U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Verification Division
Washington, DC 20529-2620

U.S. Citizenship and Immigration Services

**AILA Verification and Documentation Liaison Committee**
**Joint Meeting with USCIS Verification Division and ICE Homeland Security Investigations**
**Washington, DC**
**Agenda**
**April 16, 2015**

On April 16, 2015, The American Immigration Lawyers Association (AILA) Verification and Documentation Liaison Committee met with the USCIS Verification Division and ICE Homeland Security Investigations in Washington, DC. The questions below were submitted by AILA and responses were provided by the USCIS Verification Division.

1. **Rehiring Rules**

In certain industries, such as academia and agriculture, it is common for employers to terminate and rehire the same employees year after year. The M-274 (rev. 4/30/13), on page 24, states that in a rehire scenario, employers may rely on the prior I-9 and update Section 3 so long as the rehire is within "three years of the date that his or her *previous* Form I-9" was completed.[1] However, page 26 states that the employer can rely on the earlier I-9 only if the rehire occurs within three years of the time the *original* I-9 was completed. As the rehire rules were developed to lessen the burden on employers of seasonal workers, such employers should be permitted to rely on the original I-9, regardless of when it was created, so long as (a) the last rehire date reflected in Section 3 is no more than three years before the new rehire date; and (b) the employer follows the guidance on page 24 of the M-274 and inspects the work authorization information to make sure there is no need to re-verify. Please confirm that this interpretation of the rehire rules is correct. Would USCIS please update the M-274 to provide clarification on the rehire rules?

**USCIS Response:** The correct interpretation of the DHS regulations provides that in rehire situations, the employer may rely on the previously completed Form I-9, if the individual is hired within three years of the date of the initial execution of such Form I-9; not within three years of the last rehire date. See 8 CFR 274a.2(c)(1).

[1] USCIS M-274 Handbook for Employers with Guidance for Completing Form I-9, AILA Doc. No. 13043069, *available at* http://www.aila.org/infonet/uscis-m-274-handbook.

If an employer's seasonal workers are continuing in their employment and have a reasonable expectation of employment at all times, DHS regulations do not require a new I-9 and the previously completed I-9 may be relied upon. See the M-274, pages 25-26 for more information.

2. **Omissions in New I-9 Fields**

In the Frequently Asked Questions regarding Section 1 of the I-9 form on I-9 Central, the following two questions and answers appear sequentially:[2]

> Q. Can employees leave certain fields blank or are they required to use "N/A" in blank fields?
>
> A. In most cases employees can leave certain fields blank if they do not apply, but it is recommended to use "N/A." However, if the passport number and country of issuance fields in Section 1 do not apply, the employee must write "N/A." Follow the Form I-9 Instructions when determining if an N/A is required. The instructions state when an employer or employee may use N/A or must use N/A. Required fields must be completed with either the information requested or "N/A." Failing to provide a response in a required field may be considered a verification violation.
>
> Q. Can my employee leave any part of Section 1 of Form I-9 blank?
>
> A. Employees must complete every applicable field in Section 1 of Form I-9 with the exception of the fields requesting your employee's telephone number, e-mail address, and Social Security number. However, your employee must enter their Social Security number in this field if you participate in E-Verify.

While this is not incorrect, we are concerned that the two separate answers may cause confusion. We often receive questions asking whether all fields in Section 1 must be completed or if some fields are voluntary. We also receive questions as to whether employers are subject to fines for employee omissions in Section 1. Therefore, we suggest that it might clarify things if this issue was addressed with a single combined question and answer.[3] For example:

> Q. Can my employee leave any part of Section 1 of the Form I-9 blank? When is an employee required to use "N/A" in blank fields in Section 1?
>
> A. Employees must complete every applicable field in Section 1 of the Form I-9 with the exception of the fields requesting the employees' telephone number, e-mail address, and Social Security number; except that the employee must enter the Social Security number if the employer participates in E-Verify. Follow the form I-9 instructions when determining if a field can be blank or if "N/A" is required if the question does not apply to the employee. The instructions state when an employee may use N/A or must use N/A. Required fields must be completed with either the information requested or "N/A." For example, if the employee checks Box 4 as an alien with temporary work authorization, the employee must either provide the passport number and country of issuance Section 1 or must write "N/A." Failing to provide a response in a required field may be considered a verification violation.

[2] I-9 Central: Section 1- Employee Information and Verification, *available at* http://www.uscis.gov/faq-page/i-9-central-section-1-employee-information-and-verification.

[3] Alternatively USCIS should consider modifying the first answer by removing the first sentence that suggests that employees can leave fields blank, which appears to conflict with the remainder of the two responses.

**USCIS Response:** USCIS thanks AILA for this comment and will consider consolidating the two questions.

**Form I-9: Electronic I-9**

3. The DHS FY 2016 budget request indicates that USCIS has finalized a process whereby an employer could complete and store an I-9 on the USCIS website and auto-populate E-Verify. Can you please provide an update on the status of this project, including the estimated launch date? Also, will USCIS provide employers with an opportunity to comment prior to implementation?

   **USCIS Response:** The FY 2016 budget request was drafted in 2014 and project plans are subject to change based on other priorities and resource availability. At this time, USCIS is not currently pursuing a project related to completing and storing Forms I-9 on the USCIS website or auto-populating E-Verify. However, if this project was undertaken, USCIS would provide notice and opportunity for comment prior to implementation.

**Form I-9: Expanded DACA/DAPA**

4. Assuming the injunction is lifted and USCIS proceeds with implementation of expanded DACA and DAPA, will USCIS confirm that its guidance for employers in the original DACA FAQs that helps employers understand how to respond to an employee's request to update identity or work authorization upon receipt of a DACA-based EAD will apply under expanded DACA and DAPA?

   **USCIS Response:** We will consider changing employment eligibility related guidance, if necessary, based on the outcome..

**Form I-9: 3-D Barcode**

5. USCIS has previously stated that the 3-D barcode on Form I-9 is a place holder for possible future use. Is there any update on plans to use the 3-D barcode?

   **USCIS Response:** USCIS is developing a new enhanced version of Form I-9. When that new version is released, the box currently labeled for a 3-D bar code will be used to provide a Quick Response Code or QR code. A QR code is a three-dimensional machine readable code, represented as a series of black and white squares, which contains information about the item to which it is attached. QR codes generally provide quicker readability and greater storage capacity than a standard barcode. The enhanced Form I-9 will capture the information that is entered on the form and will encode that information in the QR code box. The code can then be read using a QR-reader enabled smart phone or computer.

**Form I-9: I-9 Central**

6. Accompanying this agenda as Attachment 2 is a portion of I-9 Central content, last updated or revised on June 20, 2013, which appears to be no longer available on I-9 Central. Would USCIS please confirm whether or not this content remains available on I-9 Central? If not, when and why was it removed?

   **USCIS Response:** The I-9 Central Questions & Answers contained in Attachment 2 were revised into a new FAQ format in March 2014 which was made available when USCIS deployed new website software. Category headers were revised and the questions and answers were reviewed and reorganized. The majority of the questions are located on I-9 Central. Some questions were revised due to a character count limitation in the question field. Ten questions were removed because they were no longer seen as relevant.

7. In the I-9 Central section, "Who needs to Complete Form I-9," the following question and answer appear:[4]

   > Q. Do the owners of a company have to complete Form I-9? What if one of the company's owner's refuses to complete Form I-9?
   >
   > A. Form I-9 requirements are triggered by the hire of an individual for employment in the United States. A "hire" is the actual commencement of employment of an employee for wages or other remuneration. If any of the owners are "employees" of the company, then each owner must complete Form I-9. Failure to comply with all Form I-9 requirements could result in civil penalties against the employer.

   While it is true that a partial owner of an enterprise might be more appropriately considered an "employee" rather than an owner, thus triggering an I-9 requirement, "[t]he general rule is that an individual is not an employee of an enterprise if the individual has an ownership interest and controls all or part of the enterprise." *See Santiago's Repacking, Inc.*, 10 OCAHO 1153, at 4-5 (2012): In light of *Santiago*, we suggest that the answer above be revised to include the notion that an I-9 is not required for "controlling owners" and that whether an individual with an ownership stake has a controlling role in the enterprise, and is thus exempt from I-9 requirements, turns on an individualized assessment of the facts.

   **USCIS Response:** USCIS appreciates your raising this issue. USCIS will review its posted guidance and consider whether it should be revised.

**RIDE and Other State Issues**

8. We understand that Nebraska has become the 5th state to join the RIDE program (along with Florida, Iowa, Mississippi, and Idaho). What factors are involved in determining which states join the program?

   **USCIS Response:** The only factors that are used to determine if a state or jurisdiction is eligible for the RIDE program are:

[4] I-9 Central: Who Needs to Complete Form I-9?, *available at* http://www.uscis.gov/faq-page/i-9-central-section-1-employee-information-and-verification.

- Must be a state or jurisdiction of the United States of America.
- Must have a relationship with AAMVA (American Association of Motor Vehicle Administrators).
- Must express an interest in participating in RIDE.

RIDE is a voluntary program that accepts new participants on a first come first serve basis.

9. AILA has learned that Arizona, Iowa and Delaware are working with a private technology vendor to issue *virtual* driver licenses to state residents. As contemplated, participating states would adopt an application that would allow licensed drivers to access a digitally encoded license that would take the place of the conventional plastic card.

   a. Is the Verification Division aware of this development and has it initiated discussions as to how electronic driver's licenses will be integrated into the employment verification process?

   b. Does E-Verify/RIDE envision an electronic integration between E-Verify and the states who issue such licenses?

   **USCIS Response:** The Verification Division is aware of the efforts to develop virtual driver's licenses for residents of some states. These efforts are in their early stages and we are in the process of evaluating virtual licenses and their potential use in the employment verification process, including options for the RIDE program. When we have reached decisions about whether and how virtual licenses might be used, we plan to publish updated information and guidance for the public.

10. In December 2014, the Texas Governor signed an Executive Order requiring all companies that do business with Texas state agencies to run all current and new hires through E-Verify (Executive Order attached as Attachment 3.) Has the Verification Division had correspondence or other communication with the Texas Governor's office or other Texas State agency to clarify that it is impermissible for employers (except for those covered by the federal FAR clause) to conduct E-Verify queries on current employees? If so, can you provide AILA a summary of such communications? If not, would the Verification Division be willing to engage with the Texas Governor's office to that effect?

    **USCIS Response:** Employers who enroll in E-Verify are responsible for complying with all requirements of the E-Verify program including those stated in the Memorandum of Understanding (MOU) in which employers agree not to verify employees hired before the effective date of their MOU. With limited exceptions, E-Verify employers should not verify their existing employees. USCIS is not commenting on requirements related to the Texas Executive Order.

    USCIS remains committed to educating and informing all interested stakeholders across the United States about E-Verify. Our multi-media educational tools, website and customer support are currently available to employers and employees in Texas to assist

them with understanding their E-Verify rights and responsibilities and using the system in accordance with E-Verify requirements. We welcome the opportunity to work with Texas based organizations, including the Texas Governor's Office, to reach out to employers and employees and share E-Verify information.

**E-Verify: Reverification**

11. During our fall 2014 liaison meeting with the Verification Division, USCIS discussed its work on a new feature that would include reverification. Please provide any updates on the E-Verify reverification feature.

    **USCIS Response:** USCIS is currently working to publish a Paperwork Reduction Act (PRA) notice for the *Federal Register*, anticipated for publication later this year, which will include Reverification.

**E-Verify: Confirmation Questions**

12. Has USCIS made any progress toward the addition of a feature that would allow an employer to provide an explanation as to why it continued to employ an individual after receipt of an FNC?

    **USCIS Response:** USCIS is exploring the possibility of adding a feature that will allow employers the ability to provide a reason why an employee was retained after receiving an E-Verify FNC. There is no additional information regarding the status of the project at this time.

13. A recent Social Security Office of Inspector General audit report states that during calendar years 2008-2011, SSA received over 4,000 E-Verify queries requesting verification of 3,873 SSA account holders whose birth dates were before 1901, making these account holders 112 years of age or older.[5] The report further noted that in only two of these instances did the SSN, name, and date of birth input into E-Verify match the SSA records for the account holder. We understand that one of the reasons an E-Verify query results in a TNC is that the employee's name, SSN, and birthdate in SSA records do not match the information provided to E-Verify in Section 1 of the I-9.

    a. Please confirm that the system confirms these data points for each E-Verify query.

    **USCIS Response**: E-Verify compares the information, including, but not limited to, name, date of birth, and social security number, provided on an employee's Form I-9, Employment Eligibility Verification with records available to DHS to confirm authorization to work in the United States.

    b. Can E-Verify report on the number of TNCs reported on an annual basis based on an SSA date of birth mismatch?

[5] http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-06-14-34030.pdf.

**USCIS Response:** USCIS currently does not publish annual rates of TNCs based on specific mismatch categories, but does publish annual data on aggregate TNC rates, which can be found on our 'Program Statistics' web page.

c. What factors explain the discrepancy recognized by the Inspector General?

**USCIS Response:** USCIS cannot speak to the factors reviewed by the OIG.

d. How does USCIS deal with a situation where the data matches but the resulting age gives rise to suspicions?

**USCIS Response:** USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

e. Similarly, if a new hire over the age of 18 provides a record which would be acceptable for I-9 purposes only for a person under 18 years of age (e.g., school record), does E-Verify issue a TNC or some other error message?

**USCIS Response**: E-Verify compares the information provided on an employee's Form I-9, Employment Eligibility Verification with records available to DHS to confirm authorization to work in the United States. If the information from the Form I-9 does not match the records available to DHS, E-Verify will return a TNC result and the employee will be required to take action to resolve the discrepancy.

14. For the E-Verify response "employment authorized 'with additional verification that can be requested by the employer,'" what is the purpose of the language in the internal quotations? When is it appropriate for an employer to ask for additional verification? What if anything is an employee required to provide in response?

**USCIS Response**: E-Verify allows an employer to request an additional name review when E-Verify issues a case result of "employment authorized," but the name returned in E-Verify does not match exactly the name on Form I-9. Instructions for the Request Name Review process are available in E-Verify User Manual (M-775), pages 23-25 (see below). A name review may be requested by the employer without any additional information or action from the employee.

**REQUEST NAME REVIEW**

In some cases E-Verify issues a case result of 'Employment Authorized,' but the name returned in E-Verify does not match exactly the name on Form I-9. This happens when the information matches, but there are name variations in DHS records. In this case, request a review of the employee's name so E-Verify can issue a final case result. To request a name review, follow the steps outlined in the 'Request Name Review - Process Overview.'

**IMPORTANT:** Do not use this functionality in a discriminatory manner (e.g., based on an individual's race, national origin or ethnicity).

**REQUEST NAME REVIEW – PROCESS OVERVIEW**

- Compare the name displayed in the yellow box with the name you entered which is shown in the white box.
- If the names match, click 'Close Case.'
- If the names do not match, request DHS review of the case by clicking 'Request Name Review.'

15. What is an employer's obligation when it receives a TNC for an employee whose employment terminated before the TNC was issued?

    **USCIS Response:** The Employer should close the E-Verify case and select the appropriate case closure code:

    - **The employee voluntarily quit working for the employer.**
      The employee chose to stop working for the employer.

    - **The employee was terminated by the employer for reasons other than E-Verify.**
      The employer terminated the employee for reasons unrelated to E-Verify.

**E-Verify: Guidelines and Sanctions for MOU Noncompliance**

16. We understand from our fall 2014 liaison meeting that USCIS was developing a process to allow sanctions of employers for E-Verify MOU noncompliance. What is the status of these developments?

    **USCIS Response:** The project is not yet completed. If and when the project is close to completion, E-Verify expects to publish this new process in a Federal Register notice prior to implementation.

**E-Verify: Complex Employers**

17. An employer with multiple locations nationwide has enrolled in E-Verify for all of its locations. However, the employer would now like to remove some of those locations from E-Verify (no further need for STEM extensions or expiration of a government contract, for example). While we understand that there is a 30-day advance written notice before an employer closes an E-Verify account, it would seem that this would not apply in a situation where the employer wants to continue in E-Verify at certain designated hiring sites but not others. We expect that an employer would accomplish this by updating its profile to exclude the specific hiring sites. Would USCIS consider adding language to the E-Verify manual to explain how an employer can accomplish this?

    **USCIS Response**: In the example provided above, it appears the employer with multiple locations has chosen to sign one MOU and listed each of its locations as a hiring site. If a company would like to delete hiring sites from its E-Verify account, its program

administrator can do so from the E-Verify website, as described in the M-775, E-Verify User Manual, and "Add New Hiring Site(s)" which discusses making changes to hiring sites within an E-Verify account. Deleting hiring sites does not require a 30-day notice. USCIS will consider including this guidance on its website.

Note: A company can update the hiring sites as part of its profile and the E-Verify case information associated with the deleted hiring sites will still be available.

18. A parent company with multiple subsidiaries and multiple E-Verify MOUs discovers that some employees were E-Verified under the E-Verify MOU for the wrong subsidiary, though all employees were confirmed as work authorized. How should an employer handle this situation? Is notification to E-Verify or some other step required? What if the employee is no longer with the company?

    **USCIS Response:** E-Verify should be notified of this circumstance by calling E-Verify Customer Support at 888-464-4218 or emailing us at E-Verify@dhs.gov.

    If the case is still open, and the employee still works for the employer, the employer should close the case as 'The case is invalid because data entered is incorrect.' The employer should then create a new case for the employee under the correct E-Verify account.

    If the case is still open, but the employee no longer works for the employer, the employer should close the case and select the appropriate closure code:

    - **The employee voluntarily quit working for the employer.**
      The employee chose to stop working for the employer.

    - **The employee was terminated by the employer for reasons other than E-Verify.**
      The employer terminated the employee for reasons unrelated to E-Verify.

    The employer should not create a new case for the employee under the correct employer account, but may attach a note to the employee's Form I-9 explaining the situation and sign and date the note.

    If the case is already closed, the employer should not create a new case for the employee under the correct employer account. The employer may attach a note to the employee's Form I-9 explaining the situation and sign and date the note.

**E-Verify: FAR**

19. We understand that many federal contracting agencies include the FAR E-Verify clause as a matter of course in all federal contracts over a certain threshold value, even where the contract is for purchase of commercial off-the-shelf (COTS) goods that are exempt from the FAR E-Verify requirements. Because the clause includes the COTS exemption, some agencies include the clause and leave it to the company to determine whether COTS applies or not. When this occurs, (and assuming it is not possible to negotiate the clause out, even if the contracting agent agrees that with the COTS characterization), is it correct that the

employer should not enroll in E-Verify as a federal contractor because a COTS employer is not required to run current employees through E-Verify? (Otherwise, the employer would have to select a method for running queries on existing employees--which it should not have to do if it is COTS exempt). If a COTS employer with a contract that includes the clause registers as a federal contractor but does not run queries for current employees, does it matter E-Verify? Does E-Verify Monitoring and Compliance look for instances where a federal contractor enrolls as such but never runs queries on existing employees?

**USCIS Response:** If the contract includes only commercially available off-the-shelf (COTS) items and related services, then the contract should not contain the FAR E-Verify clause. If the clause is part of the contract and the federal contractor is not using E-Verify as required, this poses a problem. We suggest speaking with the government contracting official in cases like these so that the problem can be resolved via a contract modification. Regarding your monitoring and compliance question, USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

**E-Verify: Communication to Employees**

20. Would USCIS please provide AILA with a copy of the template e-mail correspondence that E-Verify sends to the employee in each of the following circumstances:
    - Notify employees of case events such as the issuance of a TNC;
    - Notify employees when a TNC has been referred to the SSA or DHS;
    - Remind employees to resolve the TNC; and
    - Inform employees to update information with SSA.

    **USCIS Response:** The sample email notices E-Verify sends to employees are posted on E-Verify's website on the 'Employee Email Notifications' page. The page may be accessed through the 'Employee Email Notification' link under 'For Employees' or 'Publications.' USCIS has updated the website so that the employee email notifications can more easily be found.

21. Can an employee who receives an e-mail under one of the circumstances listed above reply directly to the email? Is the reply account monitored? Does such correspondence become part of the employee's E-Verify file?

    **USCIS Response:** No. The email sent to employees tells them to not respond to the email. The employee should instead use the contact information for E-Verify provided in the email.

22. Will E-Verify consider adding an option where an employer can provide a representative's e-mail address so that an appropriate person receives a copy of notifications between the employee and E-Verify?

**USCIS Response:** E-Verify will consider options that will allow an employee to provide a representative's e-mail address so that employee e-mail notifications can be sent to an employee's representative.

23. We understand that an employer's participation in an M&C inspection is voluntary. Does E-Verify track those employers who have or have not consented to the M&C inspection? To the extent that an employer does not consent, what if any actions does M&C take?

    **USCIS Response:** Employer participation is voluntary. USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

24. AILA has learned that some user exchanges resulted in M&C issuing written summaries and specific recommendations for improving problems. Would it be possible for E-Verify to post these summaries (without disclosing company details), or other tips that result from these recommendations so that other employers and advisors can benefit from the M&C work?

    **USCIS Response:** M&C provides specific guidance to employers based on their particular misuse(s) of the system. USCIS does provide an M&C brochure, Self-Assessment Guides that offer tips to employers and an informational page that is available on the USCIS Monitoring and Compliance web site and will consider adding examples to the website.

25. Employers using an E-Verify Web Services Employer are unable to confirm in E-Verify that they have printed the Further Action Notice (FAN). As a result, these employers continue to receive M&C inquiries regarding the failure to notify employees of a TNC even when such action has been properly documented in the vendor's system. How should an employer respond in these situations? While we understand and appreciate that this functionality will be restored, employer clients are still concerned that this system glitch will injure their compliance reputation or result in unnecessary (and burdensome) desk reviews or site visits.

    **USCIS Response:** If the employer receives a phone call from E-Verify, the employer should be prepared to review its processes and explain how FAN letters are delivered to new hires. Employers are not required to participate in a site visit or desk review. We have heard from employers who have participated in site visits or desk reviews that they have found them to be very useful and an excellent learning experience.

**E-Verify: Technical Issues**

26. We understand that a duplicate case alert appears when the same employer creates a case with the same SSN within 30 days of the original case creation. Does this notice occur for both direct and web-services users? How many duplicate case alerts have been initiated?

**USCIS Response:** This notice occurs for both direct and web-service users. ICA Version 26 – the current version – was the first ICA to include the duplicate case alert. The next two Versions (27 & 28) both require Web Services to provide the duplicate case alert. Since deployment, there have been 168,279 duplicate case alerts issued.

27. We understand that for the Further Action Notice for Web Services Users, E-Verify no longer prepopulates the E-Verify Employer Agent name. Is that correct and if so, what is the reason for this change? Must an employer fill in this field?

    **USCIS Response:** This is correct; the change was instituted in Summer 2014 in response to feedback that we received from our customers. Customers found that fields were incorrectly pre-populated and they preferred to do away with the pre-population. Since the change, fields that were previously incorrectly pre-populated are now left blank so employers should manually complete these fields.

28. Is it appropriate for the E-Verify confirmation page to display the employee's work authorization status, even though it appears that the system does not always verify status? For instance, we are aware of cases where the employee in Section 1 selected U.S. citizen, and for Section 2 verification, presented a driver's license and Social Security card, and the E-Verify result was "work authorized citizen" even though it turns out the employee was an LPR. Similarly, we have seen situations where a LPR selects "alien authorized to work" in Section 1: and the employer receives an E-Verify employment authorized confirmation that states the worker is an alien with authorized status, even though the employee is actually an LPR.

    **USCIS Response:** E-Verify's confirmation page does not display the employee's citizenship or immigration status. When an employee receives employment authorization, the screen reads: "Jane Doe is authorized to work. To complete the verification process, click Close Case." If you provide us the case numbers, we will investigate the specific cases to which you refer.

29. When the photo match is required, but the photo match tool cannot function because DHS does not have the photograph or there are technical difficulties in the display, why does E-Verify require the employer to select "yes, the photo matched" when that is not an accurate response? Is it possible to add an option that states "No Photo Available?"

    **USCIS Response:** USCIS is exploring the possibility of adding a feature that will allow employers the ability to indicate during photo matching that no photo was available. There is no additional information regarding the status of the project at this time.