

**AILA Verification and Documentation Liaison Committee
USCIS Verification Division Meeting
Washington, DC
October 17, 2012**

I. OVERVIEW

The Verification and Documentation Liaison Committee of the American Immigration Lawyers Association (AILA) met with various leaders from the USCIS Verification Division on October 17, 2012. The committee submitted the questions listed below prior to the meeting. The answers below were discussed at the meeting.

II. QUESTIONS AND DISCUSSION

A. Paperless I-94 Process/I-9/E-Verify

Please provide us with an update on interagency preparations for the implementation of the paperless I-94 process.

- 1. How will an individual or employer know what their I-94 number is to complete the I-9 when the paper I-94 card is discontinued?**

CBP is exploring automating Forms I-94, but the I-94 number will continue to be issued after automation of Form I-94.

- 2. How will an employer authenticate the number to document the I-9 and/or enter it into E-Verify?**

Employers are not required to authenticate the numbers on the documentation provided by employees. Employers are required to examine the document and determine if it appears genuine and to relate to the individual presenting it. The document examination process for completion of Form I-9 remains the same and the E-Verify process is not changing.

- 3. What will constitute an “original” for I-9 documentation purposes?**

For original Forms I-94 issued by USCIS, there will be no changes made to the look of the document. For original Forms I-94 issued by CBP, information will be made available once CBP I-94 automation is implemented. For more information about I-94 automation, please refer to www.cbp.gov for information or contact CBP directly.

- 4. Assuming CBP still plans to issue a “dummy” I-94 number to individuals who arrive via air and sea ports, how will USCIS distinguish between “real I-94” numbers (from, e.g., I-797 approval notices for change/extension of**

status or those issued at land ports of entry) versus “dummy” I-94s?

Please contact CBP if you have questions about I-9 automation. E-Verify will continue to interface with USCIS and CBP databases to validate Form I-94 information.

5. How will this change in process be dealt with in terms of the issuance of the new I-9 form?

Form I-9 was revised to include the collection of the foreign passport number and country of issuance in response to CBP’s I-94 automation initiative.

6. Will the M-274 be updated simultaneously to provide more information on I-94 documentation that will be acceptable?

The M-274 is updated once a year and we plan to update the M-274 once the revised Form I-9 is approved. All other updates are provided on I-9 Central.

B. E-Verify Desk Audits: Plans, Process, Preliminary Results

Please provide an update on any Verification audits (“desk audits”) of employer compliance practices that have been conducted.

Note: M&C does Desk Reviews, not audits

1. How many desk reviews have been conducted?

FY 12 – 48 desk reviews conducted

2. How do you choose which employers to review? Are there specific standards that will trigger a review?

E-Verify participants who received a Compliance Call during the past 12 months and had a subsequent incident which is greater than 60 days from the date of the Compliance Call are candidates. The 60 days gives the employer time to adjust their behavior. M&C then reviews the employers who exhibited the “Failure to Print TNC Notice or Referral Notice” behavior to determine if the employer should receive a Desk Review.

Employers are selected regardless of location or type.

3. What actions do you take as a result of a review? What are the outcomes (e.g., probation or ongoing review, removal from the program, mandatory

training, etc.?)

Following the review and analysis of collected information, a Final Recommendations Letter and Employer Recommendations Report is sent to the employer to communicate any key findings and recommendations.

M&C is developing effectiveness models to evaluate compliance actions and to develop ongoing review policies and processes.

4. Will desk reviews be conducted on an on-going basis?

Yes

5. Will/Do you share data from the reviews with other agencies?

Typically this data is not shared with other agencies, but if egregious behavior is found, M&C can refer to ICE or OSC as outlined in the MOAs that we signed with each agency.

C. OSC/E-Verify Data Sharing

In March 2012, AILA engaged in an extensive discussion with USCIS concerning the MOUs with ICE and Office of Special Counsel on sharing data. (See March 2012 Liaison Minutes, attached.) At that time, USCIS stated it was considering adopting a practice of following up with employers about reports of continuing employment after a Final Non-Confirmation Notice was issued.

Has USCIS started doing this yet?

M&C has developed a detection report that identifies E-Verify participants who elect to retain employees who have been determined not work authorized and received a Final Non-confirmation (FNC) E-Verify system resolution. At this point, we have not shared any data or referred any E-Verify participants to ICE as a result of this detection report, but we continue to evaluate our compliance action options and refine our report.

Also, please provide information on the number and types of issues you have reported to OSC since our last meeting.

M&C has developed two detection reports that identify E-Verify participants suspected of engaging in immigration related unfair workforce practices.

The first detection report identifies E-Verify employers who appear to require that Lawful Permanent Residents (LPR) confirm identity and work authorization using only Forms I-9 List A documents. We have referred 43 cases to OSC. M&C also monitors whether employers are printing TNC notices and behaviors indicative of prescreening.

D. E-Verify New Memoranda of Understanding (MOUs)

Please provide details on what USCIS considers the important substantive changes to the three revised MOUs recently published in the Federal Register. Please also highlight the important changes in the three new MOUs related to web interface users. Please describe and discuss the issues that the MOU changes seek to address? The revised MOUs were done to enhance their organization, readability, and ease of use, as well as policies that have changed since these MOUs were issued.

The major changes or additions to the MOUs currently in use include:

- The MOU has made it the employer, employer agent, and client's responsibility to only grant E-Verify access to current employees with a need for E-Verify access. It also sets forth the stipulation that E-Verify access should be terminated once that employee separates from the company. This was done to address privacy concerns and to make sure that only those with legitimate reason have access to E-Verify and all the company information contained therein. (Employer: Article II.A.3, EEA: Article II.A.5, Client: Article II.B.5)
- The MOU has made it the employer, employer agent, or client's responsibility to notify DHS of any security breaches. Security breach is also defined, as well as the contact information for DHS should a security breach occur. This was also done to address privacy concerns. (Employer: Article II.A.16, EEA: Article II.A.13 & Article II.B.14, Client: Article II.A.14 & Article II.B.13)
- The MOU has stipulated that employers, employer agents, and clients not make false or unauthorized claims on their website, such as being E-Verify certified or approved by DHS. Nor shall the employer, employer agent, or client state on their website or in documents that any of language used has been provided for or approved by E-Verify. These changes were made so that employers and employer agents understand that signing the MOU does not mean that E-Verify endorses or authorizes the employer, employer agent, or client's E-Verify services or any claims made concerning such services. The E-Verify logo and trademark usage terms are also included to make sure the users are compliant and do not use them unless given permission. (Employer: Article II.A.19-21, EEA: Article II.A.15-17 & Article II.B.17-19, Client: Article II.A.17-19 & Article II.B.15-17)

- The MOU has stipulated that Federal contractors with the FAR E-Verify clause shall become familiar with the current User Manual for Federal Contractors as well as the Supplemental Guide for Federal Contractors. This is to ensure that Federal contractors have the most current information concerning policies and procedures related to E-Verify. (Employer: Article II.B.1, EEA: Article II.C.1, Client: Article II.C.1)
- The MOU makes it clear that E-Verify is not liable for any losses, financial or otherwise, if the employer, employer agent, or client is terminated from E-Verify. (Employer: Article V.B.4, EEA: Article V.B.4, Client: Article V.B.4)
- The MOU does not allow the employer, employer agent, or client to assign or transfer any of its rights or responsibilities as outlined in the MOU without prior written consent. The employer or employer agent must choose which MOU suits their needs and comply with the MOU in its entirety. (Employer: Article VI.C, EEA: Article VI.C, Client: Article VI.C)
- Language has been added to the MOU stating that any inaccurate or false information provided by the signatories to DHS may be subject to prosecution, termination, or debarment. This is to ensure that all information DHS receives from the employer is accurate and true. (Employer: Article VI.F, EEA: Article VI.F, Client: Article VI.F)
- The MOU makes it clear that it is the employer agent's responsibility, not E-Verify, to properly train its clients on E-Verify processes, policies, and procedures. (EEA: Article II.A.8, Client: Article II.B.8)
- The MOU states DHS' responsibility to train employer agents on all important changes made to E-Verify through mandatory refresher tutorials and updates in the E-Verify User Manual. This is to ensure that employer agents are aware of the most current E-Verify policies and procedures, and thus compliant with the terms of the MOU. It also gives DHS the right to require mandatory refresher tutorials for employer agents even if no changes have been made to E-Verify. (EEA: Article II.E.4, Client: Article II.D.4)
- The MOU stipulates that it is the client's responsibility to notify the employer agent if it is awarded a federal contract with the FAR clause. This was included so that employer agents are able to update the client's company profile, as it must be done within 30 days of the contract award. (Client: Article II.A.21)
- To address privacy concerns the MOU clearly states that E-Verify cannot provide the client with records once the relationship between the client and employer

agent dissolves. The client must retrieve the records from the employer agent.
(Client: Article V.B.5)

There are only two new MOUs related to Web services (Web Services Employer, Web Service E-Verify Employer Agent Client). The MOU in its entirety is significant because Web services employers and employer agent clients have not had to sign an MOU up to this point. There is one WS MOU (Web services E-Verify Employer Agent) that is currently in use and therefore updated and revised.

E. Mergers & Acquisitions

At our March 2012 liaison meeting, we engaged in an extensive discussion concerning the issues employers face in a merger/acquisition situation and the three day rule. (See March 2012 Liaison Minutes, attached.) At that time, USCIS stated that it would review the issue and law with the Chief Counsel. Please provide an update on the review, including whether USCIS is planning to move forward with our suggestions or develop alternative ones. It is AILA's position that the regulations should reflect the reality that employers reasonably need more than three days to complete new I-9s after the close of a corporate deal. The policy reasons are similar to the 180-day timeframe afforded to federal contractors who are required to reverify their workforces under the FAR E-Verify statute. Please also confirm that under the existing regulation (8 CFR 274a.2(b)) and M-274 guidance, it is permissible for the acquiring employer to initiate and complete an I-9 and run the E-Verify query before the close of the transaction as long as the buyer has offered continued employment to the employee and the employee has accepted. The M-274 provides, "Ensure that the employee completes Section 1 of Form I-9 by his or her first day of work for pay. Employees may complete Section 1 of Form I-9 at any time between acceptance of a job offer and the first day of work for pay." M-274 p. 3. It also provides that in a corporate reorganization, a successor entity may consider the employees after the close of the transaction to be either new hires or continuing employees for I-9 purposes. M-274 at pp. 20-21.) Finally, please confirm that if the deal ultimately does not close, that the successor employer does not exist, that the employees are not deemed new hires, and that the employer may destroy the I-9s and corresponding E-Verify records that were prepared for the deal that ultimately did not occur.

We agree that USCIS I-9 regulations should reflect the realities that employers face in mergers and acquisitions. USCIS continues to consider regulatory alternatives that would address the issues AILA raises in this question.

USCIS can confirm that if the deal ultimately does not close, the employees are not deemed new hires of the successor employer since that employer no longer exists. The successor employer can destroy any I-9s completed and corresponding E-Verify records prepared for the deal.

If you have questions concerning worksite enforcement and the 3-day rule, please contact ICE.

F. Remote Hires

At our March 2012 liaison meeting USCIS stated that it would discuss with Chief Counsel the remote hire issues we raised. AILA outlined some of the practical and logistical problems of requiring in-person “tactile” review of a remote hire’s documents within the three-day timeframe, and requested clarification and guidance on the permissible use of technology for remote execution of the I-9 form. Please provide an update on your efforts surrounding this issue.

The employer or authorized representative reviewing the documentation and completing Section 2 or 3 of Form I-9, must examine the original document presented by the employee. The employer or authorized representative must physically inspect the document and determine if it is genuine and relates to the individual presenting it. A remote I-9 solution that meets this regulatory requirement is acceptable.

G. RIDE Pilot Program

Please provide an update on the RIDE pilot program. Have more states joined the program? What are your short-term and long-term plans for this program?

Since launching in June 2011, the RIDE program has been an unmitigated success, validating over 400,000 documents against Mississippi records. USCIS continues to engage in discussions with several states and hopes to gain more participation by the end of FY 2013.

H. Multiple Use of Same Social Security Number

As follow-up to our prior discussion, please provide an update regarding E-Verify’s efforts to identify and address the multiple, simultaneous use of social security numbers.

M&C is continuing to monitor the usage of multiple SSNs suspected of fraudulent usage. In FY13 we hope to develop a process for preventing these SSNs from being used further in E-Verify by coordinating with SSA.

Has there been any development toward an individual’s or agency’s ability to “lock” a social security number?

VER is also developing the functionality to finalize its SelfLock program, which will allow individuals to 'lock' their SSNs from being used for verifying employment.

I. I-9 Central – Content and Updates

Please provide an overview of the process for managing I-9 Central updates and content. On March 12, 2012, AILA submitted a letter to USCIS (attached) outlining issues and concerns with I-9 Central. Please advise as to whether USCIS has considered and addressed any of the issues we presented in our March 12 letter.

Responses to Questions Regarding Overview of the process for managing I-9 Central

- **How Revisions are identified:** Revisions/Updates are identified through a variety of mechanisms, including but not limited to:
 - Stakeholder feedback
 - Changes in policies that affect Form I-9
 - Quality Management process identifies an error
- **Highlight Changes:** We agree that this would be helpful to our stakeholder. We will post a table of changes on I-9 Central when we publish the next revision of the M-274. The next revision of the M-274 will be issued once OMB approves the revised Form I-9.
- **Date of Update:** Unfortunately we cannot keep outdated documents in the public realm due to the confusion it would create and to ensure that the integrity of the Form I-9 process.
- **Other Agency Review and Approval:** Any revisions or updates are approved by USCIS legal counsel and when needed by ICE , Office of Civil Rights and Civil Liberties and Office of Special Counsel.
- **Disclaimer:** We agree that a disclaimer should be considered. We will consider this for the next update to I-9 Central.
- **Corrections:** USCIS continues to work with ICE to incorporate guidance on correcting the Form I-9 on I-9 Central.
- **Document Review:** USCIS plans to review I-9 Central content in light of AILA's recommendations, once the I-9 has been approved by OMB.
- **Acceptable Documents:**

- Permanent Resident Cards – USCIS plans to include a disclaimer on I-9 Central that the documents presented on the website are a representative sample. This will be done the next time I-9 Central is updated.
 - Driver’s License – USCIS will add guidance on the drivers licenses as a receipt on the Receipt page.
 - Tribal Documents – USCIS will make this update when I-9 Central is revised.
 - Student Employment – USCIS will make this update when I-9 Central is revised.
 - Receipts – USCIS will make this update when I-9 Central is revised.
- **Retain and Store:**
 - Retaining Form I-9, Copies of Documents - We will add language clarifying the policy on copying documents for Form I-9. USCIS will make this update when I-9 Central is revised.
 - Storing Forms I-9 Electronically – USCIS will consider adding information to I-9 Central discussing electronic I-9s.
 - Inspections – USCIS will update this page when I-9 Central is revised.
- **About the Form, Statutory Listing:** USCIS will consider this recommendation.
- **Remote Hires:** The employer or authorized representative reviewing the documentation and completing Section 2 or 3 of Form I-9, must examine the original document presented by the employee. The employer or authorized representative must physically inspect the document and determine if it is genuine and relates to the individual presenting it. A remote I-9 solution that meets this regulatory requirement is acceptable.

J. “Smart” I-9

What is the status of the Smart I-9 project? At our March 2012 liaison meeting USCIS indicated that development was proceeding and could be completed as early as FY12.

The Smart I-9 is now called the Enhanced I-9 and the I-9 Wizard. The developer is in the very early stages of requirements gathering and development. Verification continues to develop of the Enhanced I-9 which is dependent on OMB approval of the revised Form I-9.

K. L-2 Work Authorization Documentation

Can USCIS confirm its practice with respect to employment verification for E-1/E-2 and L-2 spouses? Are there any circumstances where E-Verify will return an “employment authorized” response for one of these categories based on a valid I-94 showing E or L-2 status? Would this process require presentation of a marriage certificate or only proof of admission in dependent spouse status?

Spouses admitted in E-1/E-2 or L-2 status must file an application with USCIS in order to obtain employment authorization and an EAD. A valid Form I-94 showing E or L-2 status is not sufficient to evidence employment authorization for Form I-9 or E-Verify.