

AILA Questions From April 8, 2009 E-Verify Presentation in Seattle

- 1) Would the new Washington State driving license be considered a List "A" document for I-9 purposes?**
 - a. All state driver's licenses are considered List "B" documents for Form I-9 purposes. For more information on the revised Form I-9, please go to <http://www.uscis.gov/files/form/i-9.pdf>. For instructions on completing the Form I-9, please see the Handbook for Employers <http://www.uscis.gov/files/nativedocuments/m-274.pdf>.
- 2) What does SSA do to indicate an employee has visited their office to resolve a TNC?**
 - a. SSA enters information regarding the result of the employee's efforts (including calling and/or visiting an SSA field office) to contest the SSA TNC through the use of a back-end system called EV-Star. The response (either a finding of work authorization or Final Non-confirmation) is returned through the E-Verify system and enables the employer to receive the result directly.
- 3) Can you provide info on what types of cases are being presented to DOJ's OSC? Also, how have they been presented?**
 - a. The majority of cases presented to DOJ's OSC have been requested by OSC and have originated from tips received on their hotline. In the near future, monitoring and compliance efforts will focus on detecting incidences of prescreening for referrals to OSC. OSC has been a full partner in developing the types of noncompliant behaviors that could possibly trigger the existence of discriminatory practices.
- 4) When will the E-Verify tutorial be posted on USCIS's website?**
 - a. Currently, the E-Verify tutorial is available only to users after they've registered to use E-Verify. We are looking into additional ways to provide it publicly and hope to launch a new version of the E-Verify website before next summer. In addition, we have developed a short, stand alone video that focuses on running an E-Verify query. By the end of this summer, we will be posting another video on the website that will focus on employer responsibilities and employer rights.
- 5) Can you provide a sample copy of a TNC notice?**
 - a. Please find a sample copy of an E-Verify TNC notice attached.
- 6) Does the E-Verify system clarify which date to use for the hire date? The Section 1 or 2 date from the I-9?**
 - a. The applicable web page in the E-Verify system currently includes a note regarding the definition of hire date which is listed below. Employers may use the date from either Section 1 or Section 2 of the

Form I-9 for the hire date, as long they are consistent with all employees.

The E-Verify web page note, policy memo and FAQ clarifies that “the earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete the Form I-9. The employer must initiate the query no later than the end of 3 business days after the new hire’s actual start date. Though an employer may initiate the query before a new hire’s actual start date (but not before an offer of employment or completion of the Form I-9) it may not pre-screen applicants and may not delay training or an actual start date based upon a tentative non-confirmation or a delay in the receipt of a confirmation of employment authorization. An employee should not face any adverse employment consequences based upon an employer’s use of E-Verify unless a query results in a final non-confirmation. In addition, an employer cannot use an employment authorization response to speed up an employee’s start date. This would be unfair treatment to use E-Verify results to accelerate employment for this employee compared to another who may have received a tentative nonconfirmation. For example, Company X always assigns a start-date to new employees that is 2 weeks after the employee has completed an approved drug test. After the employee has accepted a job with Company X and after the employee and Company X complete the Form I-9, the company can initiate the E-Verify query. However, the company cannot speed up or delay the employee’s start-date based upon the results of the query (unless the program issues a final non-confirmation, in which case the employee should not be further employed). Employers must verify employees in a non-discriminatory manner and may not schedule the timing of queries based upon the new hire’s national origin, citizenship status, race, or other characteristic that is prohibited by U.S. law.

The E-Verify program is developing additional materials to explain the hire date concept to employers aside from the FAQ referenced above, such as providing additional clarifying guidance, training materials, and quick reference guides.

- 7) What if an employee decides to keep on an employee after an FNC has been received? What consequences are there to the employer? Can employers rely on I-9 rules without prejudice?**
- a. Employers are required to notify DHS of any plans to retain an employee who has received a Final Non-confirmation (FNC) through the E-Verify program. Employers can do so through selecting “Employee Not Terminated” when closing out a case in the E-Verify system that received an FNC. If an employer chooses to retain an employee receiving an FNC, that employer can still be held liable for

civil penalties if during a Form I-9 audit, ICE discovers that the person isn't work authorized.

8) With the new I-9, do employers have to re-verify any expired documents, including identity documents?

- a. For Form I-9 purposes, employers do not need to re-verify identity documents. Only documents showing evidence of *temporary* employment authorization (e.g. I-766) need to be re-verified upon expiration. Documents showing permanent employment authorization (e.g. a U.S. passport, U.S. passport card, or I-551) or showing identity only (i.e. any List B document, including driver's license) do not need to be re-verified. In essence, re-verification is only required for aliens authorized to work when and if the employment authorization documents they presented for the Form I-9 expire.

9) What standard are employers held to in determining whether documents presented with an I-9 are fraudulent?

- a. As stated on p. 6 of the 2009 *Handbook for Employers (M-274)*, employers "must accept any document(s) from the Lists of Acceptable Documents presented by the individual that reasonably appear on their face to be genuine and to relate to the person presenting them."

10) Client is a private federal contractor whose employees go through security at Bangor Naval facility on the Kitsap Peninsula. The Navy director for security badges is that everyone must bring their I-9 and verification documentation to enter the premises. There is a conflict with I-9 law on this because employers can't ask for more than what is required under I-9 regulations or they will be fined. Many employees were hired before 11/86 and do not need an I-9, or for others the documentation used on the I-9 has expired by now (but was valid at the time the I-9 was completed). The Navy is requiring that employees provide an updated I-9 with new verification documentation that is unexpired for everyone. I did an internal I-9 audit for the client employer and its records are so confused because of this Navy requirement. I have a copy of the Navy memo on this and need to find someone at USCIS who can help my client figure out what to do and how to comply with both required procedures. A representative from Lockheed Martin says they have the same problem, tried to resolve it, and got nowhere with it before when it tried to contact DHS. (They've opted for potential Violations of I-9 law in order to be able to get people in the facility to work). The person said if this mess could be untangled it would make a lot of contractors in this area very happy and less nervous.

- a. The USCIS Office of Chief Counsel is reviewing this issue with ICE Office of the Principal Legal Advisor.



E-VERIFY IS A SERVICE OF DHS AND SSA

Department of Homeland Security (DHS) Notice to Employee of Tentative Nonconfirmation

Name of Employee (Last Name, First Name)

Last Four Digits of Employee's SSN

Employee's A-Number

Employee's I-94 Number

Case Verification Number

Date of Tentative Nonconfirmation

Reason for
this Notice:

- ☐ **DHS Tentative Nonconfirmation.** DHS could not verify your employment eligibility. You must contact DHS to follow up on your case.
- ☐ **Photo Tool Non-Match Resulting in DHS Tentative Nonconfirmation.** Your photograph in DHS records does not match the photograph on your document. You must contact DHS to follow up on your case.

Instructions for the Employer

===== IMPORTANT =====
Employee must acknowledge receipt of this letter, date and sign it, and return it to the Employer.

Review this letter with your employee and verify the name, A-number, and/or I-94 number shown at the top of this letter with the employee. If the information is correct, provide your employee with the opportunity to contest or not to contest this Tentative Nonconfirmation (on page 2 of this Notice) and give a signed copy of this document to your employee. If this information is not correct, you will need to run a new query on the employee with the correct information after closing this case in E-Verify as an "invalid query."

If your employee chooses to contest the tentative nonconfirmation, refer the case to DHS by:

1. Clicking "Initiate DHS Referral" in E-Verify;
2. Printing the DHS Referral Letter; and
3. Providing a signed original to your employee.

If your employee chooses not to contest, you must terminate employment and close the case in E-Verify as "self-terminated."

Please enter the information below that is not pre-filled by the E-Verify system.

I certify that this employee has received a Tentative Nonconfirmation and that the employee has made the choice indicated. I certify that the employee has executed and signed this document, that the employee's choice to the best of my knowledge was a knowing and voluntary choice, and that the employee has not been coerced or pressured in any way by this employer regarding his or her choice whether to contest the tentative nonconfirmation.

Name of Employer

Name of Employer Representative

Date

Signature of Employer Representative



E-VERIFY IS A SERVICE OF DHS AND SSA

Instructions for the Employee

Why You Have This Notice

Your employer uses E-Verify, a program administered by the Social Security Administration (SSA) and the Department of Homeland Security (DHS). E-Verify electronically checks the information you provided in Section 1 of the Form I-9 against government records to make sure that you are eligible to work in the United States. If you presented your Employment Authorization Document or Permanent Resident Card to your employer, E-Verify allows your employer to check the photograph on your document to make sure that it matches the official photograph in DHS records.

You received this Notice because DHS could not verify that you are eligible to work in the United States. This does not mean that you gave wrong information to your employer or that you are not authorized to work in the United States; it just means that DHS was unable to match the information provided by your employer with the information in DHS records.

A DHS Tentative Nonconfirmation can occur for several different reasons, such as:

- Your name, A-number, and/or I-94 number may have been recorded incorrectly in DHS records;
- Your information may not have been updated in DHS records at the time your information was checked in E-Verify;
- Your citizenship or immigration status may have changed; or
- Your record may contain another type of error.

===== IMPORTANT =====

This **Notice** does not mean that you are not eligible to work or that the document you presented to complete the Form I-9 is fake. If you choose to contest the result, you will have an opportunity to contact DHS and DHS will then review its records and make a final decision on whether or not you may work in the United States. If you choose not to contest this result, your employer must terminate your employment.

What You Must Do

You have a voluntary choice. You may **Contest** the Tentative Nonconfirmation, or you may choose to **Not Contest** the Tentative Nonconfirmation. The choice is up to you.

If you **Contest** the Tentative Nonconfirmation, you must contact DHS. By contesting, your employer will refer your case to DHS through E-Verify, and provide you with a Referral Letter that will tell you how to contact DHS. The date printed on the Referral Letter will give you 8 federal government workdays to contact DHS. After contacting DHS, you may have to provide additional information or documents that will permit DHS to notify your employer that you are work authorized.

If you contest the Tentative Nonconfirmation and contact DHS within the 8-day timeframe, your employer may not take adverse action against you or fire you unless and until DHS issues a final nonconfirmation to your employer stating that you are not authorized to work in the United States.

===== IMPORTANT =====

Know your rights: Read the next page for important information about your rights under the law.

If you do **Not Contest** the decision, you are making a voluntary choice to give up your opportunity to correct the Tentative Nonconfirmation. Your case will automatically become a final nonconfirmation, which means that your employer must fire you immediately.

I Choose To (Check One)

_____ **Contest** the Tentative Nonconfirmation. I understand that I must contact the Department of Homeland Security within 8 Federal Government work days from the date shown on the referral notice which is to be provided by my employer.

_____ **Not Contest** the Tentative Nonconfirmation. I choose voluntarily to give up my opportunity to correct the Tentative Nonconfirmation. I understand that my voluntary choice not to contest the Tentative Nonconfirmation authorizes my employer to terminate my employment immediately.

Signature of Employee

Date



E-VERIFY IS A SERVICE OF DHS AND SSA

Know Your Rights: Quick List

- Employers must post a notice informing employees that they use E-Verify.
- E-Verify must be used for new hires only, after completion of the Form I-9.
- E-Verify cannot be used to verify the employment eligibility of applicants or current employees.
- E-Verify must be used for all new hires regardless of national origin or citizenship status. It may not be used selectively.
- If an employee receives a tentative nonconfirmation, the employer must promptly provide the employee with information about how to challenge the tentative nonconfirmation, including a written notice generated by E-Verify.
- If an employee decides to challenge a tentative nonconfirmation, the employer must provide the person with a referral letter issued by E-Verify that contains specific instructions and contact information.
- Employers may not take any adverse action against an employee because he/she contests a tentative nonconfirmation. This includes firing, suspending, withholding pay or training, or otherwise limiting his/her employment.
- The employee must be given 8 federal government work days to contact the appropriate federal agency to contest the tentative nonconfirmation.
- Employers may not take any adverse action against any employee (including reducing pay, delaying training, terminating the employee, etc.) based upon the tentative nonconfirmation for the duration of the tentative nonconfirmation (even if it extends beyond 10 federal government work days) as long as the employee contacted DHS within 8 federal government work days.
- Employers may terminate workers based upon E-Verify only upon receipt of a final nonconfirmation or upon notice that an employee has chosen not to contest a tentative nonconfirmation.
- Employers may not use E-Verify to re-verify the employment eligibility of an existing employee. Re-verification must be conducted through the Form I-9.
- Employees who believe that they have been wrongly terminated or experienced other adverse actions should call E-Verify Customer Support at 1-888-464-4218 or e-mail E-Verify@dhs.gov.
- Employees who believe that they have been subjected to discrimination based upon their national origin or citizenship or immigration status with respect to hiring, firing, recruitment or referral for a fee, through an employer's use of E-Verify, or when completing the Form I-9, should call the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-7688 (TDD: 1-800-237-2515) for assistance.

For More Information

E-Verify is committed to protecting your privacy and has a privacy official responsible for ensuring that your information is collected, used, and disclosed in an authorized manner.

For more information on E-Verify, including our privacy practices and program rules, visit our Web site at <http://www.dhs.gov/E-Verify>. If you believe that you have been wrongly terminated or experienced other adverse actions, call E-Verify Customer Support at 1-888-464-4218 or e-mail E-Verify@dhs.gov.



Social Security Administration (SSA) Notice to Employee of Tentative Nonconfirmation

Last Name of Employee

First Name of Employee

Employee's Social Security Number (SSN)

Employee's Month/Year of Birth

Date of SSA Tentative Nonconfirmation

Case Verification Number

Reason for this
Notice:

- ☐ **SSN does not match.** The Social Security Number (SSN) entered in E-Verify is valid, but the name and/or date of birth entered for the employee do not match SSA records.
- ☐ **SSN is invalid.** The SSN entered in E-Verify is not a valid number.
- ☐ **SSA unable to confirm U.S. Citizenship.** Cannot confirm that the employee is eligible to work because SSA records do not show that the SSN holder is a U.S. citizen.
- ☐ **SSN record does not verify, Other Reason.** SSA found a discrepancy in the employee's record.
- ☐ **SSA unable to process data.** SSA found a discrepancy in other data in the employee's record.

Instructions for the Employer

=== IMPORTANT ===

Employee must acknowledge receipt of this letter, date and sign it, and return it to you.

1. **Review this entire letter with your employee.**
 - **IMPORTANT:** If the employee cannot read, you must read this notice to the employee. If the employee does not fully understand English and speaks Spanish, you must provide your employee with the Spanish version of this notice.
 - If the information on this letter is not correct, you must first close this case in E-Verify as an "invalid query" and then run a new E-Verify query with the correct information.
 - If the employee's name, SSN and birth date at the top of this letter are correct, your employee has the right to contest this Tentative Nonconfirmation. The employee will do this on Page 2.
 - After you and your employee review and sign this document, give a copy to the employee.
2. **If your employee chooses to contest the Tentative Nonconfirmation, take the following three actions to refer the employee to SSA:**
 - (1) Click "Initiate SSA Referral" in E-Verify;
 - (2) Print the SSA Referral Letter; and
 - (3) Provide a signed original of the SSA referral letter to your employee.
3. **If your employee chooses not to contest the Tentative Nonconfirmation, you may fire the employee and close the case in E-Verify with the explanation "self-terminated."**
4. **Read and sign the statement below.**

I certify that this employee has received a copy of this Tentative Nonconfirmation Notice and that the employee has made the decision indicated on page 2 of this notice. I certify that the employee has read and signed this document. I certify to the best of my knowledge that the employee's decision to contest or not contest the SSA Tentative Nonconfirmation was of his/her own free will and that the employee has not been coerced or pressured in any way by this employer regarding his or her decision to contest the SSA Tentative Nonconfirmation. I certify that the employee named at the top of this notice is the person who signed this document on page 2.

Name of Employer

Name of Employer Representative

Date

Signature of Employer Representative



Instructions for the Employee

Why You Have This Notice

Your employer uses E-Verify, a program run by the Department of Homeland Security (DHS) and the Social Security Administration (SSA). E-Verify electronically checks the information you provided in Section 1 of the Form I-9 against the government's records and makes sure that you are eligible to work in the United States.

You received this Notice because SSA could not verify that you are eligible to work in the United States. This **does not** mean that you gave wrong information to your employer or that you are not authorized to work in the United States. Instead, it means that the information from your Form I-9 does not match SSA's records.

An SSA Tentative Nonconfirmation can occur for several different reasons, such as:

- Your name, SSN or date of birth may have been recorded incorrectly in SSA records;
- You may not have reported a name change to SSA;
- Your citizenship or immigration status may have changed since you first got your SSN;
- SSA has not received updated information for your record; or
- Your SSA record may contain another type of error.

==== IMPORTANT =====

This Notice does not mean that you are not eligible to work or that there is anything wrong with the document you presented to complete the Form I-9. You will have an opportunity to visit SSA if you choose to contest this result. SSA will then review and correct its records if appropriate. If you decide not to contest this Notice of SSA Tentative Nonconfirmation, your employer must terminate your employment.

What You Must Do

You must decide whether or not to contest the Tentative Nonconfirmation.

If you **Contest** the Tentative Nonconfirmation, you must visit SSA. By contesting, your employer will refer your case to SSA through E-Verify and give you a Referral Letter that will explain how to find the nearest SSA office and the documents to bring with you. You will have 8 federal government workdays to visit SSA. If you visit SSA within the 8-day timeframe, your employer may not take adverse action against you or fire you unless SSA issues a Final Nonconfirmation, stating that you are not authorized to work in the United States.

==== IMPORTANT =====

Know your rights: Read the next page for important information about your rights under the law.

If you choose to **Not Contest** the decision, you are making a voluntary choice to give up your opportunity to correct the Tentative Nonconfirmation. Your case will automatically become a final nonconfirmation, which means that your employer must terminate your employment.

I Choose To (Check One)

☐ **Contest** the Tentative Nonconfirmation. I understand that I must visit the Social Security Administration within 8 federal government workdays from the date my employer gives me the SSA Referral Letter.

☐ **Not Contest** the Tentative Nonconfirmation. I voluntarily choose to give up my opportunity to contest the decision. I understand that my employer must terminate my employment.

Signature of Employee

Date



Know Your Rights: Quick List

- Employers must post two notices informing employees that the employer uses E-Verify.
- E-Verify must be used for new hires only, after their Form I-9 is complete.
- E-Verify cannot be used to verify the employment eligibility of applicants or current employees.
- E-Verify must be used for all new hires regardless of national origin or citizenship status. It may not be used selectively.
- If an employee receives an SSA Tentative Nonconfirmation, the employer must promptly give the employee information about how to contest the SSA Tentative Nonconfirmation, including a written notice generated by E-Verify.
- If an employee decides to contest an SSA Tentative Nonconfirmation, the employer must give the employee the SSA referral letter that contains specific instructions and contact information.
- Employers may not take any adverse action against an employee because he/she contests an SSA Tentative Nonconfirmation. Examples of "adverse action" include firing, suspending, withholding pay or training, delaying a start date, or otherwise limiting his/her employment.
- The employee must be given 8 federal government work days to contact SSA to contest the Tentative Nonconfirmation.
- Employers may not take any adverse action against any employee (including reducing pay, reducing hours, delaying training or the start date, terminating the employee, etc.) if the employee contests an SSA Tentative Nonconfirmation and their case is still pending with SSA.
- Employers may terminate workers based upon information in E-Verify only upon receipt of a final nonconfirmation or upon notice that an employee has decided not to contest a Tentative Nonconfirmation.
- Employers may not use E-Verify to re-verify the employment eligibility of an existing employee. Instead, employers must use the Form I-9 to re-verify employment eligibility.
- Employees who believe that they have been treated unfairly may call E-Verify Customer Support at 1-888-464-4218 or e-mail E-Verify@dhs.gov.
- Employees should call the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) at 1-800-255-7688 (TDD: 1-800-237-2515) for help in some situations. This may include if:
 - The employees believe that they have been subjected to discrimination based upon their national origin or citizenship or immigration status with respect to hiring, firing, recruitment or referral for a fee, through an employer's use of E-Verify, or
 - The employer requested identity or employment eligibility documents from the employees beyond what is necessary to complete the Employment Eligibility Verification Form I-9.

For More Information

E-Verify is committed to protecting your privacy and has a privacy official responsible for ensuring that your information is collected, used, and disclosed in an authorized manner.

For more information on E-Verify, including our privacy practices and program rules, visit our website at <http://www.dhs.gov/E-Verify>. If you have general questions, call E-Verify Customer Support at 1-888-464-4218 or e-mail E-Verify@dhs.gov.