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U.S. Citizenship and Immigration Services
Verification Division
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U.S. Citizenship and Immigration Services

AILA Verification and Documentation Liaison Committee
USCIS Verification Division Meeting
Washington, DC
Agenda
April 11, 2013

On April 11, 2013 The American Immigration Lawyers Association (AILA) Verification and Documentation Liaison Committee met with the USCIS Verification Division in Washington, DC to discuss recent updates to the E-Verify and SAVE programs – notably the release of the new Form I-9 and M-274. The questions below were submitted by AILA and responses were provided by USCIS Verification Division.

New I-9 Questions and Issues

1. Effective Date: In the March 8, 2013, Federal Register Notice regarding the new Form I-9, there is an apparent inconsistency in the statement of the date on which use of the new Form I-9 is mandated. In one passage, the Federal Register states that "prior versions … can no longer be used by the public effective May 7, 2013." In another passage, the notice states that the new form must be used "after" May 7, 2013. Please confirm the effective date of the new Form I-9 (Rev. 3/8/13). In addition, is it permissible for an employer to use the old form for an employee who starts work on May 6 (before the mandatory effective date), even where Section 2 may not be completed until May 9 (after the mandatory effective date)?

Response:

a. Effective May 7, 2013 the new Form I-9 Rev. (03/08/13)N must be used. On April 9, 2013, USCIS published a correction notice in the Federal Register.

b. Yes. If the employee completes Section 1 of Form I-9 before the effective date of May 7, 2013, the employer can continue using that version of the form for completion of Section 2.

2. **I-9/I-94 Interface**: While we appreciate that the final version of the I-9 changed "I-94 card" to "I-94 number" in Section 1, we note that the instructions continue to refer to the I-94 "form" to complete Section 2, notwithstanding CBP's announced plan to automate the I-94 process. See for example, List A of Acceptable Documents. Can the USCIS Verification

Division provide us with an update on interagency preparations for I-94 automation? Does Verification contemplate issuing new I-9 instructions to further explain (beyond the limited information that is currently included on page 2 of the instructions) how employees will learn their "I-94 admission number" and what will constitute "I-94" documentation for employees who do not receive a paper I-94 card upon entry? If so, is there a time line for such developments?

Response: On March 27, 2013, CBP published an interim final rule in the Federal Register, effective April 26, defining the term "Form I-94" to include electronic Forms I-94. Even after this rule becomes effective, travellers will still be able to obtain paper Forms I-94. Because individuals will still be able to obtain paper Forms I-94 after CBP launches I-94 automation, USCIS will not be issuing new I-9 instructions. For more information on I-94 automation, see CBP's announcement at http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/03272013.xml .

3. **Section 1 for Nonimmigrant Employees**: The instructions appear to offer nonimmigrant employees a choice between using their "USCIS/A number" or their I-94 admission number. EAD holders, for example, will have both numbers and are likely to be confused about how to complete Section 1. If a nonimmigrant employee has both an A number and an I-94 number, which number should he or she provide? Will an E-Verify query be affected depending on which number is provided?

Response: For DHS purposes, the A# is preferred in cases where a nonimmigrant employee has both an A number and an I-94 number. However, aliens authorized to work have a choice of providing either an A# or an admission number. If an alien received his or her I-94 admission number from U.S. Customs and Border Protection in connection with arrival in the United States, then the alien would also be required to provide information about his or her foreign passport. E-Verify cases will not be affected, regardless of which number is provided.

4. **Online Receipt Notices**: During the March 11, 2013 public engagement teleconference on the new I-9, USCIS stated that it is reviewing whether a print-out of a USCIS online approval notification is acceptable as a List C document. This would be a welcome development for employers. Is there a target date for implementing this change? What documentation can an employee in this circumstance use for List C purposes?

Response: USCIS is reviewing this issue.

5. **Instructions**: During the March 11 teleconference, USCIS stated that an employer must make the I-9 instructions available to new hires completing the form. In the interest of avoiding additional costs and saving paper, can employers provide employees only the instructions that pertain to Section 1? Can employers provide employees with a retyped and reformatted version of Section 1 that could perhaps be laminated and reused for multiple employees?

Response: The instructions (pages 1-6) and the Lists of Acceptable Documents (page 9) must be made available to all employees completing the form. You do not need to provide a copy of the instructions for employees to keep, but you must provide a copy that they can refer to while completing the Form I-9. Employers may laminate and reuse the instructions.

6. Can USCIS clarify whether "N/A" "may" or "must" be entered in non-applicable fields, or whether "N/A" is sometimes required and sometimes optional? Both terms are used on the form and in the instructions.[1] If "N/A" is required in certain fields and not in others, what is the reason for such a distinction? What are the consequences if "N/A" is not written in the field?

Response: In most cases, employers 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 guidance in 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.

7. During the March 11 teleconference, we understood USCIS representatives to state that an employer reverifying an employee with expiring documents must follow a two-pronged instruction: (1) employers MUST use a new I-9 form to reverify in Section 3 if the original I-9 form is no longer effective at the time of reverification; or (2) if the original I-9 is still a valid version, the employer MUST use Section 3 on the original completed I-9, and cannot use Section 3 on a new form. This instruction is confusing and appears to contradict the longstanding practice, condoned by ICE, which allows an employer to complete Section 3 on a new I-9 form, so long as the new form clearly relates to the same employee. This is particularly important for large employers that store their I-9s in a central location. To require the employer to use the original I-9 for reverification imposes substantial administrative burdens and costs on employers, including unnecessary shipping charges and risk of loss as the I-9 is transferred back and forth. This requirement will also cause unnecessary confusion to employers in situations where Section 3 is already completed pursuant to a prior reverification. Given the burden on employers and the environmental impact, we ask USCIS to reconsider this guidance. We recommend that USCIS permit employers to perform the reverification either on the original I-9 form or on a new I-9 form under both prongs, or at a minimum, give employers the option to use the original or new Form I-9 where the original form is still valid.

Response: We agree that employers may choose to complete Section 3 of a new form rather than reverify on Section 3 of the original Form I-9 provided the employer attaches the new form to the original. We will amend the M-274.

[1] *See, e.g.,* Instructions: Page 1, Section 1, other names used ("write N/A"); e-mail address and telephone number ("may write N/A"); Page 2, Section 4.a., date employment authorization expires ("may write N/A") b.2. received admission number within the U.S. ("must write N/A"); Page 3, Section 2, 2, unused fields when recording document information ("may write N/A"); Page 5, top paragraph, where employment authorization does not expire ("may write N/A").

8. During the March 11 teleconference, USCIS representatives stated that an employer may not pre-populate Section 1, even where the preparer section is completed. This is contrary to public statements made by ICE on multiple occasions that pre-population may be permissible if the preparer/translator section is completed. Indeed, the advice appears contrary to USCIS's own written response to public comments solicited during notice and comment for the revised I-9 form:

DHS is not opposed to employers pre-populating the Form I-9 with respect to information such as name and address, but DHS is not able to allow the data collected to be saved online. Employers may save the business or organization name and address in their own database. DHS is not opposed to auto-filling Section 1 of Form I-9 by a company's human resource system provided the employee and employer review and complete the attestation. Additionally, if Section 1 of Form I-9 is being completed on behalf of the employee, then the Preparer-Translator section must be completed.[2]

Many electronic I-9 products routinely provide this service. Is it USCIS's position that the employer may not pre-populate Section 1 even if it completes the preparer section of the I-9? If so, please explain why USCIS's position has changed since publication of the above response to public comments.

Response: USCIS's position has not changed.

DHS regulations require that the *employee* complete Section 1 of Form I-9. Employers can offer employees electronic tools to facilitate the Section 1 completion process, as long as this regulatory requirement and the regulatory requirements for the electronic generation of the Form I-9 continue to be met.

When an *individual* other than the employee completes Section 1 of the Form I-9, the "Preparer and/or Translator Certification" portion of Section 1 must be completed. Therefore, if the employer is assisting the employee to fill out Section 1 of the Form I-9, the employer should complete the Preparer and/or Translator Certification. The individual who is actually taking the information from the employee and inputting it into Section 1 must sign the "Preparer and/or Translator Certification" portion of Section 1. The employee must still verify that the information inputted in Section 1 is correct and then sign and date the attestation in Section 1 of the Form. The employer is ultimately responsible for proper completion of Form I-9, including ensuring proper completion of Section 1.

For electronically generated Forms I-9, the employer should be aware of the requirements of 8 CFR 274a.2(e)-(i) and ensure compliance with the regulations, or risk potential liability for violation of Section 274A of the Immigration and Nationality Act.

M-274 Questions and Issues

9. *Name Change Directives and Guidance*

a. **Page 23**: Recording and documenting legal name changes (for example, in the case of marriage or divorce) is recommended, even where there is no rehire or reverification "so that

[2] *See* Appendix to Form I-9, Supporting Statement (Collection Number 1615-0047) at p. 27, Note 52, *published on* AILA InfoNet at Doc. No. 12032720 (*posted* 8/31/12).

[the employer's] actions are well-documented if the government asks to inspect your Forms I-9."[3] Can Verification confirm that the only time an employer is *required* to record a legal name change is in connection with a rehire or reverification? In addition, does USCIS intend, by its advice to "take steps to be reasonably assured of the employee's identity and the veracity of the employee's claim of a legal name change"[4] to require female employees to produce marriage licenses or divorce decrees after a change in marital status? To what extent has Verification discussed this change in guidance with OSC or the EEOC to ensure that it is not inconsistent with anti-discrimination provisions?

Response: The requirement for recording a legal name change is in connection with a rehire or reverification. The guidance suggesting that employers "take steps to be reasonably assured of the employee's identity and the veracity of the employee's claim of a legal name change" could extend to employers asking employees of either gender claiming a legal change of name to produce marriage licenses, divorce decrees, or other documentation confirming the claim. However, this is a suggestion and not a requirement. Employers should determine what steps are best to take under the circumstances. Employers should not discriminate on the basis of sex with respect to their procedures. All revisions to the M-274 are reviewed by OSC.

b. **Page 24**: Page 24 contains new guidance for employers dealing with a situation where a current employee comes forward with documentation of a new identity. The M-274 states that the employer should complete a new I-9 form, list the original hire date, and provide a written explanation of the circumstances giving rise to the new I-9. Although we agree that completion of a new I-9 may be the best practice in certain circumstances, requiring employers to complete a new I-9 for existing employees who provide updated identity documentation appears to be at odds with the statute and regulations that require an I-9 only upon "hire." What is the legal basis for requiring a new I-9 in the continuing employment context?

Response: The legal basis for the guidance in the M-274 suggesting a new Form I-9 in certain circumstances is section 274A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. 1324a(a)(2) referring to the prohibition against continuing to employ an alien knowing that he or she is unauthorized to work in the United States. For example, presentation to the employer of a new Social Security Card reflecting a new Social Security number and new name raises a material question as to the identity of the employee, the veracity of information on Form I-9, the genuineness of any documents presented in Section 2 that contain a Social Security number, and the relation of these documents to the person who presented them. The employer can no longer reasonably rely on the Form I-9 to be assured that the individual is authorized to work. USCIS suggests completion of a new Form I-9 in this instance to ensure the employee is eligible to continue in employment. This is a suggestion and not a requirement.

[3] M-274, Handbook for Employers, at p. 23-24.
[4] *Id*. at 23.

c. The M-274 goes on to state that where a new I-9 is completed in these circumstances and the employer is enrolled in E-Verify, the employer should run an E-Verify query on the new identity and I-9 information.

i. The E-Verify MOU and program rules clearly state that an employer is barred from running an existing employee through E-Verify. While the employee has presented new documentation of identity, he or she is an existing employee. Please explain how the M-274 guidance on this issue squares with the E-Verify prohibition against subjecting current employees to E-Verify queries? What is the legal basis for this new requirement and why has it only been published in the M-274, and not been the subject of full notice and comment? (*See also* Question 10, pertaining to DACA below.)

Response: The E-Verify statute requires that E-Verify reliably determine whether the person with the identity claimed by the individual is authorized to work in the United States or whether the individual is claiming the identity of another person. If there is a change in the individual's name, DOB, or SSA number, the E-Verify statute requires that E-Verify determine that this individual is authorized to work in the United States. If the identity information relied on for a previous Form I-9 and/or E-Verify verification has materially changed without reasonable explanation such as a documented legal change of name, then the previous verification should no longer be considered valid. The situation is equivalent to a new employee who has not been verified. The E-Verify process is intended to verify the information provided on the Form I-9. If and when a new Form I-9 is completed, it is appropriate to run an E-Verify query. See also responses to question 10 below.

ii. Will E-Verify allow a query for an employee whose original hire date precedes the date of enrollment in E-Verify?

Response: Yes, E-Verify will allow an employer to create a case for an employee who was hired prior to the employer signing an MOU with E-Verify.

iii. If Verification moves forward with the position that an employee who presents an updated identity requires a new I-9 and an E-Verify query, in many cases there will be a substantial intervening period between the date of hire and the date of the query. In the current E-Verify system, whenever there is a period of more than four days between the date of hire and the date of the query, E-Verify asks the employer to identify the reason for the late query. How should the employer describe the reason for the delay between the hire and query dates?

Response: Employers should indicate that the delay in the hire and the query date was the result of the employee completing a new Form I-9.

iv. What does USCIS consider to be a "false identity" sufficient to trigger the new I-9/E-Verify requirement? For example, would an employee who has the same name but a new Social Security Number (SSN) trigger the requirement? What about an employee

who presents a new first or last name? Or an employee who drops or adds a matronym or patronym but whose name otherwise remains unchanged? Does it matter if the employee did not use a Social Security Card as an I-9 document? What if the employer does not participate in E-Verify so the SSN is optional on the I-9, but the employee discloses a new SSN through a correction of payroll records?

Response: The employer should make a determination as to when a new Form I-9 is appropriate depending on the particular facts of the case before them. If the employer learns of a change, even if outside the Form I-9 context, that raises a material question as to the identity of the employee, the veracity of information on Form I-9, the genuineness of any documents presented in Section 2, and the relation of these documents to the person who presented them, then the employer can no longer reasonably rely on the Form I-9 to be assured that the individual is authorized to work and should complete a new Form I-9. For example, a name that remains unchanged except for the dropping of a matronym or patronym would likely not call for the completion of a new Form I-9, but a change in the employee's SSN probably would.

v. If USCIS intends to move forward with this position, will it update the MOU and the E-Verify User's Guide to make its positions clear and consistent and describe how to handle these queries in E-Verify?

Response: USCIS will update information on the E-Verify website to help employers better understand the new guidance in the Handbook for Employers.

10. ***Other Provisions***

a. **Page 14, TPS**: The instructions for employers of TPS EAD holders asserting automatic extension by Federal Register notice state, "You may not request that an employee provide proof that he or she is a national of a country that has been designated for TPS."[5] What is the reason for this instruction? Employers may want proof of eligibility for a TPS extension in these circumstances in order to prevent abuse by employees who may not actually qualify. Asking for proof would not expose employers to liability for national origin discrimination as these individuals are not in a protected class under the anti-discrimination provisions. If such an inquiry is not permitted, the instructions should clearly state, as the pictorial shows, that **only** EADs bearing the Code A-12 or C-19 are eligible for an automatic extension. Should an employer who recognizes a discrepancy between the country of origin on the EAD and the list of TPS countries nonetheless accept a claim of automatic extension? Would USCIS Verification contemplate allowing E-Verify queries in connection with claims of automatic TPS extensions?

Response: Asking for proof that the individual is a national of the country designated for TPS is not necessary and may lead to discrimination. There are instances where a person does not have a nationality, but s/he may still be eligible for TPS under the designation of a country where he or she last habitually resided. Employers should *not* attempt to re-

[5] *Id*. at 14.

determine whether DHS properly granted TPS to an individual based on his nationality or lack of nationality, or whether issuance of his TPS-related EAD was proper.

The notation "A-12" or "C-19" appearing on the face of the EAD under "Category" identifies the card as a TPS-related EAD. If the individual's photograph is on the card and the card otherwise reasonably appears to relate to the same individual and to be genuine, then the employer only needs to determine whether the EAD has expired. If the expiration date on the card has passed, then the employer should determine whether the EAD is one that has been automatically extended for 6 months by DHS. To do that, the employer may review the Federal Register notice(s) that announced a particular country's TPS designation extension. If existing EADs have been auto-extended until new EADs can be issued, then the Federal Register notice will give that information. Employers may also check the USCIS website at www.uscis.gov under "Temporary Protected Status" and click on a specific country's TPS webpage. If there is an EAD auto-extension, it will be described on that page. (The Federal Register notice is also linked to the specific country webpage.) The employer should *not* make a determination regarding the validity of and EAD with A-12 or C-19 on it based on the country of birth noted on the EAD.

USCIS will consider future revisions to E-Verify to allow for auto-extensions of EADs.

b. **Page 18, Documenting I-20:** The sample Section 2 pictured on page 18 shows the issuing authority of an I-20 as "DHS." Yet the I-20 sample on page 59 correctly shows DOJ/INS as the issuing authority. We suggest that either the example on page 18 be revised to show DOJ/INS as the issuing authority or, more appropriately, DHS should update the exemplar I-20 form and reissue the M-274 with updated I-20 examples.

Response: DHS or DOJ/INS are acceptable issuing authorities for the I-20. USCIS will update the I-20 examples in a future revision to the M-274.

c. **Naming Conventions, FAQ 28**: We suggest that the instructions in this FAQ be updated to include the new naming conventions included in the I-9 instructions for compound or hyphenated last names. In addition, how should an employer handle an employee who has no last name? Though DHS has historically used "LNU" to signify "last name unknown," this convention reportedly poses problems with SSA, which instead uses "FNU," (family name unknown). In fact, in most cases where this convention is used, the last (or first) name is not unknown; rather, it does not exist. Would Verification consider adding instructions for handling a situation where the employee has no last (or first) name and coordinating inter-governmental discussions so that conventions are universal?

Response: USCIS suggests that the employee write N/A where applicable. We can update the M-274 to include more guidance when an employee has only one name or a compound name.

d. **Blank Fields, FAQ 33**: The answer to this FAQ conflicts with the I-9 instructions and should be amended. The FAQ states that all "applicable" fields are required except for the

SSN field, which implies that the e-mail and phone number fields are mandatory when, according to the I-9 instructions, they are optional.

Response: USCIS will update the M-274 to reflect that the telephone number and email address are optional.

e. **Abbreviations**: The June 2011 M-274 (page 5) includes a note that states, "You may use abbreviations for commonly used documents, e.g. DL for driver's license and S for Social Security." It appears that this language has not been retained in the revised M-274. As it has been long-standing practice to allow for common abbreviations on the I-9, please confirm that this is still an allowable practice.

Response: Yes, this is still an acceptable practice. We will update the latest version of the M-274 to clarify this.

f. **H-1B Cap Gap**: The regulations state that employment authorization under the cap gap provision "shall be automatically extended until October 1 … where such petition (1) has been timely filed; and (2) states that the employment start date for the F-1 student is October 1 of the following fiscal year."[6] The M-274, page 21, states, "The student's expired OPT Employment Authorization Document (Form I-766), along with Form I-20, which shows the cap-gap extension was endorsed by the student's designated school official, would qualify as a List A document." Can you please confirm that the documents described in the M-274, which "would qualify" as evidence for I-9 purposes, are not the exclusive documents for the employer to establish compliance for a cap-gap employee, and that any combination of documents which establishes eligibility under the regulatory language would be sufficient (such as documentation of the underlying OPT and the timely filing of the H-1B cap petition)? This is particularly important in light of the fact that many schools are not willing or able to issue timely I-20s for cap-gap students.

Response: A student will not automatically receive notification when he or she has a cap gap extension. The student must request a Form I-20 from his or her DSO showing the period of the extension. In some cases, the student may need to notify his or her DSO that he or she is eligible for the extension. Although the extension is automatically granted, SEVIS may not be automatically updated to show the extension. The student will need to ensure that his SEVIS record is accurate. Please advise our office if a student is unable to obtain an updated Form I-20 from the DSO.

The guidance in the M-274 is based on the DHS guidance issued in Supplemental Questions and Answers posted on the USCIS Web site on 5/23/08. DHS has not changed its position and therefore, we will not change the information in the M-274. However, the documents listed as satisfying the Form I-9 requirements are suggestions and not requirements. DHS has determined that the suggested combination of documents satisfies the more stringent requirements for List A documents.

[6] 8 CFR §214.2(f)(5)(vi)(A).

DACA Beneficiaries Verification Guidance

11. On November 19, 2012, USCIS Verification issued guidance for employers on documenting work authorization for DACA recipients. On January 11, 2013, AILA raised concerns about this guidance in two important respects.[7] Is Verification reconsidering the guidance in either of the below contexts?

a. The circumstances in which an employer is to require a new I-9 for a DACA recipient who is already working for the employer when his or her name, Social Security number or date of birth has changed?

Response: The guidance provided at pages 23-24 of the M-274 is intended to apply to all employers and employees, including employees who are DACA recipients. A new Form I-9 is not required in the case of a legal name change, but USCIS recommends that employers follow the guidance regarding reasonable assurance of a legal name change. USCIS believes that the improvements to the M-274 substantially resolve concerns raised by AILA about possible inconsistency between the DACA guidance and the M-274. We are continuing to review the DACA guidance to determine whether any conforming changes, such as clarifying the distinction between legal name changes and other situations involving material change to a claimed identity, would be appropriate.

b. The direction to subject a current employee who presents DACA work authorization to an E-Verify query?

Response: The DACA guidance does not direct employers to perform E-Verify queries on current employees who present DACA work authorization. Rather, it says that employers should complete a new Form I-9 and perform an E-Verify query in certain situations involving material changes to identity information. As discussed above, USCIS has provided further guidance on this subject in the new M-274 that is applicable to all employers, including those employing DACA recipients.

c. If USCIS continues to instruct employers to run an E-Verify query on a current employee who presents DACA work authorization, will the MOU be changed to allow or require an E-Verify query in this circumstance?

Response: As stated above, USCIS has not instructed employers to run E-Verify queries on current employees who present DACA work authorization. As further discussed in the response below, a situation in which the identity information upon which an earlier verification was performed has materially changed is analogous to re-running a previously omitted or incorrectly performed verification, which USCIS has never construed the MOU to prohibit. USCIS will consider whether further clarification is appropriate in future versions of the MOU.

[7] "Concerns Regarding the Guidance for Employers Related to the Deferred Action for Childhood Arrivals (DACA) Initiative," (Jan. 11, 2013), *published on* AILA InfoNet at Doc. No. 13011555 (*posted* 1/15/13).

d. Are there any other circumstances (aside from FAR requirements) where employers may or must run E-Verify queries on current employees?

Response: Yes. For example, if an employer participating in E-Verify did not properly complete the Form I-9 at the time of hire, and/or did not properly perform the E-Verify query at that time, and later discovers the error, the employer is expected to bring itself into compliance as soon as possible. A situation in which the identity information used to complete the Form I-9 and to verify work authorization through E-Verify has materially changed is analogous to a situation in which an employer discovers a previous material error or omission in its earlier verification; the previous verification may no longer reasonably be relied upon and should be re-run with the new identity information. Other situations in which employers may (but are not required to) complete new Forms I-9 for employees continuing in employment include Professional Employer Organizations (PEOs) and corporate acquisition or merger situations, as discussed in Q/A 41-42 of the M-274; if new Forms I-9 are completed, employers participating in E-Verify should run E-Verify queries.

UPDATES and GENERAL ISSUES

General E-Verify Developments

12. Since our October 2012 liaison meeting, has E-Verify terminated any employers from E-Verify? If so, can you describe the circumstances?

Response: E-Verify has not terminated any E-Verify Employer MOUs since the October 2012 meeting.

13. If an employer is terminated from E-Verify, what process is afforded to the employer prior to termination, given the potential harm employers and their employees could suffer as a result of termination, and what is the process for review of a termination?

Response: Provisions regarding termination of an E-Verify MOU are found at Article V of the current MOU. Prior to terminating an Employer MOU, Monitoring and Compliance (M&C) generally engages in a progressive compliance process which could include a variety of compliance notifications: email notifications, telephone calls, a desk review, user or account suspension, and/or a site visit. These usually allow M&C to resolve non-compliant activities and provide employers with compliance assistance and education. In rare circumstances this process can be accelerated.

14. Has USCIS made any reports about a registered employer's E-Verify compliance to any federal agency in connection with the FAR E-Verify requirements?

Response: M&C does not comment on any ongoing compliance actions. M&C has responded in the past to inquiries from other federal agencies regarding E-Verify compliance by federal contractors.

15. When does USCIS expect to publish the final versions of the proposed E-Verify MOUs? Do you anticipate additional material changes to the language before publication?

Response: USCIS does not have an anticipated date for publication of the new E-Verify MOUs. Publication is dependent on approval by OMB.

16. Is Florida now participating in the RIDE program? Do you anticipate additional states participating in RIDE in FY 2013 or FY 2014? Can you identify any states in the queue?

Response: E-Verify began verifying Florida driver's licenses and state IDs in December 2012. Additionally, E-Verify began verifying Mississippi state IDs in January 2013 (previously, only Mississippi driver's licenses were verified). USCIS continues to have discussions with states about the RIDE program and will notify E-Verify stakeholders as additional states sign up.

17. How will E-Verify be affected by sequestration? Will sequestration have an operational impact on E-Verify, including basic functionality and public interface functions such as IT help and telephone assistance for employers and employees?

Response: E-Verify's operations have not been impacted by sequestration to date.

18. What is the current status of Verification's reported consultation with USCIS counsel about whether the development of the Enhanced I-9 feature is subject to the Paperwork Reduction Act analysis before publication?

Response: Currently, USCIS is considering its options on the best way to proceed with implementation of the Enhanced I-9 feature.

Inter-Agency Data Sharing Update

19. Since our October 2012 Liaison meeting, has Verification made any referrals to ICE based on an employer reporting continued employment of employees subject to Final Non-Confirmation (FNC)? If so, please explain the circumstances.

Response: M&C does not comment on any ongoing compliance actions. M&C has in the past made referrals to ICE regarding employers continuing to employ an employee that received an FNC.

20. Since our October 2012 Liaison meeting, has Verification continued to make referrals to OSC about employers whose E-Verify statistics show that all lawful permanent residents present green cards in the I-9 verification process? At our October meeting, Verification indicated that OSC was interested in referrals where the employer's recording of green cards was "disproportionate" but less than 100%. Are such referrals now being made? If so, can you describe the threshold?

Response: Yes, M&C is making those referrals. M&C does not comment on its specific thresholds and other specific compliance techniques.

21. Has Verification reconsidered its practice of making referrals to OSC without advance notice to affected employers? At our last meeting, AILA advocated that Verification or OSC provide affected employers with an informal opportunity to explain its actions in order to avoid the burden and cost of a formal investigation in situations where the fact patterns may be easily explained.

Response: Depending on the non-compliant activity, employers may receive an escalation of notices from M&C providing them with an opportunity to correct or change their non-compliant actions before they are referred to OSC. Some activities, however, are referred to OSC without advance notice.

E-Verify Operational Questions

22. When an employer appeals directly or learns of an employee's appeal of an FNC, how should the employer handle the underlying case? Should the case be closed or left open? When does the employer's obligation to report continued employment of an employee with an FNC attach in a case where the employee is appealing?

Response: Depending on the specifics of the case, a case can either be left open or closed. An employer should use their discretion when determining what actions to take with the case. If the case is still open, the employer may close it with the appropriate case closure code depending on the determination made by USCIS. If an employer receives documentation from USCIS indicating the FNC was issued in error and verifying their employee's employment authorization, the employer should retain the documentation with their employee's employment records. These records should include E-Verify and/or Form I-9 related documentation.

23. Where an employer has no way to confirm an employee's appeal of an FNC, will Verification confirm the existence/status of such an appeal to the employer?

Response: A USCIS representative will ask the employee for contact information for their employer(s) and will contact the employer to advise the employer that the employee has requested a review of the FNC. Once a determination is made, the USCIS representative will make sure the employer is informed.

24. Will the next E-Verify release allow for reversal of FNCs where appeals are successful?

Response: E-Verify is currently working on a future enhancement to allow for an FNC review process.

25. Does USCIS have any guidance for whether and how long an employer can continue to employ an employee with an FNC who is in the appeal process?

Response: Current E-Verify policy allows an employer to retain an employee who receives an FNC as long as they notify DHS.

Multiple Use of Same Social Security Number

26. As a follow-up to our continuing discussions about this issue, please provide the current status of plans whereby E-Verify would return a TNC where the system indicates more than one use of a single social security number?

Response: E-Verify Monitoring and Compliance is developing processes and policy around systematic methods for identifying and analyzing SSNs that are suspected of fraudulent use. The process would determine if a SSN is likely compromised, and potentially "lock" the SSN for resolution by the employee through a TNC process.

27. What is the status of the planned "self-lock" feature in E-Verify Self Check?

Response: Self Lock is a new feature under development that we intend to make available as part of the upcoming employee portal, the follow up to Self Check. With this feature, individuals will be able to log into their account to lock or unlock their SSNs to prevent (or allow) its use within E-Verify and Self Check.

SAVE

28. Members have reported difficulties in correcting erroneous information in SAVE, typically as the result of a CBP data entry error. SSA relies on correct SAVE information to issue SSNs, and foreign nationals are dependent on SSNs in order to open bank accounts, enroll in benefits programs, and engage in other common commercial activities. Efforts to have CBP correct errors in SAVE are often unsuccessful. Neither ICE nor USCIS appear to have a system for corrections. As we move toward the implementation of the electronic I-94, these concerns will only become more important. What mechanism can a foreign national use to resolve an error in the SAVE system?

Response: The SAVE Program provides customer agencies the most current immigration status as reflected in relevant immigration databases. SAVE does not own or maintain the records that it accesses from USCIS, CBP, and ICE databases and has no authority to make corrections to those records. Individuals with errors regarding their admission that are made by CBP should visit the nearest CBP Deferred Inspection Site or port of entry to correct the record. Applicants with errors made by USCIS on their Form I-94s can file Form I-102 with USCIS to correct the record. Additional guidance on how to correct records can be found on the SAVE website at www.uscis.gov/save under "How to Correct Your Records." This information is available in 18 languages for the convenience of the benefit applicants.

a. Does Verification have a plan for a quick process to correct SAVE entries?

Response: See prior response.

b. Can you describe current planning?

Response: See prior response.

Social Security Receipts

29. At the recent public engagement, USCIS responded to several stakeholder questions concerning acceptable Social Security Card replacement receipts, which by regulation, an employer must accept in the I-9 process.[8] USCIS indicated that not all SSA documents referring to the ownership of the SSA account or reflecting an application for a new card are valid receipts for the I-9 process. Verification said it would look into these questions and report publicly on those receipts that are acceptable. Please comment on whether the attached examples of SSA receipts for individuals seeking a replacement card are acceptable for I-9 receipt rule purposes. If not, can Verification provide an example of an SSA receipt that is acceptable? Would Verification interface with the Social Security Administration to make sure that all offices know how to handle a request for a duplicate Social Security Card?

Response: The only receipt from SSA that is acceptable under the receipt rule is a receipt that:

- States "This is a receipt to show you applied for a Social Security Card…"
- And the application was for a lost, stolen or damaged document.

Three-Day Business Rule

30. How does an employer that is operational over the weekend but whose HR office (which is open during regular business hours but closed on weekends) count the 3 business days for I-9 purposes?

Response: Employers are required to complete Form I-9 with three business days of the employees first day of work for pay. If the business is operational, this counts towards the 3 day time frame for Form I-9 completion.

Laminated SSA Card

31. Please confirm that an employer can accept a laminated SSA card, regardless of any restrictive language on the SSA Card regarding lamination, for I-9 purposes. We note that the most recent version of the M-274, the agency has eliminated the reference to the restrictive lamination provision, but I-9 Central still states that a laminated SSA Card can only be accepted if it does not bear the legend "not valid if laminated."

Response: Our office is currently reviewing the guidance we provided on I-9 Central and in the M-274 and have been in contact with the SSA concerning laminated Social Security Cards. While our discussions with SSA are continuing, we plan to remove this guidance from the M-274 and I-9 Central.

[8] 8 CFR §274a.2(b)(1)(vi).

32. If my employee presents a Social security Card that is laminated or is unsigned, may I accept such cards as evidence of employment authorization?

Response: See response to question 31.

I-9 Central:

33. Is a laminated Social Security Card valid?

Response: See response to question 31.