



Questions and Answers

**AILA Verification and Documentation Liaison Committee
Joint Meeting with USCIS Verification and ICE Homeland Security
Investigations
Washington, DC
November 10, 2015**

Overview

On November 10, 2015, the American Immigration Lawyers Association (AILA) Verification and Document Liaison Committee met with USCIS's Verification Division and ICE Homeland Security Investigations to respond to questions, provide updates and address follow up items. The questions and answers are provided below for the benefit of interested stakeholders.

Questions and Answers

Question Posed Jointly to USCIS Verification Division and ICE/HSI

1. Guidance for I-9 Completion for On Campus Employment

For Verification: While USCIS has not addressed the I-9 issue directly, ICE has provided guidance to principal designated school officials (PDSO) regarding SEVIS recordkeeping requirements. ICE requires the PDSO to keep a copy of the letter from each employer that describes the type of work, the affiliation to the school (if required), the number of hours the student will work per week, and a copy of the letter to the Social Security Administration (SSA) certifying that the student may work on-campus.¹ Would USCIS consider adding guidance to the M-274 and on I-9 Central regarding the proper way to complete an I-9 for a foreign student that has accepted on-campus employment?

USCIS will consider expanding the guidance for students who accept on-campus employment.

¹ Student and Exchange Visitor Program, Employment, F-1 Student On-Campus Basic Guidelines, available at <http://www.ice.gov/sevis/employment>.

While some schools have a policy of issuing I-20s to reflect on campus employment, others do not. For schools that do not issue I-20s in this situation, would USCIS Verification and HSI consider the following as an acceptable combination of documents: List A – Unexpired foreign passport, I-94 card, and a letter from the school confirming on-campus employment?

For on-campus employment, the F-1 student employee is only required to present an unexpired foreign passport and an I-94 indicating F-1 nonimmigrant status to complete Form I-9.

2. E-Verify Enrollment Issues

- a. Please provide examples of common scenarios where E-Verify enrollment may be delayed. When delays arise, what type of additional information may be requested?

Typically, E-Verify enrollment is completed automatically within minutes after the MOU signature page is uploaded and accepted by the system. However, there are circumstances when enrollment may be delayed:

- Potential duplicate company
- Failure to provide required information
- Customer erroneously enrolled in wrong access method e.g. employer, employer agent or web service provider
- Data provided by the employer does not match with commercial data that E-Verify uses to validate enrollments. As a result, E-Verify personnel need to review the data and in some cases contact the employer. For more information, see the [Privacy Impact Assessment Update for the E-Verify Program: Use of Commercial Data for Employer Verification](#).
- MOU that is faxed to E-Verify must be processed manually

When enrollment is delayed, E-Verify may contact the employer for more information to resolve the issue.

- b. Generally, how long should employers expect to wait to receive their E-Verify employer number after completing the required enrollment steps?

The employer number (Company ID Number) is assigned once enrollment is complete. The number is on the MOU and can also be found by a program administrator on the Company Information page. Most administrators receive their enrollment confirmation with a few minutes. However, if there is a delay as described above, the process may take longer.

3. E-Verify Enrollment and MOU Issues When Changing Software Providers

When an employer decides to terminate its relationship with an E-Verify Web Services Agent and begin using a new agent, a new E-Verify MOU must be signed.

- a. Is there a general period of time the employer should expect to wait between the time that the MOU terminates and the time that a new MOU can be activated? If so, how long is that period of time?

After the termination request is received, the old account will terminate within 30 days. In most cases, the employer may sign a new MOU and begin creating cases under the new account within 48 hours after the account is established.

- b. If an employee has a pending STEM-based Form I-765 EAD application (requesting the 17-month extension), will that application be affected if the employer's E-Verify employer ID changes (due to a change of software providers) while the application is pending?

Yes, if the E-Verify Company ID number or E-Verify Client Company ID number do not match the Employer's name provided on Form I-765, the student's pending STEM Extension application may be impacted and adjudication could be delayed.

USCIS will generally issue a Request For Evidence (RFE) to confirm the E-Verify employer ID number. When responding to the RFE, the student may submit the new E-Verify employer ID number with a brief explanation of the change and request that it be included for consideration in the pending application; or, if the designated school official (DSO) is aware of the change or mismatch prior to issuance of an RFE, the DSO can send a notice to the Vermont Service Center using the following email account VSC.studentEAD@uscis.dhs.gov. Additionally, DSOs may use this email address for other questions related to Form I-795, Application for Employment Authorization.

For inquiries related to Form I-539, Application to Extend or Change Status, DSOs should use the following email address VSC.Schools@uscis.dhs.gov.

Please note that only DSO's may use these email accounts. USCIS will not respond to inquiries or submissions sent by a student or anyone else.

4. E-Verify Individual Case Issues

We understand that a duplicate case alert notice appears when the same employer creates a case with the same social security number within 30 days that the original case was created.

- a. Does USCIS continue to track this data?

Employer data retained by E-Verify does show duplicate case alerts.

- b. If so, how many duplicate case alerts have been initiated in the past year?

We will consider publishing the number of duplicate cases when we update the website with FY15 data.

- c. What, if any, follow-up or enforcement actions are undertaken when an employer continues to have this issue despite initial notification?

M&C monitors employers that create duplicate cases. USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

- d. Is USCIS also tracking when the same SSN number is used by a different employer within a short period of time?

Yes, M&C monitors SSNs used by different employers within a short time period.

5. I-9 and E-Verify Queries for Foreign National Employees on Short Term Assignments in the U.S.

A number of multinational companies frequently have employees come to the U.S. to perform short-term work assignments for a few weeks or a few months. As a result of the length of time it may take for the employee to receive an SSN, in many cases, the employee has left the U.S. and is no longer employed by the U.S. entity before the SSN is issued. We understand the normal process for delaying the E-Verify query where an employee is waiting to receive an SSN, but what should the employer do if the employee is no longer employed in the U.S. when the SSN is issued? Is the U.S. employer still required to have the employee update the I-9 form? Should the E-Verify query be run despite the fact that the individual is no longer in the U.S. and no longer employed by the U.S. entity?

Employers should not update Form I-9 or create E-Verify cases for these individuals, but employers should note on the employee's Form I-9 why the E-Verify case was not created. USCIS will explore solutions for this issue.

6. Replacement of Lost, Stolen, or Damaged Documents

What is the proper I-9 procedure in the case of an employee who presents a receipt for replacement of a lost, stolen, or damaged document but who is terminated prior to the 90-day deadline of the receipt rule.

Once an employee is terminated, the employer must retain Form I-9 for three years after the date of hire, or one year after the date employment is terminated, whichever is later. In this case, since the employee was terminated within 90 days of hire, the employer must retain this Form I-9 for three years after the date of hire.

7. Name Discrepancies on the Form I-9 and in E-Verify

The "[Examining Documents](#)" section of I-9 Central² states that when an employee provides a document with a different name than the name provided in Section 1, the employer must "ask the

² Available at <http://www.uscis.gov/i-9-central/acceptable-documents/examining-documents>.

employee the reason for the name change.” The guidance goes on to state that “If your employee maintains that the name in Section 1 is his or her legal name and you are satisfied that the document reasonably appears to relate to the employee, you may accept the document.” In other words, the employee is not required to provide proof of the legal name change.

In the E-Verify context, the discrepancy between the name(s) on the document(s) and the name listed in Section 1 may result in a TNC. As such, will the employee responding to an E-Verify referral to DHS or SSA be able to provide an explanation of the name change, or will documentary evidence be required?

SSA and DHS may request additional documentation to resolve a TNC that was issued due to a name mismatch.

8. E-Verify Posters

E-Verify employers are required to display four posters where prospective employees may see them. For employers who recruit mainly via the Internet, these posters are generally displayed online as a link on the employer’s “careers” page.

- a. If an employer uses E-Verify only at certain hiring sites, would USCIS deem the posting requirement satisfied if the employer broadly displays the E-Verify posters online? For example, the E-Verify posters could appear on the job application website regardless of the hiring site that the job posting actually pertains to, with a statement indicating that E-Verify is used “at select U.S. hiring sites.”
- b. If not, must the employer instead display the posters only for/at the hiring sites that actually use E-Verify?

Employers are required to post the E-Verify ‘Notice of E-Verify Participation’ and ‘Right to Work’ posters in English and Spanish in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through E-Verify. In many cases, and in particular for employers who recruit mainly via the Internet, this may include displaying notices electronically on their “careers” page, but could also include posting the notices in physical and electronic locations such that applicants and existing employees may clearly view the information.

Employers who choose to only use E-Verify at select hiring sites, may provide a copy of the posters either with their job application materials, or online at a site-specific website accessible to the employees. Alternatively, employers may display the posters on the company home page with the disclaimer that E-Verify is used only at “select U.S. hiring sites” and post a list of sites using E-Verify for prospective employees to view.

9. I-9 Central Availability

In the past year, the I-9 Central FAQs have been at times unavailable (for example, from 8/29/15 to 8/31/15). Given the short timeline for I-9 verification, its imperative employers have access to this information on an ongoing basis to troubleshoot when issues and questions arise.

- a. Can you provide information regarding this issue?

The problem that caused some of the FAQs on uscis.gov to not be viewable for a short period of time has been resolved.

- b. We note that USCIS provides notifications of planned Customer Service Tools Outages when certain online tools will be offline (for example, during system maintenance).³ Would USCIS consider posting a similar alert when there are planned or unplanned outages on I-9 Central?

If USCIS becomes aware of a scheduled unavailability of any of our webpages, we generally post alerts on available channels, such as [twitter.com@E-Verify](https://twitter.com/E-Verify), a distribution to I-9 Central and gov delivery subscribers, and if time allows, on the E-Verify interface and E-Verify website.

10. E-Verify TNC Notification Requirements

E-Verify employers are required to notify the employee of a TNC and provide the Further Action Notice “promptly.”

- a. What does USCIS consider to be a reasonable timeframe for an employer to promptly notify an employee of a TNC?

An employer must notify an employee of a TNC in the shortest time that circumstances allow, as determined on a case-by-case basis and by the employer’s standard business practices.

- b. What does USCIS consider to be a reasonable timeframe between provision of the Further Action Notice and submission of the employee’s contest/no contest decision?

A reasonable amount of time to give the employee to decide whether to contest a TNC is determined on a case-by-case basis and by the employer’s standard business practices.

- c. Does E-Verify monitor the length of time it takes employers to select contest/no contest after the TNC result is posted?

Yes, E-Verify monitors how long it takes for employers to select whether the employee will contest or not contest the TNC after the system generates the TNC.

11. Proposed Changes to M-274 and I-9 Central

³ For example, *see* Customer Service Tools Outage Alert (last reviewed/updated 10/01/2015), available at <http://www.uscis.gov/news/alerts/customer-service-tools-outage>.

Because AILA and USCIS have a common goal of minimizing public confusion regarding the employment verification process, we ask that a process be developed in which AILA and other interested stakeholders and members of the public might be provided advance notice of proposed changes to the M-274 Handbook and I-9 Central. This would allow USCIS to enhance the value of the M-274 and I-9 Central following public input. Would USCIS be willing to develop such a process?

Thank you for the suggestion but we believe that USCIS already provides sufficient opportunities for stakeholders and other members of the public to submit suggestions and comments to the agency regarding potential changes to employment verification policies. Some of these opportunities are:

- Legally required notice and comment procedures,
- Questions to our Outreach, Policy and Customer Contact Operations teams,
- Calls to 888-464-4218 (for employers),
- Calls to 888-897-7781 (for employees),
- Emails to I9Central@dhs.gov,
- Comments and responses in E-Verify Listens; and,
- Stakeholder meetings such as this.

12. Remote Hires

Completion of I-9 forms for remote hires has become an increasing area of concern for employers. Notary publics often refuse to complete I-9s for employers, and those who agree to participate tend to notarize copies of the documents presented rather than complete Section 2 of the Form I-9. Will USCIS consider developing a rule for verifying remote hires?

USCIS has regulations and guidance with respect to completion of Form I-9 for employees, including remote hires, and expects employers to follow those existing regulations. USCIS is not currently in the process of developing new regulations related specifically to remote hires.

13. Registration Date v. Effective Date

Employers can begin to submit queries for employees hired on the date of registration that appears on the MOU. Would it be possible for employers to define a separate effective date as to when they can begin using E-Verify to allow employers to plan for implementation and to receive proper training, including completion of mandatory tutorials for all users?

Currently, employers cannot define a separate effective date; however, USCIS will take the points AILA raised under advisement.

14. Form I-9 Question for H-1B Employee

When CBP admits an H-1B nonimmigrant to the U.S., the officer may issue an I-94 that is valid for 10 days past the validity of the H-1B petition, pursuant to 8 CFR §214.2(h)(13)(i)(A). The regulation also states that the beneficiary may not work except during the validity period of the

petition (which would exclude this extra 10-day period). So for example, an employee's I-797 approval notice may be valid until 9/30/2015 while his/her I-94 expires on 10/10/2015.

This "mismatch" of dates often causes confusion for employers who are completing the I-9. It seems that the new employee should list the petition expiration date in Section 1 ("alien authorized to work until date") since this is the date upon which work authorization will expire. In Section 2, however, employers are often uncertain if they should write an expiration date for the I-94 in List A, box 2, which matches Section 1 (the usual case) or write the actual I-94 expiration date that is printed (with the 10-day grace period) even though this would cause a mismatch with Section 1. What is the proper procedure for completing an I-9 in this fact situation?

An employee in H-1B status is work-authorized during the validity period of his or her petition. This does not include any period of 10 days after the validity period ends which may be indicated as the employee's Form I-94 "Admit until Date." Reference 8 CFR 214.2 (h)(13).

When completing Form I-9 in this situation, the employee should enter the H-1B petition expiration date in Section 1. In Section 2, the employer should enter the expiration date from the Form I-94 the employee presents.

If the expiration date for employment authorization provided by an employee in Section 1 does not match the expiration date of the List A or List C document the employee presents for Section 2, employers should reverify the employee's work authorization no later than the earlier of the two dates.

15. Guidance for Employers who Previously Accepted 3-Year DACA EAD

In light of the court order blocking President Obama's executive actions in *Texas v. United States*, No. B-14-254 (S.D. Tex.), the USCIS recalled (and replaced) approximately 2,590 3-year EADs which had been issued after February 16, 2015. Most individuals have now been issued replacement EADs with a 2-year validity. While the issue has been largely resolved for the EAD holders, many employers are uncertain if they need to correct or otherwise update their I-9 forms to reflect the change in the work authorization validity period.

Will USCIS be releasing policy guidance on what steps an employer should take in this situation? In particular, employers should be instructed on whether there is an affirmative obligation to review I-9s for these 3-year EADs and the particular process for reverification (e.g., correction of Sections 1 and 2 similar to TPS extension or use of Section 3, etc.). In addition, employers must be cautioned that they cannot dictate what documents an employee must present (if, for example, the employee now has another acceptable document instead of an EAD).

USCIS is in the process of developing guidance on these issues. In the interim, the public can call the National Customer Service Center (NCSC) toll-free 1-800-375-5283 or 1-800-767-1833 (TDD for the deaf or hard of hearing) to raise questions related to DACA.

16. E-Verify Monitoring & Compliance Statistics Update

What are the most recent statistics from E-Verify M&C on compliance activities (emails, telephone calls, desk reviews, site visits, and referrals to other agencies)? How many of each type of compliance activity has occurred in the last year?

E-Verify publishes its most recent compliance statistics on its public facing website. USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

17. I-9 Central: Instructions for TPS Employee to Amend I-9 Section 1 Attestation

In regards to an automatic TPS employment authorization extension, I-9 Central currently provides the following instructions with regard to the amendment of Section 1:

Existing Employee

If a TPS employee previously completed Form I-9 and presented an EAD that later expired but was automatically extended, the employer should have the employee correct Section 1 by:

- Crossing out the expiration date of his or her employment authorization noted in the attestation
- Writing in the date that the automatic extension of employment authorization ends
- Initialing and dating the correction in the margin of Section 1.⁴

It appears that the I-9 Central instructions are inconsistent with the “First Day Rule” found at 8 CFR §274a.2(b)(1)(i)(A), which refers to a one-time employee attestation requirement. In addition, though there are other automatic extensions of employment authorization for existing employees by operation of law (such as H-1B portability, H-1B cap gap extensions, receipt rules, the 240 day rule, and temporary evidence of permanent residence), we note that USCIS I-9 instructions in those situations do not include the need for a Section 1 employee attestation amendment. Please address this inconsistency and advise whether employers must continue to inform TPS employees that they should amend Section 1 where there is an automatic TPS employment authorization period extension.

We will take the points that you raise under advisement. However, until the guidance changes, employers should continue to ensure that the employee corrects the Section 1 employment attestation to reflect the correct date. Reverification is triggered upon the earlier of the expiration date stated in Section 1 or the expiration date stated in Section 2 or, if applicable Section 3.

18. E-Verify Proposed Revisions

Please provide an update on the status of the proposed revisions to the E-Verify Program published in 80 Fed. Reg. 32408 on June 8, 2015.

⁴ USCIS I-9 Central, Temporary Protected Status (last reviewed/updated 10/19/2011), available at <http://www.uscis.gov/i-9-central/complete-correct-form-i-9/complete-section-1-employee-information-and-verification/temporary-protected-status>.

E-Verify is still in the process of reviewing the comments received during the 60 day comment period.

19. Follow-Up Questions from Last Agenda

As a follow-up to our last meeting, USCIS offered to take AILA's concerns about I-9s in the rehire context under advisement. Does USCIS have any update in regards to this issue?

DHS regulations provide 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).