



Questions and Answers

**AILA Verification and Documentation Liaison Committee
Joint Meeting with USCIS Verification and ICE Homeland Security
Investigations
Washington, DC
November 10, 2016**

Overview

On November 10, 2016, 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. General I-9 Questions

In the past liaison meetings, USCIS has maintained that the Immigration and Nationality Act (INA) and the regulations require the same employer representative who examines the original verification documents in the presence of the employee to execute the employer attestation in Section 2 of Form I-9, Employment Eligibility Verification. In fact, USCIS revised the Form I-9 instructions to make this point clear. However, as remote hires become more and more common at U.S. companies, this rule creates additional burdens and logistical difficulties for employers that are required to oversee proper Form I-9 execution in many locations around the country where they have little, if any, administrative infrastructure.

Now that the United States Court of Appeals for the Fifth Circuit has ruled that neither the statute nor the regulations prohibit USCIS from allowing a "corporate attestation," where, for example, one employer representative reviews the original documents on behalf of the employer and another employer representative executes Form I-9 on behalf of the employer. Would USCIS consider amending the Form I-9 instructions to allow

greater flexibility for employers attempting to deal with the logistical challenges of Form I-9 compliance for remote hires?¹

While we understand the challenges for companies who hire remotely, USCIS is not reversing its policy on corporate attestation. The version of Form I-9 at issue in the case you reference was determined by the court to be ambiguous; since then, the agency has updated its guidance that the same person who reviews original documentation in the physical presence of the employee must complete the Section 2 attestation.

- a. If employers have a question for ICE HSI, OSC, or USCIS (E-Verify or Verification Division in general), please confirm that the following contact information is accurate and appropriate. If there is any other contact information that we should be aware of, please confirm. Additionally, please confirm whether email is preferred over the phone.

2. USCIS Verification Division

The contact information below is accurate.

E-Verify Customer Support is available to assist with using E-Verify, password resets, assistance with cases, technical support, E-Verify policies and procedures, Form I-9, and employment eligibility. (M-F, 8 a.m. to 5 p.m.)

For Employers:	888-464-4218 877-875-6028 (TTY) E-Verify@dhs.gov
For E-Verify Employer Agents:	888-464-4218 877-875-6028 (TTY) E-VerifyEmployerAgent@dhs.gov
For Employees:	888-897-7781 877-875-6028 (TTY) E-Verify@dhs.gov

E-Verify Technical Support is available to help with problems accessing and using E-Verify. (M-F, 9a.m. to 8 p.m. Eastern, excluding federal holidays)

For Employers and E-Verify Employer Agents:	800-741-5023
---	--------------

For *myE-Verify and Self Check*, the E-Verify customer call center is able to answer other questions about the myE-Verify and Self Check services.

myE-Verify and Self Check Customers:	855-804-0296 877-875-6028 (TTY)
Email:	myEVerify@dhs.gov EVerifySelfCheck@dhs.gov

¹ See *Employer Solutions Staffing Group II, LLC v. The Office of the Chief Administrative Hearing Officer*, Case No. 15-60173 (5th Cir, Aug. 11, 2016).

USCIS National Customer Service Center has a tiered structure which is publically available.² As such, we would like to know the following about ICE HSI, USCIS Verification, and OSC:

- a. In general, what teams or departments are responsible for handling public inquiries at each agency? Are they government employees or contractors?

USCIS, Verification Division, Customer Contact Operations (CCO) employees are federal employees who are responsible for handling public inquires.

- b. Are phone calls recorded and reviewed for quality control? If so, how are calls reviewed (spot audit of recorded conversations, supervisory review of call notes made by representative on the call, etc.)?

Telephone calls are not recorded; however, CCO supervisors and team leads continually train staff and monitor live phone conversations. This approach has resulted in CCO consistently receiving high praise for their customer service.

- c. If an employer or attorney calls the general information line and is not satisfied with the information provided, what is the preferred method for escalating the call to a higher level? For example, should the caller request to speak with a supervisor, send an email explaining the issue and referencing the call, etc.?

The caller may ask to speak to the supervisor or team leader of the CCO representative for assistance and will be transferred to the supervisor or team lead immediately. If CCO is unable to answer the inquiry, a referral is made to the E-Verify branch for assistance. Once a response is received from E-Verify, CCO will contact the individual with the information.

3. E-Verify

The E-Verify Supplemental Guide for Federal Contractors (9/2010) states under 6.4 SUBSIDIARIES AND AFFILIATES, “Only the legal entity (business) that signs the contract is considered the Federal contractor with the E-Verify clause, and is bound by the E-Verify obligation. Whether certain subsidiaries and affiliates are a part of the legal contracting entity depends on the specific factual context. Consult your legal counsel if you have additional questions about this topic.”

- a. What are the legal considerations when deciding which entities in a parent/sub or affiliated entity are required to enroll its employees? What indicia of affiliation would make a difference? Does it matter how the E-Verify registration has been completed?

² See USCIS Policy Manual, Volume 1, Part A, Chapter 3 – National Customer Service Center (NCSC), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume1-PartA-Chapter3.html>.

USCIS recognizes the possibility of too many potential scenarios for the agency to provide sufficient guidance in this regard and leaves the determination of how to treat subsidiaries and affiliates to companies and their own legal counsel.

- b. If an employer is enrolled in E-Verify and realizes that the federal employer identification number (FEIN) currently listed in the company profile is incorrect, can the employer go into the system and correct the FEIN, or contact E-Verify to request the correction? Or, must the employer ask that the account with the wrong FEIN be closed and re-enroll in E-Verify?

If an employer notices that any of their company information is incorrect or requires updating the employer should update their Company Information Page in their E-Verify account.

- c. AILA members report that site visits are being conducted by E-Verify related to desk audits. When is a site visit required and how should an employer expect to be notified? Are the individuals conducting the site visits USCIS employees or contractors? What should an employer expect to occur during one of these visits, and are there documents that need to be prepared in advance?

E-Verify Monitoring & Compliance (M&C) staff who are federal employees conduct site visits when they believe a face-to-face meeting rather than communicating by email or phone call would be more helpful in understanding and addressing possible noncompliant activity.

M&C conducts site visits with the consent of the employer. Employers are contacted initially on the phone by M&C to request the employer's participation and to schedule a time for a site visit. A confirmation email will then be sent to the employer once M&C and the employer agree on the date, time and participants.

A site visit is an opportunity for M&C staff and E-Verify users to meet in person to discuss observations and recommendations in an effort to assist the employer in being compliant with the E-Verify Memorandum of Understanding, E-Verify Manuals, Form I-9 instructions, and applicable laws.

Some of the documents employers may be asked to provide include, Further Action Notices, Referral Date Confirmations, Termination Letters or copies of documents that are related to the particular web services application used to interface with E-Verify, if applicable.

After a brief introduction and discussion of what to expect from the site visit, M&C will ask E-Verify users about their general use of E-Verify as well as questions about specific E-Verify cases to clarify or better understand how the employer is using E-Verify. At the end of the site visit, M&C will provide a summary of observations and recommendations.

Generally, site visits will last two to three hours depending on the subjects discussed and the needs of the employer.

- d. Can you please provide an update on the proposed revisions to the E-Verify program, which would include a reverification feature?

The E-Verify PRA is under review with the Office of Management and Budget. We do not have an estimated time frame for when reverification will be released.

- e. AILA would like to thank USCIS for addressing our questions and concerns regarding the new process of locking user IDs and for issuing updated guidance. As a follow-up:

- How many user IDs have been locked since USCIS began locking E-Verify user IDs that have been inactive for 270 days or more?

Between Aug. 21 and Nov. 10, approximately 762,792 user IDs have been locked. Of those locked, 1,906 users have unlocked their accounts.

- If a user needs an ID unlocked, what is the preferred way to do that – by telephone or by email? How long on average does it take for the account to be unlocked when a security question hasn't been established and the user is required to contact E-Verify to unlock a user ID?

The preferred method for unlocking user IDs is the self-service feature in E-Verify. When a user goes through the help desk to unlock an ID, this process takes about 5 minutes.

- f. E-Verify defines a “hiring site” as “the location where employees are hired and they complete Form I-9.”³ E-Verify further states that a “participating hiring site means that an employer will create an E-Verify case for every newly hired employee who is hired and completes a Form I-9 at that site.”⁴ Remote employees, however, may be hired to work from their homes and then travel to a third party employer agent to complete Form I-9. The same company may use a number of agents in different states. Please advise how the concept of “hiring site” applies to remote employees. Do the employees’ homes need to be listed in E-Verify as hiring sites?

When an employee is hired remotely and visits a third party employer agent to complete Form I-9, for E-Verify purposes, the “hiring site” is the location of the third party employer agent where the Form I-9 was completed, not the home of the employee.

- g. 28 CFR 68.52(c)(6) states that “failure to notify the Attorney General” that an employee continues to work after receiving a final non-confirmation in E-Verify is a violation that

³ E-Verify User Manual, Aug 2016, https://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/E-Verify%20Manuals%20and%20Guides/EVerify_User_Manual_Employer.pdf, pp. 69-70.

⁴ *Id.*

will result in a civil penalty. Is updating the E-Verify system, per the E-Verify user manual, considered sufficient notice per 28 CFR 68.52(c)(6)?

Closing the case in E-Verify with the statement “The employee continues to work for the employer after receiving a Final Nonconfirmation” in the system is sufficient notice.

- h. Employers who do business in many states are often confused about the various state requirements for E-Verify. There does not appear to be one accurate source of information to obtain each state’s E-Verify requirements. There are a few commercial websites that provide updated information, but there is also a lot of outdated information that appears in a Google search (including old USCIS E-Verify PowerPoint presentations). Is there a source that USCIS uses to obtain this information or to refer the public? If so, can you post it on the E-Verify website?

USCIS does not comment on state laws which have no bearing on E-Verify requirements. Employers that are required to participate in E-Verify due to state laws may contact the applicable state for more information.

- i. There is confusion regarding science, technology, engineering and mathematics optional practical training (STEM OPT) and E-Verify with what appears to be conflicting agency guidance. USCIS has stated previously that the company location where the STEM OPT employee will work must be enrolled in E-Verify.

- What is the statutory authority for the requirement that a specific company location must be enrolled in E-Verify? The new STEM OPT final rule, published on March 11, 2016 (81 FR 48) only requires company enrollment but does not address the specific worksite. In addition, a review of the guidance on the DHS STEM OPT Hub (<https://studyinthestates.dhs.gov/stem-opt-hub>) also only refers to the company enrollment.

The final rule requires all employers training STEM OPT students to participate in E-Verify, as required since 2008. To participate in E-Verify an employer must enroll the hiring site or location where the F-1 STEM OPT employee will work and create a case in E-Verify for all new hires, including all F-1 STEM OPT employees, at that hiring site. See 214.2(f)(10)(ii)(c)(5)

- We have seen the terms “hiring site” and “worksite” used regarding E-Verify and STEM OPT. Hiring sites can be different than worksites. To clarify, is the requirement that the hiring site or the worksite must be enrolled?

A STEM student may change employers, or work at a different hiring site for the same employer but the new employer or new hiring site must be enrolled and in good standing in E-Verify before the student begins work for pay.

- j. We are interested in learning more about the E-Verify TEAM program. When did this initiative begin? What are the advantages of the program? How does an employer enroll?

Are all E-Verify participants eligible? How many strategic response managers (SRMs) are there?

T.E.A.M. was an older term used by E-Verify to describe the first strategic relationship managers (SRMs). In 2011 E-Verify began assigning SRMs to employers who needed extra help with ensuring that those users were using E-Verify correctly and efficiently. There is no enrollment process to establish an SRM relationship. Any E-Verify employer can be referred by other Verification branches such as M&C. E-Verify currently has 9 SRMs.

4. Form I-9 Completion

The instructions to Form I-9 state “Providing your Social Security number is voluntary. However, if your employer participates in E-Verify, you must provide your Social Security Number.” We have always understood this to mean that if the employer is enrolled in E-Verify in a way that requires a particular employee to be run through E-Verify, the employee needs to list his Social Security number (SSN) on Form I-9. It is not a blanket requirement for all employees of an employer who, for example, may only be enrolled in a single state or pursuant to a single government contract. Please confirm that this is correct.

A Social Security number (SSN) is required to create a case in E-Verify. When completing Form I-9, employees must provide their SSNs if their employer is enrolled in E-Verify. Employers who enroll only one hiring site in E-Verify must require all new employees hired at that site to provide their SSNs on their Form I-9; SSNs are not required on Form I-9 of new hires at sites that are not enrolled in E-Verify. Employers who are awarded a federal contract with the Federal Acquisition Regulation (FAR) E-Verify clause require SSNs on the Form I-9 of employees who are new hires or existing employees assigned to the FAR contract. Note: If an employer has only one hiring site, then all of its new hires and employees assigned to the FAR contract must provide their SSNs on their Form I-9.

The regulations state that a student with optional practical training must obtain an Employment Authorization Document (EAD) in order to work.⁵ If a student applies for and receives the EAD, may the student nonetheless present the Form I-20, passport, and Form I-94 (which combine to make a List A document) to prove work authorization, or must the employer require the EAD?

F-1 nonimmigrant students participating in optional practical training must present an EAD. The F-1 student must obtain an EAD from USCIS before he or she is authorized to work and may not begin employment until the date indicated on the EAD. The employer must record the EAD card number and expiration date under List A in Section 2. If the student’s EAD expires, the employer must reverify the student’s employment authorization in Section 3.

Only F-1 nonimmigrant students participating in curricular practical training may present the three documents (the Form I-20, passport and Form I-94) to establish identity and employment authorization.

⁵ See 8 CFR §214.2(f)(10)(ii)(A).

When border commuters from Canada or Mexico list their address in Section 1 of Form I-9, where, if anywhere, should they list the country of residence? There is no specific field for “country.”

Border commuters from Canada or Mexico may use the city or town block to enter their address such as, Toronto, Ontario, CAN. The revised Form I-9 that will be published by Nov. 22 allows border commuters to enter their city and province or state in one field and includes the country in the drop-down for the state field, either CAN or MEX.

5. Confidential information

Form I-9 files will contain “Personally Identifiable Information (PII).” There is a legal obligation to protect such information. In the I-9 Central Questions and Answers, in response to the question “How Can I Protect Private Information on Forms I-9,” USCIS advises that Form I-9 information is private “and that it is used only for Form I-9 purposes.”⁶ Is USCIS considering issuing a policy statement to identify under what circumstances Form I-9 information is transferrable to other parties when dealing with contractors and subcontractors, mergers and acquisitions, enforcement agencies, and state and local governments?

Under federal law, use of Form I-9 and any information contained in or appended to the form is limited to enforcement of the Immigration and Nationality Act, as amended, and 18 U.S.C. 1001, 1028, 1546, and 1621. Information about which agencies may request to inspect Form I-9 may be found at <https://www.uscis.gov/i-9-central/retain-store-form-i-9/inspection/inspections>.

Federal privacy laws only apply to disclosure of information by the federal government, and not by private entities. Whenever an employer deals with documents containing personal information of individuals, adequate safeguards should be taken to ensure the information is not compromised.

6. Electronic Signatures

The regulations relating to electronic Form I-9 state that there must be “no change to the name, content, or sequence of the data elements and instructions” and that “no additional data elements or language” may be “inserted.”⁷ Please confirm that this refers to the printable Form I-9 generated by the electronic software and not to the interface itself with the new hire and/or employer representative. For example, USCIS’ proposed form includes pop-ups to assist with completion of Form I-9, and the vast majority of available electronic Form I-9 software includes an interface with language in addition to that on Form I-9 itself. Further, additional language is seemingly necessary to comply with the electronic signature requirements. As such, it seems that, so long as the full form and instructions are available to the employee, the regulatory requirement relates to the printable form generated by the software.

⁶ See <https://www.uscis.gov/i-9-central/i-9-central-questions-answers/questions-and-answers>.

⁷ 8 CFR 274a.2(a)(2).

The revised Form I-9 includes only the data elements and instructions necessary to complete the form. It does not, for example, include a data element or language related to whether or not an individual served in the military. The regulations provide that the electronic Form I-9 must replicate the paper Form I-9 process. For that reason, USCIS provided all of the helper text to employers in the instructions in the paper form. Whether completed on a computer and then printed out or printed out first and then completed by hand, employees and employers have identical experiences and the result is an identical Form I-9.

The regulations relating to Section 1 electronic Form I-9 signatures state: “The system used to capture the electronic signature *must* include a method to acknowledge that the attestation to be signed has been read by the signatory.”⁸ On the paper Form I-9, there is no method to confirm that the employee has read the attestation statement, other than the fact that the attestation statement is located in the signature block.

- a. Please confirm that displaying the language on the screen on which the signature is executed satisfies the requirement or, if not, please explain what is required.

All electronic forms must include a method to allow the employee to confirm that he or she has read the attestation statement before signing the form and displaying the language on the screen on which the signature is executed does not satisfy the requirement. The employee must affirmatively acknowledge that he or she has read the attestation. This requirement does not apply to forms that are completed on paper.

- b. On a related note, the regulations relating to Section 2 electronic signatures state: “The system used to capture the electronic signature *should* include a method to acknowledge that the attestation to be signed has been read by the signatory.”⁹ Does the use of the word “should” (as opposed to “must” which is used in the Section 1 portion of the regulations) indicate a different obligation in Section 2 than applies in Section 1?

Yes, there is a different obligation in the Section 2 attestation than there is in the Section 1 attestation.

7. Agency-Specific Questions:

Questions for USCIS

The I-9 Central Questions and Answers section contains critical interpretations of the law. The questions are organized into general categories, and each answer must be “expanded” to show the answer. This makes it difficult for an employer or counsel to review and study the entire corpus of questions and answers or to download the questions and answers for future review and study. Can the service insert an “expand all” option to make the information more readily accessible?

⁸ 8 CFR 274a.2(h)(1).

⁹ 8 CFR 274a.2(h)(2)(i).

Yes, this is something we will do; it requires some developing and we are currently working on providing a way for the public to expand all questions and answers on I-9 Central so that all information is displayed at one time.

USCIS announced in the Aug./Sept. 2016 E-Verify Connection newsletter that the new Form I-9 will be released by 11/22/2016. In the event that the new version of Form I-9 is not released before this meeting, we would appreciate any updates you can provide relating to the timeline for the release and features of the form. Specifically, will this be a “Smart” fillable PDF as proposed in the related Federal Register notices last year, or has USCIS tabled the “Smart” features and USCIS plans to instead release a paper version in basic PDF format and which, like the current PDF version available, lacks interactive fillable features?

USCIS will release a new Form I-9 by Nov. 22 of this year. The new Form I-9 that will be released includes the features the public was asked to comment on in the Federal Register Notice last year.