

Employment Verification State Workforce Agency Frequently Asked Questions (FAQs)

1. Are all State Workforce Agencies (SWA) required to participate in E-Verify?

No, but it is recommended that SWAs use E-Verify to verify the employment eligibility of referred workers.

2. Why should I consider participating in E-Verify?

E-Verify is currently the best means available for State Workforce Agencies to electronically verify the employment eligibility 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.

3. How do I register for participation in E-Verify?

The first step in the registration process is to obtain the SWA Memorandum of Understanding (MOU). The SWA MOU is available from the Department of Labor or through the USCIS website www.dhs.gov/e-verify.

Please note that you must **not** register online for E-Verify at <https://www.vis-dhs.com/EmployerRegistration> as this will **not** allow you 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. The MOU signature page and the completed agency information page can be scanned and emailed to e-verifyprograms@dhs.gov or may be faxed to USCIS at (202) 358-7870.

USCIS will review your information and activate your account. After the account is activated, you will receive an email with your logon instructions, user identification and password. Additionally, you will receive a separate email with a signed copy of the MOU for your own records, and additional instructions for using E-Verify.

4. How does E-Verify work?

Based on the information provided by the employee on their Form I-9, E-Verify electronically checks this information against records contained in DHS and SSA databases. The E-Verify State Workforce Agency MOU, Quick Reference Guide, and the current User Manual and Tutorial all contain instructions and other related materials on E-Verify procedures and requirements. Once you have completed the current E-Verify tutorial, you may begin using the system to verify the employment eligibility of all referred workers. It is strongly recommended that you review the State Workforce Agency Quick Reference Guide before using E-Verify.

5. Which employees should be verified through the system?

As a participant in E-Verify, State Workforce Agencies are required to verify all referred workers. The program may not be used to prescreen applicants.

6. What information is required to conduct an E-Verify initial verification?

All referred workers are required to complete the Employment Eligibility Verification Form I-9, before an E-Verify query is conducted. “List B” identity documents presented with the Form I-9 **must** have a photograph. The State Workforce Agency must submit a query that includes information from sections 1 and 2 of the Form I-9, including:

- 1) Employee's name
- 2) Date of birth
- 3) Social Security Number (SSN)
- 4) Attested citizenship status (US Citizen, Lawful Permanent Resident, or Alien Authorized to Work)
- 5) Alien number or I-94 number, if applicable
- 6) Type of document presented for the Form I-9 to establish identity and/or work eligibility status and;
- 7) In some cases the document number and expiration date

Response to the initial query is received within seconds of submitting the query.

7. When may a State Workforce Agency initiate a query with E-Verify?

An E-Verify query should be initiated before the worker is referred and after Sections 1 and 2 of the Form I-9 have been completed.

SWAs **must** conduct E-Verify queries while the worker is physically present. This ensures that the worker can be notified immediately if he or she receives a Tentative Nonconfirmation.

SWAs may not pre-screen applicants and may not delay the referral or an actual start date of a referred worker based upon a Tentative Nonconfirmation and/or a delay in the receipt of a response. A referred worker should **not** face any adverse actions based upon a SWA's use of E-Verify unless a query results in a Final Nonconfirmation.

SWAs must verify workers in a non-discriminatory manner, and may not schedule the timing of queries based upon the worker's national origin, citizenship status, race, or other prohibited characteristic.

8. When and how frequently does the *Notice to Employer of Referred Workers* need to be used?

The *Notice to Employers of Referred Workers* must be filled out and sent to employers every time new workers are referred. The frequency of utilizing this form is contingent on the rate at which the SWA refers new workers to potential employers.

9. What does the *Notice to Employer of Referred Workers* tell potential employers?

In addition to the names of the SWA and referred worker(s), the notice informs potential employers that the SWA listed uses E-Verify to confirm the employment eligibility of workers seeking employment in the United States. However, the verification process for the referred workers may or may not be completed at the time of referral. If the verification process is incomplete, employers are told that the worker may not receive unfavorable treatment on that basis. Employers are also notified that the SWA will provide further information on the status of verification or a certification within 21 business days of the employee's hire date.

10. What should the SWA do with workers that are in the process of verification?

Workers that are in the process of being queried in E-Verify may still be referred to an employer. However, the SWA is obligated to provide either more information pertaining to the worker's verification status or a certification within 21 business days of hiring the employee.

11. Is it possible to send one notice for several workers?

Yes. When filling out the *Notice to Employers of Referred Workers* the SWA is permitted to write down the names of more than one worker as long as the form is sent simultaneously with the referral. Any additional referrals require an additional *Notice to Employers of Referred Workers* to the employer.

12. What would happen if the SWA does not send the *Notice to Employers of Referred Workers*?

Should the SWA fail to send the Notice to the employer as required, the SWA would be in violation of the E-Verify Program Memorandum of Understanding (MOU). A violation of the MOU may result in termination of the SWA's participation in E-Verify and subject the SWA to civil or criminal penalties under the law.

13. What is a Tentative Nonconfirmation?

A Tentative Nonconfirmation (TNC) occurs when the worker's information is compared to government records and work authorization could not be immediately confirmed. A TNC may be issued by either SSA or DHS, depending on where the information mismatch occurred. A TNC does not necessarily mean that the worker is not work authorized, or that the information provided was incorrect.

SWAs must immediately notify any worker that receives a TNC by giving them the system-generated TNC Notice, and allow them the opportunity to address the discrepancy in their record by contacting SSA or DHS (depending on the agency that issued the TNC). If the worker decides to contest their TNC, the SWA must provide them with a system-generated Referral Letter that provides instructions on how to resolve their case. If the worker decides not to contest their TNC, they should be considered unauthorized to work and not referred.

14. Can SWAs refuse to refer workers who receive a Tentative Nonconfirmation?

No. A Tentative Nonconfirmation (TNC) does not necessarily mean that the worker is unauthorized (see above). The SWA should continue to process and refer the worker as usual, unless the worker decides not to contest the TNC.

15. Does participation in E-Verify provide safe harbor from work site enforcement?

A State Workforce Agency who verifies employment eligibility under E-Verify has established a rebuttable presumption that it has not knowingly referred an unauthorized alien. Participation in the program does not provide a “safe harbor” from worksite enforcement, however.

16. What should I do if my organization no longer wants to participate in E-Verify?

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

- 1) Select **Request Termination** in the **Site Administration** section of the E-Verify website.
- 2) Type the reason for the termination in the **Termination Request Reason** field.
- 3) Select **Request Termination**.