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The New E-Verify – Ready or Not, Things Have Changed

On Sunday, June 13th, U.S. Citizenship and Immigration Services (USCIS) rolled out what it claimed to be a newly-designed, improved and user-friendly E-Verify, continuing its promotion and marketing of the E-Verify system with its announcement of a system-wide redesign. The GT compliance team agrees that the look and feel of E-Verify has substantially improved with this update, along with the number of tools now available to employers to track alerts and close cases. At the same time, we remind employers that while E-Verify is a best practice, the program is still vulnerable to identity theft and requires companies to ensure proper use of the system by implementing ongoing monitoring and internal audits of E-Verify.

This launch contains the most substantive upgrades and additions to E-Verify since USCIS's initial push in 2007 to brand and expand the successor to the Basic Pilot Program. A combination of State law mandates combined with the Federal Contractor (FAR) E-Verify mandate has significantly increased the number of employers that have registered to use the program as a means to electronically verify the employment authorization of new hires and existing employees under the FAR. As with any new system, the program has experienced criticism and growing pains. However, in advancing its goal of improving customer service, USCIS has redesigned the system in response to user feedback by providing new features to assist employers in utilizing E-Verify more efficiently and effectively as part of the overall hiring process.

The new E-Verify website is designed to enhance usability and security. Existing user names and passwords will remain valid, but registered users will be required to view a short 10 to 20 minute tutorial on the new redesign the first time they log in after the update. Users will not be able to perform queries until they complete the tutorial, so it is essential to plan accordingly. After you have completed the new tutorial, you will be greeted with a host of new features, some of which are highlighted below.



Redesign Highlights

Home Page

The new home page enhances security by displaying the user's name, user ID, and last login date and time. The navigation menu on the home page now features simplified language, and provides access to an E-Verify User Manual from any page.

Previously, the design required users to return to an individual case to check for status updates. Now, case alerts appear at the bottom of the home page, allowing users to easily view whether action is needed on any pending E-Verify cases. The home page also features an expanded news section that allows users to view updated E-Verify news without downloading a separate document.

Simplified Language

It was long recognized that the previous version of the E-Verify system used confusing terms. Now, several key terms have changed to make the E-Verify process more user-friendly. For example, rather than having to "initiate a query," users will now "create a case." "Exit" is now "log out", "Resolve case" is now "Close case" and the "photo tool" is now called "photo matching" to better reflect the description of matching the photo on the EAD or I-551 card with the photo presented by E-Verify. Employers welcome this simplification of terms and reaffirmation of USCIS's efforts to improve transparency with the use of "clear and simple language." As the USCIS website states, "you shouldn't have to keep a glossary handy to figure out what we're trying to say."

A full list of the new terms with reasons for the changes made is available on the [USCIS website](#).

Viewing Cases

The new system introduces new iconography so that users may easily tell how a case has been resolved and quickly identify if action is needed on a specific case. Previously, users could only view cases by searching, but a new "View Cases" screen will now show users up to 100 open cases at a time. The screen features the status of each case, the employee's name, the case number, the employee's partially-masked Social Security Number and the employee's hire date. Users may sort the records by any column except Social Security Number.

Case Alerts

The E-Verify system provides users with prominent reminders on the home page indicating which open cases need to be closed and which cases have new updates. The case alert bar will be blue unless you have case alerts that need to be attended to, in which case the bar will turn red.

Three types of case alerts will be displayed:

1. open cases that need to be closed;
2. cases with new updates; and
3. work authorization documents that are expiring.



Case alerts will appear for 30 days after the update occurs or the case is closed.

The work authorization tickler was created as a reminder for employers to update Section 3 of the Form I-9, when such action is required. Caution: *This reminder is only available for the first time a document expires. As subsequent reminders will not appear for new documents, employers should continue to maintain their own tickler systems. We encourage you to contact your GT Compliance team to formulate a refined strategy to not only address reverifications, but retention requirements as well.* The tickler serves as a simultaneous illustration of both improvements and shortcomings of the system. In this case, the user will need to select an alternative way to track subsequent work authorization expirations. Remember: employers should not create a new case in E-Verify for employees with expiring work authorization documents; the alert is merely provided as a reminder for the employer to complete Section 3 of the Form I-9 before the document expires.

The new case alerts notifying managers when there are new updates about a case should be particularly helpful, as will the reminders to re-verify expiring work authorization documents. While general users can only see case alerts for cases they create, program administrators can track case alerts for all cases on the company's account. Unfortunately, email alerts were not included in this version based on limited technology. That being said, your GT Compliance team may have alternative approaches to ensure your compliance administrators receive timely email notification of upcoming due dates.

Identifying Late Cases (Violations of the Three-Day Rule)

The training video states that you are required to open a case in E-Verify within three days after the employee's date of hire. This instruction seems to indicate that the E-Verify program has acknowledged the plight of employers, who often find themselves being forced to complete the Form I-9 and initiate an E-Verify query by the end of "Day 3." Logistically, this has been very difficult, especially for employers with remote hires or for those running E-Verify from a centralized location



different from the actual worksite. This guidance will certainly be welcomed by employers, however, absent a strong clarification that the E-Verify "3 day" rule is different from that I-9 "3 day" rule (requiring that Section 2 of the form must be completed within three days of the hire¹), it is certain to create further confusion in the field.

Another new feature that raised a flag is the tracking of late cases in the system. Now, if you open an E-Verify case after the three days, the system will require the user to enter a "reason" why the case was created late. The choices include the following:

- the individual was awaiting a Social Security number (as you cannot process an E-Verify case without a valid SS number)
- there were technical difficulties
- an audit revealed that the employee had not been run through E-Verify
- or "other" - with the option to enter another reason of your own explanation.

¹ 274.a.3(b)(1)(i)(B).

Before entering a reason for your delay under the “other” category, you should contact your GT Compliance team for advice. You should not identify the employee or E-Verify user by name in providing a reason for the delay. The GT Compliance Team will work with you to provide only a general reason for the failure to create a case within three days. Considering the focus on “late completion” by the Monitoring and Compliance Branch (who are obliged to report your compliance violation to ICE for further investigation), and the increasing number of the Department of Justice’s Office of Special Counsel investigations for discriminatory hiring practices, this new tracking system is yet another reason why employers ought to invest in conducting attorney-supervised audits, including E-Verify inspections by experienced immigration counsel. Reviewing this data prior to a government review could assist in determining trends and issues that require attention.

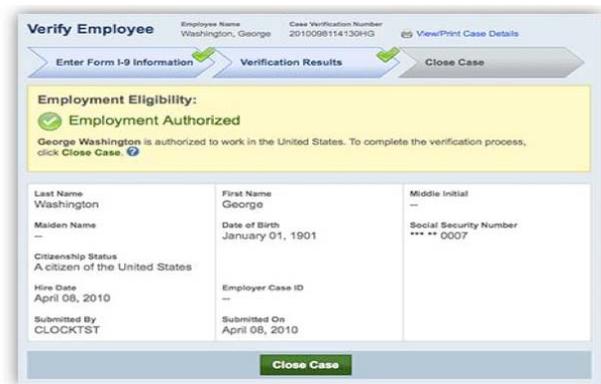
Federal contractors subject to the FAR E-Verify requirement will also be able to select an option identifying the employee as an *existing employee* who is being verified outside the three days, under the FAR E-Verify clause.

Although this feature is currently only available for tracking purposes, program administrators will be able to run reports containing this information with the anticipated September 2010 update. USCIS has stated that this feature was added at the request of, and for the convenience of, users. While this may be true at this time, it is also conceivable that it will be used by ICE Special Agents in the future.

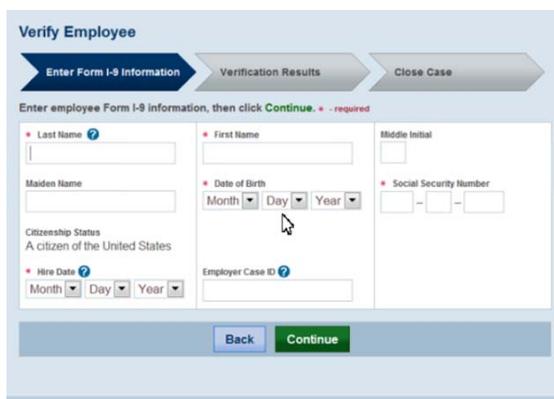
Easy as 1-2-3

The redesign team determined that the vast majority of E-Verify cases can be accomplished in a quick and easy three-step process. The redesign reflects this by dividing the E-Verify process into three segments: entering information from Form I-9, receiving verification results, and closing the case. A video demonstration of the 1-2-3 process is available on the [USCIS website](#).

If a case is following the most-common three-step progression, the buttons on the bottom of the screen will appear in green. Less common options (such as tentative-non-confirmations) will appear in blue.



Step 1: Enter Form I-9 Information

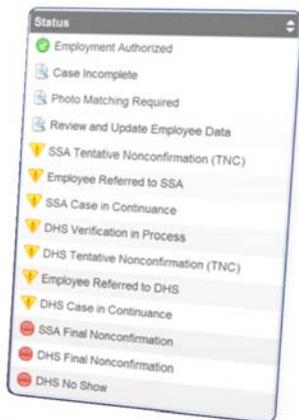


Typographical errors frequently result in preventable tentative non-confirmations. The redesign is intended to reduce typographical errors when entering Form I-9 information. Some of the key changes include:

- use of drop-down boxes for entering dates to ensure that dates are correctly entered in mm/dd/yyyy format.
- dividing the Social Security number field into three sections to improve accuracy. Users will not be required to tab through the sections as long as JavaScript is enabled on their computers.

- data entry screen now organized in the same order as the Form I-9.
- document names now referred to *before* form numbers to help users more easily identify the proper document.
- users will now be able to select a Temporary I-551 stamp printed on a Machine Readable Visa (MRV) as a document option.

Step 2: Verification Results



The verification results of a case used to appear as a series of historical progressions where the most recent case update appeared at the bottom of the page. This made it difficult for users to see the status of a case. With the redesign, each case will have only one status at a time, prominently displayed with an icon.

If you do want to see the historical progression of a case, you can click “view/print case details” at the top of the screen.

Step 3: Close Case

Previously, users were offered a series of codes (i.e. “Resolved Authorized, Resolved Unauthorized/Terminated”) when closing a case.

Now, users will first be asked whether the employee is still employed with the company, and based on the user response, a series of plain language statements will appear as selections.

For example, if you state that the employee still works for your company, you will be presented with three options to close the case:

- The employee continues to work for the employer after receiving an Employment Authorized result
- The case is invalid because another case with the same data already exists
- The case is invalid because the data entered is incorrect



The option to select “The case is invalid because the data entered is incorrect” replaces the previous option to identify an invalid query.

Simplified Tentative Non-Confirmation (TNC) Process

E-Verify states that the majority of users rarely encounter a Tentative Non-confirmation (TNC) in E-Verify. However, it is imperative that company users understand how to correctly approach the TNC process when this does occur. The redesign addresses the issue by attempting to makes the process as user-friendly as possible.

When a TNC is received from the *Social Security Administration (SSA)*, the user will be shown a reason for the TNC (i.e. "SSN not valid" or "Name and date of birth do not match SSA records"). However, the specific reason for the TNC will not occur in the event of a *Department of Homeland Security TNC*, due to database information limitations.

The TNC process is now divided into four main steps. If a user does not complete the steps in one session, the system will return to the step where the user left off when the user views the case again. A short video demonstration of the TNC process is available on the [USCIS website](#). GT highly recommends that companies provide training sessions to their HR team and ensure that their users view the video.

Step 1: Print, Review and Sign TNC Notice

The first step is to print the TNC notice for the employee. This screen provides a link to download the TNC and instructs the employer to meet with the employee and have both parties sign the TNC.

The user is required to confirm on this page that the employee has been notified of the TNC.

Step 2: Confirm Employee Decision

After the user has notified the employee of the TNC, he or she must report whether the employee has chosen to contest the TNC. If the employee is contesting the TNC, the user is instructed to proceed to the next step of the TNC process.

If the employee is not contesting the TNC, the user is instructed to close the case.

Step 3: Refer Employee

When an employee is referred to a government agency, the employee is given eight federal workdays to contact the appropriate agency. E-Verify will begin tracking these eight days when the E-Verify user selects the "Refer Employee" icon.

Step 4: Print, Review & Sign Referral Letter

In the final step, E-Verify instructs the user to print the referral letter and discuss it with the employee. It also instructs the user and employee to sign the letter so that the employee may present it to the appropriate government agency.

The system will then tell the user how many days the employee has to visit the government agency, and will also provide a deadline for E-Verify to provide a status update on the case.

An employer's greatest exposure when addressing a TNC is running afoul of the Department of Justice's Office of Special Counsel's (OSC) discrimination provisions. Accordingly, it is critical that your GT Compliance team be notified to provide assistance in designing workable Standard Operating Procedures (SOPs) to deal with TNCs and to resolve unusual or problematic notices.

Memorandum of Understanding

Program administrators can download their company's electronically-signed Memorandum of Understanding (MOU) by clicking "Edit Company Profile" on the navigation menu. The MOU is available as a PDF and Designated Agents can access electronically-signed MOUs but will not have access to faxed signature pages.

USCIS reminds employer that if you enrolled prior to the implementation of electronic signatures in 2007, your signature on the MOU will be blank. If you need to obtain a copy of the original, signed MOU, you should contact customer service. Federal Contractors should ensure that they review all of their existing MOUs to understand the actual participation of their existing entities, as well as the possible need to consolidate accounts when changing their E-Verify status to *Federal Contractor*.

More Information

More information on the changes to E-Verify, including video demonstration and screen shots, is available at www.uscis.gov/e-verify_redesign.

New manuals and quick reference guides are expected to become available later this month on the [USCIS website](#).

This *GT Alert* was written by Dawn M. Lurie and Lindsey Baldwin. Questions about this information can be directed to:

- [Dawn M. Lurie](#) – 703.903.7527 | luried@gtlaw.com
- Any member of [Greenberg Traurig's Business Immigration & Compliance Team](#) listed on the next page
- Or your [Greenberg Traurig](#) attorney

[Greenberg Traurig's Business Immigration and Compliance Group](#) has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification and E-Verify implementation matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops comprehensive immigration-related compliance strategies and programs, and performs full-scale attorney supervised I-9 and E-Verify compliance inspections. GT has also successfully defended businesses involved in large-scale government worksite enforcement actions, I-9 Audits and Department of Labor Wage and Hour investigations. The GT Team is able to recommend a full-scale digitization and remediation protocol that may dramatically decrease outstanding administrative exposure and while preventing accumulation of exposure into the future. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws-Office of Special Counsel Investigations, and employers' responsibilities when faced with traditional no-match situations as well as more serious workplace identity theft or other alleged misrepresentations made by employees.

Austin
512.920.7200
Sujata Ajmera
Kevin Lashus
Maggie Murphy

Dallas
972.419.1250
Peter Wahby

Houston
713.374.3500
Martha Schoonover

Los Angeles
310.586.7700
Mahsa Aliaskari
Jennifer Biloshmi[†]
Ganesh Kalyanaraman

Miami
305.579.0500
Oscar Levin

New York
212.801.9200
Marcela Bermudez
Patricia Gannon
Christina Pitrelli

Tysons Corner
703.749.1300
Lindsey Baldwin
Kristin Bolayir[†]
Patty Elmas[†]
Dawn Lurie
Laura Reiff
Glenn E. Reyes[†]
Rebecca Schechter
Martha Schoonover

Washington, D.C.
202.331.3100
Montserrat Miller
Laura Reiff

[†]Not admitted to the practice of law.

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