerly known as the Treasury Enforcement Communications System, is now referred to only by its acronym.



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amounts were not adjusted in FFMS to reflect renegotiated fines. Figure 5 shows NIF and final order amounts.

Figure 5. Worksite Enforcement Fines Submitted to the Burlington Finance Center, FYs 2011–2012

Fiscal Year	Final Orders Received	Initial NIF Amount*	Final Order Amount*
2011	385	\$16.30	\$10.46
<i>2011 Adjustment</i>	<i>(13)</i>	<i>(\$0.36)</i>	<i>(\$0.26)</i>
2012	337	\$15.99	\$8.47
<i>2012 Adjustment</i>	<i>(13)</i>	<i>(\$1.25)</i>	<i>(\$0.36)</i>
Total	696	\$30.68	\$18.31

Source: BFC, as of June 29, 2012.

*Amounts in millions.

The field offices did not always provide consistent and updated information in WSE monthly reports submitted to HSI headquarters. WSE monthly reports capture statistics on administrative inspections that TECS cannot generate. HSI headquarters provides instructions to the field offices on updating the WSE monthly reports. We determined that some of the field offices did not follow the instructions, which led to inaccurate reporting. HSI headquarters did not have a process to ensure that the field offices were accurately compiling the information. Furthermore, not all field offices included the same information in their reports. According to an HSI headquarters employee, there was no systematic reconciliation of data received from the field offices. Reconciling the data would allow HSI and BFC to identify inaccuracies and make timely corrections, as well as identify discrepancies in their systems and reports.

Recommendations

We recommend that the U.S. Immigration and Customs Enforcement Executive Associate Director for Homeland Security Investigations:

Recommendation #1:

Enforce its oversight procedures to ensure consistent application of the worksite enforcement strategy administrative inspection process nationwide.



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Recommendation #2:

Develop a process to evaluate the effectiveness of the administrative inspection process and modify the process based on the evaluation.

Recommendation #3:

Direct Homeland Security Investigations field offices to provide consistent, accurate, and timely reporting and reconciliation of information on worksite enforcement strategy administrative inspections.

Management Comments and OIG Analysis

We obtained and reviewed written comments on the draft report from ICE. Where appropriate, we made changes to the report. ICE did not concur with recommendation 1 and concurred with recommendations 2 and 3. Appendix B includes a copy of the management comments in their entirety. Our analysis of ICE's response to the draft report follows.

Management Response to Recommendation #1: ICE did not concur with this recommendation. According to ICE, variances in the percentages of investigations that result in a particular enforcement outcome, such as the issuance of a warning letter as opposed to a NIF, among field offices are the result of local mission priorities, resources, and local socio-economic characteristics rather than a lack of consistent processes or oversight. The number and results of inspections fluctuate among field offices; however, the resources necessary to issue and support a fine remain constant. This accounts for the variance among field offices in the percentages of cases that result in fines, warnings, and compliance.

ICE HSI Headquarters WSE Unit provides oversight to ensure consistent application of this process by the field offices through the following: a fiscal year inspection implementation plan; uniform notice template letters; oversight of the de-confliction process; a central repository of policy, resources, and guidance to be utilized by the field offices; periodic refresher webinars to reiterate training points and policies; conference calls with first-line supervisors to discuss current issues; and real-time responses to questions from the field offices. In addition, the WSE Unit monitors and tracks case dispositions, ensuring cases are submitted to the Department of Labor for de-confliction and ensuring that the Notices of Inspections are served and accurately captured in TECS-II.



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OIG Analysis: Although ICE HSI Headquarters WSE Unit developed procedures, we maintain that they did not effectively oversee field office personnel to ensure that the ICE guidance and procedures were uniformly implemented across their field offices. OIG understands that ICE field offices vary in local mission priorities and resources; therefore, we are not calling that to question. However, we believe that allowing ICE field offices to develop and implement internal practices that are outside of established ICE guidance could cause variances in administrative inspection outcomes. Specifically, we identified two ICE field offices that make determinations based on the viability and characteristics of the employer's business and another field office that established a fine amount threshold. These types of practices are not taken into consideration at other field offices where we conducted site visits. ICE guidance does not include a dollar amount threshold for issuing a NIF to employers. Because some field offices have internal practices, the outcome of some administrative inspections that resulted in warnings could have potentially resulted in fines. Therefore, ICE must consider the fairness of issuing warning notices and fines to employers across the country.

We believe ICE must enforce its oversight procedures to ensure that field offices are consistent in applying the WSE administrative inspection process nationwide. This recommendation will remain unresolved and open pending resolution that ICE Headquarters WSE Unit is enforcing its oversight procedures to resolve the internal practices among field offices.

Management Response to Recommendation #2: ICE concurred with this recommendation. According to ICE, it continuously reviews its WSE strategies by collecting statistics. Since receipt of our report, ICE has taken the following steps to enhance the process it uses to evaluate the effectiveness of the administrative inspection process and to modify the process based on its evaluation. The WSE Unit participated in the ICE Innovation Forum, "Achieving the Mission and Driving Innovation through Public-Private Partnerships," conducted on July 16, 2013. ICE hosted approximately 120 industry representatives to work with ICE subject matter experts to address specific current challenges, including effective methods of evaluating the current WSE strategy. With the benefit of these discussions, ICE will attempt to create a method to evaluate the effectiveness of its WSE strategy's administrative fine policy. ICE will begin developing an evaluation methodology by the end of FY 2014.



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OIG Analysis: We consider this recommendation resolved because steps are being taken to implement it. However, it will remain open until ICE provides evidence that it has developed and implemented the evaluation methodology by September 30, 2014.

Management Response to Recommendation #3: ICE concurred with this recommendation. ICE will review the statistics entered as part of the administrative inspection process for timeliness and accuracy and forward deficient cases to the field to be corrected or updated. In addition, ICE will create an administrative inspection statistics webinar, which will be provided to employees assigned to WSE groups. The webinar will reiterate the proper method to report information about WSE administrative inspections and the proper reconciliation methods for deficiencies. The expected completion date is December 31, 2014.

OIG Analysis: We consider this recommendation resolved because steps are being taken to implement it. However, it will remain open until ICE provides evidence that it conducted a review to ensure the timeliness and accuracy of WSE data and provides evidence that it conducted the webinar.



Appendix A

Objectives, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

Our objective was to determine whether ICE is meeting the requirements of IRCA through the administrative inspection process for its WSE strategy. We interviewed officials from various ICE headquarters offices, including the Office of the Director, Office of the Principal Legal Advisor, and HSI. We also interviewed officials from U.S. Citizenship and Immigration Services' Verification Division. We conducted site visits and interviews with BFC and ICE field office officials in Chicago, Denver, Los Angeles, Miami, and New Orleans.

We reviewed prior audit and evaluation reports, relevant laws, regulations, strategic plans, standard operating procedures, policies, and ICE's organizational charts. We reviewed memorandums of agreement, congressional testimony, media reports, outreach documents, legal analyses, and talking points.

In our analysis, we used data from the WSE Consolidated Monthly I-9 Inspection Tracking Sheets that recorded administrative inspections from January 2009 to June 2012. We identified discrepancies in the data because field offices did not consistently update the reports, and some offices deleted data that others retained. In addition, we identified discrepancies on BFC's fine collection report from FYs 2011 through 2012 because the original fine amounts were not adjusted in FFMS to reflect renegotiated fines. However, these were the only reports HSI had available that consolidated all current information on the status of administrative inspections.

We analyzed the results of 692 administrative inspections conducted by five field offices from January 2009 to August 2012 to determine the percentage of compliance, warnings, and fines issued to employers. Of the 692 administrative inspections, we determined the number of administrative inspections results from the following field offices: Chicago (152), Denver (79), Los Angeles (147), Miami (194), and New Orleans (120).

For our sample selection of 149 administrative inspections files, we selected the following from each field office: Chicago (35), Denver (30), Los Angeles (29), Miami (26),



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and New Orleans (29). While onsite, we reviewed the sample of administrative inspection files to determine if HSI personnel conducted administrative inspections in accordance with ICE policies. We also identified an additional sample of administrative inspections files to review the accuracy of WSE reporting. For our sample selection, we selected a total of 56 files from the following field offices: Chicago (4), Denver (15), Los Angeles (14), Miami (8), and New Orleans (15). In addition, we visited BFC to review financial information, reports, and applicable operating procedures.

We conducted this performance audit between March 2012 and May 2013 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objective.



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Appendix B

Management Comments to the Draft Report

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

December 20, 2013

MEMORANDUM FOR: Mark Bell
Acting Assistant Inspector General for Audits
Office of Inspector General

FROM: *for Martin W. Finkelstein*
Radha C. Sekar
Acting Executive Associate Director, Management and
Administration

SUBJECT: Management Response to OIG Draft Report titled, "U.S.
Immigration and Customs Enforcement's Worksite Enforcement
Administrative Inspection Process."

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the subject draft report. Attached is our response to each of the three recommendations. We have reviewed and concur with recommendations 2 and 3. ICE will continue working to resolve each of these identified weaknesses.

ICE does not concur with recommendation 1, as the agency provides effective oversight of the administrative inspection process. This recommendation relates to the report's assumption that variances in the inspection outcomes among individual field offices are valid criteria to determine if the agency consistently applies the inspection process. Variances in the percentages of investigations that result in a particular enforcement outcome, such as the issuance of a warning letter versus a notice of intent to fine, among field offices are the result of many factors. ICE Homeland Security Investigations (ICE) has long been sensitive to the need for consistent application of its administrative inspections and has robust measures in place to promote consistency.

Should you have questions or concerns, please contact Michael Moy, Audit Portfolio Manager, at (202) 732-6263, or by e-mail at Michael.Moy@dhs.gov.

Attachment

www.ice.gov



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Attachment

ICE Response to OIG Draft Report Recommendations:

“U.S. Immigration and Customs Enforcement’s Worksite Enforcement Administrative Inspection Process” **[OIG Project No. 12-012-AUD-ICE]**

Recommendation #1: Enforce its oversight procedures to ensure consistent application of the worksite enforcement strategy administrative inspection process nationwide.

Response: ICE does not concur with this recommendation, as the agency provides effective oversight of the administrative inspection process. This recommendation relates to the report’s assumption that variances in the inspection outcomes (warning notices vs. fines) among individual field offices are valid criteria to determine if the agency consistently applies the inspection process. We respectfully disagree. Variances in the percentages of investigations that result in a particular enforcement outcome, such as the issuance of a warning letter versus a notice of intent to fine, among field offices are the result of many factors. These factors include local mission priorities, resources and local socio-economic characteristics, rather than the lack of consistent processes or oversight. The number and results of inspections fluctuate among field offices; however, the resources (the individuals assigned at each field station) necessary to issue and support a fine remain constant. This accounts for the variance among field offices in the percentages of cases concluded by fines, warnings and findings of compliance.

Furthermore, as we discuss in detail in our response to Recommendation 2, we conducted re-inspections of companies that had been issued a fine or a warning to determine which disposition was more effective in fostering compliance. We found no significant difference in post-inspection compliance whether we issued a fine or a warning. Given this, contrasting the variance between fines or warnings is not a valid criterion to describe a variance in the effective application of the inspection process.

ICE Homeland Security Investigations (ICE HSI) has long been sensitive to the need for consistent application of its administrative inspections and has robust measures in place to promote consistency. The process by which Employment Eligibility Verification Form I-9s are received, inspected and adjudicated is consistently applied throughout ICE HSI. The process results in a finding of compliance, an adjusted compliance, a warning, or a fine. ICE HSI Headquarters Worksite Enforcement (WSE) Unit provides oversight to ensure consistent application of this process by the field offices. It does this by providing or facilitating: a fiscal year inspection implementation plan; uniform notice template letters; oversight of the de-confliction process; a central repository of policy, resources, and guidance to be utilized by the field offices, which is updated by the WSE Unit; periodic refresher webinars to reiterate training points and policies; conference calls with first line supervisors to discuss current issues; and real-time responses to questions from the field offices. The WSE Unit authors the fiscal year inspection implementation plan, which contains detailed guidance. The WSE Unit monitors and tracks case dispositions, ensuring cases are submitted to the Department of Labor for de-confliction and ensuring that the Notices of Inspections are served and accurately captured in TECS-II.

Accordingly, we request this recommendation be closed.

1



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ICE Response to OIG Draft Report Recommendations:

“U.S. Immigration and Customs Enforcement’s Worksite Enforcement Administrative Inspection Process” **[OIG Project No. 12-012-AUD-ICE]**

Recommendation #2: Develop a process to evaluate the effectiveness of the administrative inspection process and modify the process based on the evaluation.

Response: ICE concurs with this recommendation. ICE continuously reviews its worksite enforcement strategies through the collection of statistics. Since receipt of the report, ICE HSI has taken the following steps to enhance the process we use to evaluate the effectiveness of the administrative inspection process and modify the process based on the evaluation.

- ICE reviewed the recidivism rate of approximately 500 businesses that were re-inspected in January 2012 to determine which enforcement actions resulted in greater future compliance with the employment verification system; the goal of the current strategy. These businesses were all subject to prior findings of non-compliance resulting in either the issuance of a Warning Notice or an Administrative Fine. Over 50% of the businesses were found to be compliant, and there was no significant difference in the future compliance rate between a Warning Notice and Fine when looking at the recidivism rate.
- To explore options on the most cost-efficient and effective methodology to evaluate the effectiveness of the administrative inspection process, ICE WSE participated in the ICE Innovation Forum conducted July 16, 2013. This event was entitled *Achieving the Mission and Driving Innovation through Public-Private Partnerships*. ICE hosted approximately 120 industry representatives to work with subject matter experts at ICE to address specific current challenges; including effective methods to evaluate the current worksite enforcement strategy. With the benefit of these discussions, ICE will attempt to create a method for evaluation of the effectiveness of the ICE worksite enforcement strategy relating to the administrative fine policy.
- ICE will begin development of an evaluation methodology by the end of Fiscal Year 2014.

We request this recommendation be considered resolved and open pending completion of our planned corrective action.

Recommendation #3: Direct Homeland Security Investigations field offices to provide consistent, accurate, and timely reporting and reconciliation of information on worksite enforcement strategy administrative inspections.

Response: ICE concurs with this recommendation. To ensure greater consistency and accuracy in reporting of information, ICE HSI will review statistics entered as part of the administrative inspection process for timeliness and accuracy, and forward deficient cases to the field to be corrected or updated. ICE will further create an administrative inspection statistics webinar that will be provided to employees assigned to ESE groups during FY 2014 to reiterate the proper

2



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ICE Response to OIG Draft Report Recommendations:

"U.S. Immigration and Customs Enforcement's Worksite Enforcement Administrative Inspection Process" **[OIG Project No. 12-012-AUD-ICE]**

method to report information on worksite enforcement administrative inspections and the proper reconciliation methods for deficiencies. Expected completion date is December 31, 2014.

We request this recommendation be considered resolved and open pending completion of our planned corrective action.



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Appendix C

Form I-9 Employment Eligibility Verification

OMB No. 1615-0047; Expires 08/31/12

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):	
		<input type="checkbox"/> A citizen of the United States	
		<input type="checkbox"/> A noncitizen national of the United States (see instructions)	
		<input type="checkbox"/> A lawful permanent resident (Alien #) _____	
		<input type="checkbox"/> 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: _____		_____		_____
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)

Form I-9 (Rev. 08/07/09) Y Page 4



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LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

LIST A	LIST B	LIST C	
Documents that Establish Both Identity and Employment Authorization	Documents that Establish Identity	Documents that Establish Employment Authorization	
	OR	AND	
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	6. U.S. Citizen ID Card (Form I-197)	
	7. U.S. Coast Guard Merchant Mariner Card		7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
	8. Native American tribal document		
	9. Driver's license issued by a Canadian government authority		
For persons under age 18 who are unable to present a document listed above:			
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	10. School record or report card		
	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)

Form I-9 (Rev. 08/07/09) Y Page 5



Appendix D

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Appendix E

Report Distribution

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Attention: Office of Investigations Hotline
245 Murray Drive, SW
Washington, DC 20528-0305

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