

State Workforce Agency Questions and Answers

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1. What is a State Workforce Agency?

Some states refer to their employment agencies as State Workforce Agencies (SWA) while others refer to them as State Employment Agencies. Both are considered SWAs for E-Verify purposes.

2. How does E-Verify work?

Based on the information provided by the referred worker on their Form I-9, E-Verify electronically checks this information against records contained in the Department of Homeland Security (DHS) and the Social Security Administration (SSA) databases. E-Verify provides SWAs an MOU, User Manual and other materials that contain guidance on E-Verify procedures and requirements. Once you sign the MOU and complete the current E-Verify tutorial, you may begin using the system to verify the employment authorization of all referred workers. You should review the SWA Quick Reference Guide before using E-Verify.

3. Are all SWAs required to participate in E-Verify?

No, but we recommend that SWAs use E-Verify to verify the employment authorization of referred workers.

4. Why should we participate in E-Verify?

E-Verify is currently the best means available for SWAs to electronically verify the employment authorization of prospective workers. E-Verify helps reduce Social Security mismatch letters, protects jobs for authorized U.S. workers, and helps U.S. employers maintain a legal workforce.

5. Will our participation in E-Verify provide safe harbor from worksite enforcement?

Participation in E-Verify does not provide safe harbor from worksite enforcement. E-Verify participants may still be subject to worksite inspections and audits. An employer that does not participate in E-Verify assumes the legal burden of demonstrating compliance with I-9 requirements, and other relevant employment laws relating to authorized workers. However, employers that participate in E-Verify do not bear this burden, and are provided a “rebuttable presumption” of compliance with the verification process. The “rebuttable presumption” shifts the burden from the employer, to the Government, to demonstrate non-compliance with the verification process.

6. How do we enroll in E-Verify?

Before you enroll, your agency must obtain the SWA Memorandum of Understanding (MOU). The SWA MOU can be found at www.dhs.gov/e-verify by searching under **Customer Support**.

IMPORTANT	
	You must not enroll online for E-Verify at https://e-verify.uscis.gov/enroll because you will be unable to complete the MOU specific to State Workforce Agencies.

Once you receive, review and sign the SWA MOU, please complete the agency information page and sign the MOU signature page. You may either:

- Scan and e-mail both the MOU signature page and the completed agency information page to e-verifyprograms@dhs.gov, or Fax it to USCIS at (202) 443-0215

USCIS will review your information and activate your agency's E-Verify account. After the account is activated, you will receive an e-mail with your login instructions, user identification and password. Additionally, your agency will receive a separate e-mail with a signed copy of the MOU for your own records, and additional instructions for using E-Verify. For more information about this process, go to www.dhs.gov/e-verify and search under **State Workforce Agency Support** in the **Customer Support** tab.

7. Which employees should I verify through E-Verify?

As an E-Verify participant, your agency must verify all workers who use your agency's employment services. Agencies may not create an E-Verify case unless the agency is referring the worker to an employer.

8. Our state SWA has an online referral system that makes it impossible for workers to complete Form I-9 or be verified in E-Verify at a local office. Do we still have to complete Form I-9 and E-Verify for these workers?

No. If the worker does not come in to your local office, you are not required to complete Form I-9 or create an E-Verify case. If you participate in E-Verify, you should post a notice on your website that informs the employer that the SWA is not performing E-Verify queries for any positions posted online. However, if a worker comes into a SWA office after using your online referral service, you should complete Form I-9 and create an E-Verify case for them just like any other worker who is seeking a job referral.

9. What information do I need to conduct an E-Verify initial verification?

All referred workers must complete Form I-9, Employment Eligibility Verification, before you can create an E-Verify case. E-Verify requires that you comply with Form I-9 rules as discussed in the Handbook for Employers: Instructions for Completing Form I-9 (M-274) (Rev. 07/31/09).

Your agency will enter the following information from Sections 1 and 2 of Form I-9 into E-Verify to conduct a query:

1. Employee's name
2. Date of birth
3. Social Security number
4. Attested citizenship status (U.S. Citizen, Noncitizen National of the United States, Lawful Permanent Resident, or Alien Authorized to Work)
5. Alien number or Form I-94 number, if applicable
6. Type of document(s) presented when completing Form I-9 to establish identity and employment authorization
7. The document number and expiration date, if applicable

You will receive a response to your initial query within seconds of submitting the query.

10. When may a SWA create an E-Verify case?

Your agency should create an E-Verify case after you and the referred worker complete Form I-9, but before you refer the worker.

The worker must be physically present when you create the E-Verify case. This ensures that you can notify the worker immediately if he or she receives a tentative nonconfirmation. Because the worker must be present when completing Form I-9 and during a query, your agency is not required to verify those workers who use your agency's online referral system. See also question 8.

You may not delay a referred worker's referral based on a tentative nonconfirmation and/or a delay in the receipt of a response from E-Verify. A referred worker should not face any adverse actions based on your use of E-Verify unless a query results in a final nonconfirmation. You may not initiate queries based on the worker's national origin, citizenship status, race, or other protected characteristic.

11. When and how frequently does a SWA need to use the Notice to Employer of Referred Workers?

You must complete the Notice to Employer of Referred Workers and send it to employers every time you refer new workers. How frequently you use this form depends on how often you refer new workers to employers.

12. Does our agency need to complete a new Form I-9 and create an E-Verify case each time a referred worker comes back for a new referral?

If a referred worker returns for other referrals within 3 years of completing the initial Form I-9, you should review their previous Form I-9. If the worker is still authorized to work, you do not need to complete a new Form I-9 or create a new E-Verify case before issuing a new certification. If the individual is no longer authorized to work, you should reverify under standard Form I-9 procedures. As before, you should not create a new E-Verify case.

If the referred worker comes back for other referrals and his or her Form I-9 is more than 3 years old, you must complete a new Form I-9 and create a new E-Verify case.

13. We are aware that USCIS released a new Form I-9. How does my agency reverify or update a worker's Form I-9 if the agency used a previous version of the form?

If you used a previous version of the form that is no longer acceptable for use and you need to reverify or update a worker's Form I-9, you should complete a new Form I-9. For more information on which versions of Form I-9 are acceptable for use, please visit <http://www.uscis.gov/i-9>.

14. Can SWAs accept receipts for actual documents when completing Forms I-9?

No. Unlike employers, SWAs may not accept a receipt for a List A, List B, or List C document that has been lost, stolen or mutilated.

15. May I accept the same documents from prospective workers that employers accept from newly hired employees for Form I-9?

Yes. Like employers, you must accept any document(s) the worker presents from the Lists of Acceptable Documents on the last page of Form I-9. Unlike employers, you may not accept a receipt for a List A, B, or C document to complete Form I-9. Remember that you must review the actual documents the worker presents. You will need to make and retain a photocopy of a candidate's document if a job candidate presents any of the following documents:

- Form I-551 (Permanent Resident Card),

- Form I-766 (Employment Authorization Document); or, U.S. passport or passport card

16. How long must the SWA retain Forms I-9 and certifications?

You must retain Forms I-9 and certifications for 3 years from the date the worker was last referred and hired by an employer. You should ensure that certifications are easily retrievable for comparison with Forms I-9.

17. Must the agency verify employment authorization or issue certification for workers who will only work for 3 days or less?

No. Your agency is not required to verify employment authorization on Form I-9 or issue certification to employers that hire a referred worker for a period for 3 days or less. You should notify the employer that you do not complete Form I-9 with workers who will work for 3 days or less and that the employer must complete Form I-9 with those workers. You may notify employers of this requirement by incorporating it into the job order or other referral form utilized by the state employment agency as appropriate. If you choose to complete Form I-9 with workers who will work for 3 days or less, you must do so for all workers.

18. How do I end my participation in E-Verify?

You should check your state's laws concerning use of E-Verify before ending participation in the program. If you referred workers while you were enrolled in E-Verify, there may be Form I-9 requirements that you may still be required to follow.

E-Verify Program Administrators may request termination from E-Verify at any time. To request termination you should:

1. Select Close Company Account in the My Company section of the E-Verify Website.
2. Type the reason for the termination in the Termination Request Reason field.
3. Select Request Termination.