

**USCIS Webinar E-Verify Q&A  
December 11, 2008**

**The PowerPoint is not yet available for release. It will be forwarded when available.**

**E-Verify Enrollment/Maintain Company Profile**

**Q:** As a public services/accounting organization, we have occasional state & federal projects. How should we register as an employer?

*A: Your organization will register as either a general employer or a federal contractor depending upon whether you have been awarded a qualifying federal contract containing an E-Verify clause requiring your company to use E-Verify as a condition of the contract on or after February 20, 2009. An employer may not register as a federal contractor in E-Verify until they are awarded a qualifying federal contract containing AND the contract is awarded on or after the effective date of the FAR.*

**Q:** What if you have already selected the category of Federal Contractor if you are currently an E-verify user? Do you need to re-select it again after Jan 15th?

*A: If an employer is currently enrolled as a federal contractor, but is awarded a qualifying federal contract on or after February 20, 2009, the employer will need to utilize the "Maintain Company" link in the left tool bar in E-Verify and update their company profile.*

**Q:** I understand that when a federal contractor first enrolls in E-Verify it must indicate whether it will be verifying all existing employees or only those employees working on a covered government contract. Can the federal contractor later change its mind and how does it accomplish this change?

*A: Yes, a federal contractor can change the category of employees to be verified by using the "Maintain Company" link in the left tool bar in E-Verify.*

**Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts & modification of contracts:**

**Q:** Please advise me of the contract award date for an IDIQ contract which has been modified post Jan 15, 2009. I am not sure if the date of the company's acceptance of the modification is the "contract award" date for purposes of the 30 day deadline to enroll in E-Verify. *USCIS FAQ p. 2*

*A: Date contract is modified to include E-Verify clause is the contract "award date" for purposes of E-Verify.*

**Q:** Is a change order considered a new contract?

*A: Not generally, however an employer should review contract terms with their contract professional if there is any question relating to the terms of the contract or any modifications arising out of a change order.*

### **Financial Institutions and Hospitals**

Q: Please advise the position of DHS as to hospitals being provided Medicaid reimbursements - Will this scenario be considered a federal contract under FAR?

Q: Can you provide information as to whether financial institutions whose only interaction with the federal government relates to US Savings Bonds and FDIC insurance are subject to the FAR and the E-Verify obligations?

*A: The question of whether a contract is subject to the Federal Acquisition Regulations (FAR) and amendments requiring use of E-Verify for federal contractors awarded qualifying federal contracts is specific to the terms of the contract.*

*The FAR states that qualifying federal contracts are awarded on or after the effective date of the FAR, exceed the minimum acquisition threshold of \$100,000, have a performance period in excess of 120 days and contain an E-Verify clause. The FAR also applies to subcontracts for services or construction with a value over \$3,000 where the prime contract contains the E-Verify clause.*

*See your contract professional for specific information on whether a contract is subject to the FAR.*

### **FAR 1.108(d)(3)**

Q: Can you please send me FAR 1.108D3?

A: [http://edocket.access.gpo.gov/cfr\\_2008/octqtr/pdf/48cfr1.108.pdf](http://edocket.access.gpo.gov/cfr_2008/octqtr/pdf/48cfr1.108.pdf)

### **Security Clearances**

Q: Please confirm that E-Verify is not a requirement for any employee holding a clearance.

*A: Employees holding an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual and employees with credential clearance under Homeland Security Presidential Directive 12 (HSPD-12) are exempt from E-Verify. The exemption does not apply to Transportation Worker Identification Credentials (TWIC).*

Q: I work for a company where all employees hold clearances. I assume we are exempt from enrolling in E-Verify. Do we enroll in E-Verify when we reach the time where we do hire an employee who will not hold a clearance? Also, if we are exempt, should we still be posting the Anti-Discrimination poster you referenced in your earlier slide?

*A: You are required to register with E-Verify in order to qualify for federal contracts that contain an E-Verify clause, however you will not verify your employees until you hire an employee who does not have an active security clearance. Similarly, if you bring on a new employee with an “interim” clearance, that individual does not at the time of hire hold an active clearance and should be verified as a new hire. Yes. You should post the Anti-discrimination and E-Verify Participating Employer posters in a place that is visible to your new & existing employees. Additionally, you must include the posters in any electronic media you use for recruiting or hiring new employees. If you cannot feasibly include the posters due to the construction of your website, the prospective employee should be provided with a copy of the posters with their application for employment.*

**Q:** Is there a problem running an employee who has security clearance if you are verifying the entire workforce?

*A: As stated above, employees holding active security clearances are exempt from E-Verify. However, if an employer chooses to query employees holding security clearances as part of exercising the workforce option, the employer should be mindful that:*

*The choice to verify employees holding security clearances should be uniformly applied organization wide to avoid issues of discrimination. If you verify 1 employee with a security clearance, you must verify them all. Similarly, if you exclude 1 employee with a security clearance, you must exclude them all.*

*The employer will be required to complete the full verification process once they have initiated an E-Verify for an employee. If an employee holding a clearance receives a tentative or final non-confirmation (TNC/FNC), the employer may not then treat the employee as “exempt,” but must give the employee notification of and an opportunity to resolve the TNC or deal with the FNC.*

## **TNC Resolution**

**Q:** If there is a TNC, does the employer have to permit the employee to resolve the issue during work hours and with pay? Most new hires do not have paid time off available to them.

*A: The employer should allow the employee to resolve the TNC during work hours as that is the time that SSA and DHS offices and resources are available for them to access. The issue of whether or not to pay an employee or allow the employee to use administrative time to resolve the TNC is a workplace policy decision for the employer to make. However, once made, the employer must apply the policy decision uniformly to all employees.*

**Q:** How do we confirm that an employee has contacted either SSA or DHS within 8 days of the TNC notice being given to them?

A: *The FAR does not require an employee to inform the employer whether s/he has contacted SSA or DHS, however if the employee fails to make contact, a DHS No-Show response will be electronically issued to the employer.*

Q: *If we enter at a central location how do we handle the non-confirmations with employees that are at another location? Is there a time frame, do we accept an electronic signature or do we have to wait for the original to get mailed back and forth?*

A: *The question of whether to accept an electronic signature or to send original documents back and forth when resolving a TNC is an employer policy decision. Employers should clearly designate their company's policy for handling TNCs and then uniformly apply the policy to existing employees (if a federal contractor) and new hires throughout the organization.*

### **LPR/Naturalization**

Q: *Your slides reference a requirement to update when the employee changes from an LPR to a USC. Where is this requirement in the regulations? We do not reverify an LPR upon expiration of the I-551 so why is this a requirement upon naturalization?*

A: *Article II.D.1.e of the E-Verify Program Memorandum of Understanding for Federal Contractors states in pertinent part that the employer may use an existing I-9 to conduct an E-Verify query “as long as that Form I-9 is complete (including the SSN), complies with Article II.C.4, the employee’s work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee’s stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).*

*Naturalization constitutes a change in the employees stated basis for employment authorization contained in Section 1 of the Form I-9, the employer. As such, a previously completed I-9 for an LPR who has now become a U.S. citizen would not be a valid basis for initiating an E-Verify query.*

### **Photo tool**

Q: *Does the photo need to match exactly or should be just be able to determine that it is the same individual?*

A: *The photo on the Employment Authorization Document (EAD) or Permanent Resident Card (PRC) or photocopy of the original EAD or PRC should be an exact match to the photo that appears in the photo tool.*

Q: *Is the Photo Tool required for use by federal contractors?*

*A: The photo tool will appear when an employee presents an Employment Authorization Document (EAD) or Permanent Resident Card (PRC) and the employer inputs the card data into the E-Verify system.*

*The photo tool is currently unavailable to employers using the Designated Agent access method.*

### **E-Verify Posters**

**Q:** Does the E-verify poster have to be on our applicant tracking system?

*A: The E-Verify poster & Office of Special Counsel (OSC) Anti-discrimination poster must be posted in locations that are accessible by prospective applicants and new hires. This applies to electronic media, as well as physical locations. If it is not practical to provide access to the posters electronically, the posters may be provided to a prospective new hire along with an application for employment. If you are a federal contractor with a contract subject to the E-Verify clause, you must also display the posters in areas and media accessible to existing employees.*

### **Existing workforce/I-9/Reverification**

**Q:** In order to re-verify our current workforce, do we need to have their I-9 forms, or can we simply enter their social security numbers and names?

*A: You will need a complete, accurate existing I-9 form or a newly completed I-9 if one does not already exist. Existing I-9s must be reviewed for accuracy & completeness and updated as necessary. See Article II.D.1.e of the MOU. You will need a complete accurate I-9 as the information from Section 1 and Section 2 of the I-9 must be entered into the E-Verify system to initiate a verification query.*

**Q:** If an I-9 on file for an existing employee has an item from list B that does not include a photo, does that employee have to complete a new I-9 before running the EE's information in E-Verify?

*A: If you are verifying an existing employee and the employee provided a list B document, but you cannot determine whether the document had a photo, you must request that the employee provide new I-9 documents. You cannot specify which documents the employee may provide from list A or list B & C, however you may present the list of eligible documents & inform the employee that since you are an E-Verify participant, that if the employee wishes to provide a list B document, the document must contain a photograph.*

### **Contracts without E-Verify clause**

**Q:** If our existing contract does not include the E-Verify clause, can we still choose to verify all employees when we enroll as a federal contractor?

*A: No. You are not eligible to verify existing employees if you are not a federal contractor who has been awarded a qualifying federal contract. As stated above, a qualifying federal contract is one that is awarded on or after the effective date of the Federal*

*Acquisition Regulation, exceeds the minimum acquisition threshold of \$100,000, has a performance period in excess of 120 days and contains the E-Verify clause.*

### **E-Verify System: users & MOU**

**Q:** How many users can a company/institution have?

*A: An employer can enroll as many users as necessary to meet their specific needs.*

**Q:** Can a user be registered as both an employer who will run verifications and an administrator who designates users, etc?

*A: Yes. A single individual can have both employer and corporate or program administrator rights. The recommended best practice is for companies to have multiple users that hold both sets of rights so that there is always someone available to unlock accounts, reset passwords, or designate new users, etc.*

**Q:** When will we have access to the E-verify FAR user manual?

*A: The FAR manual will be available no later than the effective date of the FAR. Please check the E-Verify website [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify) for additional information.*

### **Independent Contractor/1099:**

**Q:** Does an independent contractor who fills out a Form 1099 rather than a Form I-9 have to be verified in E-Verify?

*A: E-Verify does not apply:  
Self-employed individual with no I-9 requirement as a condition of employment*

*E-Verify may apply:  
Corporation or other business entity, even if a sole operator if an I-9 must be completed as a condition of employment*

### **USCIS Webinar Q & A on FAR E-verify**

**January 8, 2009**

**Q: Can I get a copy of the PowerPoint?**

*A: The PowerPoint will be forwarded when it is made available for public distribution.*

**Q: Please send me information for the technical team in regards to the web services batch file.**

*A: Web Service batch proceeding inquiries can be made to: 1-800-741-5023.*

**Q: Are we required to follow procedures, since we are a supplier, and may only supply indirectly to Fed contracts.**

*A: Whether your contract is specifically subject to the Federal Acquisition Regulation, including the amendments requiring use of E-Verify for qualifying federal contracts is specific to the terms of your contract. Please consult with your contracting professionals and/or legal counsel to assess your specific situation.*

**Q: HQ co with operating units, many of which have Federal Contracts that will qualify. Question: Are all operating units required to participate even if they don't have a qualifying contract**

*A: This question turns on both the specific terms of the contract and your business's organizational structure. Please consult with your contracting professionals and/or legal counsel to assess your specific situation.*

**Q: What is the election for a government contractor that have employees from previous contracts that meet the eVerify guidelines ?**

**Q: We have current Federal contracts that will continue for more than 6 months after 1/15/09. Do we wait for our COTR to amend our current contract or do we assume the inclusion of the E-verify clause. Our final question is what date do we use as our "contract award date", when will we be required to begin using E-Verify?**

*A: No existing contract, with one exception, is subject to the E-Verify requirements. The exception is the indefinite delivery/indefinite quantity (IDIQ). An IDIQ contract that has: 1) at least 6 months remaining on the performance period of the contract after January 15, 2009; and 2) there is a substantial amount of work or number of orders expected during remaining performance period is subject to bilateral modification of the contract under FAR 1.108(d)(3) to include the E-Verify clause. The contract award date for this type of contract becomes the date the contract is modified to include the clause.*

*For contracts awarded and IDIQ contracts modified on or after February 20, 2009 containing the E-Verify clause, employers have options of employees the company will verify. For a company that is not within the 4 special category exempted employers (Institutions of Higher Learning, Federally Recognized Indian Tribes, State or Local Government, or Sureties), the company may choose to verify:*

- New employees company wide regardless of whether they are assigned to a contract with the E-Verify clause or not **AND** existing employees who are assigned to work on the federal contract that contains the E-Verify clause. OR*
- The company's entire workforce*

*If you are an employer within one of the four Special Category employers, you only need to verify new and existing employees assigned to a federal contract to be in compliance*

*with the FAR. You may verify the broader categories of employees listed above, but are not required to do so.*

**Q: Substantial duties under the contract: If we have employees that recruit employees for the federal government contract and process HR issues, but do not bill their time to the federal government contract, would those employees need to be verified under E-Verify and be considered employees that have substantial duties under the contract?**

*A: Substantial work is defined as direct work on a contract that is other than support or overhead functions. How this is defined by your company is specific to your organization and your contract terms. Please consult with your contract professionals and legal counsel to assess your current situation.*

**Q: Do new hires working on the federal contract outside the US have to be run through E-Verify? Some of the employees are hired in the US and some are hired outside the US, but all of them do all their work outside the US.**

*A: No. The terms of the FAR state that the work done by the employee on the federal contract must be within the United States. For purposes of E-Verify, the United States includes all 50 states, the U.S. Virgin Islands, Guam, and Puerto Rico*

**Q: Can we find the E-Verify clause to be used in subcontracts? I have looked for it in the FAR and in the CFR and have not found it.**

*A: The language of the solicitation provisions and contract clause can be found in 48 CFR part 52, (73 FR 67704-67705).*

**Q: Where can you get the required eVerify and discrimination posters?**

*A: The DOJ Office of Special Counsel poster in both English & Spanish is available on our website at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify). It is also available, in both languages in the E-Verify system in the Online Resources options feature located at the top right hand of the E-Verify screen. The E-Verify employer poster in both languages is available to you after enrollment in the system in the Online Resources library as well.*

**Q: Can we run E-Verify after the I-9 is completed but before the actual first day of work? I'm assuming the hire date is the actual date of first day of work.**

*A: If you have extended an offer of employment to an individual, the individual has accepted the offer, and you have completed Sections 1 & 2 of the I-9, you may initiate an E-Verify as early as the completion date of the I-9 up until 3 days after the employee begins working for pay.*

**Q: Do we need to keep copies of verifying documents (eg drivers license, ss card etc) with the I-9?**



*A: For purposes of E-Verify, you are only required to maintain a copy of an Employment Authorization Document (I-766) or Permanent Resident Card (I-551). There are no other document retention requirements for E-Verify.*

**Q: Do you need to complete e-verify each time and employee is terminated?**

*A: E-Verify does not distinguish between a rehire and a new hire. If you are a participating employer and you hire OR rehire an employee, you must verify that employee through E-Verify.*

*If you rehire a former employee within 3 years of his or her previous hire date, you may rely on the information on his or her previous Form I-9 if it shows continuing employment authorization and you update it to reflect the date of rehire. If the employee's previous employment authorization has expired, you may reverify employment authorization in Section 3 of the Form I-9 or complete a new Form I-9.<sup>1</sup>*

*Whichever method you use, you must use that Form I-9 to verify the employment authorization of the rehired individual in E-Verify. Note that this new hire situation is different from reverification of existing employees whose employment authorization has expired. You may not reverify existing employees through E-Verify.*

**Q: If we verify all employees and include employees with security clearances will that cause any issues?**

*A: Employees holding active security clearances of Confidential, Secret or Top Secret in accordance with the National Industrial Security Program Operating Manual or credentials awarded in accord with Homeland Security Presidential Directive -12 (HSPD-12) are exempt from E-Verify requirements.*

*Because these employee are exempt, you do not need to query them in E-Verify. If however, you include this category of employees in your verifications, there are two issues to keep in mind:*

- 1) Once you have made the election to verify this category of employees, you cannot selectively verify the employees within the category. If you verify one employee with a clearance, you must verify them all. Similarly, if you exclude a single employee, you must exclude them all.*
- 2) You cannot initiate a verification query on an otherwise exempt employee, and later declare the employee is exempt. Once the verification process is begun for the employee, it must be completed. This will include resolution of tentative non-confirmations and taking action on final non-confirmations.*

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<sup>1</sup> See 8 CFR 274a.2(c)

*NOTE: TWIC (Transportation Worker Identification Credentials) are not covered by the E-Verify security clearance exemption. Employees holding TWICs must be queried in E-Verify.*

**Q: Do you need to complete the online tutorial if you have changed employers and have already completed the tutorial elsewhere?**

*A: Yes. You will need to complete the online tutorial before you are eligible to verify employees in E-Verify. If you are currently enrolled, but are changing your employer profile due to the fact that you have been awarded a federal contract containing the E-Verify clause, you need to update your company profile and take the Federal Contractor Refresher Tutorial before verifying employees in E-Verify.*

**Q: If we have on-going federal contracts that were awarded in the past; however, we have never participated in E-verify how would we go about entering that into the system?**

*A: You do not. As stated above, under the FAR provisions the only type of on-going contract which is subject to E-Verify requirements is an IDIQ contract that has been modified on a bilateral basis to include the E-Verify clause. Until such time as you are awarded a federal contract that contains the E-Verify clause or an existing IDIQ contract has been modified to include the clause, you may not enroll in E-Verify as a federal contractor and you are prohibited from verifying existing employees.*

**Q: How can we register our other sites to use e-verify?**

*A: Site registration can be accomplished a few ways. First, if you intend to use a single account to manage your E-Verify queries, the main account holder will need to identify one or more Program or Corporate Administrators. The administrator can then create sub accounts for general users at remote sites. The remote sites would be responsible for initiating verifications, but the program or corporate administrator would be able to monitor all of the account activity company wide.*

*If you have remote locations that are separate business entities and wish to maintain separate accounts, but have a parent company or administrator monitoring all accounts for each sub unit, the sub units will enroll in E-Verify independently, but designate an identified individual as the Corporate Administrator or Program Administrator for the individual accounts. That way, only the Corporate or Program Administrator will have access to all of the accounts. The individual account holders will not be able to monitor accounts other than their own.*

*For additional questions regarding enrollment, please contact us at: (888) 464-4218 or [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov).*

**Q: Are the thresholds requiring E-Verify over \$100,000 and over \$3,000 or is it \$100,000 and over and \$3,000 and over?**

A: *E-Verify FAQs*, page 5 states in pertinent part:

***What is the acquisition threshold for this rule?***

*The rule requires the insertion of the E-Verify clause for prime federal contracts with a period of performance longer than 120 days and a value **above** the simplified acquisition threshold (\$100,000)*

***Does the rule apply to subcontracts?***

*The rule only covers subcontractors if a prime contract includes the clause. For subcontracts that flow from those prime contracts, the rule extends the E-Verify requirement to subcontracts for services or for construction with a value **over** \$3,000.*

**Q: I read that we can give the posters to new employees rather than post them. Is this correct?**

A. *E-Verify MOU for Employer (Federal Contract Version)*

*C. Responsibilities of the Employer*

- 1. The Employer agrees to display the notices displayed by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.*

*If you have difficulty posting E-Verify participation notices due to the setup of your business, ensure that all prospective employees receive them with their application materials and post them in the most appropriate location for viewing by potential and current employees. E-Verify User Manual for Federal Contractors, page 9 (January 2009).*