



**AILA Verification and Documentation Liaison Committee
Joint Meeting with USCIS Verification Division and ICE Homeland Security Investigations
Washington, DC
Agenda
November 6, 2014**

On November 6, 2014 The American Immigration Lawyers Association (AILA) Verification and Documentation Liaison Committee met with the USCIS Verification Division and ICE Homeland Security Investigations in Washington, DC. The questions below were submitted by AILA and responses were provided by the USCIS Verification Division.

1. The regulation at 8 CFR §274a.2(b)(1)(viii) provides guidance to employers who are purchasing or acquiring an entity in a merger or acquisition. The employer is given the choice of treating the acquired employees as new hires and completing new I-9s, or treating them as continuing in their employment, accepting the previous employer's I-9s, and assuming the risks related to any deficiencies on those forms.

If the purchasing employer accepts the selling employer's I-9s, and the seller hands the original I-9 forms over to the purchaser, is the seller absolved of all obligations with respect to the transferred I-9s, even if the seller is subjected to an ICE I-9 audit after the sale closes but before the required I-9 retention period has ended? Is there an expectation or requirement that the seller maintain copies?

USCIS Response: There is no rule which requires sellers to maintain copies of Form I-9 records once the original records have been transferred to the purchaser. Whether the seller is still liable for violations under section 274A of the INA is dependent on the facts of each case.

Form I-9: List B Documents

2. During our April 15, 2014 meeting, we discussed state-issued driver's licenses or similar identity documents for individuals who are not lawfully present in the United States.¹ USCIS

¹ Q&As from AILA Joint Meeting with USCIS Verification and ICE HSI, AILA Doc. No. 14051343 (posted May 13, 2014) available at <http://www.aila.org/content/default.aspx?bc=36200|48567>.

confirmed that such identity documents are presumptively valid List B documents, so long as the required data points are included, even if the document includes an annotation such as “Not Valid for Identification” or “Driving Privileges Only.”

Will USCIS publish guidance (for example on I-9 Central) confirming that such a document is a presumptively valid List B identification document issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address?

USCIS Response: The employer must decide whether the card presented by an employee meets the description of acceptable identity documents in the regulations at 8 CFR 274a.2(b)(b)(1)(v)(B). The [Handbook for Employers](#) (M-274) and [I-9 Central](#), and the [Form I-9 List of Acceptable Documents](#) currently indicate that a driver’s license or identification (ID) card issued by a state or outlying possession of the United States is acceptable as a List B document provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address. They also indicate that an identification card issued by federal, state, or local government agencies or entities may be acceptable as a List B document provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address. The INA and DHS regulations prohibit an employer from hiring or continuing to employ an individual if the employer has actual or constructive knowledge that the employee is unauthorized to work. USCIS publishes all questions and answers from its meetings with AILA; the information provided at the [April meeting](#) has been published on our website at www.uscis.gov/outreach under the Notes from Previous Engagements.

3. May an employer use an unexpired List B identity document which, though valid on its face, may no longer be valid for the purposes for which it was issued? For example, if an employee presents an unexpired Texas offender identification card, but the person is no longer under an order of supervision, please confirm that the identification document is valid for List B purposes.

USCIS Response: Yes, the identification document would still be valid for List B purposes as long as the document is unexpired and contains a photo or information such as name, date of birth, gender, height, eye color and address. If the employer is an E-Verify participant, the document must contain a photo.

Form I-9: F-1 “Cap Gap” Documentation

4. Page 21 of the M-274 (rev. 4/30/13) states that for students in the F-1 cap-gap employment authorized period, “The student’s expired OPT Employment Authorization Document (Form I-766), along with Form I-20, which shows that the cap-gap extension was endorsed by the student’s designated school official, would qualify as a List A document. You should enter these documents in Section 2 under List A (or Section 3 if reverifying) of Form I-9. These documents are acceptable for establishing employment authorization through September 30 of the year in which you filed the H-1B petition or until the H-1B petition is rejected, denied,

or withdrawn. You must reverify employment authorization when the Form I-20 cap-gap endorsement expires but not later than October 1.”²

During our April 11, 2013 meeting with the USCIS Verification Division, we discussed this language and suggested that a cap-gap endorsed I-20 need not be mandatory because an expired OPT EAD with a Form I-797 H-1B receipt notice also documents cap-gap eligibility.³ Moreover, there is no support for this requirement in the regulations and employers often have difficulties obtaining cap-gap Form I-20 documents from Designated School Officials. USCIS agreed to review this issue and confirmed that for Forms I-9, the documents listed in the M-274 are suggested but not required. Would USCIS consider updating the M-274 and I-9 Central to that effect?

USCIS Response: As indicated during the April 11, 2013 meeting, DHS has determined that the suggested combination of documents are acceptable under List A. DHS does not anticipate making updates to the M-274 or I-9 Central at this time, but will keep these comments under consideration when evaluating future updates.

Form I-9: EAD Approval as List C Document

5. During AILA’s November 19, 2013 liaison meeting with the USCIS Verification Division, AILA asked whether information from the USCIS online case status system indicating that work-authorized status had been approved could be used as a List C document.⁴ USCIS responded that it did not consider this to be the equivalent of an approval notice. We understand that position, as a case status system update does not include information that shows the name, date, and duration of approval. However, we have some follow-up questions concerning other EAD approval documents:
 - a. Would an I-797 approval notice for a Form I-765 employment authorization application be acceptable as a List C document under the category *employment authorization document issued by the Department of Homeland Security*? The I-797 includes the name, date, and duration of approval. Allowing employers to accept this document would be extremely helpful in situations where the EAD card is delayed or lost in the mail.

USCIS Response: The approval notice clearly states that it is not evidence of employment authorization and, therefore, is not an acceptable document for Form I-9. In instances where a Form I-766, Employment Authorization Card, is lost in the mail, the employee may present a receipt for the application for a lost I-766 and continue to work for 90-days. By the end of 90-days, the employee must present the actual I-766 for which the receipt was issued.

² USCIS M-274 Handbook for Employers with Guidance for Completing Form I-9, AILA Doc. No. 13043069 (posted April 30, 2013) available at <http://www.aila.org/content/default.aspx?docid=46793>.

³ AILA Minutes from 4/11/13 Meeting Between AILA and USCIS Verification, AILA Doc. No. 13091802 (posted Sept. 18, 2013) available at <http://www.aila.org/content/default.aspx?bc=36200|47321|45856>.

⁴ Minutes from AILA’s Joint Meeting with USCIS Verification Division and ICE/HSI, AILA InfoNet Doc. No. 14021844 (posted Feb. 18, 2014), available at <http://www.aila.org/content/default.aspx?bc=36200|47487>.

- b. Members report that when an employee is approved for an OPT EAD and there are government glitches in card production, the employee is sometimes able to secure a letter like the one attached as Exhibit A.
 - i. Does USCIS agree that an employer may accept the original of such a letter in the I-9 process? If so, how should the employer document the I-9?
 - ii. Should the letter be treated as a “receipt” under the 90-day rule such that the employee must ultimately present the EAD card?
 - iii. When should an E-Verify employer run the E-Verify query in such a case?

USCIS Response: Some employment authorization documents issued by DHS may be acceptable as List C#8 documents. A letter from a USCIS field office issued to an individual to use as proof of employment may qualify as a List C#8 document if it states that the individual may use the letter as proof of employment authorization for a specific length of time. The employer should document Form I-9 with the document information required by the form and regulations. If there is no document number, then this should be indicated on Form I-9. An E-Verify employer may create an E-Verify case as usual. If the letter does not state that it can be used as proof of employment authorization, then it is not acceptable. For more information about DHS-issued documents please contact [customer support at 888-464-4218](tel:888-464-4218).

I-9 Central

6. An I-9 Central FAQ regarding List C “catch-all” documents reads:

Employment authorization document issued by DHS. Some employment authorization documents issued by DHS include but are not limited to the Form I-94 issued to an asylee or work-authorized nonimmigrant (e.g., H-1B nonimmigrants) because of their immigration status, the unexpired Reentry Permit (Form I-327), the Certificate of U.S. Citizenship (Form N-560 or N-561), or the Certificate of Naturalization (Form N-550 or N-570). A form I-797 issued to a conditional resident may be an acceptable List C(8) document in combination with his or her expired Form I-551 (“green card”). For more information about DHS-issued documents please contact customer support.⁵

This question implies that an H-1B employee may present a driver’s license and an I-94 card only (no passport) for verification. Is this correct? If not, might USCIS consider using a different example after the term “work-authorized nonimmigrant”?

USCIS Response: Employers cannot specify which document(s) employees may present from the Lists of Acceptable Documents to establish identity and employment authorization. Employees must present one selection from List A or a combination of one selection from List B and one selection from List C. An employee may choose to present a Form I-94 (indicating that the employee is a nonimmigrant who is work authorized incident to status

⁵ List C Documents that Establish Employment Authorization, available at <http://www.uscis.gov/i-9-central/acceptable-documents/list-c-documents>.

with this specific employer) with an unexpired foreign passport as a List A document, or may choose to present such Form I-94 status as a List C document, under C8, in combination with a selection from List B. If the employer is an E-Verify participant, the List B document that is presented with the Form I-94 also must contain a photograph.

7. The Citizenship Status/Document Matrix provides guidance as to which documents are issued to specific groups of people.⁶ It states that an alien authorized to work (as well as an LPR) could provide a voter registration card as a valid List B document. This is very confusing because in general, non-citizens cannot vote. Would USCIS consider either updating the matrix or adding a caveat (as is currently the case with the Social Security card).

USCIS Response: While it is true that non-citizens cannot vote in a state or federal election, there are a limited number of municipalities which allow non-citizens to vote in local elections. These occurrences are rare, however if the municipality issues a voter identification card that meets the requirements of a List B document, i.e. the voter registration card contains a photograph or identifying information such as name, date of birth, gender, height, eye color and address, the document would be acceptable for Form I-9 purposes. USCIS will review our current guidance and consider whether a caveat is warranted.

8. Under the List A document section of I-9 Central, the photo of the I-94 card is the older paper version.⁷ Since many employees have the new printout version and are confused regarding its validity (as are employers), would USCIS consider adding a photo of the new electronic I-94 print out as well?

USCIS Response: USCIS updated our website to include an image of the [electronic I-94](#) printout.

E-Verify: Reverification

9. During the June 23, 2014 E-Verify and Form I-9 Virtual Forum, USCIS stated that it is working on adding the ability to reverify an existing employee's work authorization in E-Verify. What is the status of this feature? Since employers cannot currently use E-Verify for existing employees unless they are a federal contractor with the FAR clause in their contract, under what circumstances would an employer be required to use the feature?

USCIS Response: USCIS is currently working on developing a reverification process for E-Verify. USCIS intends to publish a Federal Register Notice describing the proposed process and inviting public comment.

10. Please confirm that if the reverification feature is implemented for use in Section 3, it will not be extended to cases where Section 3 is used solely to record a name change.

⁶ Who Issued this Document? Citizenship Status/Document Matrix, available at <http://www.uscis.gov/i-9-central/acceptable-documents/who-issued-document>.

⁷ List A Documents that Establish Both Identity and Employment Authorization, available at <http://www.uscis.gov/i-9-central/acceptable-documents/list-documents>.

USCIS Response: USCIS is still developing the proposed reverification process and therefore cannot confirm details of the proposal.

E-Verify: Rehire

11. On page 11 of the June 2014 version of the M-775, E-Verify User Manual for Employers, the following guidance relating to rehires is provided:

While you must use E-Verify for all employees you rehire, E-Verify should never be used to re-verify the employment authorization of an existing employee. E-Verify has special rules if you rehire an employee who previously provided a U.S. Passport, U.S. Passport Card, Permanent Resident Card, Alien Registration Receipt Card (Form I-551), Driver's License or State ID card for Form I-9 and the document is now expired. In these situations, there are two options:

- *If you never created a case in E-Verify for the employee, you must have the employee complete a new Form I-9 and create a case in E-Verify.*
- *If you previously created a case in E-Verify for the rehired employee and received an employment authorized result, complete Section 3 of the employee's previous Form I-9 and do not create a new case for the employee in E-Verify. Alternatively, you may choose to complete a new Form I-9 and create a case for the employee in E-Verify. If you previously created an E-Verify case, but did not receive an employment authorized result, you must have the employee complete a new Form I-9 and create a case in E-Verify.⁸*

Please explain why there is a reference in the first paragraph about whether the identity document “is now expired”? The employer’s decision to create a new Form I-9 should turn on whether the work authorization document has expired, not on whether the identity document has expired. Would USCIS consider simply replacing the two bullet points above with the following options:

- *If you never created a case in E-Verify for the rehired employee, you must complete a new Form I-9 and create a new case in E-Verify.*
- *If you previously created a case in E-Verify and received an employment authorized result, you may complete Section 3 of the Form I-9 and need not create a new E-Verify case.*

⁸ M-775, E-Verify User Manual For Employers, June 2014, available at http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/E-Verify%20Manuals%20and%20Guides/EVerify_User_Manual_Employer.pdf.

- *If you previously created a case in E-Verify and did not receive an employment authorized result, you must complete a new Form-9 and create a new E-Verify case for the rehired employee.*
- *Alternatively you may choose to treat every rehire as a new hire and complete a new Form I-9 and create a new E-Verify case for the employee.*

USCIS Response: When an employee is rehired, but did not previously have his or her employment authorization verified through E-Verify or if verified, did not receive an employment authorized result, the employer must create an E-Verify case for the rehired employee. E-Verify does not accept any expired documents, so we provided this guidance to remind employers to ensure the rehired employee’s identity document is unexpired before creating an E-Verify case.

E-Verify: New Features

12. How many SSNs has E-Verify locked since implementing that feature? Of those cases, how many of the related TNCs were uncontested? How many were successfully converted to “Employment Authorized” status?

USCIS Response: USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

13. In monitoring duplicate cases (based on multiple uses of the same SSN), how does USCIS distinguish between multiple short-term hirings of the same individual (where the employer chooses to complete a new I-9 rather than rely on the formula for determining whether re-hire provisions apply), and use of the same SSN by different individuals?

USCIS Response: USCIS monitors for duplicate cases of the same SSNs and conducts research and analysis of the data to determine what compliance actions are appropriate.

E-Verify: Outreach

14. Would USCIS consider communicating informally and/or conducting training for a company whose data indicates a “too high” percentage of presentation of green card documentation for LPRs before referring the employer to OSC?

USCIS Response: USCIS does provide compliance assistance for this behavior as it does for others. When it is determined that an employer’s behavior is potentially discriminatory, USCIS may refer the matter to OSC.

15. Since E-Verify does not have a “live” training site, would USCIS publish the screen-shot-tree-deck so that employers are better able to train personnel? Would USCIS also identify the date when published training materials change?

USCIS Response: All users are required to take and pass the E-Verify tutorial and refresher tutorials prior to creating a case in E-Verify. If a company wants to provide additional training to its users or to other staff members in the company that do not access E-Verify, the

company could use the ‘Training Requirements and Guidelines for Web Services Users’ found in the publication section of the E-Verify public website (www.dhs.gov/E-Verify). The guide outlines the topics and key points that companies should use when developing supplemental training for E-Verify users or other company staff members. Companies may also use the information and graphics found in the various user manuals and guides found on the E-Verify public website to help supplement their training material.

The ‘Training Requirements and Guidelines for Web Services Users’, like all E-Verify user manuals and guides, is periodically updated. The revision date is always included on the document and public website.

USCIS also provides many free resources that can be used by employers to train personnel. Free live webinars for novices and more experienced users are offered throughout each month. Several videos are posted on the E-Verify website (www.dhs.gov/E-Verify) that can be used for training. A recently posted resource is the interactive Employee Rights Quiz which advances learning while testing knowledge.

16. The June 2014 E-Verify Connection newsletter includes the following information about Self Check: “The Self Check web page has been dressed up. Encourage job seekers to visit Self Check to confirm their own employment eligibility before you do.”⁹ Would E-Verify consider adding language reminding employers that they may not **require** candidates to use Self-Check?

USCIS Response: Yes. USCIS utilizes various channels to remind employers and workers that employers may not require employees and job seekers to use Self Check. That reminder has been included in other issues of E-Verify Connection. It was also included in the August 14, 2014 blog post about Self Check. This point is emphasized in all E-Verify, Self Check and myE-Verify webinars. USCIS will continue to communicate this message to employers.

E-Verify: Technical System Questions

17. E-Verify initially included an automatic case closure function. Would USCIS consider returning to the prior practice of automatic closure upon employment authorized notification?

USCIS Response: An automatic closure function has never been an E-Verify capability. USCIS is not considering automatic case closure at this time.

18. E-Verify guidance, over the phone, in meetings, and in writing often is to “add a note to the file.” Please explain where and how employers should add a note as instructed. Is M&C reviewing comments in the “remarks” box before sending a compliance inquiry or notice to employers?

⁹ USCIS Releases E-Verify Connection, June 2014 (Issue 19), AILA Doc. No. 14070147 (posted July 1, 2014) available at <http://www.aila.org/content/default.aspx?docid=49081>.

USCIS Response: A note can be attached physically or electronically to an employee's Form I-9. Any notation should clearly explain a situation or correction and be signed and dated by the employer.

A USCIS compliance inquiry is an attempt to offer assistance to correct a non-compliant behavior. An email is sent when the first occurrence of a non-compliance issue is raised. USCIS analysts conduct pre-call research to include reviewing comments.

19. How does an employer fix a typo that is entered into E-Verify? There appears to be inconsistent guidance. Observation A, Recommendation #3 says to ignore it if E-Verify issued an "employment authorized" notification notwithstanding the typo, yet Observation G says to close the TNC and create a new case.

USCIS Response: If incorrect information is entered while creating a case in E-Verify, the employer will need to create a new case with the correct information for the employee. If the case is not yet closed, the employer should close the case by selecting the statement, 'The case is invalid because the data entered is incorrect.' If the case is already closed, the employer should make a note either on the E-Verify case details page or on the employee's Form I-9 explaining that a second case was created because the first case contained incorrect information.

20. Would USCIS consider adding additional case closure options to cover the following scenarios:

- To reflect the fact that the employee never returned to work: E-Verify might return a TNC, but the TNC notice is never delivered to the employee because the employee failed to report work and was terminated as a result.
- Employment terminated for reasons unrelated to verification, either before the employer gave notice or before the employee responded to contest.

USCIS Response: USCIS is currently reviewing the E-Verify closure codes. We appreciate your comments and will consider them as we complete our review.

21. Would USCIS consider adding a feature that would allow an employer to provide an explanation as to why it made a decision to continue to employ an individual after receipt of an FNC?

USCIS Response: USCIS is considering adding a feature to allow an employer the ability to state the reason an employee was retained after receiving an E-Verify FNC.

22. Employers who are E-Verify web-services users report that they have been subject to M&C reviews based on allegations that they failed to print the TNC/Further Action Notice. We understand that this development arises from the way DHS and web-services providers communicate with each other under Version 25 of the Interface Control Agreement. What happens now is that E-Verify does not show when an employer prints an FAN and provides it

to the employee because in V.25, there is no ability for the web-services provider to send that specific “call” to the E-Verify system.

- a. Has USCIS provided guidance to web-services providers that a FAN template could be hosted and completed locally? If so, does this local action somehow track the “print” function within E-Verify so as to avoid false negatives? If not, what method should web-services employers use so that M&C can see that the employer has actually printed and provided the TNC/FAN to affected employees?
- b. Is there a “fix” for this issue in Version 26?

USCIS Response: Whether using the E-Verify graphical user interface (GUI) or web services, E-Verify participants may print and manually complete a Further Action Notice (FAN) when necessary. Web Services providers may request a copy of the FAN template for incorporation into their web services software. E-Verify does not currently have a command or prompt that allows an employer to attest to creating FAN manually or locally. E-Verify only tracks when the “Print Notice” button is clicked within the E-Verify GUI. The most recent E-Verify Interface Control Agreement, Version 26, incorporates a method call which will allow a Web Services user to retrieve the most current version of the FAN. E-Verify will be able to track this method call in future reports.

E-Verify: Purging Records

23. In light of the October 3, 2014 announcement¹⁰ regarding USCIS’s plans to purge E-Verify/Basic Pilot records that are ten year and older, please provide answers to the following questions:

- a. How many employee records will be purged on December 31, 2014?

USCIS Response: USCIS will delete approximately 989,404 records on December 31, 2014, as part of its compliance with the NARA schedule.

- b. Does USCIS anticipate purging once annually at the end of the year for records that reach the 10-year mark during the year? If so, will the purge date always be December 31?

USCIS Response: USCIS will dispose of records annually. Records will be deleted on December 31st each year. Please see the E-Verify Records Retention and Disposal [Fact Sheet](#) for additional information.

- c. What happens to records that span the 10-year anniversary: for example, the original TNC was in December 2004, but the employment authorized or FNC was in January 2005?

USCIS Response: USCIS will dispose of E-Verify case ten years from the date of the last transaction.

¹⁰ USCIS Alert on E-Verify Record Disposal, AILA Doc. No. 14100340 (posted Oct. 3, 2014) *available at* <http://www.aila.org/content/default.aspx?docid=50278>.

d. Can USCIS provide a sample of what the Historic Records Report will look like?

USCIS Response: A sample copy of the Historic Records Report and a description of the report are included in the Instructions for Downloading which are linked to the E-Verify Records Retention and Disposal Fact Sheet and available in the What's New section of the E-Verify website.

Monitoring & Compliance: General

24. We understood from our last meeting that USCIS was developing policy and guidelines to sanction employers for E-Verify MOU non-compliance.¹¹ What is the status of this policy? Has E-Verify taken any adverse actions against employers for E-Verify violations? If so, when and why?

USCIS Response: USCIS continues to develop policy and guidelines related to noncompliance with the E-Verify MOU.

25. There have been instances where an M&C site visit recommendation letter included issues that were not disclosed nor discussed during site visit meetings with the employer. Going forward, could M&C disclose all current issues and areas of concern prior to or during the meeting, and give the employer a meaningful opportunity to respond? Alternatively, can a follow-up meeting be held, after delivery of the post-review recommendation letter, to discuss and respond to issues not previously raised?

USCIS Response: M&C strives to provide the employer with all information it has regarding non-compliance issues that may arise during site visits. In some cases, we learn of items during the visit or afterward that we address in our recommendation letters. We have engaged in conversations subsequent to visits and encourage employers to contact us about site visits and the recommendations.

26. We understand that USCIS is monitoring the following 20 employee behaviors. Which of the following are the most common, and are there any others that are not included on this list?

- Duplicate SSN EA (Employment Authorized) Verifications
- Verification Incomplete Closed
- Use of Invalid SSNs
- Non-Use of E-Verify
- Deliberate Verification Delay
- Verifies Existing Employees (pre-MOU date)
- Fails to verify within 3 days of hire
- Verifies existing employees
- Terminates an employee who contests a TNC
- Verification incomplete closed

¹¹ Q&As from AILA Joint Meeting with USCIS Verification and ICE HSI, AILA Doc. No. 14051343 (posted May 13, 2014) available at <http://www.aila.org/content/default.aspx?docid=48567>.

- Fails to print TNC Referral Notice
- Referred for TNC and Case closed as Invalid
- Fails to resolve TNC
- Employee continues to work after FNC
- Employer requests specific documents of LPRs
- Global receipt number use
- Global I-94 number use
- Global A-number use
- Global passport/passport card number use
- Global SSN number use

USCIS Response: USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

27. Please provide updates on the following:

- a. Does M&C ever conduct site visits without the employer first having undergone a desk review?

USCIS Response: Yes, there are instances when USCIS finds it appropriate to conduct a site visit without a prior desk review.

- b. How many USCIS employees currently conduct desk reviews? Are they the same employees that handle site visits or are site visits handled by contractors?

USCIS Response: USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

- c. Are follow-up site reviews/visits being conducted?

USCIS Response: USCIS may perform follow up site reviews as needed on a case by case basis.

28. Under the M&C code for “employer requests specific documents,” how does USCIS conclude that the employer “requests specific documents of the LPRs?”

- a. What patterns does M&C monitor for that might suggest such a practice?
- b. To date, how many employers have been identified as “discriminating by requesting specific documents?”
- c. How many such employers have been referred to the U.S. Department of Justice Office of Special Counsel because of this issue?

USCIS Response: USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

Monitoring & Compliance: Statistics

29. Please provide the following statistics:

- a. To date, how many U.S. employers are enrolled in E-Verify in each state, in particular, states which have a mandatory E-Verify requirement?
- b. How many E-Verify participants are registered as FAR users?

USCIS Response: As of October 2014, more than 520,000 employers enrolled in E-Verify of which 43,804 are enrolled as FAR employers. USCIS has created the [E-Verify Employers Search Tool](#) which lists employers enrolled in E-Verify by each state. The Tool can generate reports identifying employers by state, size, enrollment method, and identification as a Federal contractor. Employers are encouraged to read the site information and the [additional caveats](#) prior to reviewing search results.

- c. What percentage of E-Verify desk review cases lead to site visits?

USCIS Response: USCIS does not provide information regarding specific monitoring and compliance activities, capabilities and techniques.

- d. What is the total number of employers who access E-Verify through a web service provider?

USCIS Response: Currently 889 E-Verify Employers and 227 E-Verify Employer Agents access E-Verify through a web service provider. The estimated number of client companies of the 227 EEAs using Web Services is 24,000.

- e. How many times in 2013, 2012, and 2011 did an employer receive an FNC and choose to continue to employ the affected individual?

USCIS Response: USCIS declines to answer this question. Some employers may continue to employ individuals without notifying USCIS.

- f. Does E-Verify track TNCs and FNCs by gender? If so, what are the TNC and FNC percentages for women verses men?

USCIS Response: E-Verify does not collect gender information or track tentative nonconfirmations and final nonconfirmations by gender.

Additional Question

30. We have learned of apparently contradictory E-Verify practices concerning work authorization for L-2 spouses. (This issue likely applies equally to E-2 spouses, but we do not have direct evidence.) One of our members reports that she has --on multiple recent occasions, successfully resolved tentative non-confirmations when an L-2 spouse presents a valid foreign

passport and L-2 I-94 (without an EAD) while another member reports that he recently received a final non-confirmation in exactly the same setting--because the working L-2 spouse did not yet have an EAD.

- a. In light of the November 2013 BIA decision in the Matter of Do Kyung Lee (BIA Nov. 5, 2013), does USCIS agree that L-2 spouses may work incident to status, without an EAD?
- b. If so, is it acceptable to document the I-9 with a valid foreign passport and an L-2 I-94?

USCIS Response: The current USCIS position is that the I-94 is not acceptable for Form I-9 purposes and the employee needs to request work authorization and receive an EAD before starting to work.

Q&A

Q: What level of protection will there be to prevent one person from falsely verifying another's identity in order to lock the name and number? For instance, it would not be unusual for spouses, and ex-spouses, to be able to provide answers to the required verification information in order to access self check.

A: Multiple rounds of identity proofing are required – in addition to establishing two factor authentication – to prevent fraudulent account setup. However, if an individual finds an account is set up maliciously, we can work with them on a case-by-case basis to lift the lock (to allow for an employment authorized response) and to delete the account.

Q: What level of protection is there to prevent a hacker from accessing an individual account and/or a number of accounts?

A: myE-Verify technical architecture complies with all DHS security standards to ensure the protection of the data stored. The myE-Verify accounts are NIST level 3 compliant – i.e. the identity of the account holder is established via remote identity proofing during the account setup process. To use the account an individual must log in with two-factor authentication – i.e. user name, password and a one-time-passcode sent via text, voice or email established during account setup.

Q: For those that do lock their name and number and then decide to unlock such, what protocols or procedure will be in place for an individual who forgets a password or any other verification needed to unlock it?

A: A myE-Verify account holder can reset his/her password using the “forgot password” link on the myE-Verify homepage.

Q: What role if any will the Social Security Administration play in the operation of the system?

A: The Social Security Administration continues to be a partner for E-Verify but does not currently play a role in myE-Verify beyond their current role with the E-Verify system.

Q: If for cultural reasons a woman changes her name, will she be able to lock her Social Security number from use in E-Verify, even if she has not notified the SSA of her new legal name?

A: If a person wants to create a myE-Verify account, he/she will have to pass through E-Verify (via Self Check) to get the option to create an account. You must use your name on record with SSA to pass through E-Verify.

Q: If for cultural reasons a woman has changed her name a few times over her life, can she lock her social number once? Or will she be required to lock her number in conjunction with any name ever used? If it must be done for every name how would such operate since she will only have one legal name at a time?

A: See above.

Q: If the person logs in and locks his/her name and number, will the system automatically notify that person, as of that day, if and when the data had been previously submitted to E-Verify? Or if and when it was previously used in the past?

A: Notifications are not planned. However, the Case History feature, which will allow an individual to review all use of his/her SSN in E-Verify and Self Check historically in the last 10 years from within his/her secure account, is slated for an upcoming release in 2015.

Q: At present, E-Verify allows name misspellings, variations on hyphenated names, and variations on multiple word last names, to be verified. Will the ability to lock a name and security number be restricted only to one who can provide the exact spelling or full name, or will the variations and misspellings still be accepted when one wants to lock a name and number?

A: To establish one's identity to create a myE-Verify account (and thus use Self Lock) the data provided must exactly match the data on record.