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**HELPFUL STEPS TO COMPLY WITH REQUIREMENTS OF
E-VERIFY PROGRAM**

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- Apply the process uniformly to all newly hired employees.
- Do not use for existing employees.
- Do not use prior to hiring individual.
- Do not terminate employment, refuse to provide training, refuse to provide benefits, or otherwise take adverse action based on TENTATIVE non-confirmation.
- The employer must allow the employee to keep working during the verification process until a FINAL nonconfirmation, unless the employment is terminated for a reason other than the verification process.

1. Complete Form I-9 verification process **after** the date of hire but within **3 business days** after the employee’s first day of employment. Regulations technically require the employee to complete Section 1 on the first day of employment but the employer has three (3) business days to complete the form.
 - (a) If employee chooses to provide List B document, it must contain a photograph.
 - (b) There is no requirement that the Company retain copies of the documents presented to complete the I-9 form, **except that if the employee presents a Permanent Resident Card or Form I-766 Employment Authorization Document the Company must make and retain a photocopy of the Permanent Resident Card or Employment Authorization Document.**¹

¹ Please note that there is a potential issue with copying only the permanent resident card or Form I-766 and not copying any other supporting documents used to complete the I-9. Federal law prohibits employers from selectively copying documents employees present to complete the form I-9. Federal law and regulations state that the employer may but is not required to copies, but to selectively copy only the documents of individuals of certain national origins or citizenship statuses could violation the nondiscrimination provisions of the Immigration and Naturalization Act. 8 C.F.R. § . 274a.2(3). We are awaiting an opinion from the Office of Special Counsel for Immigration Related Unfair Employment Practices regarding whether employers participating in E-Verify are

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2. After completing the Form I-9 and within **3 business days** after employee's first day of employment, enter the information from Section 1 and Section 2 of the Form I-9 into E-Verify.

If the employee provided a Permanent Resident Card or Employment Authorization Document, you will be prompted to verify the picture on the card against the picture in the DHS database.

The pictures should be exactly the same. If the picture does not match (allowing for variances in color and gradation given the age of the photo, color settings on computer monitor, etc), enter this information into E-Verify. You will receive a "DHS Tentative Nonconfirmation" --**go to Step 7.**

If you cannot determine whether the picture is the same, enter "cannot be determined," when asked if the photo matches. You will receive a "DHS Verification in Process"--you must send a copy of the employee's photo to DHS and **go to Step 6.**

3. E-Verify will provide one of the following responses:
 - (a) "Employment Authorized" – **go to Step 4.**
 - (b) "SSA Tentative Non-Confirmation" – **go to Step 5.**
 - (c) "DHS Verification in Process" – **go to Step 6.**
 - (d) "DHS Tentative Nonconfirmation" – **go to Step 7.**
 - (e) "Case in Continuance" – **go to Step 8.**
4. If E-Verify provides "**Employment Authorized**" response, check the first and last names on the confirmation to ensure that they match employee's name.
 - (a) If the information is incorrect, request additional verification from the Case Details page. Check the E-Verify system periodically for a response to your request for additional verification. E-verify should provide a response within three business days.
 - (i) If the response is "Employment Authorized" go to Step 4(b).
 - (ii) If the response is "DHS Tentative Non-Confirmation" go to Step 7.

required to keep photocopies of all documents used to complete I-9s to be non-discriminatory or may maintain only those documents required by the E-Verify program.

- (iii) If the response is “DHS Employment Unauthorized” this acts as a FINAL NONCONFIRMATION. Go to Step 9.
 - (b) If the name on the confirmation matches the employee’s name, “resolve the case” in E-Verify from case details screen. Then print the Case Details page (the confirmation), staple to the Form I-9, and file in I-9 file. END PROCESS.
- 5. If E-Verify provides “**SSA Tentative Non-Confirmation**,” then print the “Notice to Employee of Tentative Non-Confirmation” and provide to employee.
 - (a) Employer and employee must both sign letter.
 - (b) Keep copy of signed letter with employee’s I-9 and give copy to employee.
 - (c) Employee must choose to contest or not contest tentative non-confirmation and sign the Notice.
 - (i) If employee contests, go to Step 5(d).
 - (ii) If employee does not contest, this acts as FINAL NONCONFIRMATION. Go to Step 9.
 - (d) Initiate an SSA Referral from Case Details page. Print the referral letter, sign and date, and have the employee sign. Provide a copy of the referral letter to the employee and keep a copy with the employee’s I-9.
 - (e) After **10 business days** (or 24 hours after employee returns referral letter stamped by the SSA office, whichever is earlier), resubmit the verification through E-Verify. Locate the employee’s record in E-Verify, update information as necessary, and click “Initiate SSA Resubmittal.”
 - (i) If E-Verify returns “Employment Authorized” go to Step 4(b).
 - (ii) If E-Verify returns “SSA FINAL NONCONFIRMATION” go to Step 9.
 - (iii) If E-Verify returns “DHS Verification in Process,” go to Step 6.
 - (iv) If E-Verify returns “Case in Continuance,” go to Step 8.

6. If E-Verify provides “**DHS Verification in Process,**” check the E-Verify system periodically for a response from DHS. DHS should provide a response within 3 business days.
 - (i) If the response is “Employment Authorized” go to Step 4(b).
 - (ii) If the response is “DHS Tentative Non-Confirmation” go to Step 7.
 - (iii) If the response is “DHS Employment Unauthorized” this is a FINAL NONCONFIRMATION. Go to Step 9.
 - (iv) If the response is “Case in Continuance,” go to Step 8.

7. If E-Verify provides “**DHS Tentative Non-Confirmation,**” select “Initiate DHS Referral” from the Case Status screen, then print a DHS Referral Notice, sign it, have the employee sign it, and give a copy to the employee. Keep a copy of the referral notice with the employee’s I-9.
 - (a) Check the E-Verify system periodically for a response from DHS. DHS should provide a response within 3 business days.
 - (i) If the response is “Employment Authorized” go to Step 4(b).
 - (ii) If the response is “DHS Employment Unauthorized” this is a FINAL NONCONFIRMATION. Go to Step 9.
 - (iii) If the response is “DHS No Show” this acts as a FINAL NONCONFIRMATION. Go to Step 9.
 - (iv) If the response is “Case in Continuance,” go to Step 8.

8. If E-Verify provides “**Case in Continuance,**” check the E-Verify system periodically for a response from DHS.
 - (a) If the response is “Employment Authorized” go to Step 4(b).
 - (b) If the response is “DHS Employment Unauthorized” this is a FINAL NONCONFIRMATION. Go to Step 9.

9. Once you receive a notice that acts as a **FINAL NONCONFIRMATION:**
 - (a) TERMINATE THE EMPLOYMENT OF THE INDIVIDUAL who was the subject of the final nonconfirmation. Complete a personnel status form identifying that the employee was unable to complete a valid I-9.

If the Company chooses not to terminate the employment, it must report in E-Verify during the case resolution, “Employee Not Terminated” and it will be presumed that the Company is knowingly employing an unauthorized worker if the individual turns out to be unauthorized.

- (b) Resolve the Case on the Case Details Screen by selecting “Resolve Case” and selecting “Resolved Unauthorized/Terminated.”
- (c) Print the Case Details Page and attach to the Form I-9. END PROCESS.

This document is a summary for informational purposes and should not be relied upon as legal advice. Refer to the 65-Page E-Verify User Manual, the Memorandum of Understanding, and updates released by the USCIS at www.uscis.gov for more information.