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### **E-Verify FAQ**

#### **What is E-Verify?**

The E-Verify program was created as a voluntary Internet-based pilot program to help employers verify the work authorization of new hires. It applies to U.S. citizens and noncitizens. Originally known as the Basic Pilot/Employment Eligibility Verification Program, the program was renamed E-Verify in 2007. The program is administered by the U.S. Department of Homeland Security in partnership with the Social Security Administration. ([www.uscis.gov/everify](http://www.uscis.gov/everify))

#### **When and how was it created?**

The Basic Pilot program was established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), P.L. 104-208, signed September 30, 1996, citation: 8 U.S.C. 1324a. The program started in California, Florida, Illinois, New York and Texas (1997) with Nebraska joining in 1999. Congress authorized the expansion of the pilot program to employers in all 50 states in 2003.

#### **When will E-Verify expire?**

September 30, 2012. IIRIRA required the termination of the pilot program after four years (allowing for a one-year implementation). It was extended for two years in 2002 and five more years in 2003 (until November 30, 2008). See the Basic Pilot Program Extension and Expansion Act of 2003, Public Law 108-156. Congress passed a continuing resolution extending budgets of certain federal agencies until March 2009, including E-Verify (HR 2638). Congress then passed the Omnibus Appropriations Act of 2009 in March, extending the budget of E-Verify until September 2009 (Public Law 111-8). Another three-year extension was approved in the Department of Homeland Security appropriations in October 2009, P.L. 111-83.

#### **How does E-Verify work?**

All employers must first complete an I-9 form for every new hire, within three business days of the date the employee starts work. Employers may not begin the I-9 process until after the individual is hired. The employer and newly-hired employee jointly complete the I-9 Employment Eligibility Verification form. The form asks for employee's name and date of birth; social security number; citizenship status; an A number or I-94 number if applicable; documentation to establish work authorization; and proof of identity and expiration date, if applicable. Employees may choose from several documents to prove identity and authorization to work, such as a U.S. passport or



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unexpired employment authorization card, or a combination of a driver's license and social security card. Documents must appear genuine.

An employer then enters information from the I-9 form into the E-Verify system, where it is compared against 455 million records in the Social Security Administration (SSA) database and 80 million records in the Department of Homeland Security's (DHS) immigration databases. Most inquiries are resolved within 72 hours. Some inquiries can't be confirmed instantly by DHS ("tentative non-confirmation notices") due to changes in citizenship status, name changes (e.g., marriage/divorce), or typographical errors.

To resolve a non-confirmation notice, the employee must visit an SSA office or call DHS toll-free. The employee has eight federal workdays to start resolving the case. About one-half of those who receive a non-confirmation notice contest the notice. Of these, about half of the employees will follow up.

### **What is the current usage and capacity?**

The U.S. Citizenship and Immigration Services (USCIS) reports that, as of January 18, 2012, more than 243,000 employers use E-Verify and, on average, 1,000 new employers enroll each week. There were 16 million inquiries in FY 2010. In FY2009, there were 8.7 million inquiries, in FY 2008, 6.6 million, and 3.27 million in FY2007. There are an estimated 7 million employers in the United States and 60 million new hires per year. The 2007 Westat evaluation estimated that 4 percent of newly hired workers are verified using the system.

### **How well does E-Verify work?**

USCIS conducted a Customer Satisfaction Survey among companies enrolled in the E-Verify program and released their findings in September 2011. The survey concludes that 85% of respondents were satisfied with E-Verify and 88% were confident in the accuracy of the program. The full survey results and findings can be found here: [http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/UCSICE-VerifyFinalReport2011Addendum-FINAL.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/UCSICE-VerifyFinalReport2011Addendum-FINAL.pdf).

A December 2010 GAO report found that USCIS has improved the accuracy of E-Verify, immediately confirming 97.4 percent of 8.2 million new hires in 2009, up from 92 percent in 2007. The report notes that E-Verify remains vulnerable to identity theft and employer fraud. Name mismatches (multiple or hyphenated names) can still lead to tentative non-confirmation notices. GAO recommends that USCIS disseminate



## NATIONAL CONFERENCE of STATE LEGISLATURES

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information to employees to consistently record names and to develop procedures to help employees correct inaccurate information. GAO also recommended that USCIS develop reliable cost estimates for E-Verify. The 81-page report, "Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain" can be found at: <http://www.gao.gov/new.items/d11146.pdf>.

USCIS answered GAO's report and a copy of Deputy Director Couch's response can be found at: <http://www.uscis.gov/USCIS/Resources/Reports/E-Verify/E-Verify-Response-GAO-11-146.pdf>.

A previous study conducted by Westat in 2007 for DHS found that the accuracy of the USCIS database had improved substantially. However, the error percentage was still too high for it to become a mandated program. The report found that "the database used for verification is still not sufficiently up to date to meet the IIRIRA requirement for accurate verification." SSA estimated that 4.1 percent or 17.8 million records contained discrepancies related to name, date of birth or citizenship status; 12.7 million of these pertained to U.S. citizens. Westat reported that for the July-September 2008 quarter, 96.9 percent of employees attesting to be U.S. citizens were automatically confirmed as authorized to work instantly or within 24 hours (up from 96.1 percent in the previous quarter). Westat's 2007 study noted significantly different rates between citizen and noncitizen cases. Only 72 percent of lawful permanent residents and 63 percent of immigrants authorized to work were confirmed automatically.

The Westat report can be found here:

<http://www.uscis.gov/USCIS/Native%20Docs/Westat%20Evaluation%20of%20the%20E-Verify%20Program.pdf>.

### **How is it enforced?**

The Immigration Reform and Control Act of 1986 established a prohibition on employers from hiring unauthorized workers and established criminal and civil sanctions. Citation: 8 USC 1324a(h)(2). USCIS is responsible for verification of documents and Immigration and Customs Enforcement (ICE) is responsible for enforcement. Both USCIS and ICE are part of DHS. To participate in E-Verify, employers sign a Memorandum of Understanding that sets out responsibilities for USCIS, SSA and the employer.

The law also created civil rights protections against unfair immigration-related employment practices. The Office of Special Counsel in the U.S. Department of Justice



## NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

is the law enforcement agency charged with enforcement against discrimination on the basis of citizenship, immigration status or national origin discrimination. See section 274(b) INA. <http://www.justice.gov/crt/about/osc/>

### **What is required of federal contractors?**

As of Sept. 8, 2009, federal contractors or subcontractors are required to use E-verify to determine employment eligibility of employees performing direct work on the contract and new hires. It applies to federal contracts that contain the Federal Acquisition Regulation E-Verify Clause. It exempts contracts of less than 120 days and valued at less than \$100,000 and subcontracts valued at less than \$3,000.

Background: President Bush amended Executive Order 12989 on June 6, 2008, requiring all federal contractors to verify the employment eligibility of all persons hired during the contract term and all persons performing work within the United States on the federal contract by using the employment eligibility verification system (E-Verify). It was scheduled to go into effect on January 15, 2009, but implementation was delayed subsequent to a lawsuit. The lawsuit filed by multiple parties, including the U.S. Chamber of Commerce, challenged the use of the Executive Order on the grounds that it circumvented the Congressional prohibition in mandating the use of E-Verify for federal contracts through IIRIRA.

### **What states currently address the use of E-Verify?**

Eighteen provisions are through legislation and two, Florida and Idaho, are through executive orders. Minnesota and Rhode Island previously enacted executive orders requiring state agencies and contractors to use E-Verify, but the orders were rescinded in 2011. Other states are exploring alternatives to E-Verify, like Massachusetts, or identifying safe harbor provisions, like New Hampshire, Pennsylvania and Tennessee. North Dakota is the only state to mandate a Legislative Management study on the feasibility of mandating the use of E-Verify.

Two states, California and Illinois, currently limit the use of E-Verify by prohibiting states and localities from requiring employers to use the program. Originally in 2008, Illinois enacted legislation that barred all companies in the state from using E-Verify; however, a federal district court ruled in 2009 that the law violated the Supremacy Clause of the U.S. Constitution and therefore the law was rescinded.