Frequently Asked Questions Regarding E-Verify

E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), which is part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify has been available for every business in the U.S. since late 2004. Unless required by state law, or unless your company is a federal contractor working on a federal project subject to the federal E-Verify regulation, participation in E-Verify currently is voluntary. The purpose of E-Verify is to provide an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of the new hires’ Social Security numbers.

1. **How does an employer register for participation in E-Verify?**

Employers can register for participation in E-Verify online by visiting [www.uscis.gov/e-verify/e-verify-enrollment-page](http://www.uscis.gov/e-verify/e-verify-enrollment-page), which provides instructions for completing the registration process. At the conclusion of the registration process, an employer will be asked to read and sign a memorandum of understanding (MOU), which is a legal document setting forth the terms and conditions for participating in E-Verify.

Among other requirements, the MOU requires the employer to display notices supplied by USCIS regarding participating in E-Verify. The MOU also requires the employer to provide to the SSA and USCIS the names, title, addresses and telephone numbers of the employer representatives to be contacted regarding E-Verify.

The MOU requires the employer to make two slight modifications to the I-9 process. First, though the standard I-9 process does not allow the employer to specify which documents it will accept from the list of acceptable documents, the MOU requires employers to only accept a List B identity document that contains a photograph. Second, though maintaining copies of documents provided for purposes of completing Section 2 of the Form I-9 is optional, if an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (employment authorization document), the MOU requires the employer to photocopy the document and retain the photocopy with the employee’s Form I-9.

Importantly, the MOU requires the employer to agree not to use E-Verify procedures for pre-employment screening of job applicants. Except for certain cases involving federal contractors, E-Verify is to be used only to verify the work authorization status of new hires.

2. **If an employer registers to participate in E-Verify, does he or she still need to complete an I-9 for each new hire?**

Employers still are required to complete an I-9 for each new hire. Indeed, the information provided on the I-9 form is used to verify a new hire’s work authorization status through use of E-Verify.

3. **How does E-Verify work?**
When an employer hires a new employee, federal law requires the employee to complete Form I-9 within the first three business days of hire. For those employers registered to participate in E-Verify, new hires are required to provide their Social Security numbers in Section 1 of the Form I-9 (otherwise, for employers not registered with E-verify, the employee is not required to provide his or her Social Security number on the Form I-9).

Once the I-9 is fully completed, the employer logs onto E-Verify to create a new case within three business days of the day of hire. The employer then starts the new case by providing the information required by the system, all of which comes from the Form I-9. If the employee provided a Form I-551 Permanent Resident Card, a Form I-766 Employment Authorization Document, or a U.S. Passport or Passport Card, the employer automatically will be prompted to compare the employee’s photo ID with a photo displayed in E-Verify. This helps ensure the document provided is valid. Once the employer inputs all the information into the system, he or she then clicks the “Submit” button. The information about the employee is transmitted immediately to the SSA.

The MOU allows the SSA up to three federal work days to provide confirmation or Tentative Nonconfirmation of the individual’s Social Security number. If the Social Security number and the name match SSA records, the employer receives an Employment Authorized message within two or three seconds and the process is finished. The employer then records the case verification number on the employee’s Form I-9 or prints the screen containing the case verification number and attaches it to the employee’s Form I-9. If the Social Security number and the name do not match SSA records, the employer receives a Tentative Nonconfirmation and a Further Action Notice.

If the Social Security number and name match but the SSA cannot verify that the employee is authorized to work (the Social Security number may have been issued "not for employment purposes"), the employer receives a DHS Verification in Process message indicating that DHS is attempting to verify work authorization. DHS also has three federal work days to provide confirmation that employment is authorized or a Tentative Nonconfirmation of employment eligibility. If DHS finds a match, it tells the employer and the process is finished. The employer then records the case verification number on the employee’s Form I-9 or prints the screen containing the case verification number and attaches it to the employee’s Form I-9. If DHS is unable to find a match, a Tentative Nonconfirmation is issued, along with a Further Action Notice.

If a Tentative Nonconfirmation is issued by either SSA or DHS, the employer is instructed to review it privately with the employee. If the employee chooses not to contest the Tentative Nonconfirmation, the result is considered final, and the employer may terminate the employee based on E-Verify. The employer then closes the case and indicates in E-Verify whether the employee was terminated. If the employee chooses to contest the Tentative Nonconfirmation, the employer then is required to return to the E-Verify system to “refer” the case. If the employee contests a Tentative Nonconfirmation from DHS that was issued because of a photo mismatch (meaning the employer indicated the photo displayed by E-Verify did not match the photo on the employee's document), the employer also must make a copy of the document the employee provided and submit it to DHS for review. The employer may either scan and upload
When the case is referred, the system then generates a Referral Date Confirmation document, which instructs the employee to either visit an SSA field office or contact DHS by phone, depending on which entity issues the Tentative Nonconfirmation, and to do so within eight federal work days to attempt to resolve the issue. The MOU requires the SSA and DHS to provide notice that employment is authorized or to issue a Final Nonconfirmation of employment eligibility within 10 federal work days of the date of the referral letter. If additional time is necessary, either DHS or SSA will provide additional verification instructions. In that case, the employer will receive a “Case in Continuance” message.

In some cases, SSA will prompt an employer to review and correct the employee information that was entered into E-Verify and update the case by issuing a Review and Update Employee Data notice. This occurs when an employee who has received a Tentative Nonconfirmation from SSA visits SSA, and SSA determines there are no errors in the employee's record. It may be that the employer made a typing error in E-Verify or the employee provided incorrect information on his or her Form I-9, which would result in a Review and Update Employee Data notice.

If the employee does not visit SSA, after 10 federal working days of the referral date, E-Verify automatically changes the employee’s status to a Final Nonconfirmation. If this issue is one involving DHS and the employee fails to contact DHS within eight federal working days of the referral date, E-Verify automatically will change the employee’s status to DHS No Show after 10 federal work days from the referral date. After receiving a DHS No Show notification, the employee may be terminated.

The MOU specifically provides that employers must notify DHS if they continue to employ any employees after receiving a Final Nonconfirmation notice or a DHS No Show notice. A failure to so notify DHS subjects the employer to a civil money penalty between $550 and $1,100 for each failure to notify and also subjects the employer to a rebuttable presumption that he or she has knowingly employed an unauthorized worker.

4. **What if an employee does not have a Social Security number but is otherwise able to prove identity and work authorization status?**

If an employee that is otherwise able to provide his or her identity and work authorization status does not have a Social Security number, perhaps because he or she has applied for a number but not yet received it, the employer can wait to run an E-Verify query. In this instance, the employee must be allowed to continue to work, and the employer should note on the Form I-9 why an E-Verify query has not yet been run. Once the Social Security number is available, employers are instructed to create a case in E-Verify. If the Social Security number is not provided until after the first three business days following the date of hire, the E-Verify system will prompt the employer to enter a reason for the delay; employers are instructed to select “Awaiting Social Security number.”
5. If an employer uses E-Verify and it turns out one of the individuals he or she hires is not authorized to work in the U.S., can the employer be held liable?

Employers who participate in E-Verify in good faith cannot be held liable for hiring unauthorized workers. An employer who participates in E-Verify and verifies work authorization is presumed to have not knowingly hired an unauthorized worker. Participation in E-Verify does not, however, provide protection from worksite enforcement.

6. A company has more than one office. Its offices are located in different states. However, it does all hiring out of one central office. Can it participate in E-Verify? Do all of its locations need to participate in E-Verify?

A response to this question requires an understanding of the difference between a “verification site” and a “hiring site” under E-Verify. Verification sites are locations where registered E-Verify users create verification cases. Typically, a verification site is where the company's human resources staff takes the information from an employee's Form I-9 and begins a case in E-Verify. Hiring sites are locations where the employer’s employees are hired. Typically, a hiring site is where an employee completes Form I-9. If, as in this example, the employer begins cases in E-Verify at the hiring site, that site is both a verification location and a hiring site.

For companies with multiple locations that hire from only one central location, during registration with E-Verify, the individual at the site that will be verifying new hires must select “multiple site registration” and give the number of sites the company will be verifying. Not every site needs to be enrolled in E-Verify. Employers are permitted to choose which sites to enroll and to add additional sites at a later time.

7. What happens if a company opens a new office location after registering to participate in E-Verify?

If an employer chooses to have the new office location participate in E-Verify, he or she will need to amend the number of hiring sites registered to participate in E-Verify.

8. What if each location does its own hiring?

Employers with multiple locations that have each location do their own hiring also must decide whether each location also will be a verification site using E-Verify to verify the employment eligibility of its new hires.

Importantly, E-Verify only permits employers to enter one verification location per employer access account. If the company wants to maintain only a single employer access account, it must choose one of its verification locations as the verification location of record in E-Verify. Although location information for the other verification locations is not provided to E-Verify, the employer still may run E-Verify cases at its other locations if it so chooses. Proceeding in this manner requires execution of only a single MOU during enrollment.
Alternatively, for employers who would rather enroll each verification location in E-Verify separately, the system allows for multiple accounts to be linked together with a corporate administrator account. A corporate administrator account (discuss below) allows employers to manage the accounts of each verification location enrolled in E-Verify and linked to the corporate administrator account. A corporate administrator account, as opposed to an employer access account, does not permit use of the E-Verify system to verify the employment eligibility of employees. Employers still must enroll at least one verification location in E-Verify with an employer access account to use E-Verify to verify the employment eligibility of employees. Although a corporate administrator account does not require execution of an MOU, an MOU must be signed for each verification location enrolled in E-Verify with an employer access account.

For employers with multiple locations who have each location doing their own hiring but then have a central office running E-Verify inquiries for all locations, the employer will enroll in E-Verify with a single employer access account, identifying the central office as the verification location. The employer also will use the system to identify each of its hiring sites.

9. **What is a corporate administrator for E-Verify?**

A corporate administrator is someone who has management oversight authority of the employer’s hiring sites that participate in E-Verify but generally does not perform employment eligibility verification queries. Employers may have more than one corporate administrator. The corporate administrator role enables oversight of all the company sites participating in E-Verify. To become a corporate administrator, an individual only needs to register and does not need to sign an MOU. Once registered, the individual serving in the role of corporate administrator will be able to register company sites, add or delete users at company sites, and view reports generated by company sites but cannot run employment eligibility verification queries. Employment eligibility verification queries are run by the employer’s program administrators.

10. **Once an employer registers to participate in E-Verify, how long is he or she bound to participate?**

Employers are free to terminate their participation in E-Verify at any time after providing 30 days written notice. Signing the MOU does not commit an employer to participating in E-Verify for any period of time.

11. **Can a company use E-Verify to screen applicants to ensure it does not hire an unauthorized worker?**

The MOU is clear on this issue. The earliest an employer can initiate a query with E-Verify is after an individual accepts an offer of employment and after the employer and employee complete Form I-9. Although an employer may initiate the query before a new hire’s actual start date, he or she may not pre-screen applicants and may not delay training or an actual start date based on a tentative nonconfirmation notice.

12. **What does an employer do if the E-Verify website is down and not functioning?**
If the automated system is not working, the three-day period within which you must submit your query is extended until it is again operational to accommodate the employer’s attempt, in good faith, to make inquiries.

13. **If an employer registers to participate in E-Verify, is he or she still subject to an Immigration and Customs Enforcement audit, and if so, how does the employer prove that he or she completed an E-Verify verification?**

Employers who register to participate in E-Verify agree to allow DHS to make periodic visits to their offices for the purposes of reviewing E-Verify-related records that were created during an employer’s participation in the E-Verify program. Employers prove they completed E-Verify verifications by recording the case verification number on an employee’s Form I-9 or printing the computer screen containing the case verification number and attaching the printed page to the employee’s Form I-9.

14. **What is an E-Verify Third Party Agent or Designated Agent?**

An E-Verify Third Party Agent or Designated Agent is a liaison between E-Verify and employers wishing to participate but who choose to outsource the running of employment eligibility verification queries. E-Verify Third Party Agents conduct the verification process for other employers/clients.

15. **If an employer verified an individual’s employment authorization through his or her use of E-Verify but has since come across information indicating the individual’s work authorization has expired, what should the employer do?**

E-Verify is not to be used for reverification of employment authorization. If an individual has been verified on E-Verify at the commencement of employment and presents updated documents before the expiration date for the individual’s original work authorization, all an employer must do is complete Section 3 of the Form I-9 using the information from the updated documents.

When this individual was originally hired, the Form I-9 should have been completed in its entirety. The completed Form I-9 identifies the expiration date of the individual’s work authorization. To ensure continued employment, the employer should mark a day at least 90 days before the date of employment authorization expiration to advise the individual to procure continuation of his or her work authorization status. If the expiration date arrives and the individual is unable to show his or her employment authorization status has been extended, the employer immediately should consult with legal counsel.

16. **A roofing company does some of its hiring at project sites that are far away from its main office. The individuals hired at the project sites cannot come to the office to complete the Form I-9 but rather complete the Form I-9 in front of a foreman or superintendent at the project site. The foreman or superintendent is responsible for reviewing the documents produced by the employees for purposes of completing and signing Section 2 of the Form I-9. How does the company use E-Verify in this instance?**
In this instance, once a foreman or superintendent has personally verified the new employee’s original employment eligibility documents, a foreman or superintendent can fax or send the Form I-9 to the employer’s main office via overnight delivery. The information from the Form I-9 can be used to run the employment eligibility query on E-Verify by the verification location of record, as previously discussed.