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IMMIGRATION REFORM

Status of Implementing Employer Sanctions After Second Year

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Comptroller General
of the United States

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The President of the Senate and the
Speaker of the House of Representatives

This is the second of three annual GAO reports required by Section 101(a) of the Immigration Reform and Control Act of 1986. The act prohibits employers from knowingly hiring unauthorized workers. Noncompliance can result in penalties (sanctions).

The act requires us to review the implementation and enforcement of employer sanctions for the purpose of determining if such provisions (1) have been carried out satisfactorily, (2) have caused a pattern of discrimination against U.S. citizens or other eligible workers, and (3) have caused an unnecessary regulatory burden on employers. Since the act has not yet been fully implemented, this report presents information on actions to date. In addition, we discuss several methodological problems that may preclude us from making conclusive determinations on these matters in our next report.

Copies of this report are being sent to the Attorney General; the Secretary, Department of Labor; the Chairman, Equal Employment Opportunity Commission; the Chairman, U.S. Commission on Civil Rights; the Director, Office of Management and Budget; and other interested parties.

This report was prepared under the direction of Arnold P. Jones, Senior Associate Director. Other major contributors are listed in appendix V.

Charles A. Bowsher

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Comptroller General
of the United States

Executive Summary

Purpose

Congress passed a law in 1986 to penalize employers who hire any alien not authorized to work. The law requires GAO to issue three annual reports to Congress on its implementation and establishes procedures for Congress to repeal provisions of the law if GAO's third report finds a "widespread pattern" of discrimination caused "solely" by the law. This is the second report. (See pp. 10 and 16.)

Background

In recent years the Immigration and Naturalization Service (INS) has been arresting aliens who were working in the country illegally. However, federal law did not provide penalties for employers who knowingly hired unauthorized aliens. (See p. 10.)

The Immigration Reform and Control Act of 1986 (1) contains civil and criminal penalties for employers of unauthorized aliens and (2) requires all employers in the Nation to complete an employment eligibility verification form (I-9) for each new employee. The law authorizes INS and Department of Labor officials to inspect I-9s. (See p. 11.)

Because of concern that employers—to avoid being sanctioned—would not hire "foreign-looking or -sounding" U.S. citizens or legal aliens, Congress added a provision prohibiting employers with four or more employees from discriminating on the basis of a person's national origin or citizenship status. (See p. 12.)

The law requires that each of GAO's annual reports review the implementation and enforcement of the employer sanctions law for the purpose of determining whether (1) the law has been carried out satisfactorily, (2) a pattern of discrimination has resulted against authorized workers, and (3) an unnecessary regulatory burden has been created for employers. Congress also asked GAO to determine if the antidiscrimination provision creates an unreasonable burden for employers.

During the second year GAO (1) reviewed federal agencies' implementation of the law, (2) reviewed discrimination complaints filed with federal agencies as well as data from state agencies and groups representing aliens, and (3) surveyed employers to obtain their views on the law's effects. Survey results were used to approximate the employer population but have certain limitations. (See pp. 16 and 83.)

Results in Brief

The general approach INS used during the second year to continue educating employers while increasing enforcement is satisfactory. INS could, however, improve its efforts to determine employer compliance.

The second-year data show the following:

- Some employers did not understand the law's antidiscrimination provision, and the provision has not resulted in an unreasonable burden on employers.
- About one of every six employers in GAO's survey who were aware of the law may have begun or increased the practice of (1) asking only foreign-looking persons for work authorization documents or (2) hiring only U.S. citizens. But this does not establish that the law has caused a pattern of discrimination because the survey responses do not adequately tell why employers may have taken these actions nor the number of authorized workers that may have been affected. This information does, however, indicate a need for more public education and further investigation.
- The number of discrimination charges filed, to date, does not establish a pattern of discrimination.
- Information is insufficient to determine if the employer sanction provision has caused an unnecessary regulatory burden on employers.

Principal Findings

Employer Education Needs to Continue

During the second year INS continued to educate employers while increasing enforcement. On the basis of the employer survey, GAO estimates that about 22 percent were not aware the law was passed. For those aware of the law, as many as 20 percent did not clearly understand the law's major provisions. (See pp. 22 and 46.)

Enforcement Actions

Consistent with the law, INS has phased in its enforcement activities. The number of employer violations for employing unauthorized aliens was 452 and about 4,700 for not completing I-9s, as of September 1, 1988. GAO's survey estimates show that about half of the 1.9 million employers who were aware of the law and hired at least 1 employee had not completed all the required I-9s. (See pp. 26 and 27.)

Opportunities to Improve Enforcement

GAO also identified three areas where INS and/or Labor could improve their methods for determining employer compliance with the I-9 requirement.

- Although unauthorized aliens' use of counterfeit documents could undermine the law's success, INS does not systematically analyze data on their use. On the basis of GAO's analysis of INS records in 5 cities, 435 (or 39 percent) of the 1,107 employed unauthorized aliens used or were suspected of using counterfeit documents. (See p. 30.)
- When INS inspects I-9s, it notifies employers in advance of the inspection and considers them in compliance with the I-9 requirements if, after completing its review, all required forms are completed. This may require more than one INS visit. INS does not distinguish between employers who voluntarily comply with the act before receiving an INS notice of inspection and those who are brought into compliance as a result of INS' visits. If employers' initial compliance levels were recorded, INS could use this data to better allocate its inspection resources where most noncompliance occurs. (See p. 30.)
- When GAO observed INS and Labor inspecting employers' I-9s, they did not consistently review the employer's payroll records to verify that there were no other employees hired who required an I-9. Without verifying to some extent the number of employees hired after the law, INS and Labor cannot fully determine employer compliance. (See pp. 28 and 34.)

No Pattern of Discrimination

The data on discrimination does not establish (1) a pattern of discrimination caused by employer sanctions or (2) an unreasonable burden on employers. (See p. 60.)

The Office of Special Counsel in the Department of Justice—responsible under the law for prosecuting discrimination charges—had received 286 charges as of September 1988, of which 89 had been closed. (See p. 40.)

As of September 1988, the Equal Employment Opportunity Commission—the agency that administers Title VII of the Civil Rights Act of 1964 prohibiting national origin discrimination—had received 148 charges related to the new immigration law. Of these, 64 were still in process as of September 1988, and 84 were closed. Fifty-four charges were filed with both agencies, and additional charges have been filed with state and local agencies. (See p. 43.)

On the basis of GAO's employer survey, of the 3.3 million who were aware of the law, about 528,000 (or 16 percent) had begun or increased the practice of (1) asking only foreign-looking persons for work authorization documents or (2) hiring only U.S. citizens. For example, GAO estimates that in California about 53,000 employers began to ask only foreign-looking or -sounding job applicants to present work authorization documents.

The survey responses, however, did not adequately address the number of authorized workers who were fired, not hired, or otherwise affected by the reported practices. Thus, the survey responses should not be construed to mean that the law has caused a pattern of discrimination. Nevertheless, policymakers should be concerned about the reported practices and federal agencies should provide the public more information about the act. (See pp. 46 and 60.)

Recommendations

To better determine employer compliance levels and allocate enforcement resources, GAO recommends that the Attorney General direct the Commissioner, INS, to (1) collect information on the extent unauthorized aliens used counterfeit documents to be hired; (2) measure employers' voluntary I-9 compliance level; and (3) along with the Secretary of Labor, use employer records, when needed, to verify that I-9s have been prepared for all new employees. (See p. 38.)

GAO recommends that the Attorney General direct the Special Counsel, in coordination with other agencies, to develop a plan and budget to better educate the public about the law's antidiscrimination provision. (See p. 61.)

Agency Comments

GAO discussed the contents of the report with officials from INS, Office of Special Counsel, Department of Labor, and the Equal Employment Opportunity Commission. They concurred with the report, and their comments have been included where appropriate.

Contents

Appendixes

Tables

Figures

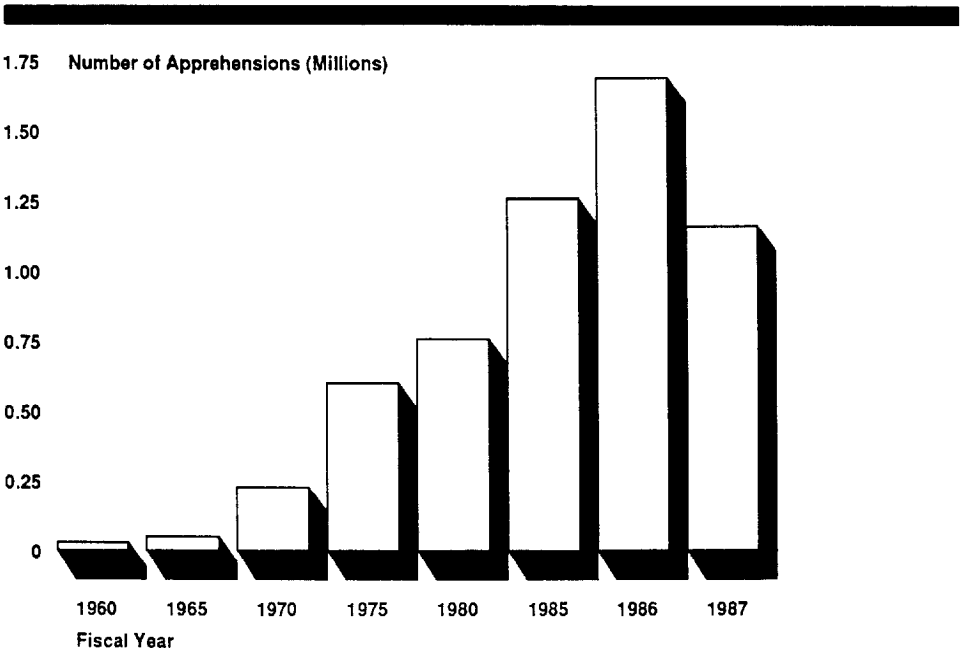
Abbreviations

DOJ	Department of Justice
DOL	Department of Labor
EEOC	Equal Employment Opportunity Commission
ESA-91	Employment Eligibility Verification Record Keeping Requirements Form
FLSA	Fair Labor Standards Act
GAP	General Administrative Plan
I-9	Employment Eligibility Verification Form
INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act of 1986
LAW	Legally Authorized Worker Program
MALDEF	Mexican American Legal Defense and Educational Fund
NLRA	National Labor Relations Act
OFCCP	Office of Federal Contract Compliance Programs
OMB	Office of Management and Budget
OSC	Office of Special Counsel
SBA	Small Business Administration
SSA	Social Security Administration
SSN	Social Security Account Number
WHD	Wage and Hour Division

Introduction

During the past 15 years Congress has been increasingly concerned over the inability to control the illegal flow of aliens across our borders and the economic consequences of aliens who are not authorized to work taking jobs away from authorized workers.[1] However, some researchers believe that the presence of unauthorized aliens has aided the U.S. economy.[2] Figure 1.1 shows the number of aliens the Immigration and Naturalization Service (INS) apprehended at U.S. borders as they tried to enter the country illegally.

Figure 1.1: INS Apprehensions at U.S. Borders



Source: INS.

After a series of hearings in the 1980s, the Immigration Reform and Control Act of 1986 (IRCA) became law on November 6, 1986. The act requires that we issue three annual reports on its implementation beginning with November 1987. We issued our first report on November 5, 1987 (Immigration Reform: Status of Implementing Employer Sanctions

[1]Illegal Aliens: Limited Research Suggests Illegal Aliens May Displace Native Workers (GAO/PEMD-86-9BR, Apr. 21, 1986).

[2]See, for example, Julian Simon, How Do Immigrants Affect Us Economically?, published by the Center for Immigration Policy and Refugee Assistance of Georgetown University (1985); and The 1986 Economic Report of the President.

After One Year, GAO/GGD-88-14). More information about the act's purpose and objectives are contained in that report.

The Immigration Reform and Control Act of 1986

IRCA affects each of the Nation's estimated 7 million employers and the estimated 67.5 million people hired annually.[3] Specifically, the act's employer sanction provision makes it unlawful to knowingly hire, recruit, or refer for a fee aliens who are not authorized to work in the United States; requires those who hire and recruit or refer for a fee to verify both the identity and the employment eligibility of hired individuals; and prohibits employment discrimination based on national origin and citizenship status. Prior to IRCA, federal law did not provide penalties for employers who knowingly hired unauthorized workers. Also, IRCA established a new enforcement unit—the Office of the Special Counsel for Immigration-Related Unfair Employment Practices (OSC)—within the Department of Justice (DOJ) to prosecute complaints alleging national origin and citizenship status discrimination. It further authorized the Attorney General to designate administrative law judges to hear discrimination and employer sanctions cases.

Unlawful Employment Practices

The law states that it is unlawful to knowingly hire or recruit or refer for a fee for employment any alien not authorized to work in the United States or to hire any person (including U.S. citizens) without verifying the person's legal employment status. It is also unlawful to knowingly continue to employ an alien who is or has become unauthorized to work or to knowingly obtain the services of an unauthorized alien through a contract. Noncompliance can result, depending on the violation, in civil and criminal penalties. However, the law permits employers to continue to employ unauthorized aliens hired before November 6, 1986, without being sanctioned (i.e., "grandfathered" aliens). INS can deport grandfathered aliens who are in the country illegally.

IRCA places certain responsibilities on employers when hiring employees. Generally, for employees hired after November 6, 1986, IRCA requires employers to verify the employee's identity and eligibility to work in the United States. Employers must complete the Employment Eligibility

[3]The number of employers is based on Internal Revenue Service data on organizations filing tax returns. The estimate of people hired annually is based on a study by Malcolm Cohen, Employer Service Potential (Institute of Industrial and Labor Relations: Ann Arbor, Michigan, 1979).

Verification Form (Form I-9) for each employee, certifying that documents used to verify identity and eligibility were reviewed. Job applicants may use a number of documents to establish employment eligibility, some of which INS issues. INS is responsible for inspecting the forms for compliance with the act's requirements. The Department of Labor (DOL), in conjunction with its other duties, also inspects the forms.

Timetable for Employer Verification Requirements

The law and implementing regulations establish timetables for enforcement of the law and related penalties. The implementation is generally divided into three phases: a 6-month education period, a 1-year period during which citations were issued to first-time violators, followed by full enforcement of sanctions against those who violate the law.[4] When INS imposes a penalty, it issues a Notice of Intent to Fine.

Unlawful Discrimination

The new immigration law also prohibits discrimination because Congress was concerned that employers—to avoid being sanctioned—would not hire "foreign-looking or -sounding" U.S. citizens or legal aliens. Under this law, employers with four or more employees may not discriminate against any authorized worker in hiring, discharging, recruiting, or referring for a fee because of that individual's national origin or, in the case of a citizen or intending (prospective) citizen, because of his or her citizenship status.

Title VII of the Civil Rights Act of 1964 and the remedies against discrimination it provides remain in effect. Title VII prohibits discrimination against anyone on the basis of national origin in hiring, discharging, recruiting, assigning, compensating, and other terms and conditions of employment. Charges of national origin discrimination against employers with 15 or more employees are generally to be filed with the Equal Employment Opportunity Commission (EEOC).

Under the new immigration law, charges of national origin discrimination against employers with 4 through 14 employees and charges of citizenship status discrimination against employers with 4 or more employees are to be filed with OSC.

[4]Agriculture employers are generally exempt until December 1, 1988, with respect to their seasonal agriculture employees.

After investigating the charge, OSC may file a complaint with an administrative law judge. The administrative law judge will conduct a hearing and issue a decision.

Although IRCA's antidiscrimination provision was intended to be distinct from, and a complement to, the provisions of title VII, there are some incidents over which EEOC and OSC both may have jurisdiction. Such incidents would involve allegations of both citizenship status and national origin discrimination against employers having 15 or more employees. IRCA, however, prohibits charging parties from filing charges of discrimination based on national origin arising from the same set of facts with both EEOC and OSC. A charging party is thus forced to select an agency with which to file. If the charging party selects an agency without authority over the complaint or for which no remedy is available (see p. 41), the charging party may not be able to make a second filing with the appropriate agency before the statute of limitations has run out. In order to avoid having such a situation prevent a charging party from exercising his/her rights, EEOC and OSC signed an interim agreement in April 1988 that designated each other as agents for purposes of complying with the statute of limitations deadline.

Employers found to have engaged in unfair immigration-related employment practices under the new immigration law will be ordered to stop the prohibited practice and will be subject to certain legal remedies. They may be ordered to (1) hire, with or without back pay, individuals directly injured by the discrimination; (2) pay a fine; and (3) keep certain records regarding the hiring of applicants and employees. If the judge decides that the losing party's claim had no reasonable basis in law or fact, the judge may require the losing party to pay the prevailing parties' (other than the United States) reasonable attorney fees.

INS Responsible for Enforcement of Employer Sanctions

The implementation of employer sanctions is the responsibility of INS' enforcement components.[5] According to an INS official, as of August 1, 1988, INS had 1,347 investigators on duty in its headquarters, 4 regional offices, and 33 districts. Investigators do various types of investigations in addition to employer sanctions, such as those involving fraud and apprehending deportable criminal aliens.

[5]Employer sanctions are generally carried out by INS investigators and Border Patrol agents. Throughout this report "investigators" refers to both Border Patrol agents and INS investigators.

In addition to carrying out its responsibility of apprehending persons illegally crossing our Nation's borders, the Border Patrol also enforces employer sanctions. INS received 135 additional Border Patrol positions to investigate employers, inspect I-9 forms, and help to educate employers about the law's requirements.

INS' employer sanctions budget for fiscal years 1988 and 1989 was about $60 million and $63 million, respectively, or about 7 percent of its budget in both years. INS' fiscal year 1989 budget provides about 1,237 positions for employer sanctions, or 8 percent of its total positions (see app. I for INS' employer sanctions budgets).

According to INS officials, 60 percent of the enforcement resources for employer sanctions will be directed at employers who are suspected of employing unauthorized aliens. The remaining 40 percent will be devoted to a program to randomly select employers nationwide for I-9 compliance inspections. According to INS, this program—the General Administrative Plan (GAP)—has five objectives: (1) detect I-9 form violations, (2) identify employers who knowingly hire unauthorized aliens, (3) promote compliance, (4) monitor the level of I-9 form compliance among various employment sectors, and (5) help plan future enforcement efforts. Half of GAP inspections will be employers randomly selected from employment sectors that have proven in the past to employ significant numbers of unauthorized aliens, on the basis of local INS management determination. According to INS, the other half of GAP inspections will be employers randomly selected from all employment sectors and geographical areas to ensure fairness and balance in enforcing the law.

Two Labor Offices Inspect Employers' Records

In conjunction with other duties, the two offices within DOL that are responsible for inspecting employers' I-9 forms are components of the Employment Standards Administration: (1) the Wage and Hour Division (WHD) and (2) the Office of Federal Contract Compliance Programs (OFCCP). During their investigations, they review I-9s.

WHD administers and enforces a wide range of laws that establish standards for wages and working conditions. These laws cover virtually all private sector employment. From September 1, 1987, to August 31, 1988, WHD had inspected I-9s at 28,420 employers.

The OFCCP administers a number of statutes, including Executive Order 11246, which prohibits federal contractors from discriminating on the

basis of race, color, religion, sex, or national origin. From September 1, 1987, to July 31, 1988, OFCCP had inspected I-9s at 2,364 employers.

At the completion of their employer visits, WHD and OFCCP officials forward the results of the I-9 inspections to INS district offices on an Employment Eligibility Verification Record Keeping Requirements Form (ESA-91). The form includes such information as apparent compliance or noncompliance with the I-9 requirements, apparent unfair employment practice, and possible employment of unauthorized workers. For fiscal year 1989, Congress appropriated $5 million for DOL to make I-9 compliance inspections and authorized 91 positions.

Objectives, Scope, and Methodology

IRCA requires that we issue an annual report on the employer sanctions provision each November for 3 years. Specifically, the act requires us to describe the results of our review of the implementation of employer sanctions for the purpose of determining whether such provision has (1) been carried out satisfactorily, (2) caused a widespread pattern of discrimination, and (3) created an unnecessary regulatory burden. The act also says that if we find that employer sanctions have caused a widespread pattern of discrimination, Congress can expedite the repeal of the employer sanctions provision if it concurs with our conclusions.[1] In addition, if we determine and report that no significant discrimination has resulted from employer sanctions or that an unreasonable burden has been created for employers, Congress can repeal the antidiscrimination provision using the same expedited procedures. According to Chairman Rodino, House Judiciary Committee, the congressional conferees added this repeal provision because of concern that persons would abuse the new legal authority in IRCA and file lawsuits to harass employers. They were also concerned that the discrimination penalties in IRCA could create an unreasonable burden.

IRCA's legislative history does not provide guidance on the meaning of such terms as "widespread pattern of discrimination," "unnecessary regulatory burden," and "unreasonable burden." Without such guidance, we analyzed the available data to help us draw conclusions that could address these questions. However, data limitations, partly related to the act's newness, and methodological problems caused us to qualify our answers to the mandated questions. These problems probably will persist into the third report, causing us to qualify those results too.

With respect to discriminatory hiring practices, not enough time has passed for us to obtain the results of many of the charges filed with OSC, EEOC, or others (e.g., state and local agencies). Information regarding the regulatory burden on employers from their preparation and retention of the I-9s is still being developed. Therefore, any conclusion needs to recognize that later experience may differ from early reports. Also, methodological problems exist in determining if employer sanctions caused a pattern of discrimination.

Until full enforcement of employer sanctions has been underway for some time, employers may have little reason to fear being sanctioned.

[1]Congress established procedures to expedite the repeal of employer sanctions (sec. 101) and/or the antidiscrimination (sec. 102) provisions. On the basis of the conclusions in our third report, these sections could be repealed if Congress enacted a joint resolution within 30 days of our report, stating in substance that it approves our findings.

After enforcement is increased, we still may not be able to determine if any discrimination that occurs was caused "solely" by employers' fear of sanctions. The Chief Administrative Hearing Officer in DOJ as well as officials from EEOC, OSC, and DOL said that judges' decisions on cases of discrimination normally do not specify what caused the discriminatory act. We may, therefore, not be able to use judges' decisions in specific cases to determine whether sanctions caused discrimination.

Determining the extent of discrimination caused by sanctions is also difficult (i.e., widespread pattern of discrimination versus no significant discrimination). There is no data on the number of persons who applied for the estimated 67.5 million jobs filled in a given year who were not hired because of employers' fear of sanctions. Without this information, we may not be able to determine what is a "widespread pattern" of discrimination versus "no significant" discrimination.

IRCA's discrimination provision increases from about 13 to 48 percent the portion of the Nation's employers subject to federal antidiscrimination laws.[2] This increase could, by itself, result in an increase in the number of discrimination cases.

Our ability to answer the questions may be affected by several issues. First, changes in alien employment and flow may be caused by factors other than employer sanctions, which we may not be able to account for in our analysis. Second, some necessary data to address the three questions may not exist. For example, the extent of discrimination is not known since persons who are discriminated against because of employer sanctions may decide for various reasons not to file a charge with a federal or state agency. EEOC officials believe many acts of discrimination may not be reported because of the victim's reluctance to come forward and file an official charge. Therefore, our estimate of IRCA-related discrimination may be less than has actually occurred. Third, the 3 years provided in IRCA for us to report on the law's impact may not be sufficient. For example, government officials in two countries believed that it took 3 or more years before employer sanctions laws became a deterrent to employment of illegal aliens.[3]

[2]This is based on data from a private marketing service, which identified about 6 million employers in the Nation.

[3]Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries (GAO/GGD-82-86, Aug. 31, 1982) and Illegal Aliens: Information on Selected Countries' Employment Prohibition Laws (GAO/GGD-86-17BR, Oct. 28, 1985).

Our evaluation of IRCA consisted of three major tasks:

- We gathered and analyzed data on the three mandated questions from the various federal agencies—INS, DOL, OSC, EEOC, the Small Business Administration (SBA)—and nonfederal state and local agencies. We did our work at these agencies mainly in Chicago, Dallas, Los Angeles, Miami, and New York City, where we believe the law could have a disproportionate effect because of the large number of resident aliens. These cities are referred to as "high alien population cities." In addition, we did work at the headquarters of various agencies in Washington, D.C., and visited INS offices in El Paso, Texas, and Baltimore, Maryland.
- We developed indicators of the illegal flow of aliens into the country and the employment levels of unauthorized aliens. To identify and refine our list of indicators, we (1) reviewed past GAO, INS, Bureau of the Census, and EEOC reports; (2) obtained comments from officials with INS, OSC, as well as advocacy groups; (3) met with public interest groups; (4) participated in an immigration seminar with employers; and (5) asked experts with experience in immigration issues to critique our indicators.
- We developed a questionnaire on the act's implementation to send to a stratified random sample of U.S. employers in late 1987. The results are intended to provide data relevant to the three questions.

We surveyed employers anonymously to gather information on their (1) understanding of the law, (2) employment practices, and (3) costs to comply with the I-9 form requirements. To help ensure an adequate response rate to our survey, we deliberately avoided explicit questions about illegal activities by employers. For example, we consciously did not ask employers if they discriminated against authorized workers because of employer sanctions.

We used a private commercial firm's September 1987 list of over 6 million employers to take our sample. We took a stratified random sample of 5,998 employers. A total of 1,956 were subtracted from the original employer sample because they were out of business (1,714), or had no employees (242). The adjusted sample was 4,042. A total of 3,169 usable responses were received, for a response rate of 78 percent. Our final estimates indicate that our results project to a universe of about 4.2 million employers out of the firm's list of 6 million employers. The universe was stratified by state and industry. California, Florida, Illinois, New York, and Texas were classified as "high alien population states." All other states were grouped in a separate sixth strata. Construction, farming, food processing, garment, and hotel/restaurant were classified as

"high alien population industries." All other industries were grouped in a separate sixth strata.

The first mailing was done in November 1987, with two subsequent mailings in early 1988. Follow-up phone calls were made to nonrespondents in April 1988. Data collection was closed off in May 1988. The sampling plan was designed so that we could be 95-percent certain that the results would not be more than ±10 percent different if a different group of employers had been selected for our sample. Survey results were used to approximate the employer population, but they have certain limitations. (See app. III for a full discussion of sample selection and sampling errors.) The questionnaire results are presented in appendix II. The analysis is based on weighted data, calculated as the ratio of the universe divided by the sample for each strata.

IRCA also requires the President to issue reports related to employer sanctions, some of which relate to the three questions we will address. We plan to review and analyze the reports related to our review and use the data in doing our work next year. As of October 1, 1988, no such reports had been issued.

To determine the extent that unauthorized aliens were hired after IRCA by using counterfeit or fraudulent documents in preparing the I-9, we reviewed all available INS employer case files in the five high alien population cities for the period September 1987 through April 1988. For Los Angeles the period was October 1987 through April 1988. Specifically, we determined the number of unauthorized aliens INS had apprehended at work who had been hired after IRCA and, of those, how many INS reported as having provided counterfeit or fraudulent documents to the employers. We did not review every employer case file at these locations because some of the files were being used by INS officials and were therefore not readily available or could not be located. In addition, we do not know if our results are representative of all employers or unauthorized aliens in the cities visited.

To observe how INS and DOL officials were carrying out their responsibilities, we accompanied them on 101 employer I-9 inspections (51 with INS and 50 with DOL). During our visits we observed their review of employer I-9s and other employer records. These 101 employer visits consisted of 20 visits in 4 of our 5 high alien population cities and 21 in the fifth city. Generally, in each city, 10 of the visits were with INS and 10 with DOL. Of the 10 DOL visits in each city, 7 were generally with WHD officials and 3 were with OFCCP officials. We did not select randomly the

employers whom we visited. The purpose of our visit was to determine the approach used by INS and DOL in doing their reviews. INS and DOL officials notified us of planned visits, and we selected those that were from a cross-section of industries. Thus, our results are not projectable to all employers whom INS and DOL visited in the five cities.

To identify what INS actions, if any, were taken to follow up on DOL information it received about employers who may not be in compliance with IRCA, we reviewed the DOL forms (ESA-91s) received and retained by INS' offices in our five high alien population cities. The Form ESA-91 is used by DOL to summarize the results of its inspection of employers' I-9 forms.

To determine if implementing the law is resulting in a pattern of employment discrimination, we (1) interviewed officials at INS, DOJ, EEOC, state employment service offices in the five states included in our review, and public interest groups and (2) obtained and analyzed data on discrimination related to national origin and citizenship status. We reviewed available discrimination data to determine if the antidiscrimination provision created an unreasonable burden for employers from persons filing lawsuits to harass employers.

To determine if EEOC was accurately identifying IRCA-related national origin discrimination charges it receives, we reviewed about 800 national origin charges filed with EEOC's district offices in our five high alien population cities since the passage of IRCA to February 29, 1988. For each charge reviewed, we read the allegation against the employer and made a judgment on whether the employer's hiring or firing decision was IRCA-related or sanction-related. This judgment could change, however, depending on additional evidence developed. EEOC identified 38 cases as IRCA-related in our 5 cities and we found 3 additional charges that could be IRCA-related. We did not review those charges that EEOC (1) had referred to another agency for investigation and (2) could not locate. We reviewed only charges where the person was not hired or was fired.

To determine which OSC charges were related to the implementation of employer sanctions, we reviewed all national origin and/or citizenship status charges filed with the OSC from IRCA's enactment to May 2, 1988. In addition, to determine if the charge filed at OSC was sanction-related, we read the complaint file and made a judgment on whether the employer's action to fire or not hire the complainant was sanction-related. This judgment could change, however, depending on additional

evidence developed. An example of what appears to be a potential sanction-related charge would be if an employer, after November 6, 1986, started a policy to hire only U.S. citizens. An example of a charge that does not appear to be sanction-related would involve an employer whose policy to hire only citizens was started years before IRCA's enactment.

We sent a questionnaire to all 104 state and city human rights agencies that have formal work-sharing agreements with EEOC. The purpose of the questionnaire was to determine their awareness of IRCA's antidiscrimination provision and whether the laws the agencies enforce provide similar protection. The questionnaires were sent in July 1988 with a follow-up in late August. A total of 81 were returned, for a response rate of 78 percent. The results of this survey are shown in appendix IV.

Data sources, such as state employment agencies, categorize job applicants into racial or ethnic groups (e.g., Blacks, Whites, etc.). To determine if employers are not hiring job applicants who may appear "foreign-looking" to avoid sanctions, we selected two groups for analysis that we believe have a greater likelihood of being discriminated against—Hispanics and Asians.

While both the public and private sectors are required to comply with the employer sanctions provision of IRCA, we did not review IRCA's effects on federal, state, or local government employment practices. Rather, we decided to focus on the private sector where we believe, on the basis of reviewing immigration literature, that most unauthorized aliens are employed.

Due to time constraints and given the numerous data sources reviewed, we did not verify the data provided. Our work was done between November 1987 and October 1988 in accordance with generally accepted government auditing standards. We also included data from our first report—Immigration Reform: Status of Implementing Employer Sanctions After One Year (GAO/GGD 88-14, Nov. 5, 1987).

Implementing Employer Sanctions

INS and DOL continue to make satisfactory progress in implementing the law. INS' strategy to increase employers' awareness and understanding of the law is necessary to help achieve a high level of voluntary compliance. Of the 4.2 million employers in our survey population, we estimate about 900,000 (or 22 percent) were not aware of the law. In addition, we estimate from 60,000 to 300,000 employers did not clearly understand one or more of IRCA's major provisions. We estimate that of the 1.9 million employers who were aware of the law and hired one or more employees, at least 958,000 (or 50 percent) had not completed all required I-9 forms.

INS increased its efforts to enforce employer sanctions. As of September 1, 1988, INS had issued 311 notices of intent to fine employers for employing unauthorized aliens or not completing I-9s. The fines totalled about $1.6 million.

During our review, we identified several ways INS could improve its implementation of employer sanctions and the methods it uses to measure and increase employers' compliance. Specifically, INS is not (1) consistently verifying that all required I-9 forms have been provided by employers, (2) analyzing data on unauthorized aliens' use of counterfeit or fraudulent documents to complete I-9s, and (3) measuring employers' voluntary compliance at the beginning of inspections.

We also identified an emerging issue related to employer compensation for unauthorized aliens. There have been reports of some employers lowering the wages of these aliens to offset the adverse effects of employer sanction fines. For some of these employers, this practice may not be illegal.

INS Employer Education Efforts Continue

One of the major elements of INS' implementation strategy is to educate employers about the law's requirements to gain their cooperation and provide a foundation for further enforcement action, if warranted. Between June 1, 1987, and June 1, 1988, INS devoted 50 percent of its investigative resources to educational activities, which resulted in over 1 million employer contacts to explain IRCA. INS also mailed an Employer Handbook explaining the law to over 7 million employers and completed a national media campaign to educate employers.

INS collected information from about 650,000 of its employer educational contacts between June 1987 and May 1988. The data showed that 64 percent of the employers contacted by INS were aware of IRCA, 40 percent

of the employers had received the INS Employer Handbook, and over 99 percent of the employers expressed their willingness to comply with the law. As a result of its visits, INS made over 241,000 employers aware of IRCA and provided handbooks to about 400,000 employers who had not received them.

In June 1988, INS reduced the resources dedicated to its educational efforts from 50 to 25 percent and set a new goal of contacting 500,000 additional employers by June 1989. According to INS officials, as of September 1, 1988, INS had (1) contacted over 124,000 employers; (2) implemented a program to help employers find legally authorized workers; and (3) concluded its national media campaign, which was carried out by the Justice Group.[1] According to the INS Justice Group project director, INS spent over $2.5 million to explain employer sanctions.

LAW Program

In July 1988, INS implemented a Legally Authorized Worker Program (LAW) in all 50 states to help employers find authorized workers for jobs formerly held by unauthorized aliens. According to INS, it has been standard procedure, since July 1988, to provide employers with information on sources of legal labor during all educational visits and GAP inspections. The INS staff visit employers and encourage them to fill job openings by contacting such organizations as the local state employment service office. In addition, INS will visit those employers who have been fined for violations of the act to provide them with an opportunity to voluntarily participate in the program.

As of May 31, 1988, INS had initiated 11 LAW projects, of which 6 had been completed, 3 were ongoing, and 2 were cancelled. The program has had mixed results. For example, a furniture manufacturer in California who had traditionally employed unauthorized aliens began hiring authorized workers after working with INS and the state employment service. In another example, a major poultry processor filled about 38 positions by advertising with the California Employment Development Department. However the LAW program has also had some difficulty. For example, INS cancelled two LAW projects involving garment industry employers in New York and Los Angeles because employers were opposed to raising wages.

[1]The Justice Group is a consortium of companies awarded a contract for a media campaign about IRCA.

Education Increases Employers' Understanding

According to our survey, about 3.3 million (or 78 percent) of the Nation's 4.2 million employers in our population are aware of IRCA's sanction provision. Generally, we found (1) the employers who had been visited by INS to identify unauthorized aliens had a greater level of awareness and understanding of the law than those employers who had not and (2) employers with less than 10 employees were least aware of and least understood IRCA's sanction provision. Similar results were contained in a report prepared for INS.

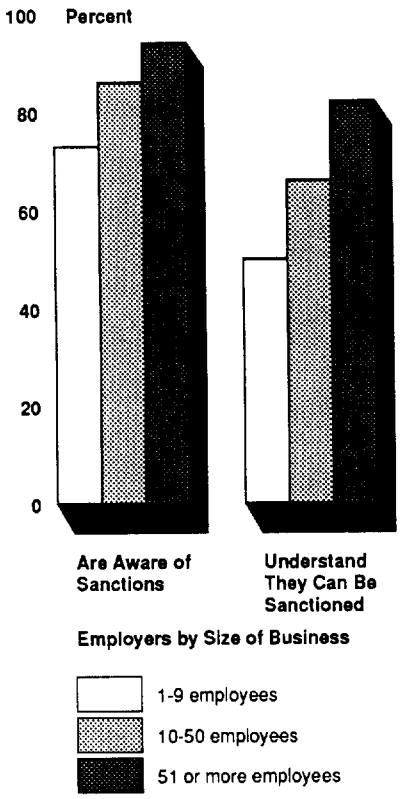
INS plans to contract with a commercial firm for a list of names of new employers and will mail them copies of its handbook. In addition, according to an INS official, INS plans to place special emphasis on educating small and new employers.

We estimate that about 900,000 employers of the 4.2 million in our population (or 22 percent) were not aware of IRCA's employer sanction provision. For the 1.7 million employers who indicated they were aware of and reviewed information on IRCA, from 51 to 87 percent said their understanding of specific hiring or verification requirements was generally or very clear. For example, we estimated that 84 percent were clear about IRCA's requirement to complete an I-9. Fifty-six percent of the employers were clear about DOL's responsibility to review I-9s.

According to our survey, over 430,000 employers who were aware of the law said that their organizations' familiarity with IRCA had increased because of INS' education campaign (e.g., meetings with businesses and trade associations and INS announcements in newspapers, on the radio, and on television). Similarly, of those 3.3 million employers aware of the law, about 1 million, or 33 percent, said they reviewed INS' Employer Handbook. Of those employers who used the handbook, over 900,000, or 90 percent, said they clearly understood the I-9 verification requirement, compared to over 500,000, or 82 percent, who said they understood the I-9 process but did not use the handbook. Furthermore, employers who were clear about IRCA's requirements cited INS as the most useful source of information as compared with newspapers, radio, television, trade associations, unions, and attorneys.

In addition, our survey showed the smaller the employer the less often they said they were aware of the sanction provision and the less they understood they could be sanctioned (see fig. 3.1).

Figure 3.1: Employers by Size of Business That Are Aware of and Understand Sanctions



Note: Numbers used to generate this figure can be found in table III.6.

Source: GAO Employer Survey, Spring 1988.

In addition, a NuStats, Inc. study[2] of 494 small employers done in Texas and California during December 1987 and January 1988 also showed many employers needed education on the law. Specifically, the study showed that (1) 56 percent reported knowing "just a few details" about IRCA, (2) employers with six or more employees reported having more knowledge than those with less than six, and (3) 61 percent had not seen the Employer Handbook.

[2]NuStats, Inc. did the study for the Justice Group. Fifty-three percent of the surveyed employers had zero to five employees, while the rest had six or more.

INS Enforcement Actions

INS' enforcement actions are summarized in table 3.1.

Table 3.1: INS Enforcement Actions, November 6, 1986, to September 1, 1988

Action	Number	Assessed amount (dollars)
Citations	2,322	n/a
Warning notices	530	n/a
Fines[a]	311	$1,553,850
Violations		
knowing or continuing employment	452	
paperwork	4,724	
Hearing requested	65	$406,950
pending	61	$376,700
completed	4	$30,250

[a]One fine may involve multiple violations.

Source: INS.

The 311 notices of intent to fine in table 3.1 include 95 fines for "paperwork only" violations where employers refused to comply with the I-9 form requirement or where other factors existed. INS' Office of General Counsel established an employer sanctions unit to monitor, review, and litigate cases and address related issues. According to the unit head, in practice, INS frequently negotiates with the employer the amount of the fine in exchange for the employer's agreement to cease its illegal activities.

On June 1, 1988, IRCA's 1-year citation period ended and INS' full enforcement of employer sanctions began. In a memorandum dated May 26, 1988, the Commissioner described INS' employer sanctions policy. According to INS, this policy has been implemented as follows:

- GAP program to inspect employers selected at random has been implemented nationwide.
- Citations are no longer issued for first violations.
- Warning notices may be issued for first violations if the employer has not received an educational visit or GAP inspection and no egregious factors are present.
- Fines may be issued for violations either after an educational visit or GAP inspection or, in the case of an egregious violation, on the basis of the first contact.

- Notices of intent to fine solely for violations of the paperwork requirements may be issued in the following circumstances: (1) the paperwork violations are egregious, such as willful failure to complete I-9s for new hires following a documented educational contact; (2) the paperwork violations relate to substantive violations, e.g., a "knowing" violation cannot be proved, but the apprehension of unauthorized workers at the workplace is involved; and (3) INS agrees to a paperwork fine pursuant to a plea agreement, and the employer admits in writing to the violation and agrees to future compliance.

The Commissioner's memorandum (1) increased the available investigative resources for employer sanctions enforcement and (2) confirmed the delegation of authority to approve notices of intent to fine to INS' four regional offices, which occurred April 15, 1988. Each regional office was authorized to further delegate approval of notices to the districts and sectors. During the initial months of sanctions implementation, all notices required approval from INS headquarters.

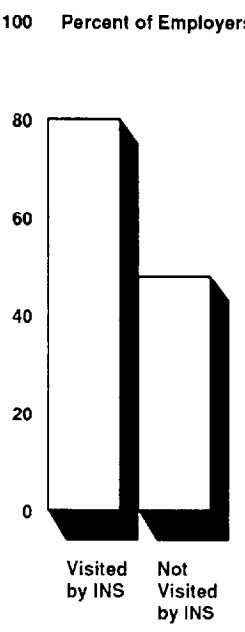
Employer Survey Compliance Results

On the basis of our survey, we estimate that about 50 percent of the 1.9 million employers who are aware of the law and hired at least 1 employee between November 1, 1986, and October 31, 1987, completed an I-9 form for each employee hired as the law required. However, over 235,000 (or 12 percent) had completed some but not all required I-9s, and over 723,000 (or 38 percent) had not completed any I-9s for the employees they had hired. Further, according to our survey, those employers who were not in compliance more frequently did not

- have an adequate supply of I-9 forms,
- believe they could be sanctioned,
- clearly understand the I-9 verification requirement,
- expect an INS visit, or
- find it easy to locate authorized workers.

As shown in figure 3.2, our survey also indicates a relationship between INS enforcement actions and employers' compliance with the I-9 requirements. However, the survey did not identify whether the INS visit occurred before or after the act was passed.

Figure 3.2: INS Visits as a Factor Related to Employers' I-9 Compliance



Note: Numbers used to generate this figure can be found in table III.6.

Source: GAO Employer Survey, Spring 1988.

Opportunities to Enhance INS Enforcement

INS has made good progress in planning and carrying out its enforcement responsibilities related to IRCA. While we recognize that INS is still in the process of implementing IRCA, more could be done to (1) better verify that all required I-9 forms have been provided by employers during inspections, (2) analyze data on aliens' use of counterfeit or fraudulent documents in completing an I-9, and (3) measure employers' voluntary compliance. With respect to fraudulent Social Security Account Numbers (SSN), the Social Security Administration (SSA) has a pilot project for employers to validate Social Security numbers.

Need to Verify Employer-Provided I-9s

IRCA generally requires every employer to complete an I-9 for each employee hired after November 6, 1986, or be subject to a fine for not doing so. INS' Employer Sanctions Field Manual requires investigators to

review the employer-provided I-9 forms. However, it is left to the investigator's discretion to determine whether or not to review additional documentation to verify that an I-9 has been prepared for all employees who require one.

During 31 of the 51 INS I-9 inspections we observed, INS investigators attempted to verify that the employer did provide all the required I-9s. Verification included reviewing other employer documents, such as payroll records, to ensure that the employer completed an I-9 for each employee who required one. In the other 20 inspections, either (1) investigators reviewed only those I-9s offered to them by the employer, or (2) the employer did not provide any I-9s. In either situation, the investigators could not be assured that the employer had all the required I-9s.

Investigator verification that all I-9s had been presented varied significantly among INS districts. For example, in 1 of the 11 I-9 inspections we observed in the Dallas District, the investigators attempted to use employer records to verify that all I-9s had been prepared. Conversely, in the New York District, investigators attempted verification in all 10 of the inspections we observed. In July 1988, the Los Angeles District began requesting a list of all employees hired after November 6, 1986, when informing the employers of INS' impending inspection.

During our 51 observations with INS investigators, the review of I-9s was completed in a few hours, generally depending on the number of I-9s provided by the employer. On the basis of our observations, when the INS investigator examined employer records, it did not take significantly longer. However, in some cases the investigators had to return to examine additional employer records.

By reviewing only those I-9s presented by the employer, the investigator cannot determine whether the employer has prepared an I-9 for all employees who require one. For example, during an inspection we observed, INS investigators reviewed additional documentation and found that the employer had hired more people for whom the employer had not prepared or presented an I-9.

If the investigator does not know how many employees the employer actually hired after November 6, 1986, there is no assurance that an employer has presented all of the required I-9s, and thus employer compliance cannot be determined. We recognize that investigators need discretion in determining whether or not to review additional documentation. For example, reviewing additional documentation may

be time-consuming at large employers. In such cases, sampling payroll records rather than attempting 100-percent verification would be appropriate. However, INS has not provided explicit guidance on the use of this discretion; the types of records that should be reviewed; and the methods (e.g., when to use sampling) that should be used to do such a review.

Improvements Needed to Determine Voluntary Employer Compliance

With over 7 million employers and about 635 INS investigators devoted to sanctions, voluntary compliance with IRCA is critical to its success. To date, indicators of voluntary compliance have ranged from 95 percent, on the basis of INS' GAP inspection results, to about 50 percent on the basis of our survey results, and 42 percent for DOL inspection results.

INS' compliance rate is higher than our survey results because INS counts as in compliance both employers who voluntarily comply with IRCA before receiving INS' notice of inspection, and those who are brought into compliance because of INS' visits. Our review in four INS locations showed that investigators do not determine employers' compliance on the basis of an initial review of the employer's records. Rather, compliance is measured after INS completes its review. For example, an employer who has not properly completed all required I-9s may require more than one INS visit until the I-9s are accurate and complete. A Los Angeles District official estimated that about 40 percent of employers would be in compliance if the determination was based on an initial review as compared to the 80 percent being reported after INS completes its review.

By distinguishing between the employers who are complying before INS' inspection and those who are brought into compliance as a result of an inspection, INS can more reliably measure voluntary compliance and evaluate the results of additional inspections. As discussed in chapter 1, GAP is intended to provide a profile of employer voluntary compliance so that INS can plan future enforcement efforts (e.g., the location, size, and industry to select for inspections). However, recording employer compliance only at the end of the inspection may overstate compliance levels and thus distort future enforcement efforts.

INS Needs to Measure Fraudulent Document Use

INS does not systematically analyze data on the extent to which unauthorized aliens are using counterfeit or fraudulent documents to obtain employment. We reported in March 1988 that aliens' use of such documents represents a potential threat to the integrity of IRCA's employment

verification (I-9) system.[3] We found that about 39 percent of employed unauthorized aliens identified by INS who were hired after IRCA had used, or were suspected of using, such documents to complete the I-9. After we discussed the results with INS officials, they agreed more had to be done to determine the extent of the problem.

Various INS officials said that the use of these documents to meet the I-9 requirements poses a real threat to enforcing the employer sanctions provision of IRCA because the employer generally cannot be fined if the documents appear genuine. At an INS Western Region employer sanctions conference in May 1988, a regional INS official said that the use of such documents is "the one greatest obstacle" that must be overcome. He further said that if INS cannot overcome it, the sanctions program will have "real problems." According to a representative from the Livermore California Border Patrol Sector, the biggest problem the sector faces is aliens' use of such documents. The representative said that at one employer all of the I-9 forms reviewed during the inspection "looked clean," but half had been completed by unauthorized aliens who used such documents. Further, a Los Angeles District representative said that at one employer, 385 of 450 employees had used such documents to circumvent the I-9 process.

INS records identified 1,107 unauthorized aliens who were hired after IRCA in our 5 high alien population cities between September 1, 1987, and April 30, 1988. The data in INS files showed that 435 (or 39 percent) had provided, or were suspected of providing, counterfeit or fraudulent documents[4] to support an I-9 form. The remaining 672 (or 61 percent) did not complete I-9s. For at least 211 of these 435 aliens (or 49 percent), INS could not establish that the employers knew of the aliens' unauthorized status and thus could not be sanctioned under IRCA for employing unauthorized aliens.

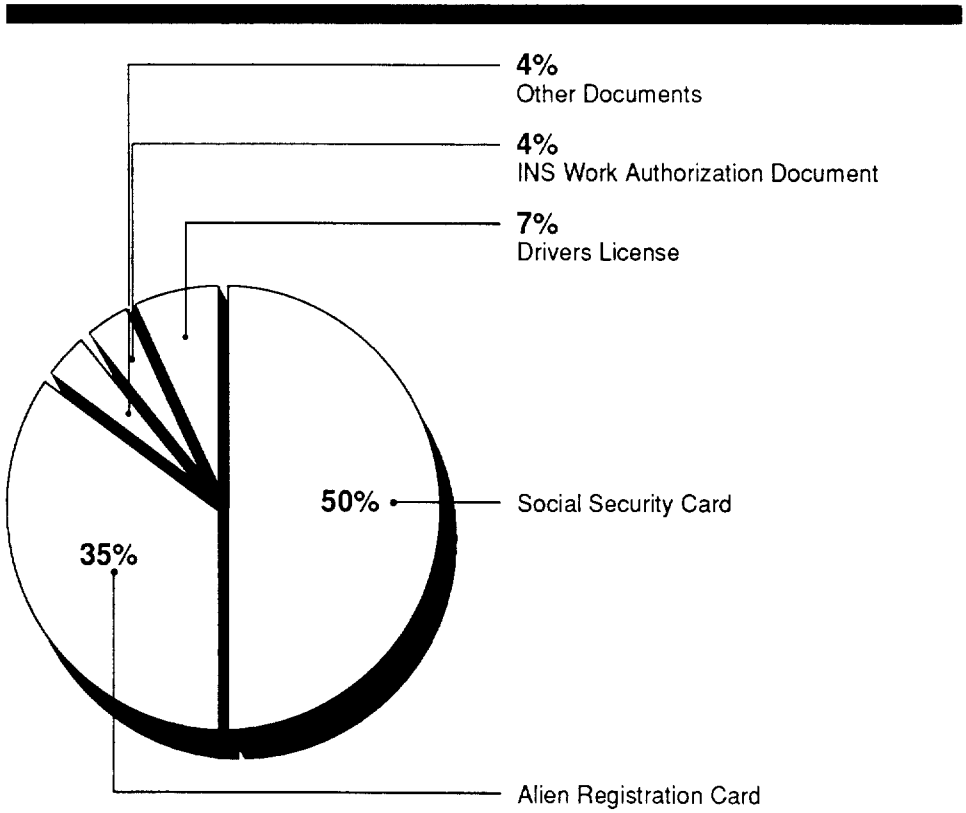
The most prevalent counterfeit and fraudulent documents used by the unauthorized aliens were the Social Security card and the INS alien registration card (see fig. 3.3). For example, INS records showed an alien entered the United States illegally at the Mexican border in January 1988, purchased a counterfeit alien registration card and a Social Security card for $50, and was hired in New York in February 1988 by a light

[3]Immigration Control: A New Role for the Social Security Card (GAO/HRD 88-4, Mar. 16, 1988).

[4]A counterfeit document is one that is illegally manufactured, such as a fake Social Security card. A fraudulent document is a genuine document that is illegally used (e.g., an alien using another person's valid Social Security card) with or without alterations.

industry manufacturer. An alien in Chicago, who claimed U.S. citizenship, had used a valid Illinois driver's license and a valid Social Security card to complete the I-9. In addition, the alien presented a counterfeit INS work authorization document showing a pending permanent residency application. Some employers provided comments about fraudulent documents when responding to our survey. For example, one said that there is no way to differentiate "between false papers and good papers." Another said that ". . . the current requirements . . . almost encourage cheating."

Figure 3.3: Types of Counterfeit and Fraudulent Documents Found on Employed Illegal Aliens



Note: N=265

Source: INS.

During our 51 employer visits with INS, the investigators made no effort on 20 inspections to check with other information sources to determine the validity of the documents used to complete I-9s. However, they did

on 31 visits. INS instructions require its inspectors to investigate the use of counterfeit or fraudulent documents when warranted by the evidence. Had INS done this routinely, the number of aliens found to have used these documents may have been greater. How frequently INS checked the validity of the documents varied by INS district. For example, in Dallas INS checked for such documents in 3 of 11 inspections we observed, but INS investigators in New York checked in 8 of 10 inspections.

The Center for U.S.-Mexican Studies of the University of California at San Diego reported in June 1988 that aliens were using fraudulent documents to find work. The study was based on 100 immigrant-dependent firms and 420 employees of these firms in southern California. The study reported that 39 percent of the unauthorized alien employees interviewed admitted that they had purchased or used fake documents to gain employment. Fifty-seven percent knew that they were subject to penalties under IRCA for showing such documents to an employer.

After discussing with INS officials the preliminary results of our review of aliens' use of counterfeit and fraudulent documents, they agreed more had to be done to determine the extent and nature of the problem. Specifically, INS headquarters' enforcement officials took the following actions:

- INS issued a 2-page checklist to its field agents for use during compliance inspections. The checklist asks the agent to record whether there is evidence of use of counterfeit or fraudulently obtained documents.
- INS began making changes to its management information systems to permit more monitoring of counterfeit or fraudulent document use.
- INS expanded the scope of its fiscal year 1989 priority to detect and deter fraud to include more emphasis on employment document fraud (as opposed to entitlement and other fraud).

The President's reporting requirement under section 402 of IRCA requires annual reports on the adequacy of the employment verification system. If INS collects data on the use of such documents to gain employment, it could be used to help meet this reporting requirement.

SSA's Verification Project

SSA completed a pilot project to determine the feasibility of a telephone verification system for use by employers. The project's goals were to (1) evaluate ways to more effectively control the issuance of SSNs and

their use in the workplace and (2) reduce the incidence of earnings reported by employers for their employees under incorrect SSNs.

Participation in the project, which began January 20, 1987, and ended June 30, 1988, was voluntary and available to about 70,000 employers in the Dallas, El Paso, and Corpus Christi, Texas areas. The verification unit responded to inquiries of employers who provided the employee's name, SSN, and date of birth. An SSA employee checked the database to verify that SSA records showed that the number was issued to the person named and with that date of birth. If the information provided did not agree with SSA's record, the employer was advised to tell the prospective employee to contact an SSA office for resolution.

Through June 30, 1988, employers had made about 20,000 calls to verify about 35,000 SSNs of prospective employees. SSA was able to verify about 81 percent of the SSNs provided. A name mismatch was the primary reason the unit could not verify the SSNs. Other reasons included the date of birth differed, the number provided was invalid, or the individual was not authorized to work.

Employers in high-turnover industries—including construction companies, building trades, temporary employment agencies, and food service companies—were the most likely to contact SSA to verify employee SSNs.

The project provided some assurance to employers who participated that the SSN card presented by a prospective employee is valid and the individual who presents it is the legal owner. This verification could reduce the number of individuals using (1) fraudulent cards with invalid numbers, (2) nonwork or restricted SSN cards, and (3) cards belonging to children or other persons where the age entered differs significantly from that of the bearer of the card.

DOL Needs to Expand Inspections

In September 1987, DOL began inspecting employers' I-9s and as of August 31, 1988, completed 30,784 I-9 inspections.[5] The results of these inspections show that 42 percent of the employers visited were complying with IRCA's recordkeeping requirements. As with INS' I-9 inspections,

[5]Every DOL employer visit does not result in an inspection of the employer's I-9 forms, in part because DOL must provide the employer with a 3-day notice of the I-9 inspection. If the DOL inspectors cannot provide the notice, or the employer does not waive his right to such a notice, then no inspection is done. For example, 2,155 visits did not result in I-9 inspections because the employer did not receive the required 3-day notice. DOL has drafted a change to its existing notification letter to include a reference to the I-9 inspection. This should reduce the number of visits that exclude I-9 inspections.

DOL inspection procedures do not assure that employers have prepared all the required I-9s. As a result, DOL cannot assure itself that employers are in compliance.

DOL's instructions include the following: (1) inspect all I-9s when there are less than 25 new hires and sample the I-9s when there are 25 or more new hires (e.g., for establishments with more than 250 new hires, every 10th form will be inspected); (2) compare the information on the I-9 with any documents attached to the form; and (3) inspect the I-9s for their proper completion and retention.

We accompanied DOL inspectors on 50 employer visits and observed the I-9 inspection. We observed that the inspectors did not routinely check payroll or similar records to ensure that the employer had completed an I-9 for all employees who required one. In 23 of the 50 inspections we observed, DOL inspectors attempted to verify that the employer had completed all required I-9s. In the other 27 inspections, the inspectors reviewed only the I-9s presented to him by the employer. These inspections consist of making a visual inspection and reporting to INS on the results of that inspection.

According to DOL officials, its inspectors are to refer to payroll records to ensure that all required I-9s have been prepared. They said that DOL will clarify its procedures to its inspectors.

Limited Scope of Labor LAW Protections Could Affect Employer Sanctions

According to our survey, we estimate that 108,000 (or 3 percent) of the 4.2 million employers in our population suspected that they employed unauthorized aliens just prior to November 7, 1986. Ninety-four percent of these employers were located in our five high alien population states.

There have been reports that employers of unauthorized aliens decreased their wages to compensate for the costs of an INS sanction. For example, the Northern Manhattan Coalition for Immigrant Rights testified before a New York State Assembly task force in November 1987 that some employers began to take a percentage from the weekly salaries of unauthorized aliens, supposedly to develop a fund to pay for potential employer sanctions.[6] In addition, 20 unauthorized alien families in Texas complained in an August 30, 1988, letter that their employer is requiring them to pay "an extra fee to build a fund of

[6]New York State Assembly Task Force on New Americans One Year Under IRCA: The Impact of Employer Sanctions in New York, November 2, 1987.

$2000.00 in order to pay the fine if the INS finds out we work." In responding to our questionnaire, 180 employers said they employed unauthorized aliens. While not projectable, 12 employers said that they decreased wages of their unauthorized alien employees to compensate for the costs associated with employer sanctions.

Some of these employers cannot be prosecuted for this practice because they are not covered under federal labor or employment discrimination laws. However, according to INS, this practice may be illegal under a provision of IRCA that prohibits employers from requiring a bond or indemnity from an individual against liability under the new law. Violations of that provision may result in a $1,000 fine for each individual who was required to pay the indemnity and an order to make restitution. Practices that may reflect an informal arrangement or scheme related to indemnification include kickbacks or suspicious or irregular contract employment arrangements. Thus, according to INS, employers who engage in such practices face heavier penalties than would accrue solely for knowingly hiring unauthorized aliens.

EEOC officials said that an employer who (1) decreases the wages of an unauthorized alien to offset the costs of an INS sanction or (2) pays an unauthorized alien less than a legal worker for the same job could only be charged with national origin discrimination under Title VII of the Civil Rights Act of 1964, if the practice (or practices) has the purpose or effect of discriminating on the basis of national origin. However, we estimate that about half of the Nation's employers of unauthorized aliens would not be covered under title VII because they have less than 15 employees.

DOL officials said that an employer could not be prosecuted for violating the Fair Labor Standards Act (FLSA) unless the aliens' wages were decreased below the federal minimum wage of $3.35 per hour. For example, Labor officials said an employer who paid unauthorized aliens $4 per hour and legal workers $6 per hour for the same job could not be prosecuted under FLSA.

OSC said that employers reducing unauthorized aliens' wages also could not be prosecuted under IRCA's discrimination provision because IRCA (1) excludes from coverage unauthorized aliens and (2) applies to only employers' hiring and firing actions, not to working conditions.

Congress wanted strong enforcement of the laws that protect the working conditions of unauthorized aliens. IRCA's legislative history shows the

employer sanction provision was not intended to undermine or limit the existing protections for unauthorized workers in various labor laws such as the National Labor Relations Act (NLRA). In addition, the Supreme Court ruled that unauthorized aliens are entitled to the protections of the NLRA. (Sure-Tan, Inc. v. NLRB, (467 U.S. 883 (1984)). EEOC said that unauthorized aliens' working conditions are protected under Title VII of the Civil Rights Act.

Under IRCA, employers cannot be sanctioned for continuing to employ unauthorized aliens hired before November 7, 1986 (i.e., grandfathered aliens). No other employer in the Nation can hire these grandfathered aliens without being subject to the sanction provision. Thus, some employers of grandfathered aliens may reduce aliens' wages knowing the alien probably would not (1) leave to find another job, or (2) report the employer to a federal agency for fear of being deported.

Conclusions

INS' overall strategy and approach of continuing to educate employers and enforcing IRCA is satisfactory. Our employer survey supports INS' decision to (1) continue its educational efforts and (2) increase its emphasis on enforcement. INS' policy of allocating the majority of available sanction resources to identifying employers of unauthorized aliens also seems reasonable.

While we believe INS' overall strategy, including GAP, is satisfactory, we believe INS needs to improve its implementation of the law in the following three areas:

- INS' procedures do not require its investigators to review employer records to assure that employers have prepared all the required I-9s. However, some investigators, on their own, do routinely examine employers' records to determine if all required I-9 forms have been prepared. As a result of not requiring its investigators to verify that all required I-9s have been prepared, INS has no assurance that at the time of its visit, an employer is in compliance with IRCA. On the basis of our observation, the additional verification would not take much time.
- INS' current GAP procedures to measure compliance at the end of an inspection overstate the level of employers' voluntary compliance with IRCA's I-9 requirement. In using the GAP results to allocate enforcement resources, we believe INS should measure employer compliance at the time INS makes its initial visit.
- We found aliens' use of counterfeit or fraudulent documents in our five high alien population cities is a threat to IRCA's employment verification

system. The INS initiatives to determine the extent of the problem could be improved. For example, INS does not systematically identify and record the types of counterfeit or fraudulent documents aliens present when completing the I-9. Although we found the Social Security card was the document used most frequently by aliens, the documents used in other cities may be different. By collecting comparable data nationwide on the type and extent of such documents used by unauthorized aliens, INS can identify any changes needed to the verification system.

DOL expects its inspectors to review payroll records to assure themselves that employers have prepared all the required I-9s. However, our review showed that this is not always being done.

Recommendations

We recommend that the Attorney General direct the Commissioner of INS to

- revise the guidance to INS investigators to require them to follow reasonable steps to determine if all required I-9 forms have been prepared, such as requesting employer payroll records;
- modify GAP to measure compliance at the beginning of the inspection; and
- begin systematically evaluating data on the extent unauthorized aliens are using counterfeit or fraudulent documents to complete the I-9 form, including the types of documents used.

We also recommend that the Secretary of Labor direct the WHD and OFCCP to ensure reasonable steps are taken to determine if all required I-9s have been prepared, such as reviewing employer records.

Agency Comments and Our Evaluation

In discussing the report with us, INS concurred with the report's recommendations. DOL said that its inspectors should refer to payroll records to ensure that all required I-9s have been prepared. They said that DOL will clarify its procedures to its inspectors. In our opinion, DOL's proposed action, if properly implemented, should address our recommendation.

Discrimination and Employer Sanctions

There were 286 discrimination charges filed with OSC as of September 19, 1988, and 148 discrimination charges related to IRCA filed with and investigated by EEOC as of September 15, 1988. Of these charges, 54 were filed with both agencies. OSC and EEOC are working on developing a memorandum of understanding to minimize duplicative investigation where charges involve both national origin and citizenship status discrimination. EEOC officials said that the memorandum should also ensure that all IRCA-related charges are properly referred. In addition, EEOC identified 15 IRCA-related charges filed with state and local human rights agencies. Other organizations have developed discrimination data.

On the basis of the employer survey responses, we estimate that since IRCA was passed in November 1986, 528,000 of the 3.3 million employers (or 16 percent) who said they were aware of the law began or increased employment policies or practices that may not be permitted under the law. For example, they initiated a policy of hiring only U.S. citizens and thereby were not complying with IRCA's policy to also hire aliens authorized to work.

However, the results of the survey cannot be relied on to show if the law has caused a pattern of discrimination because the responses to the survey questions cannot be verified or further refined so as to indicate the extent and impact of the practices. For example, we do not know the number of persons authorized to work who were not hired or were fired by these employers or who were otherwise affected by the reported practices. Therefore, the survey results may only be used to indicate that unfair employment practices may be occurring. In discussing our survey results, OSC and INS officials agreed that more needs to be done to explain IRCA's antidiscrimination provision to the public. EEOC officials also recognized the need for additional education.

We surveyed 104 state and local agencies that enforce discrimination laws in their respective jurisdictions. Of the 81 who responded to our questionnaire, 19 said that they were generally unfamiliar with IRCA's antidiscrimination provision. Furthermore, 44 had not received information about OSC's forms used in filing a charge. The Special Counsel recognizes that OSC needs to disseminate more information about IRCA's antidiscrimination provision.

We do not believe that discrimination charges and survey results, to date, show a pattern of discrimination. In addition, we do not believe that responding to the cases filed with OSC and EEOC, including their duplicated efforts in 54 cases, is an unreasonable burden for employers.

We have devised an indicator to test whether employers' fear of sanctions may cause discrimination. We compared the state employment service job placement rates of Hispanics and Asians before and after IRCA with the placement rates for other ethnic groups in an effort to determine if differences occurred.

OSC and EEOC Investigate IRCA-Related Discrimination Charges

OSC is responsible for enforcing IRCA's antidiscrimination provision. EEOC is responsible for enforcing Title VII of the Civil Rights Act of 1964 and its ban on national origin discrimination. Together they have received 434 IRCA-related discrimination charges. Of these, 54 charges were filed with both agencies. Both OSC and EEOC recognize that increased education about IRCA is needed, which should include a coordinated effort by all concerned federal agencies, including INS, OSC, DOL, and EEOC. However, OSC had limited funds available to explain the antidiscrimination provision of IRCA to the public.

OSC Activities

Not all OSC's discrimination charges appear to be related to employer sanctions. OSC's funding level has remained about the same for fiscal years 1988 and 1989. However, its operating budget has decreased about 12 percent.

OSC Cases

As of September 19, 1988, OSC had received 286[1] discrimination charges. (See table 4.1.)

Table 4.1: Summary of OSC Charges

Classification of charge	Number
Closed[a]	59
Settlement reached	30
More information needed	69
Under investigation	120
Filed with administrative law judge[b]	8
Total	**286**

[a]OSC lacked jurisdiction, determined charge unfounded, or had insufficient data to investigate charge. Six charges have been filed directly with an administrative law judge by the injured party.

[b]One charge has been presented to the judge, and seven are awaiting a hearing. One of the seven has also been filed with an administrative law judge by a third party.

Source: OSC.

[1]Fifty-four of these charges were also filed with EEOC.

In addition, as of September 1988, OSC had filed pattern and practice of discrimination charges against three employers with an administrative law judge.

As of October 1988, the administrative law judge had rendered one discrimination-related decision. In this decision (Romo v. Todd Corporation), the judge ruled that the employee failed to qualify as a protected individual under IRCA's citizenship status discrimination provision.[2] Consequently, while the judge said that the employee was wrongfully fired, he found in favor of the employer because the charging party was not covered under IRCA.

Because charges filed with OSC may not be the result of employer sanctions, all charges cannot be used in deciding whether a pattern of discrimination caused by the sanctions exists. Thus, we reviewed all 119 charges filed with OSC as of May 2, 1988, to determine those that appear to be employer sanctions-related. Of these 119 charges, 62 involved persons who were fired, 48 involved persons who were not hired, and the remaining 9 charges related to other issues. Of these 119 charges, 68 were filed by the injured party. In addition, OSC investigated 12 charges against airline companies.

The 119 charges fall within three categories. We determined that 19 did not appear to be related to employer sanctions (section 101 of IRCA), 66 appeared to be related to employer sanctions, and in 34 cases we were unable to determine whether the charge was related to employer sanctions because of insufficient information. Additional evidence could result in our reclassifying some charges. An example of a charge covered under IRCA's discrimination provision that does not appear to be related to employer sanctions was an allegation by a newly legalized worker that an employer fired him because the employer preferred to employ only unauthorized aliens. Charges we considered to be employer sanctions-related usually included information in the allegation directly related to the I-9 process. For example, an employer allegedly would not accept the work authorization documents provided by the employee.

Of the 66 charges that appeared to be related to sanctions, 33 of the charges alleged that an employer refused to accept authorized work documents. Of these same 66 employer sanctions-related charges, 34 are

[2]OSC had initially determined that it did not have jurisdiction in this case. Due to a procedural change, OSC intervened after the charging party filed a complaint directly with the administrative law judge.

still under investigation and 32 were closed. Of the 32 closed cases, 9 were closed because there was no reason to believe the charge was true, 14 were closed with settlement, and 9 were closed because OSC lacked jurisdiction. In most of the settled cases, the employer did not admit any wrongdoing but agreed to hire, rehire, or otherwise change hiring policies. Of those charges that included settlement payments, we identified 11 charges where employers paid a total of $35,660 to employees as compensation.

In addition to investigating and litigating charges, OSC sent letters to 301 employers who required U.S. citizenship in their job advertisements in five major city newspapers. OSC found some of these employers were defense contractors who, for security reasons, are required to hire only U.S. citizens for some positions. However, many others misunderstood the provision in IRCA to mean they could have such a policy.

OSC's letters to employers explained the law and asked them to justify why the advertisements required U.S. citizenship status. Of the 213 responses to OSC's letter as of September 19, 1988, OSC decided that 135 of the employers' policies were justified. Another 41 said that they did not realize they were doing anything wrong and promised to correct the problem; OSC is considering investigating the remaining 37 cases. An OSC official said a second letter will be sent to those employers who did not respond to the first letter.

OSC Education Initiatives

OSC has taken several initiatives in fiscal years 1987 and 1988 to educate the public about IRCA's antidiscrimination provision, even though specific funding was not provided for this purpose. These include (1) mailing about 5,000 information packets to various agencies; (2) developing a handbook (Your Job and Your Rights), in conjunction with INS, to be distributed to employees, employers, and other interested organizations and individuals; (3) making about 100 presentations before attorney and employer associations and other groups; (4) assisting in the development of a television video; and (5) airing radio advertisements. According to an OSC official, the advertisements, which INS paid for because OSC lacked funds, generated many telephone inquiries. OSC is also coordinating with INS and DOL to distribute information on IRCA's antidiscrimination provision to employees and employers. In discussing this issue with us, the Special Counsel recognized a need to educate the public but said OSC has limited resources to do it. He also recognized that agencies such as EEOC, INS, and DOL could assist in educating the public but that there should be a coordinated education plan.

OSC Caseload and Funding

Initially, OSC estimated in April 1988 that 180, 250, and 300 charges will be filed in fiscal year 1988, 1989, and 1990, respectively. As of September 19, 1988, it exceeded its fiscal year 1988 initial estimate of 180 by 106 charges (or 59 percent). In discussing OSC's future workload with us, officials recognized that their initial estimates were too low. In September 1988, OSC revised its projections to 290, 500, and 700 for the 3 fiscal years.

OSC's fiscal year 1988 operating budget was $2.345 million ($2.044 million for fiscal year 1988 and a $301,000 carryover from fiscal year 1987). For fiscal year 1989, OSC requested $3.369 million and 14 additional positions—a requested funding increase of $1.024 million, or 44 percent. The President's fiscal year 1989 budget request for OSC was $2.795 million and included funding for seven additional positions—an increase of $450,000, or about 19 percent. According to OSC, the President's budget request would enable the office to pursue some additional independent investigations, but it did not represent adequate staffing for the anticipated workload. On the basis of recent congressional appropriations, OSC estimates its fiscal year 1989 budget is $2.064 million, or about what it received the previous year. According to OSC, this represents a 12-percent decline from its fiscal year 1988 operating budget of $2.345 million.

During fiscal years 1987 and 1988, OSC staff increased from 5 to 24 legal and administrative staff. As of the end of October 1988, OSC had 29 staff. As of September 19, 1988, the average caseload per attorney was about 20 with a range of 10 to 35 charges. According to the Special Counsel, the average workload per attorney should be from 12 to 14 charges, and more than 14 charges will negatively affect the quality of the investigations. According to the Special Counsel, OSC's first obligation under the law is to investigate and litigate charges; if budget limitations occur, efforts to educate employers would be one of the first to be reduced. He also said that if the workload increases dramatically, OSC's fiscal year 1989 budget could preclude OSC from meeting its primary mission of investigating employers charged with discrimination.

Charges Filed With EEOC

As discussed in chapter 1, EEOC handles national origin discrimination charges filed under Title VII of the Civil Rights Act. As of September 15, 1988, EEOC had received 148 charges for IRCA-related investigations.[3] (See table 4.2.)

[3]Fifty-four charges were also filed with OSC.

Table 4.2: Summary of EEOC Charges

Classification of charge	Number
No discrimination found	26
Settlement reached[a]	36
Withdrawn by charging party	12
Lacked jurisdictions	7
Under investigation or being processed	64
Administratively closed[b]	3
Total	**148**

[a]In 23 cases, benefits were given to the individual.

[b]At the request of the charging parties, EEOC notified employers of the charging parties' right to sue.
Source: EEOC.

Similar to OSC charges, not all EEOC national origin charges are related to the implementation of employer sanctions. We reviewed 38 IRCA-related charges that were in our 5 high alien population cities. Of these, we classified 14 charges as appearing to be employer sanctions-related, and 7 charges as not appearing to be employer sanctions-related. We were not able to classify the remaining 17 charges. As with the OSC charges, our determination could change on the basis of additional evidence.

One of the IRCA-related cases was filed by an unauthorized alien. The person was fired from his job and had filed a charge with EEOC under title VII. EEOC found no cause to believe the person had been discriminated against. EEOC has taken the position that title VII (as opposed to IRCA) protects undocumented workers from discrimination based on race, color, sex, national origin, or religion. The Commission, however, has not yet determined the remedies available to such workers under title VII.

In commenting on the draft report, EEOC officials said that it receives no funds and has no enforcement responsibilities under IRCA. However, the Commission has taken several initiatives since the law was passed to educate its staff, other human rights and fair employment agencies, and the public about the antidiscrimination provision in IRCA and its relationship to title VII. EEOC officials have participated in numerous outreach efforts, including radio programs and speeches to employer and civil rights groups and to the National and American Bar Associations. EEOC headquarters also initiated a conference for human rights agencies that, in part, addressed the antidiscrimination provision of IRCA and a nationwide teleconference seminar that included a discussion of the antidiscrimination provision. Headquarters staff also actively participated in

an interagency task force organized to assist INS in conducting a public information campaign on IRCA. In addition, EEOC has issued two policy guidance memoranda concerning IRCA, answered many telephone requests for information, and will soon be issuing brochures for employers and employees that provide information about discrimination under both IRCA and title VII. EEOC field offices have also been involved in various outreach and education efforts. Field staff have distributed brochures and other information to the public and to state fair employment agencies. Field staff have also participated in more than 80 conferences and panel discussions and in several radio and television programs. EEOC estimates that these field activities have reached over 400,000 people.

Overlap of Charges

IRCA requires that there be no overlap of charges between EEOC and DOJ on charges of unfair immigration-related employment practices based on national origin that arise from the same set of facts unless the charge is dismissed as being outside the scope of the particular agency's jurisdiction.[4] Of the 434 charges filed with OSC and EEOC, 54 charges are being investigated by both agencies. According to OSC and EEOC officials, both agencies may need to investigate the charge if it involves national origin and citizenship status discrimination.

When a charging party alleges discrimination based on citizenship status and national origin and the employer has 15 or more employees, the charge can be investigated by both OSC and EEOC. OSC can investigate the charge that the employer discriminated against the individual because of citizenship status, and EEOC can investigate the charge that the employer discriminated against the individual because of national origin. This situation occurs because EEOC does not have jurisdiction over citizenship status discrimination charges, and OSC generally does not have jurisdiction for national origin charges against employers with 15 or more employees. A limited memorandum of understanding, signed in April 1988, makes each agency the agent of the other for the purpose of the receipt of charges and satisfaction of the time limits for filing charges.

According to EEOC officials, a final memorandum of understanding between OSC and EEOC is needed to establish procedures for ensuring the

[4]The administrative law judge's decision for the first administrative hearing on an IRCA discrimination charge ruled that the overlap provision (see p. 41) applies only to national origin and does not preclude a charging party from filing under title VII for national origin and IRCA for citizenship (Romo v. Todd Corporation).

referral of all IRCA-related charges or portions of charges to the appropriate agency. A memorandum of understanding is also needed to provide for the coordination of investigations when a charge is properly filed before both OSC and EEOC to ensure that there is no overlap in the processing of such charges. EEOC believes that EEOC and OSC staff need detailed procedures to assist them in processing IRCA-related charges. Therefore, EEOC is currently in the process of developing a detailed memorandum of understanding with guidelines for establishing specific procedures for the referral of relevant charges to the appropriate agency, and for the coordination of investigations that concern the same set of facts. Negotiations concerning the agreement are continuing. Although both agencies' staffs have coordinated on some investigations, 16 employers said to OSC that they had to respond to EEOC and OSC separately regarding the same charges.

Employer Survey May Show Unfair Employment Practices

Our survey showed that two major provisions in the law associated with discrimination were not clearly understood. Of the estimated 1.7 million employers who were aware of and reviewed information on the law, we estimate that 332,000, or 20 percent, were unclear about the authority to hire a U.S. citizen rather than an authorized alien when both are equally qualified, and 248,000, or 15 percent, were unclear about the penalties for employers who discriminate.

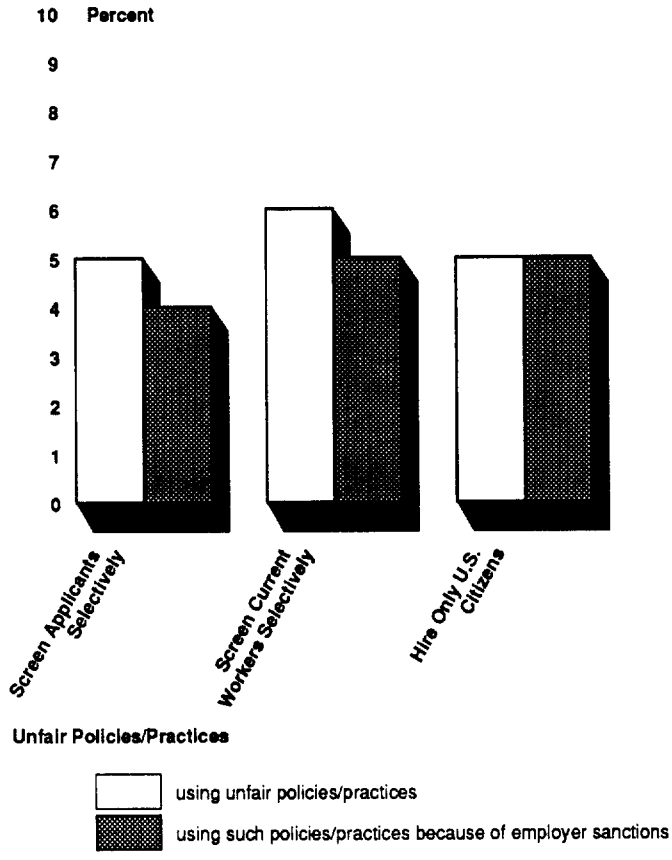
In addition to identifying problems in understanding the law, our survey results also indicated that since November 1986 an estimated 528,000, or 16 percent, of the 3.3 million employers who were aware of the law reported beginning or increasing policies or practices that may not be permitted under the law. Specifically, employers said they (1) asked only foreign-looking or -sounding job applicants to present work authorization documents, (2) asked only current workers who were foreign-looking or -sounding to present work authorization documents, and (3) began a new policy to hire only U.S. citizens.

Unfair hiring practices were generally not related to employers' state, industry, or business size but were generally related to employers' knowledge of IRCA's I-9 verification requirements and previous INS visits. Further, those employers who responded that they had fired grandfathered employees for not having work authorization documents were located in the five high alien population states.

The number of respondents who said they began or increased these unfair practices because of employer sanctions is too small to be projected to the population of U.S. employers. Most of the respondents, however, indicated that they began or increased the unfair practice because of sanctions. Of the 161 respondents who said they began to ask only foreign-looking or -sounding job applicants to present work authorization documents, 136 (or 85 percent) said they did so because of sanctions. Of the 178 respondents who said they began to ask only foreign-looking or -sounding employees for documents, 152 (or 85 percent) said they began or increased this practice primarily because of sanctions. Similarly, of the 169 respondents who said they began a policy to hire only U.S. citizens, 151 (or 89 percent) said they did so primarily because of sanctions. (See figure 4.1.)

On the basis of our survey, no consistent pattern of unfair hiring practices exists between the five high alien population states and industries and other states and industries, as shown in table 4.3 and table 4.4. Similarly, there is no consistent pattern of unfair employment practices by number of employees, as shown in table 4.5.

Figure 4.1: Employers Using Unfair Hiring Policies/Practices



Note: N=3,169

Source: GAO Employer Survey, Spring 1988.

Table 4.3: Employer Responses to Unfair Employment Practices by State

	Employers by states					
Type of unfair employment practice	**CA**	**FL**	**TX**	**NY**	**IL**	**Other**
Screen job applicants selectively						
Universe	519,000	216,000	369,000	252,000	197,000	1,316,000
Respondents[a,b]	53,000	29,000	16,000	30,000	20,000	66,000
Percentage	10	13	4	12	10	5
Screen current workers selectively						
Universe	506,000	211,000	369,000	249,000	196,000	1,316,000
Respondents[a,c]	78,000	20,000	16,000	25,000	22,000	82,000
Percentage	15	9	4	10	11	6
Hire only U.S. citizens						
Universe	515,000	212,000	352,000	249,000	195,000	1,304,000
Respondents[a]	73,000	23,000	38,000	13,000	22,000	110,000
Percentage	14	11	11	5	11	8

[a]These are estimates.

[b]These employers responded that they began or increased asking only foreign-looking or -sounding job applicants to prove they were authorized workers.

[c]These employers responded that they began or increased examining work authorization documents of only foreign-looking or -sounding current workers.

Source: GAO Employer Survey, Spring 1988.

Table 4.4: Employer Responses to Unfair Employment Practices by Industry

	Employers by industry					
Type of unfair employment practice	**Construction**	**Farming**	**Food processing**	**Garment**	**Hotel/ restaurant**	**Other**
Screen job applicants selectively						
Universe	208,000	39,000	9,000	8,000	92,000	2,513,000
Respondents[a,b]	12,000	5,000	1,000	1,000	12,000	183,000
Percent	6	13	11	13	13	7
Screen current workers selectively						
Universe	212,000	39,000	9,000	8,000	90,000	2,489,000
Respondents[a,c]	18,000	5,000	1,000	1,000	10,000	208,000
Percent	8	13	11	13	11	8
Hire only U.S. citizens						
Universe	207,000	38,000	9,000	8,000	90,000	2,477,000
Respondents[a]	27,000	3,000	1,000	1,000	9,000	239,000
Percent	13	8	11	13	10	10

[a]These are estimates.

[b]These employers responded that they began or increased asking only foreign-looking or -sounding job applicants to prove they were authorized workers.

[c]These employers responded that they began or increased examining work authorization documents of only foreign-looking or -sounding current workers.

Source: GAO Employer Survey, Spring 1988.

Table 4.5: Employer Responses to Unfair Employment Practices by Number of Employees

Type of unfair employment practice	Number of employees			
	1-3[a]	4-9	10-50	51 or more
Screen job applicants selectively				
Universe	743,000	825,000	825,000	314,000
Respondents[b,c]	41,000	69,000	89,000	6,000
Percent	6	8	11	2
Screen current workers selectively				
Universe	742,000	809,000	821,000	313,000
Respondents[b,d]	45,000	65,000	100,000	22,000
Percent	6	8	12	7
Hire only U.S. citizen	s			
Universe	736,000	807,000	812,000	308,000
Respondents[b]	64,000	106,000	73,000	27,000
Percent	9	13	9	9

[a]These employees are not covered by IRCA's antidiscrimination provision.

[b]These are estimates.

[c]These employers responded that they began or increased asking only foreign-looking or -sounding job applicants to prove they were authorized workers.

[d]These employers responded that they began or increased examining work authorization documents of only foreign-looking or -sounding current workers.

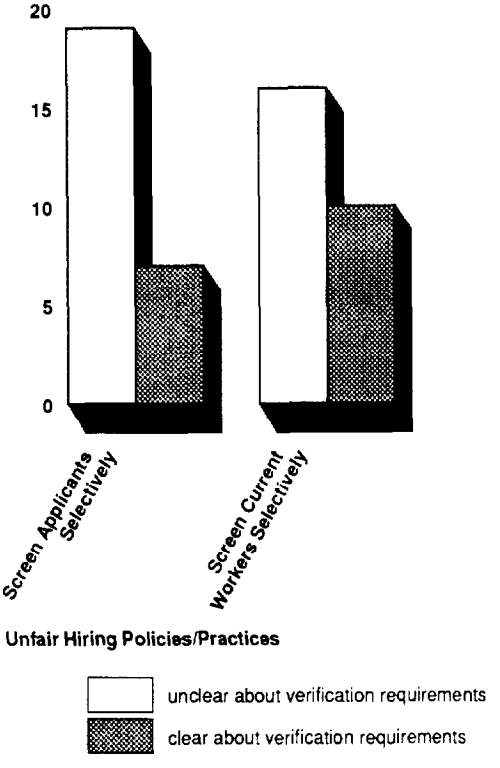
Source: GAO Employer Survey, Spring 1988

Employers who expressed a lack of clarity about the I-9 verification requirements more frequently reported asking only foreign-looking or -sounding job applicants and current workers for work authorization documents. (See fig. 4.2.) Also, employers who responded that INS had visited them to determine employment of unauthorized aliens more frequently asked only foreign-looking job applicants and current workers for work authorization documents than those not visited by INS. (See fig. 4.3.)

INS officials, in commenting on the report, said that the survey did not identify whether the INS visit occurred before or after the act was passed. Therefore, employers visited prior to IRCA may not have been informed about the verification process when completing the questionnaire.

In addition, although these figures are not projectable to our universe, 134 employers who responded to our survey said they fired workers because they lacked proper work authorization documents. Of the 134,

Figure 4.2: Employers' Lack of Understanding of IRCA May Influence Unfair Hiring Policies/Practices

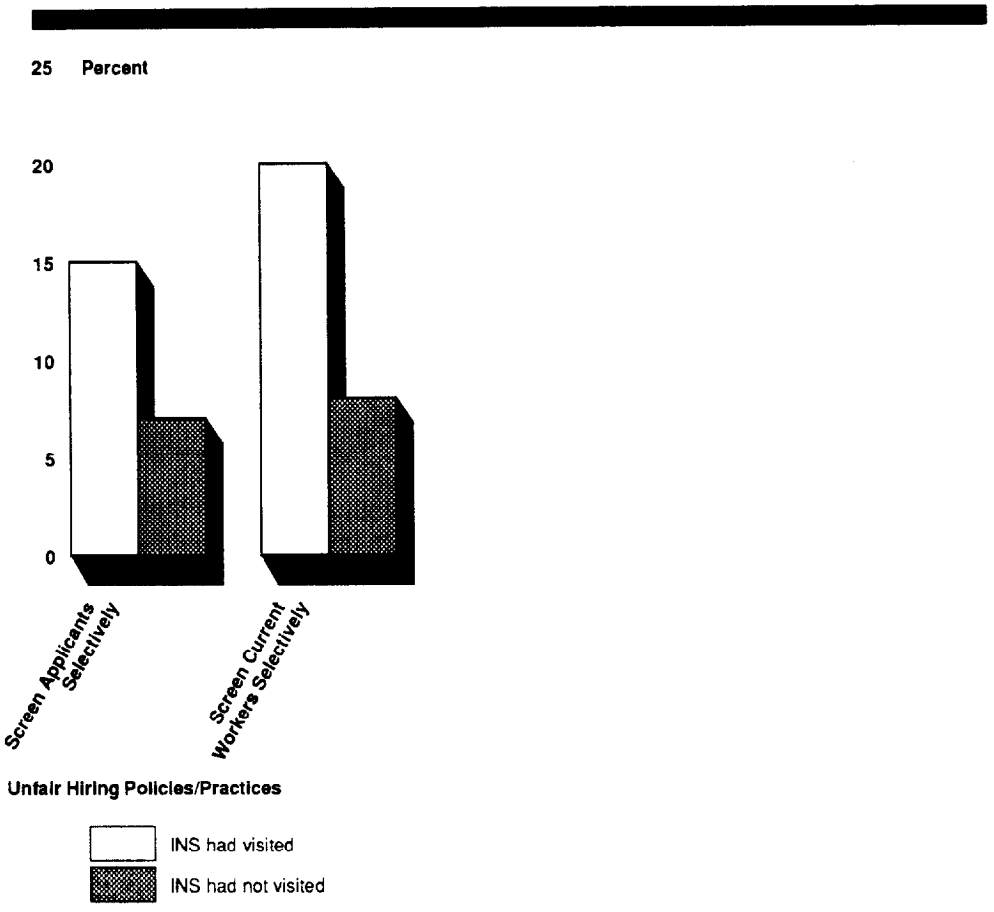


Note: Numbers used to generate this figure can be found in table III.6.

Source: GAO Employers Survey, Spring 1988.

35 employers said that the fired workers were hired prior to November 7, 1986. We believe these employers' firings may have been illegal because IRCA exempted all employers from the I-9 work authorization requirements for its employees hired before November 7, 1986. As a result, IRCA did not provide employers with a legal basis to fire these employees. While these firings may be illegal, we do not know how many of the fired grandfathered employees were authorized workers and thus covered by the antidiscrimination provision. As a result, this data by itself may not be used as evidence of a pattern of discrimination. In commenting on the report, an INS official said the employer survey did not determine whether the employer required work authorization prior to IRCA. According to OSC officials, unauthorized

Figure 4.3: INS Visits May Influence Unfair Hiring Policies/Practices



Note: Numbers used to generate this figure can be found in table III.6.

Source: GAO Employer Survey, Spring 1988.

employees, including those who are grandfathered, are not subject to protection under IRCA's discrimination provision.

Other Organizations Providing Discrimination Data

In addition to data collected by OSC and EEOC and our survey, other federal, state, and local agencies and private organizations have provided IRCA-related discrimination data. These include DOL, INS, state and local human rights agencies, and public interest groups that assist immigrants.

DOL

When DOL inspects employers' I-9 forms, it looks for evidence of "disparate treatment" and reports it to INS. INS is to report the suspected disparate treatment to OSC. In our review of 4,130 ESA-91 forms at INS' district offices in our 5 high alien population cities, we found that DOL marked 3 forms "disparate treatment" and INS had not forwarded them to OSC.

INS

INS officials have taken, or are planning, several actions to educate the public as well as its own officials about IRCA's antidiscrimination provision. These actions include

- providing a description of IRCA's antidiscrimination provision in over 7 million handbooks distributed to employers;
- sending an antidiscrimination message in INS information packages distributed to 12,000 colleges and universities nationwide;
- sending a half million copies of an OSC and INS pamphlet, Your Job and Your Rights, to INS, EEOC, and DOL offices, as well as other interested organizations;
- sending a memorandum to all INS employees that contained information on IRCA's antidiscrimination provision and the "800" phone number for OSC; and
- making and distributing public service announcements to English and Spanish language radio and television stations in 36 markets nationally.

For fiscal year 1987, INS spent about $60,000 to educate the public and its staff about IRCA's antidiscrimination provision.

In August 1988, we discussed with INS officials the preliminary results of our employer survey, which suggested that some employers may be engaging in unfair employment practices. In response, INS officials said that greater emphasis needs to be placed on educating the public on the antidiscrimination provision. INS is taking or has taken several actions. These actions include the following:

- It developed an employer handout with OSC on antidiscrimination for distribution in the course of employer education efforts (e.g., GAP and DOL inspections).
- It developed a videotape presentation on discrimination to be reviewed by all INS employees who come into contact with the public, including sanctions enforcement personnel.
- It is developing material on the antidiscrimination provision for incorporation into speeches given by INS personnel on employer sanctions.

According to INS officials, INS is working with OSC and DOL to develop a comprehensive education program.

State and Local Human Rights Agencies

We surveyed 104 state and local human rights agencies that enforce state and local antidiscrimination laws to determine the extent to which they were aware of IRCA's antidiscrimination provision. Of the 81 who responded, 30 indicated that they were greatly or very greatly familiar with the antidiscrimination provision in IRCA but 7 said they had little or no familiarity. Thirty-seven indicated that they did not have OSC's address, and 42 did not have OSC's 800 telephone number. Forty-four did not have the OSC form to file a citizenship status discrimination charge. Six reported that they referred a complaint to OSC. Fifty-nine agencies said they had received information about IRCA's antidiscrimination provision from EEOC.

Thirty-four said that IRCA's provision, authorizing an employer to hire a U.S. citizen rather than an authorized alien when both are equally qualified, could conflict with their antidiscrimination laws. For example, one respondent said that "if this is done consistently, without a defensible legitimate business necessity...it would have an adverse impact on qualified foreign-born applicants."

In addition to the survey, five EEOC district offices reported 15 IRCA-related charges had been filed with state and local agencies. (See table 4.6.)

Table 4.6: State and Local IRCA-Related Charges

Agencies	Number
New York State Division of Human Rights	10
Nebraska Equal Opportunity Commission	1
California Department of Fair Employment and Housing	2
Corpus Christi Human Rights Agency, Texas	1
Ohio Civil Rights Commission	1
Total	**15**

Source: EEOC.

Center for Immigrants Rights

The Center for Immigrants Rights, located in New York City, operates an employer sanctions telephone line to collect complaints of IRCA-related discrimination and abuse. From June 1988 to August 1988, the Center reported that it received 18 calls from workers who said that

they were authorized to work but were fired or not hired because (1) employers refused to accept work documents other than INS alien registration cards or U.S. passports or (2) workers had lost their immigration papers and had no other acceptable proof of work eligibility. The Center also received 45 calls dealing with workplace abuses, such as nonpayment of full wages and firing of grandfathered workers. We did not verify the actual complaints. The Center believes that reported incidents of discrimination and abuse understate the discrimination problem because workers (1) have not been educated about their rights, (2) do not recognize discrimination, (3) do not know where to seek assistance when employers discriminate, or (4) are too frightened to complain.

Mexican American Legal Defense and Educational Fund

The Mexican American Legal Defense and Educational Fund (MALDEF) is a nongovernmental organization that, among other things, provides legal assistance to Mexican Americans and other Hispanics involved in employment discrimination suits or complaints. In conjunction with the American Civil Liberties Union and a Los Angeles based coalition concerned with immigration reform, they received 194 complaints about IRCA-related employment practices between November 1986 and September 1988. In 148 cases the workers had work authorization, but 46 workers did not. In addition, 100 workers had been working for their employers before IRCA was enacted.

The type of employers' action included:

- penalizing employees for previous use of false documents or aliases,
- requiring work documents of grandfathered individuals who were not authorized to work,
- accusing employees of using fraudulent documents that were valid, and
- favoring U.S. citizens over noncitizens.

According to the project report, in 73 of the cases the employers demanded more documents than the law requires or requested specific documents that the law does not permit. The analysis also cited instances where INS' actions may have worsened the problem. For example, in some cases legitimate INS documents with typographical errors caused the employer to suspect forgery. In other cases, there were lengthy delays in replacing lost or stolen immigration documents.

Fifty-four of the cases were filed with OSC, EEOC, state or local antidiscrimination agencies, unions, or other organizations. The report also emphasized that as with all discrimination, the number of reported

cases probably represents only a small fraction of the total number of incidents. It stressed that this is especially likely with IRCA-related discrimination, given the newness of the law and the lack of widespread publicity about its antidiscrimination provision.

In addition to the 194 cases in Los Angeles, MALDEF's Chicago office provided data on 58 discrimination charges filed there from April 1987 to August 1988. (See table 4.7.)

Table 4.7: Chicago MALDEF Cases, April 1987 to August 1988

Type of complaint	Number
Employees fired	27
Persons not hired, suspended, or threatened with dismissal	12
Employees lost seniority	6
Employer requested more documentation than law requires	3
Other employment practices	10
Total	**58**

Source: MALDEF.

Chicago Commission on Human Relations

The City of Chicago authorized the Chicago Commission on Human Relations to act as a clearinghouse for IRCA discrimination complaints. Since formation of the Commission, its staff have undertaken an information and outreach program. It mailed a detailed description of the Commission's service and purpose to more than 200 ethnic and community organizations. The Commission has also contacted more than 350 Chicago employers to inform them of their rights, duties, and obligations pursuant to IRCA. As of July 31, 1988, the Commission had received 122 alleged IRCA discrimination-related complaints. Those complaints involved

- 27 dismissed grandfathered employees,
- 22 cases of employers refusing to accept work authorization documents,
- 22 legalization applicants who lost seniority benefits and/or wages,
- 24 legalization applicants who resigned because of employer harassment,
- 18 Mexican-origin people who were asked for documentation while others were not,
- 1 white male who was hired over an equally qualified Mexican-American citizen, and
- 8 persons who were not hired because they were not U.S. citizens.

Of the 122 alleged discrimination charges, the Commission resolved 63, had 13 under investigation, and referred 46 to other agencies. INS officials said that the I-9 verification process applies to all new employees.

State of Illinois

The Illinois General Assembly made the Illinois Department of Human Rights and the Human Rights Commission responsible for gathering and reporting to GAO information on IRCA-related discrimination. The Department and the Commission held three public hearings between July 1, 1987, and June 30, 1988. As a result, they reported that charges of discrimination based on individuals' national origin have increased because of IRCA. Eight IRCA-related discrimination charges had been filed with the Department as of August 31, 1988. They said that this number does not represent the true scope of the unlawful discrimination problems that IRCA has caused. Many immigrants, who have been subjected to discrimination, fear the government and are reluctant to come forward to seek relief.

New York State Assembly Task Force

The New York State Assembly Task Force on New Americans, in conjunction with several community organizations,[5] sponsored a public hearing on November 2, 1987, to assess the effects of employer sanctions in the State of New York on employers and employees, immigrants and U.S. citizens, and unauthorized and legal residents. During the hearing, several advocacy groups and individuals gave testimonial evidence on the following:

- Sanctions are leading to the intimidation and unnecessary firing of unauthorized workers hired before IRCA.
- Fear of sanctions can lead to discrimination against legal immigrants. Employer ignorance of acceptable documents for proof of legal status is creating hardships for legal immigrants.
- U.S. citizens, especially Puerto Ricans in the New York City area, are suffering discrimination due to employer sanctions. According to the testimony, many employers do not know that Puerto Ricans are U.S. citizens and are unaware of what documents are acceptable as proof of citizenship.
- Employer sanctions have made employers fearful of assisting current and past undocumented employees with their legalization applications.

[5]These organizations included the Center for Immigrants Rights, Inc., the Asian American Legal Defense and Education Fund, and the Northern Manhattan Coalition for Immigrants Rights.

- INS had not done an adequate job of educating employers about IRCA's sanction and the antidiscrimination provisions.

The hearing report did not discuss the actions, if any, taken by the individuals to file their complaints with a government agency.

Antidiscrimination Burden on Employers

IRCA's antidiscrimination provision provides protection to employees against possible national origin or citizenship status discrimination that may occur with respect to hiring, referral, recruitment, or discharge. However, according to Chairman Rodino, the congressional conferees were apprehensive that the provision might be used as a tool to harass employers. Therefore, Congress included a provision for awarding attorneys' fees if the losing party's argument "is without reasonable foundation in law or fact." This particular language was intended to discourage law suits to harass employers. As of October 1988, one case has been adjudicated (Romo v. Todd Corporation).

State Employment Service Placement Rates

Employment service placement rates in four high alien population states that had comparable data before and after IRCA did not change significantly for Hispanics and/or Asians in relationship to other ethnic groups.[6] In addition, the Commonwealth of Puerto Rico's Department of Labor and Human Resources refers Puerto Rican job applicants to employers and has offices in Chicago, Cleveland, New York, and Philadelphia. Table 4.8 shows job referral data provided by a Commonwealth official for Puerto Ricans in New York City. Data for fiscal years 1987 and 1988 do not show a decrease in the placement rate compared to pre-IRCA years. However, because we are looking at aggregate information, the data may not detect minor changes and are not adjusted to account for changes in New York's economy. Therefore, the data may not identify discriminatory practices.

[6]A New York State employment service official stated that comparable data on placements before and after IRCA were not available. As a result, we did not include New York State employment service data in our analysis.

Table 4.8: Puerto Rican Job Referral Data in New York City

	Number of Puerto Ricans		
		Employed	
July to June	Referred	Number	Percent
Fiscal year			
1984	2,159	1,219	56
1985	2,186	1,262	58
1986	2,482	1,344	54
1987	3,200	1,910	60
1988	3,739	2,175	58
Totals	**13,766**	**7,910**	**57**

Source: Commonwealth of Puerto Rico's Department of Labor and Human Resources.

Conclusions

To date, the charges filed with OSC and EEOC and data on IRCA-related discrimination do not show the law has caused a pattern of discrimination. While our survey shows that about one of every six employers surveyed apparently has begun or increased unfair employment practices, the survey cannot be relied on to determine if IRCA caused a pattern of discrimination. It does not show the number of authorized workers who were fired or not hired or were otherwise affected by the reported practices. Nevertheless, policymakers should be concerned about employers who may have begun or increased these unfair practices. For our third annual report, we will continue to analyze the available data to determine if the law caused a pattern of discrimination. However, the methodological problems discussed above and in chapter 2 may preclude us from determining whether such a pattern exists.

Our survey results showed that employers, who were aware of the law, were unclear about the (1) authority to hire a U.S. citizen rather than an authorized alien when both are equally qualified (about 332,000) and (2) discrimination penalties under IRCA (about 248,000). In addition, information provided by private organizations indicates that authorized workers may not understand IRCA's antidiscrimination provision. As INS significantly increases enforcement of sanctions, it is important that the public receive the necessary information to avoid discriminatory practices.

To help assure the Nation's employers do not react to INS' increased enforcement of sanctions by concurrently increasing discrimination, we believe that a more coordinated federal effort is needed to educate the

public about IRCA's antidiscrimination provision. If this is done, employers may be less likely to engage in unfair employment practices, and persons discriminated against should know about OSC and the legal remedies in IRCA. In discussing our preliminary survey findings of unfair employment practices with INS, DOL, OSC, and EEOC officials, they agreed more needs to be done to explain IRCA's antidiscrimination provision to the public. While the actions INS and OSC have taken to date in response to our survey should help, we believe a more comprehensive multiagency educational effort is needed.

In our opinion, the 434 cases filed with OSC and EEOC, including their duplicated efforts in 54 cases and the 1 adjudicated case, are not an unreasonable burden for employers.

Recommendation

We recommend that the Attorney General direct the Special Counsel to develop, in conjunction with other federal agencies, including EEOC, INS, and DOL, a coordinated strategy to educate the public about IRCA's antidiscrimination provision and develop a plan for carrying out the strategy, including a budget. OSC should submit this information to the Director of OMB for consideration during the federal budget process because no specific appropriation exists for education and more than one agency is involved.

Agency Comments

OSC agreed with our recommendation and it, along with INS, EEOC, and DOL, recognized the need for continued education.

Employer Sanctions' Burden on Employers

Congress was concerned about the regulatory burden the law placed on the Nation's estimated 7 million employers to complete I-9 forms for all new employees. The law requires us to report on our review of the implementation of the employer sanction provision for the purpose of determining, among other things, whether the regulatory burden created by this provision is "unnecessary."

To determine if the burden resulting from completing I-9 forms is unnecessary, we (1) identified employers' costs to complete the I-9 forms and (2) developed indicators of the law's effectiveness in decreasing the employment of unauthorized aliens and/or illegal migration to the United States.

In principle, the burden resulting from employer sanctions (e.g., preparation of an I-9) may not be necessary if it could be proven conclusively that the law has not significantly decreased the employment of unauthorized aliens and/or their flow into the United States below what the levels would have been without the law.[1] For example, if the same number of unauthorized aliens find jobs through use of counterfeit or fraudulent documents as they would without the I-9 requirement, then the burden of preparing the I-9 would be unnecessary. Although it is unlikely that we will find conclusive evidence, we continue to monitor the employment and flow of unauthorized aliens before and after IRCA using two indicators: (1) INS' alien apprehension rate and (2) employers' reliance on authorized workers.[2]

Costs

Our questionnaire results provide data on the time employers take to complete the I-9, number of I-9s prepared, and their start-up costs associated with implementing the law. INS estimated employers' annual costs to obtain, complete, and store I-9s at $182 million,[3] of which $169 million was for personnel costs to prepare the I-9. Our estimate of employers' personnel costs to complete the I-9s is comparable to INS' estimates.

[1]Six countries and Hong Kong reported that if they had not enacted employer sanction laws, the problem of aliens working illegally would be greater than it was. Illegal Aliens: Information on Selected Countries' Employment Prohibition Laws (GAO/GGD-86-17BR, Oct. 28, 1985).

[2]The unauthorized alien population indicator in our first report has been deleted because there was insufficient data to measure changes after IRCA.

[3]SBA developed a $675 million cost estimate for the recordkeeping requirements of a similar immigration bill in 1985. The difference between SBA's and INS' cost estimates is due to different assumptions about the hourly cost to complete a form. SBA used $40 per hour versus INS' $10 per hour.

Table 5.1 shows the time employers, who were aware of the law and had employees, estimated to complete an I-9.

Table 5.1: Time Employers Took to Complete I-9

Minutes	Percent of employers
Less than 10	51
At least 10 but less than 20	31
At least 20 but less than 30	6
At least 30 but less than 40	1
40 or more	2
Do not know	9
Total	**100**

Note: Percent based on an estimated 1.5 million employers responding to the survey question.

Source: GAO Employer Survey, Spring 1988.

INS estimated that employers would take an average of 15 minutes to complete an I-9. If INS had used our response data to estimate the cost to complete the I-9, the costs would have been about the same—$152 million using our response data compared to $150 million using INS' estimate—for 89 percent of the employers who could estimate the time to complete the I-9 and who took less than 40 minutes. To calculate our estimate we used (1) the high end of the time range rounded to the nearest 10 (e.g., 10 minutes for those employers who estimated their time to complete the I-9 at from 1 to less than 10 minutes) and (2) the estimated new hires to be 67.5 million who are required to have I-9s. Also, we assumed that the employers hired the 67.5 million people in the same distribution as the time it took employers to complete the I-9 (e.g., 51 percent of the employers who took less than 10 minutes to complete the I-9 also hired 51 percent of the 67.5 million people). We multiplied the time to complete the I-9s by the number of new employees for each interval. We used $10 per hour to calculate the total cost for preparing the I-9s for 89 percent of the 67.5 million new employees. Eleven percent did not respond or took more than 40 minutes to complete the I-9, and therefore we could not estimate the time.

Table 5.2 shows the number of I-9s employers prepared to comply with IRCA for those employers who were aware of the law and had employees.

Table 5.2: Number of I-9s Prepared

Number of I-9s prepared	Percent of employers[a]
5 or less	46
6 - 10	19
11 - 20	14
21 - 50	14
51 or more	8
Total	**100**

Note:Percent based on an estimated 1.4 million employers responding to this survey question.
[a]Total exceeds 100 percent due to rounding.
Source: GAO Employer Survey, Spring 1988.

On the basis of our survey, we estimated that 82 percent of the 3.1 million employers had no start-up costs. However, table 5.3 shows the start-up costs of those who incurred them.

Table 5.3: Start-Up Costs

Dollars	Percent of employers
less than 50	24
51 to 100	16
101 to 200	16
201 to 500	22
more than 500	22
Total	**100**

Note:Percent based on an estimated 300,000 employers responding to this survey question.

Source: GAO Employee Survey, Spring 1988.

As shown in table 5.2, almost half of the employers said that they prepared less than six I-9s. As shown in table 5.3, 56 percent of the employers who had start-up costs said their start-up costs were less than $201. Start-up costs include paying overtime, purchasing equipment such as filing cabinets, and hiring consultants.

Employers Complain About Regulatory Burden

On the basis of our survey, 44 percent of the estimated 3.1 million employers said it was easy to find authorized workers since the law was passed, while 4 percent said it was difficult. Some of the employers expressed concern that compliance with the law is a burden and/or the law has affected the labor supply. The following are examples of employer views provided in their survey responses:

"Most employers are struggling to find new employees to replace the illegal employees that they had fired or laid off."

"Compliance [with the law] is no big thing, but when added to all the other requirements an employer has to adhere to, the burden is getting heavy!"

"I resent being forced to be an unpaid immigration agent of the U.S. Government."

"This law is illogical and very burdensome. It seems to me that the employer requirements of having every new hire fill out an I-9 is stupid. If the government cannot do its job, to keep illegal aliens out of the country, why force business to do its job?"

"Employers are far too overloaded with government reports, etc. to be Immigration Agents as well."

"Industry as a whole and this company . . . has been adversely influenced since the labor pool has shrunk due to the restrictions imposed under this law. Thus, capacity utilization of plant is only some 75% and wages demanded by qualified personnel have increased some 15%. Unfortunately, the consumer has to pay for these added costs."

"While we understand that the laws' intent is to protect authorized workers and avoid discrimination toward authorized workers, we seldom even have an applicant that is questionable. This law, in our area, is just another thorn in the side to small business. If you keep this up we'll all have to work for the government."

"I think it is unrealistic for this law to require the employer to have I-9 forms filled out and then expect the employer to pay to get the forms. If you want the information then you should make the forms available at no charge."

"If I, as an employer, am required to have forms completed, it should be easy for me to get forms. It isn't."

"I have one major problem with the law and that is the nature of the documentation required. We are a small city in a rural area. . . Many of our potential employees do not drive. Therefore, they do not have driver's license[s]. Most are women, therefore few have military cards. . . I'm turning away 50% of applicants because of this and terminating another 10% within 24 hours because they fail to produce it as promised. . . Something else has to be made available to citizens-you're penalizing them."

In contrast to these employer complaints, INS finds the I-9 form requirement can be a valuable enforcement tool in locating unauthorized aliens and their employers. For example, according to an INS official in Los Angeles, information about aliens gained during an I-9 inspection can be

used in court to prove probable cause for a judge to issue a search warrant. Once the warrant is issued, INS can examine the employers' payroll records and interview the suspected unauthorized workers.

Effectiveness

It is too soon to tell whether the requirement in IRCA for employers to complete the I-9 form will reduce unauthorized alien employment or migration. As discussed in chapter 3, 22 percent of the Nation's employers surveyed in late 1987 and early 1988 did not know the law was passed in 1986. Of those employers who did know, about 50 percent were not completing all required I-9 forms. In addition, for those employers in our review who INS visited in five high alien population cities, 61 percent of the unauthorized alien employees hired after IRCA did not complete I-9 forms. The remaining 39 percent of unauthorized aliens hired after IRCA provided, or were suspected of providing, counterfeit or fraudulent documents to complete I-9 forms.

We cannot determine from INS' records the number of unauthorized aliens who were not hired as a result of the I-9 requirement. However, if the I-9 form does deter unauthorized aliens from finding work or entering the country illegally, our two indicators of employer sanctions' effectiveness should show (1) a decrease in INS' alien apprehension rate and (2) a decrease in employers' reliance on unauthorized workers. However, as discussed below, so far the indicators are inconclusive. Even if more employers begin complying with the I-9 requirement in 1989, it is unlikely that we will be able to determine the impact on illegal immigration and employment in our third and final report to Congress.

Potential Indicators of Employer Sanctions Effectiveness

As part of our analysis of regulatory burden, we are monitoring the extent to which employer sanctions appear to be achieving Congress' objective of reducing unauthorized alien employment and migration to the United States. We selected two indicators of the law's effectiveness in addressing this objective:

- the rate that INS apprehends unauthorized aliens per work hour and
- employers' reliance on legal labor sources rather than unauthorized alien labor.[4]

[4]In our first report we used data on employers' use of public employment agencies as an indicator of authorized employment. It has been deleted from this report because not all states are opting to prepare I-9s for employers.

Caution should be exercised in using these indicators because measuring them is difficult, and changes may be influenced by factors other than employer sanctions. As a result, it may not be possible to attribute changes solely to IRCA. For example, economic or political conditions in other countries could affect the flow of aliens into the United States. Accordingly, changes in the indicators can only be used as a rough gauge of employer sanctions' effectiveness.

INS Apprehensions

This year, we continued measuring changes related to INS' apprehensions in two ways.

1. If employer sanctions are effective in reducing job opportunities for unauthorized aliens, fewer aliens will attempt to enter the country illegally to search for work. One measure of the flow of aliens attempting to enter the country is Border Patrol "linewatch" alien apprehensions measured by 10-hour shifts. Linewatch is an INS Border Patrol operation in which its agents set up surveillance on major crossing points at or near the border to apprehend aliens who illegally enter the country.

Figure 5.1 shows INS Border Patrol linewatch apprehensions measured by 10-hour shifts for the fiscal years 1983 to 1988. The data show that alien apprehensions per 10-hour shift decreased after the passage of IRCA.

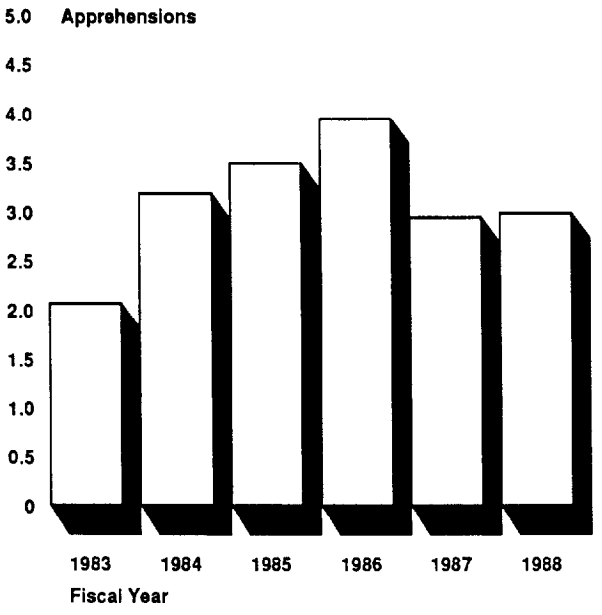
2. If employer sanctions are effective in reducing the number of aliens employed illegally, then the number of aliens INS arrests who are working illegally should decrease. INS data indicate the number of aliens arrested, who were employed illegally, has decreased per investigator hour since the passage of IRCA in November 1986.

In our survey, most employers (69 percent) said they had no basis to judge whether or not employer sanctions have been effective. However, about 8 percent of the employers surveyed who were aware of the law said employer sanctions have been effective to a great or very great extent in reducing the number of working unauthorized aliens. After we survey employers again in 1989, we plan to determine whether this percentage increased and include the results in our third annual report.

Reliance on Authorized Workers

We measured changes in employers' reliance on authorized workers in three ways.

Figure 5.1: Border Patrol Linewatch Apprehensions Measured by 10-Hour Shifts



Note: FY 1988 represents 9 months of data.

Source: INS.

1. If employer sanctions are effective in reducing the number of aliens employed illegally, then the percent of nonimmigrants (visitors) who receive visas to enter the country each year but subsequently become illegally employed might decrease. For example, if employers verify the employment eligibility for all new employees, fewer visitors should find illegal employment and overstay (violate) their visas.

Table 5.4 represents estimated visa violation rates for October through March during the years 1984 to 1987 for five countries.[5] The countries were selected on the basis of having a high number of estimated visa violations.

[5]This 6-month period was selected because, according to an INS official, visa violations occur more frequently during the summer months and a 6-month period better reflects the changes in estimated violations.

Table 5.4: Nonimmigrant Visa Violation Rates (By Country)

Country	Years	Arrivals	Estimated visa violations	Percent
Canada	1984	29,302	5,559	19
	1985	31,538	5,130	16
	1986	26,867	3,329	12
	1987	25,594	3,197	13
Haiti	1984	31,919	3,938	12
	1985	32,061	4,480	14
	1986	33,647	5,884	18
	1987	35,478	5,554	16
Mexico	1984	292,301	20,766	7
	1985	384,407	9,022	2
	1986	347,769	14,661	4
	1987	340,434	15,381	5
Philippines	1984	42,239	6,015	14
	1985	46,408	5,769	12
	1986	49,175	7,118	15
	1987	52,091	6,398	12
Poland[a]	1984	13,114	4,261	33
	1985	22,721	9,438	42
	1986	25,917	10,649	41
	1987	27,757	8,836	32

[a]Nonimmigrants from Poland were permitted to remain in the country temporarily for humanitarian or other reasons.

Source: INS.

2. SSA issues special nonwork Social Security cards to legal alien nonimmigrants who are not authorized to work but who need the number for other reasons (e.g., to open a bank account). If employer sanctions are effective, we believe the percentage of nonwork cards with wages reported to SSA by employers should decrease after IRCA. SSA data show that about half of the nonwork cards issued since 1974 had wages earned and reported to SSA for calendar years 1982 to 1986.

3. In our March 1988 report,[6] we found that a large supply of unauthorized alien labor may depress wages for legal workers. If sanctions are effective and this downward wage pressure is relieved because employers hire only authorized workers, we believe wages for these jobs in high alien population states and industries could increase as employers attempt to recruit legal workers to fill the vacated jobs. This assumes

[6]Illegal Aliens: Influence of Illegal Workers on Wages and Working Conditions of Legal Workers (GAO/PEMD-88-13BR, Mar. 10, 1988).

that this effect is not offset by wage declines for grandfathered aliens or business declines.

Our 1988 survey results indicate that since November 1986 about 180,000 of the 2.9 million employers (or 6 percent) increased wages to attract authorized workers. Of these, we estimate about 40,000 employers increased wages because of employer sanctions, and nearly all of these (97 percent) were in our five high alien population states.

In our final report we will try to compare the percentage of employers surveyed in 1988 with those surveyed in 1989 who said IRCA's sanction provision caused them to increase wages to attract legal workers.

Conclusions

Two years after IRCA there is insufficient data for us to determine if the implementation of sanctions has created an unnecessary regulatory burden for employers. While our survey indicates the direct cost of the law to employers may be about the same as INS originally estimated, the impact of the law on reducing illegal immigration and employment, as measured by our indicators of sanctions' effectiveness, is uncertain.

Even if more employers begin to comply with the I-9 requirements, unauthorized aliens may continue to find jobs through use of counterfeit or fraudulent documents, as discussed in chapter 3. Aliens' use of such documents is a development that could undermine the employer sanctions program and make the I-9 system in IRCA an "unnecessary" burden for employers.

We believe that the ultimate answer to whether the burden imposed on employers is unnecessary is the extent to which the employer requirements imposed by the law are accompanied by, and contribute to, a desired reduction in unauthorized alien employment and illegal immigration. Unfortunately, it will be extremely difficult, if not impossible, to conclusively establish such a cause/effect relationship. Further, even if no progress is realized, the employer requirements may still be a necessary part of a revised strategy.

Fiscal Year 1987, 1988, and 1989 INS Budgets for Employer Sanctions

Dollars in thousands

	1987		1988		1989	
INS office	**FTE[a]**	**Amount**	**FTE[a]**	**Amount**	**FTE[a]**	**Amount**
Border Patrol	14	$3,049	81	$4,661	135	$6,184
Investigations	50	15,325	450	20,142	500	19,721
Anti-Smuggling	4	773	34	1,805	38	1,970
Detention and Deportation	24	4,977	218	12,293	242	13,169
Training	1	330	7	391	8	428
Data and Communications	0	4,236	2	6,099	2	5,519
Information and Records	13	1,939	86	2,546	96	2,352
Intelligence	2	119	7	264	8	289
Construction and Engineering	0	196	0	3,012	0	3,012
Legal Proceedings	17	1,985	153	7,214	170	8,315
Executive Direction	3	240	6	378	7	413
Administrative Services	4	500	28	936	31	1,192
Totals	**132**	**$33,669**	**1,072**	**$59,741**	**1,237**	**$62,564**

[a]Full-time equivalent positions.

Source: INS.

Survey of Employer Views of the 1986 Immigration Reform and Control Act

United States General Accounting Office

Survey of Employer Views of the 1986 Immigration Reform and Control Act

Instructions

The U.S. General Accounting Office, an agency of the Congress, is conducting a 3-year review of the Immigration Reform and Control Act of 1986. The purpose of this survey is to gather information from employers on: 1) their understanding of the law; 2) the Immigration and Naturalization Service's (INS) efforts to implement the law; 3) employer hiring practices; and 4) their costs to comply with the law's verification requirements.

This questionnaire is anonymous. There is nothing in this form that can identify how you or any other organization responded and no enforcement action can be taken against your organization based on your responses. In order to ensure privacy, we ask that you separately return the enclosed postcard indicating that you have completed your questionnaire. We need these cards returned so that we can follow-up with those who do not respond to our first mailing. Your participation in this survey is voluntary, but it is very important that you provide us with the requested information. Without your frank and honest answers, we cannot provide meaningful information to Congress.

The questionnaire should be answered by the head of the organization or designee in consultation with key staff familiar with the organization's accounting and personnel practices. Most of the questions can be easily answered by checking boxes or filling in blanks. The questionnaire should take about 20 minutes to complete. Space has been provided at the end of the questionnaire for any additional comments you might want to make. If needed, additional pages may be attached. If you have any questions, please call Al Stapleton at (202) 357-1094.

Please return the completed questionnaire in the enclosed preaddressed envelope within 10 days of receipt. Also, do not forget to mail back the postcard. Do not return the post card in the envelope with the questionnaire. In the event the envelope is misplaced, our return address is:

U.S. General Accounting Office
Mr. Al Stapleton
441 G Street, N.W., Room 3660
Washington, D.C. 20548

Thank you for your help.

Glossary

Authorized Alien - A person born in a foreign country who has documents authorizing employment in the United States.

Employer Sanctions - Monetary fines or incarcerations for employers who knowingly hired unauthorized aliens after November 6, 1986.

Employment Verification Requirements - For all employees hired after November 6, 1986, employers are required to examine documents that show the person is authorized to work in the United States and complete a federal form I-9 (Employment Eligibility Verification).

Form I-9 (Employment Eligibility Verification - The federal form that employers must complete for all employees hired after November 6, 1986. The form identifies the documents the employer examined to show the person is authorized to work. Both the employer and the employee must sign the form.

Unauthorized alien (illegal alien) - A person born in a foreign country who does not have documents authorizing employment in the United States.

NOTE: All results presented in this survey are estimated.

I. Background

1. In which state or territory is your organization located?

CA	621,000	15%	
FL	303,000	7%	
IL	297,000	7%	50%
NY	419,000	10%	
TX	445,000	11%	
Other	2,108,000	50%	
TOTAL	4,193,000		

2. Which of the following best describes what kind of organization this is? (CHECK ONE.) [CATEGORIES COLLAPSED (*) INTO A NEW CATEGORY, "OTHER."]

1. [*] Communications and utilities			
2. [ ] Construction		8%	340,000
3. [*] Durable manufacturing			
4. [ ] Farming (Agriculture)		1.5%	63,000
5. [*] Finance, insurance, or real estate			
6. [ ] Food Processing		.3%	12,000
7. [*] Forestry and fishing			
8. [ ] Garment (Apparel)		.3%	11,000
9. [ ] Hotel or Restaurant		3.5%	145,000
10. [*] Mining			
11. [*] Non-durable manufacturing other than garment			
12. [*] Retail trade other than restaurant			
13. [*] Services other than hotel			
14. [*] Transportation			
15. [*] Wholesale trade			
16. [*] Other (Please specify) _____			
OTHER		86%	3,622,000
TOTAL			4,193,000

3. The number of persons your organization employs may vary during the year. However, in an average week, how many employees, both full-time and part-time, does your organization have working for it? (ENTER NUMBER.)

N=3,914,000

1-9 persons employed 65%
10-50 persons employed 27%
51 + persons employed 9%

4. Approximately how many of your current employees, both full-time and part-time, fall into the following categories? (THE TOTAL SHOULD EQUAL YOUR ORGANIZATION'S TOTAL NUMBER OF EMPLOYEES.)

1.	Black (Non-Hispanic)	24%	N=3,941,000
2.	Hispanic	26%	N=3,953,000
3.	Asian or Pacific Islander	12%	N=3,926,000
4.	American Indian	5%	N=3,906,000
5.	White (Non-Hispanic)	92%	N=4,038,000
6.	Other (specify)	3%	N=3,850,000
	TOTAL		

5. About how many new employees (do not include recalls from layoffs) did your organization hire from November 1986 through October 1987? (ENTER NUMBER. IF NONE, ENTER "0".)

_____ **(November 1, 1986 - October 31, 1987)**

N=4,015,000

0 new employees 38%
1-4 new employees 38%
5-9 new employees 9%
10-20 new employees 9%
21 + new employees 7%

6. Has the Immigration and Naturalization Service ever visited your organization to determine if your organization employed unauthorized aliens? (CHECK ONE.)

1. [ ] Yes		3%
2. [ ] No		91%
3. [ ] Don't know		6%

N=4,160,000

Appendix II
Survey of Employer Views of the 1986 Immigration Reform and Control Act

7. During the next 12 months, does your organization expect to be the subject of an INS inspection to determine if your organization employs unauthorized aliens? (CHECK ONE.)

1. [ ] Definitely yes	.2%	N=4,005,000
2. [ ] Probably yes	2%	
3. [ ] Uncertain	9%	
4. [ ] Probably no	30%	
5. [ ] Definitely no	28%	
6. [ ] No basis to judge	30%	

8. Prior to November 7, 1986, it was not illegal to hire unauthorized aliens. Just prior to November 7, 1986, did your organization suspect that it was employing any persons believed to be unauthorized aliens? (CHECK ONE.)

3%	1. [ ] Definitely yes	(CONTINUE TO QUESTION 9.)
	2. [ ] Probably yes	
2%	3. [ ] Uncertain	
92%	4. [ ] Probably no	(SKIP TO QUESTION 10.)
	5. [ ] Definitely no	
3%	6. [ ] No basis to judge	

N=4,152,000

9. Just prior to November 7, 1986, approximately what percentage of your organization's total work force was made up of persons you believed to be unauthorized aliens? (IF NONE, ENTER "0".)

_____ percent

N=105,000

0% of workforce	14%
1-4% of workforce	15%
5-9% of workforce	7%
10-14% of workforce	18%
15-19% of workforce	4%
20-25% of workforce	15%
26% + of workforce	28%

10. Since November 7, 1986, has your organization had any complaints filed against it which allege employment discrimination on the basis of national origin or citizenship? (CHECK ONE.)

1. [ ] Yes	1%	N=4,133,000
2. [ ] No	98.2%	
3. [ ] Don't know	1%	

11. Implementation

11. Prior to receiving this questionnaire, was your organization aware that a new immigration law was passed in November 1986 calling for penalties (sanctions) against employers who knowingly hire unauthorized aliens? (CHECK ONE.)

1. [ ] Yes (CONTINUE TO QUESTION 12.)	78%	
2. [ ] No (SKIP TO QUESTION 32.)	22%	

N=4,153,000

12. Based on the information available to you at the present time, do you believe that your organization can or cannot be penalized (sanctioned) by INS for hiring an employee without completing a proper Employment Verification Form (I-9)? (CHECK ONE.)

59%	1. [ ] My organization can be sanctioned by INS	(SKIP TO QUESTION 14.)
14%	2. [ ] My organization cannot be sanctioned by INS	(CONTINUE TO QUESTION 13.)
27%	3. [ ] Don't know	(SKIP TO QUESTION 14.)

N=3,217,000

13. Why do you believe that your organization cannot be sanctioned by INS? (PLEASE EXPLAIN.)

_____

_____

_____

14. Which of the following sources of information about the employer sanctions provisions of the 1986 Immigration Reform and Control Act, if any, has your organization reviewed? (CHECK ALL THAT APPLY.)

20%	1. [ ] Immigration Reform and Control Act	N=3,212,000
14%	2. [ ] INS regulations on employer sanctions	
33%	3. [ ] INS' Handbook for Employers	
12%	4. [ ] Other (Please specify) _____	
45%	5. [ ] None of the above (SKIP TO QUESTION 16)	

15. Based on the information your organization has reviewed, how clear or unclear are each of the following employer sanctions provisions? (CHECK ONE BOX IN EACH ROW.)

PROVISIONS	Very clear (1)	Generally clear (2)	Marginally clear (3)	Generally unclear (4)	Very unclear (5)	No basis to judge (6)
1. The documents new employees must present as evidence of authorization to work N=1,719,000	86%		6%	4%		4%
2. Requirement to complete INS' Employment Eligibility Verification Form (I-9) N=1,713,000	84%		6%	6%		4%
3. Range of penalties (sanctions) for violations by employers N=1,709,000	62%		18%	12%		7%
4. Restrictions on employment of unauthorized aliens N=1,687,000	76%		11%	8%		5%
5. Length of time employers must retain the I-9 Form N=1,693,000	68%		11%	15%		6%
6. Exemptions for employees hired before November 7, 1986 N=1,696,000	73%		10%	11%		6%
7. Penalties for employers (with four or more employees) who discriminate N=1,696,000	61%		15%	15%		9%
8. Authority to hire a U.S. citizen rather than an authorized alien when both are equally qualified N=1,695,000	51%		18%	20%		13%
9. Review of I-9's by Department of Labor Inspectors during their standard on-site field visit to your organization N=1,700,000	56%		13%	14%		17%

NOTE: Numbers differ due to MISSING DATA and NON-RESPONSE

SKIPPED = 1,448,000

16. How useful, if at all, has each of the following sources been in providing information about the employer sanctions provisions of the new law? (CHECK ONE BOX IN EACH ROW.)

SOURCES	Very useful (1)	Generally useful (2)	Moderately useful (3)	Somewhat useful (4)	Of little or no usefulness (5)	No basis to judge (6)
1. Immigration and Naturalization Service N=2,899,000	30%		7%	22%		41%
2. Newspaper or news magazine N=2,974,000	35%		15%	32%		19%
3. Radio N=2,867,000	20%		13%	41%		26%
4. Television N=2,919,000	27%		13%	39%		21%
5. Business, trade association, or union meetings or publications N=2,857,000	25%		9%	31%		36%
6. Attorney retained by the company N=2,716,000	12%		3%	24%		60%
7. Other (Please specify) _____ _____ N=282,000	71%		8%	21%		0%

NOTE: Numbers differ due to non-responses and missing data.

17. This question addresses actions/activities your organization may or may not have taken since November 7, 1986. For each action/activity, please indicate (a) whether or not your organization has started or increased that action/activity since November 7, 1986 and if yes, please indicate (b) whether or not the action/activity was started or increased primarily as a response to the employer sanctions provisions of the 1986 immigration law. If you answered "no" in part A, there is no need to answer part B.

ACTIONS/ACTIVITIES	(A) Started or increased since November 7, 1986 IF YES, GO TO PART B		(B) Primarily because of employer sanctions provisions	
RECRUITING	No (1)	Yes (2)	No (1)	Yes (2)
1. Use of state employment services to find job applicants	91% 2,668,000	9% 273,000	84% 214,000	16% 40,000
2. Use of contractors to do work	93% 2,713,000	7% 211,000	86% 144,000	14% 23,000
3. Increased wages, working conditions, and/or fringe benefits paid for new positions in order to attract U.S. citizens and/or authorized aliens	94% 2,747,000	6% 178,000	74% 115,000	26% 40,000
4. Use of newspapers and other public advertisements to recruit applicants	84% 2,457,000	16% 479,000	92% 387,000	8% 33,000
5. Decreased wages of unauthorized alien workers to compensate for costs associated with employer sanctions, e.g., fines and paperwork	100% 2,884,000	-	73% 9,000	27% 3,000
HIRING				
6. Asked only job applicants who looked and/or sounded foreign to prove they were authorized to work in the United States	93% 2,656,000	7% 214,000	17% 30,000	83% 146,000
7. Examined documents of only those current workers who looked and/or sounded foreign to assure they were authorized to work in the United States	92% 2,604,000	9% 243,000	19% 37,000	81% 161,000
8. Copied documents provided by new employees as evidence of their authorization to work in the U.S.	69% 1,971,000	31% 880,000	12% 95,000	88% 667,000
9. Contacted INS to verify that the person hired is authorized to work in the U.S.	98% 2,783,000	2% 63,000	23% 12,000	77% 39,000
10. Began a new policy to hire only U.S. citizens	90% 2,549,000	10% 280,000	12% 27,000	88% 191,000
OTHER				
11. Actively considered moving or have moved all or part of your organization to another country	100% 2,850,000	-	42% 7,000	58% 10,000
12. Increased the price of your product/service to your customers	92% 2,613,000	8% 221,000	80% 156,000	20% 38,000
13. Other (Please specify) _____	94% 327,000	6% 21,000	46% 11,000	55% 3,000

NOTE: Due to rounding, percentages may not sum to 100.

18. The new immigration law prohibits employment discrimination on the basis of national origin or citizenship status for employers of 4 or more persons. Which of the following actions, if any, has your organization taken to avoid being sued under this new law? **(CHECK ALL THAT APPLY.)**

1. [ ] Does not apply--organization employs fewer than 4 persons. 31% N=3,161,000

2. [ ] Hired legal counsel to explain/clarify your organization's responsibilities under the new immigration law. 3% N=3,162,000

3. [ ] Trained personnel involved in recruiting and interviewing job applicants on the provisions of the new immigration law. 15% N=3,162,000

4. [ ] Used state employment services to screen job applicants. 6% N=3,162,000

5. [ ] Asked all job applicants to prove they are authorized to work in the United States. 38% N=3,162,000

6. [ ] Other (Please specify) _____ 5% N=3,162,000

7. [ ] None of the above 23% N=3,159,000

19. The INS has conducted a campaign to educate employers about the employer sanctions provisions of the 1986 immigration law. To do this, INS held meetings in cities across the country and made announcements in the newspaper, on TV, and on the radio. To what extent, if any, has your organization's familiarity with the immigration law increased due to INS education efforts? (CHECK ONE.)

N=3,113,000

1. [ ] Very great extent
2. [ ] Great extent — 14%
3. [ ] Moderate extent 17%
4. [ ] Some extent
5. [ ] Little or no extent — 38%
6. [ ] No knowledge of INS campaign 31%

20. Since the employer sanctions provisions took effect, how easy or difficult has it been for your organization to find enough U.S. citizens or authorized aliens to fill job openings? (CHECK ONE.)

N=3,149,000

1. [ ] Very easy
2. [ ] Easy — 44%
3. [ ] Neither easy nor difficult 17%
4. [ ] Difficult
5. [ ] Very difficult — 4%
6. [ ] No basis to judge 35%

21. In your opinion, to what extent, if at all, have the employer sanctions provisions of the new immigration law been effective in reducing the number of aliens working without proper work authorization documents in your industry? (CHECK ONE.)

N=3,156,000

1. [ ] To a very great extent
2. [ ] To a great extent — 8%
3. [ ] To a moderate extent 4%
4. [ ] To some extent
5. [ ] To little or no extent — 20%
6. [ ] No basis to judge 69%

III. Employment Practices

22. INS requires that its form I-9 be completed by the employer for each new employee. Does your organization have a supply of this form on hand? (CHECK ONE.)

1. [ ] Yes 53% N=3,138,000
2. [ ] No 37%
3. [ ] Don't know 10%

23. As of the date you are completing this questionnaire, approximately how many I-9 forms has your organization completed? (ENTER NUMBER. IF NONE, ENTER "0".)

_____ **(IF "0", SKIP TO QUESTION 28.)**

0 forms 55% 10-20 forms 9% N=2,984,000
1-4 forms 18% 21-50 forms 6%
5-9 forms 9% 50 + forms 4%

24. Does your organization have a completed I-9 form for every employee still on the organization's payroll hired after November 6, 1986? (CHECK ONE.)

N=1,474,000

1. [ ] Yes **(SKIP TO QUESTION 26.)** 86%
2. [ ] No **(CONTINUE TO QUESTION 25.)** 10%
3. [ ] Don't know **(SKIP TO QUESTION 26.)** 4%

25. For which of the following types of employees does your organization not complete an I-9 form? **(CHECK ALL THAT APPLY.)**

1. [ ] Persons believed to be authorized to work 37% N=135,000
2. [ ] Persons believed to be unauthorized to work 8% N=132,000
3. [ ] Organization does not examine documents nor complete an I-9 form for anyone. 11% N=132,000
4. [ ] Other (Please specify) _____ 50% N=132,000

26. Overall, how clear or unclear is the I-9 form? (CHECK ONE.)

N=1,467,000

1. [ ] Very clear
2. [ ] Generally clear — 83%
3. [ ] Marginally clear 9%
4. [ ] Generally unclear
5. [ ] Very unclear — 4%
6. [ ] No basis to judge 4%

27. Approximately how long does it take your organization to complete the I-9 form for a new hire? (CHECK THE MOST APPROPRIATE BOX.)

N=1,471,000

1. [ ] Less than 10 minutes 51%
2. [ ] At least 10 minutes but less than 20 minutes 31%
3. [ ] At least 20 minutes but less than 30 minutes 6%
4. [ ] At least 30 minutes but less than 40 minutes 1%
5. [ ] 40 minutes or more 2%
6. [ ] Don't know 9%

28. Since November 7, 1986, has your organization fired or laid off any workers because they did not have proper work authorization documents? (CHECK ONE.)

N=3,150,000

1. [ ] Yes **(CONTINUE TO QUESTION 29.)** 2%
2. [ ] No 96%
3. [ ] Don't know 2%

(SKIP TO QUESTION 30.)

29. Were any of the workers who were fired or laid off employed by you before November 7, 1986? (CHECK ONE.)

N=73,000

1. [ ] Yes 24%
2. [ ] No 70%
3. [ ] Don't know 6%

IV. Cost to Comply With Regulations

30. Which of the following start-up costs were incurred by your organization to comply with the 1986 immigration law's employment verification requirements? **(CHECK ALL THAT APPLY.)**

1. [ ] Overtime 4% N=3,095,000

2. [ ] Used outside consultants (CPAs, lawyers, accountants, computer firms, etc.) 6% N=3,095,000

3. [ ] Hired additional employees (clerks, lawyers, personnel officials, etc.) 1% N=3,095,000

4. [ ] Purchased/revised computer software and/or hardware 1% N=3,095,000

5. [ ] Purchased filing cabinet(s) to store required forms 2% N=3,092,000

6. [ ] Other (Please specify) _____ _____ 8% N=3,092,000

- -

7. [ ] No start-up costs **(SKIP TO QUESTION 32.)** 82% N=3,095,000

31. Please estimate your organization's total 1987 start-up costs for complying with the 1986 immigration law's employment verification requirements? (ENTER AMOUNT. IF NONE, ENTER "0".)

N=445,000

$_____

$0	26%
$1 - $500	58%
$501 - $5000	14%
$5001 +	2%

V. Comments

32. If you have additional comments concerning the immigration law, please provide those to us in the space below. Attach additional sheets, if necessary.

PLEASE REMEMBER TO RETURN THE COMPLETED QUESTIONNAIRE IN THE ENCLOSED PRE-ADDRESSED ENVELOPE. ALSO, PLEASE RETURN YOUR POSTCARD.

THANK YOU FOR YOUR HELP.

GGD/WBH/11-87

Statistical Data for Employer Survey

As part of our review of the implementation of IRCA, we wanted to determine the perceived effects of the new law on U.S. employers. To accomplish this, we mailed a questionnaire to a stratified random sample of employers to gather information on their (1) understanding of the law, (2) employment practices, and (3) costs to comply with the I-9 form requirements. Our sample was selected from a private marketing service's database. We selected our sample from the database as it was constituted on September 15, 1987. On that date, the database contained over 6 million employers.

Several other databases exist that provide information about businesses in the United States, such as those compiled by the Internal Revenue Service, U.S. Census Bureau, and SBA. We chose the marketing service for the following reasons.

- The data were purported to be more frequently updated and therefore provided more current information than the other databases.
- The database identified each business location with an address, phone number, and the name of a business contact.
- The database could be accessed with minimal administrative effort compared to the other databases.

To draw our sample, we first stratified the universe of employers into a 36-cell matrix. The stratification was a mix of the high alien population states (California, Texas, Florida, New York, and Illinois contain approximately 80 percent of the alien population) and all other (low alien) states; and of high alien population industries (agriculture, restaurants and hotels, construction, garment, and food processing) and all other (low alien) industries. (See table III.1.)

Table III.1: Sampling Plan

	States						
Industries	**CA**	**FL**	**TX**	**NY**	**IL**	**Other**	**Total**
Agriculture	137	135	136	133	136	139	816
Restaurant/hotel	137	137	137	151	137	123	822
Construction	133	136	136	137	135	137	814
Garment	134	130	128	136	126	135	789
Food processing	134	126	129	129	128	136	782
Other	137	137	135	137	135	1,294	1,975
Totals	**812**	**801**	**801**	**823**	**797**	**1,964**	**5,998**

Due to technical difficulties and related issues concerning their proprietary rights, we agreed to have the private marketing service draw the sample and certify that the sample selection procedure it used was a random one. We did not verify the procedure the private marketing service used.

We based our cell sample sizes on a confidence level of 95 percent ± 10 percent. Generally, this resulted in required sample sizes of between 90 and 100 employers per cell. We over-sampled in each cell by approximately 30 percent due to the fact that any mail survey will experience some degree of nonresponse and because we felt it important to maintain the 10-percent error level. The 30 percent represented our best judgment as to the percentage of nonrespondents we could expect for this type of mail instrument. The resulting cell sizes for our sample were generally between 126 and 137 employers. (See table III.2.) Because of the size of the universe for other industries and states, we deliberately oversampled (779) in this category in case a more detailed analysis of the responses from this group was necessary.

In addition to the sample employers drawn for the 36-cell matrix, we had the marketing service draw an additional random sample of 500 employers from the universe of approximately 6,000,000. We had originally intended this sample to be used for test purposes. However, we subsequently decided that the test was not necessary. Since the 500 employers had been randomly selected, we included them in our mailout to the sample of employers. The practical effect of including them was to raise the sample sizes in our matrix, especially in the other industries and states category.

We initially mailed our questionnaire to 5,998 employers across the country in November 1987. We did follow-up mailings in January 1988 and March 1988. Finally, we tried to telephone all nonrespondents in April of 1988.

Of the 5,998 questionnaires mailed, 3,230 completed questionnaires were returned. We dropped 1,956 questionnaires from our sample: 1,714 were returned to us because the addressee could not be located, and 242 were dropped because they said they had no employees. Our adjusted sample (subtracting the number whom we considered to be no longer in business and the number who indicated they had no employees from the original sample) was 4,042. Of the 3,230 questionnaires received, 61 were excluded because, when projected, the estimates for the number of

employees in each respondent's company exceeded Census Bureau estimates of the number of employees in an industry in a given state, or 1 million. In these instances, we assumed that these employers provided the number of employees in the entire company rather than the number employed at that location. Given the number of completed and usable questionnaires returned (3,169), this provided us with a response rate of 78 percent. See table III.2 for details.

Table III.2: Employer Questionnaire Disposition by State

	States						
Industry	**CA**	**FL**	**TX**	**NY**	**IL**	**Other**	**Total**
Agriculture							
Universe	17,000	7,000	11,000	6,000	6,000	114,000	162,000
Adjusted universe[a]	14,000	4,000	7,000	4,000	5,000	77,000	111,000
Projected universe[b]	6,000	2,000	3,000	2,000	2,000	49,000	63,000
Sample	137	135	136	133	136	139	816
Out of business	23	50	47	36	29	33	218
No employees	2	4	8	8	6	12	40
Adjusted sample	112	81	81	89	101	94	558
Total questionnaires	49	34	34	38	35	60	250
Unusable questionnaires	0	0	0	0	0	0	0
Total usable questionnaires[c]	49	34	34	38	35	60	250
Response rate[d]	44%	42%	42%	43%	35%	64%	45%
Restaurant and hotel							
Universe	41,000	19,000	20,000	28,000	17,000	234,000	359,000
Adjusted universe	27,000	11,000	12,000	17,000	11,000	150,000	224,000
Projected universe	15,000	8,000	7,000	10,000	7,000	99,000	145,000
Sample	137	137	137	151	137	123	822
Out of business	45	53	55	57	47	41	298
No employees	3	2	1	2	1	3	12

(continued)

Industry	States						
	CA	FL	TX	NY	IL	Other	Total
Adjusted sample	89	82	81	92	89	79	512
Total questionnaires	49	56	48	55	52	53	313
Unusable questionnaires	0	0	0	0	0	1	1
Total usable questionnaires	49	56	48	55	52	52	312
Response rate	55%	68%	59%	60%	57%	66%	61%
Construction							
Universe	66,000	41,000	50,000	39,000	31,000	461,000	687,000
Adjusted universe	38,000	25,000	31,000	25,000	19,000	273,000	423,000
Projected universe	32,000	14,000	15,000	17,000	13,000	249,000	340,000
Sample	133	136	136	137	135	137	814
Out of business	42	50	49	40	46	49	276
No employees	13	3	2	8	4	7	37
Adjusted sample	78	83	85	89	85	81	501
Total questionnaires	65	48	40	62	55	74	344
Unusable questionnaires	0	0	0	0	0	0	0
Total usable questionnaires	65	48	40	62	55	74	344
Response rate	83%	58%	47%	70%	65%	91%	69%
Garment[a]							
Universe	5,600	1,800	1,500	8,600	1,100	20,100	39,000
Adjusted universe	3,385	1,205	1,043	5,375	821	13,996	26,000
Projected universe	1,470	560	288	2,205	180	6,258	11,000
Sample	134	130	128	136	126	135	789
Out of business	50	42	39	48	30	39	248
No employees	3	1	0	3	2	2	11

(continued)

Industry	States						
	CA	FL	TX	NY	IL	Other	Total
Adjusted sample	81	87	89	85	94	94	530
Total questionnaires	35	40	24	35	20	42	196
Unusable questionnaires	0	0	0	0	0	0	0
Total usable questionnaires	35	40	24	35	20	42	196
Response rate	43%	46%	27%	41%	21%	45%	37%
Food processing[a]							
Universe	3,500	1,100	1,900	1,900	1,400	17,900	28,000
Adjusted universe	2,821	882	1,340	1,443	1,225	14,346	22,000
Projected universe	1,196	432	810	660	770	7,656	12,000
Sample	134	126	129	129	128	136	782
Out of business	24	24	37	31	16	26	158
No employees	2	1	1	0	0	1	5
Adjusted sample	108	101	91	98	112	109	619
Total questionnaires	46	48	54	44	71	59	322
Unusable questionnaires	0	0	0	0	1	1	2
Total usable questionnaires	46	48	54	44	70	58	320
Response rate	43%	48%	59%	45%	63%	53%	52%
Low Alien Industries							
Universe	554,000	240,000	351,000	376,000	218,000	3,045,000	4,784,000
Adjusted universe	344,000	158,000	208,000	233,000	118,000	2,205,000	3,270,000
Projected universe	566,000	279,000	419,000	386,000	275,000	3,697,000	3,622,000
Sample	137	137	135	137	135	1,294	1,975
Out of business	40	41	40	40	47	308	516
No employees	12	6	15	12	15	49	109

(continued)

Industry	States						
	CA	FL	TX	NY	IL	Other	Total
Adjusted sample	85	90	80	85	73	937	1,350
Total questionnaires	150	160	165	145	173	756	1,549
Unusable questionnaires	10	1	4	4	2	35	56
Total usable questionnaires	140	159	161	141	171	721	1,493
Response rate	165%	177%	201%	166%	234%	77%	111%
Totals							
Universe	686,000	310,000	437,000	459,000	274,000	3,893,000	6,059,000
Adjusted universe	467,000	203,000	276,000	300,000	191,000	2,763,000	4,083,000
Projected universe	621,000	303,000	445,000	419,000	297,000	2,108,000	4,193,000
Sample	812	801	801	823	797	1,964	5,998
Out of business	224	260	267	252	215	496	1,714
No employees	35	17	27	33	28	74	214
Unidentified with no employees[f]	•	•	•	•	•	•	28[f]
Total number deleted	259	277	294	285	243	570	1,956
Adjusted sample	553	524	507	538	554	1,394	4,042
Questionnaires received	394	386	365	379	406	1,044	2,974
Unidentified questionnaires	•	•	•	•	•	•	256[f]
Total received	394	386	365	379	406	1,044	3,230
Unadjusted							
Response rate	49%	48%	46%	46%	51%	53%	54%
Unusable questionnaires	10	1	4	4	3	37	59

(continued)

Industry	States CA	FL	TX	NY	IL	Other	Total
Unidentified and unusable	•	•	•	•	•	•	2[f]
Total unusable	10	1	4	4	3	37	61
Total usable questionnaires	**384**	**385**	**361**	**375**	**403**	**1,007**	**3,169**
Response rate	**69%**	**73%**	**71%**	**70%**	**73%**	**72%**	**78%**

[a]The adjusted universe reflects the adjustment made to the universe on the basis of the proportion of employers in the sample who are either out of business or have no employees. Adjusted Sample/Sample x Universe = Adjusted Universe.

[b]The projected universe is based on the weighted data.

[c]The total usable questionnaires are those employers who are still in business, have at least one employee, and have provided the number of employees at work in their specific location. We excluded respondents who we believe provided information based on their entire (nationwide) company rather than on the single unit to which the questionnaire was addressed, since the sample was drawn on the basis of specific locations rather than nationwide companies.

[d]The Response Rate = Total Usable Questionnaires/Adjusted Sample.

[e]Because of the size of the response rate, only the totals were rounded to the nearest thousand.

[f]"Unidentified" respondents are those who did not indicate a state and/or industry on the questionnaire.

Sampling Errors

To interpret survey results, all sample surveys are subject to sample error, i.e., the extent to which the results may differ from what would be obtained if the whole population had received and returned the questionnaire. The size of the sampling errors depends largely on the number of respondents. Sampling errors for analyses done in this report are plus or minus 5 percent or less, except as presented in table III.3.

Table III.3: Sampling Errors Greater Than 5 Percent

Question/crosstabulation[a]	Maximum sampling error (percent)	Unweighted responses	Weighted responses
Question 17.A[b]	7	475	528,000
Question 17.B[c]	9	328	368,000
Question 31	8	440	445,000

[a]For complete wording of each question, refer to the Employer Survey, appendix II.

[b]This was a variable created to look at all those who had answered Questions 17.6A, and/or 17.7A, and/or 17.10A without duplication.

[c]This was a variable created to look at all those who had answered Questions 17.6B, and/or 17.7B, and/or 17.10B without duplication.

Nonsampling Errors

In addition to sampling errors, the practical difficulties of conducting any survey may introduce other sources of error into the study.

The questionnaires were anonymous[1] in order to increase the likelihood that employers would respond and that their responses would be honest. This was an issue of particular importance because answers to certain questions indicate they had engaged in practices that might not be legal. There were, however, some consequences of this strategy.

Potentially, the most serious consequence associated with the anonymity of the questionnaire was the threat posed to our ability to weight the data and, therefore, project the results to the universe of employers. Specifically, respondents identified their industry differently from the identification made by the marketing firm. In other words, some respondents "migrated" from one strata to another. The result was that we had over 100-percent response rates in the category non-alien, or "other" industries. Consequently, these responses were weighted more heavily than they would have been had they been identified in their original strata.

As a result, we generally report the results using two strata, rather than six, for each dimension. That is, we either report for the Nation as a whole; for states with high alien populations (California, Florida, Illinois, New York, and Texas); or all other states with low alien populations. We made the same distinctions by industries: high alien population industries (agriculture, restaurant and hotel, construction,

[1]Employers were requested to separately return a post card acknowledging that they responded to our questionnaire. While this enabled us to determine the nonrespondents, we have no way to associate employers with their questionnaires.

garment, and food processing) and all other (low alien) industries. A comparison of our survey estimates of those populations and those of the marketing service and Bureau of Census can be found in table III.4.

Table III.4: Comparison of Numbers of Employers in High/Low Alien Population States and High/Low Alien Population Industries by Data Source

	Data Source					
	Marketing Service[a]		1985 Census[b]		GAO survey estimates	
States						
High alien population states	2,185,900	(35%)	2,069,672	(36%)	2,086,000	(50%)
Low alien population states	3,892,600	(65%)	3,631,813	(64%)	2,108,000	(50%)
Totals	**6,058,500**	**(100%)**	**5,701,485**	**(100%)**	**4,194,000**	**(100%)**
Industries						
High alien population industries	1,274,900	(21%)	990,284	(17%)	571,000	(14%)
Low alien population Industries	4,783,600	(79%)	4,711,201	(83%)	3,622,000	(86%)
Totals	**6,058,500**	**(100%)**	**5,701,485**	**(100%)**	**4,193,000**	**(100%)**

Note: "High alien population states" are the five states identified by the INS as having the largest population of aliens: California, Florida, Texas, New York, and Illinois. All other states have been defined as "low alien population states." "High alien population industries" are those classified by INS as those employing the largest number of aliens: agriculture, restaurant/hotel, construction, garment, and food processing. All other industries have been classified as "Low alien population industries."

[a]Marketing services database, September 15, 1987.

[b]County Business Patterns—United States, 1985. Washington, DC: Bureau of the Census, November 1987, pp. 1-2.

These numbers are quite close across the strata. However, if you compare the universe of employers by industry, from the marketing service, the 1985 Census, and our survey, a clearly observable difference in the estimates exists. (See table III.5.) This reinforces our decision to report by high/low alien population industry, rather than by the original six strata.

Table III.5: Comparison of the Universe of Employers by Industry

Industry	Data Source: Marketing Service[a]	1985 Census[b]	GAO survey estimates
Agriculture	161,900	63,700	63,000
Restaurant/ hotel	359,400	399,340	145,000
Construction	687,200	476,217	340,000
Garment	38,700	29,458	11,000
Food processing	27,700	21,569	12,000
Low alien population Industries	4,783,600	4,711,201	3,622,000
Totals	**6,058,500**	**5,701,485**	**4,193,000**

[a]Marketing service database, September 15, 1987.

[b]County Business Patterns—United States, 1985. Washington, DC: Bureau of the Census, November 1987, pp. 1-2.

In order to help determine the seriousness of the migration problem, we compared both weighted and unweighted data to see if there were differences in response patterns in those strata that appeared to be most vulnerable. Overall, we found that there were generally differences of less than 5 percent in weighted and unweighted response differences on both frequencies and cross tabulations. Response differences appeared to be most sensitive to differences caused by the weights for questions with a very small number of respondents. In these instances, the differences only ranged from 3 to 12 percent. Thus, we have reported the findings numerically for instances where the migration differences apparently had relatively little effect and qualitatively in other instances, but we are not able to "reconstitute" the original sample. In any event, the combination of low to moderate item response rates and migration means the precision actually achieved, while we cannot estimate it exactly, could be notably lower than the 95-percent confidence with a 10-percent error we had planned for.

Projected Responses for Selected Figures

Table III.6 provides the projected employer universes used in the figures listed.

Table III.6: Employer Universe for Selected Figures

Figure number	Column	Estimated number
3.1	1-9 Employees/Are Aware of Sanctions	2,500,000
	1-9 Employees/Understand They Can be Sanctioned	1,800,000
	10-50 Employees/Are Aware of Sanctions	1,000,000
	10-50 Employees/Understand They Can be Sanctioned	890,000
	51+ Employees/Are Aware of Sanctions	345,000
	51+ Employees/Understand They Can be Sanctioned	325,000
3.2	Employers visited by INS	76,000
	Employers not visited by INS	1,700,000
4.2	Screen Applicants Selectively: Employers unclear about verification requirements	86,000
	Employers clear about verification requirements	1,400,000
	Screen Current Workers Selectively:	
	Employers unclear about verification requirements	86,000
	Employers clear about verification requirements	1,300,000
4.3	Screen Applicants Selectively:	
	INS had visited	87,000
	INS had not visited	2,600,000
	Screen Current Workers Selectively:	
	INS had visited	87,000
	INS had not visited	2,600,000

Survey of State/Local Human Rights Agencies on Unfair Immigration-Related Employment Practices

U.S. GENERAL ACCOUNTING OFFICE

SURVEY OF STATE/LOCAL HUMAN RIGHTS AGENCIES
ON UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

INTRODUCTION

The U.S. General Accounting Office (GAO), an agency of Congress responsible for evaluating federal programs, is conducting a review of the Immigration Reform and Control Act (IRCA). The purpose of this survey is to gather information from human rights agencies on their awareness of employment-related discrimination coverage under the federal law and to identify whether there are other laws at their levels of government which provide similar coverage.

Part I asks questions pertaining to your organization's awareness of IRCA. Part II asks questions pertaining to your agency's discrimination laws which deal with national origin employment discrimination, or discrimination based solely on a person's nationality. Part III asks questions pertaining to your agency's discrimination laws that address employment discrimination related to a person's citizenship status, separate from national origin. (PLEASE BE SURE TO NOTE THE DISTINCTION BETWEEN QUESTIONS IN PARTS II AND III.) Part IV concerns IRCA and your jurisdiction's law. Part V asks about your organization. Space is provided in Part VI for any comments you may have.

The questionnaire should be answered by the head of the organization or designee in consultation with key staff familiar with your organization's processing of discrimination charges. Your responses will be treated confidentially. They will be combined with others and used only in summary form in our report. Most of the questions can be easily answered by checking boxes or filling in blanks. The questionnaire should take about 10 minutes to complete. Space has been provided at the end of the questionnaire for any additional comments you might want to make. If needed, additional pages may be attached. If you have questions, please call Ms. Linda Watson at (202) 357-1019.

Please return the completed questionnaire in the enclosed pre-addressed envelope within 10 days of receipt. In the event the envelope is misplaced, our return address is:

U.S. General Accounting Office
General Government Division
Ms. Linda Watson
441 G Street, NW Room 3660
Washington, D.C. 20548

Thank you for your help.

PART I. THE IMMIGRATION REFORM AND CONTROL ACT (IRCA)

BACKGROUND

In November 1986, a federal immigration law was passed, the Immigration Reform and Control Act (IRCA). It includes specific provisions to protect individuals against employment discrimination in hiring and firing based on national origin and citizenship status. The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in the Department of Justice handles IRCA employment discrimination charges.

1. Prior to receiving this questionnaire, how familiar, if at all, were you with IRCA's employment discrimination provisions? (CHECK ONE.)

(5)

1. [11] Very greatly familiar
2. [19] Greatly familiar
3. [32] Moderately familiar
4. [12] Somewhat familiar

→ (CONTINUE TO QUESTION 2.)

5. [7] Little or no familiarity (SKIP TO PART II, PAGE 2.)

N=81

2. From which of the following sources, if any, have you received information/assistance about IRCA's discrimination provisions? (CHECK YES OR NO FOR EACH SOURCE.)

SOURCE	Yes (1)	No (2)	
1. Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Department of Justice N=64	[19]	[45]	(6)
2. Immigration and Naturalization Service (INS) N=64	[36]	[28]	(7)
3. Equal Employment Opportunity Commission (EEOC) N=72	[59]	[13]	(8)
4. State office (specify) _____ N=54	[15]	[39]	(9)
5. City office (specify) _____ N=50	[7]	[43]	(10)
6. County office (specify) _____ N=51	[2]	[49]	(11)
7. Radio, TV announcements N=59	[29]	[30]	(12)
8. Other (specify) _____ N=28	[28]	[-]	(13)

3. Which of the following types of information/assistance, if any, has your organization received regarding IRCA's discrimination provisions? (CHECK YES OR NO FOR EACH ITEM.)

INFORMATION/ASSISTANCE	Yes (1)	No (2)	
1. OSC's toll-free (800) telephone number N=64	[22]	[42]	(14)
2. OSC's address N=65	[28]	[37]	(15)
3. OSC charge forms CRT-37 (Jul. 87) N=66	[22]	[44]	(16)
4. Training to counsel individuals about protections under IRCA N=67	[14]	[53]	(17)
5. Other (specify) _____	[17]	[-]	(18)

4. Has your organization referred any individuals or cases to the Office of Special Counsel? (CHECK ONE.)

N=75 (19)

1. [6] Yes
2. [66] No
3. [3] Don't know

PARTS II AND III ASK FOR INFORMATION ABOUT YOUR AGENCY'S DISCRIMINATION LAWS WHICH ARE APPLICABLE TO YOUR ORGANIZATION.

PART II. YOUR AGENCY'S NATIONAL ORIGIN EMPLOYMENT DISCRIMINATION LAWS

National origin discrimination refers to discriminatory actions taken by an employer as a result of one's national origin. (FOR CITIZENSHIP STATUS EMPLOYMENT DISCRIMINATION, SEE PART III, PAGE 3.)

5. Does the jurisdiction (state, county, or city) under which your organization operates have a law which prohibits national origin employment discrimination? (CHECK ONE.) (20)

1. [81] Yes (CONTINUE TO QUESTION 6.)
2. [-] No → (SKIP TO PART III, PAGE 3.)
3. [-] Don't know → (SKIP TO PART III, PAGE 3.)

N=81

6. Is this law a state, county, or city law? (CHECK ONE.)

N=74 (21)

1. [40] State law
2. [7] County law
3. [27] City law

7. Does your organization have responsibility for investigating national origin employment discrimination charges? (CHECK ONE.) (22)

1. [81] Yes (CONTINUE TO QUESTION 8.)
2. [ ] No (SKIP TO PART III, PAGE 3.)

N=81

2

8. In order for this law to be applicable under your organization's jurisdiction, what is the minimum number of employees the employer must have? (ENTER NUMBER. IF NONE, ENTER "0.") (23-24)

   Number of employees for law to apply: 0 - 15 (minimum)

9. Does your organization generally investigate and process national origin employment discrimination charges received or do you generally forward, without investigation, some or all of these cases to another agency? (CHECK ONE.) (25)

   1. [77] Keep most or all the cases — N=80
   2. [3] Keep about half the cases/refer about half → (SKIP TO QUESTION 11.)
   3. [0] Forward, without investigation, most or all the cases (CONTINUE TO QUESTION 10.)

10. If you forward, without investigation, most or all of your cases, to what organization do you forward them? (ENTER NAME OF ORGANIZATION AND ADDRESS.) (26)

    _____

    _____

    _____

11. Approximately how many national origin employment discrimination charges were filed directly with your organization in fiscal year 1987? (ENTER NUMBER. IF NONE, ENTER "0" AND SKIP TO PART III.) (27-30)

    Charges filed: Average = 67
    Median = 13
    N=77

12. Of those charges (in Question 11), about how many were related to employers' hiring or firing practices? (ENTER NUMBERS. IF NONE, ENTER "0." IF YOU DON'T KEEP RECORDS IN THIS FORMAT, CHECK "N/A.")

	Number of charges	OR	N/A (CHECK BOX)	
1. Hiring N=49	Average=9 Median=2		[ ]	(31-35)
2. Firing N=50	Average=30 Median=5		[ ]	(36-40)

PART III. YOUR AGENCY'S CITIZENSHIP STATUS EMPLOYMENT DISCRIMINATION LAWS

We are defining employment discrimination due to citizenship status as discriminatory actions taken by an employer based solely on an individual's immigration status. An example of citizenship status employment discrimination is when an employer has a policy to hire only applicants who are U.S. citizens regardless of the individual's national origin, having the effect of discrimination against non-citizens. (FOR NATIONAL ORIGIN DISCRIMINATION, SEE PART II, PAGE 2.)

13. Does the jurisdiction under which your organization operates (the state, county, and/or city) have a law prohibiting citizenship status employment discrimination when national origin is not a factor? (CHECK ONE.) (41)

    1. [7] Yes (CONTINUE TO QUESTION 14.)
    2. [71] No → (SKIP TO PART IV, PAGE 4)
    3. [3] Don't know → (SKIP TO PART IV, PAGE 4)

    N=81

14. Does your organization have responsibility for investigating citizenship status employment discrimination charges? (CHECK ONE.) (42)

    1. [7] Yes (CONTINUE TO QUESTION 15.)
    2. [0] No (SKIP TO PART IV, p.4)

    N=7

15. In order for this law to be applicable under your organization's jurisdiction, what is the minimum number of employees the employer must have? (ENTER NUMBER. IF NONE, ENTER "0.") (43-44)

    N=7

    Number of employees for law to apply: 0 - 15 (minimum)

16. Does your organization generally investigate and process citizen status employment discrimination charges received or do you generally forward, without investigation, some or all of these cases to another agency? (CHECK ONE.) (45)

    1. [6] Keep most or all the cases → (SKIP TO QUESTION 18.)
    2. [0] Keep about half the cases/refer about half
    3. [0] Forward, without investigation, most or all the cases (CONTINUE TO QUESTION 17.)

    N=6

17. If you forward, without investigation, most or all of your cases, to what organization do you forward them? (ENTER NAME OF ORGANIZATION AND ADDRESS.)

(46)

18. Approximately how many citizenship status employment discrimination charges were filed directly with your organization in fiscal year 1987? (ENTER NUMBER. IF NONE, ENTER "0" AND SKIP TO PART IV.)

(47-50)

Charges filed: Total=6

N=7

19. Of those charges (in Question 18), about how many were related to employers' hiring or firing practices? (ENTER NUMBERS. IF NONE, ENTER "0." IF YOU DON'T KEEP RECORDS IN THIS FORMAT, CHECK "N/A.")

	Number of charges	OR	N/A (CHECK BOX)	
1. Hiring	Total=1 N=1		[ ]	(51-54)
2. Firing	Total=1 N=1		[ ]	(56-59)

PART IV. IRCA AND YOUR JURISDICTION'S LAW

We are interested in finding out how your laws compare with IRCA.

20. Under IRCA, if an employer is trying to decide between two individuals to fill a specific job, and both are equally qualified for the job, the employer may give preference in hiring to the U.S. citizen.

If, in this situation the employer hired the U.S. citizen, could this constitute a violation of any law which your organization investigates or enforces? (CHECK ONE.)

N=77 (62)

1. [9] Definitely yes
2. [25] Probably yes → (CONTINUE TO QUESTION 21.)
3. [21] Uncertain
4. [18] Probably no
5. [4] Definitely no → (SKIP TO QUESTION 22.)

21. Please explain the circumstances under which this would constitute a violation under your law.

(62)

22. Are aliens who are not authorized to work in the U.S. covered by your jurisdiction's law against an employer's discriminatory hiring/firing practices? (CHECK ONE BOX IN EACH ROW. IF YOUR JURISDICTION DOES NOT HAVE A NATIONAL ORIGIN OR CITIZENSHIP STATUS LAW, CHECK COLUMN 4, "NOT APPLICABLE.")

YOUR JURISDICTION'S LAWS	Yes (1)	No (2)	Don't know (3)	N/A (4)	
1. National origin N=79	47	17	13	2	(63)
2. Citizenship status N=79	3	3	2	71	(64)

PART V. YOUR ORGANIZATION

Finally, we would like to find out something about the approximate size of your organization and the person who filled out this questionnaire.

23. Approximately, how many charges of discrimination were filed directly with your organization in fiscal year 1987? (ENTER NUMBER. INCLUDE ALL CHARGES, SUCH AS SEX, AGE, EMPLOYMENT ETC.)

(65-69)

Total charges: Average=810
Median=277

N=78

24. Please provide the following information in case we need to contact you for any follow-up questons. Please remember that you responses will be confidential.

Name: _____

Title: _____

Organization: _____

Telephone number: (_____) _____
(Area code) Number

GGD/MS/7-88

PART VI. COMMENTS

25. If you have any comments regarding any previous questions, please use the space provided below. If necessary, additional sheets may be attached.

(70)

PLEASE REMEMBER TO RETURN YOUR QUESTIONNAIRE IN THE ENCLOSED, PRE-ADDRESSED ENVELOPE.

THANK YOU FOR YOUR HELP.

5

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