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November 27, 2023

Samantha L. Deshommes,
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Submitted via www.regulations.gov
Docket ID number USCIS-2006-0068-0708

Re: Comment to Proposed USCIS Information Collection Activity: Revision of a Currently Approved Collection: Employment Eligibility Verification and E-Verify Program
OMB Control Number 1615-0047

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) respectfully submits the following in response to the above-referenced 30-day notice and request for comments, dated October 26, 2023, on the proposed information collection activity with respect to Form I-9, Employment Eligibility Verification and the E-Verify Program.¹ As requested, we provide comments relating to one or more of the following issues: the necessity and practical utility of the information collection; the accuracy of the estimate of the anticipated estimated burden (i.e. the time, effort, and resources used by the respondents to respond); the quality, utility and clarity of the information collected; and the information's collection's efforts to minimize the burden on respondents.

Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. Our members' collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

¹ 88 FR 73611 (October 26, 2023).

Initially, it must be recognized that the *Federal Register* notice and supplemental materials published on June 29, 2023, and October 26, 2023, were both less than clear in terms of the specific information requested in connection with the proposed revisions to Form I-9, Employment Eligibility Verification and the E-Verify process. It is our understanding that the Department of Homeland Security (DHS) has requested comment on that part of the Form I-9 process relating to enrollment in the E-Verify program, tutorials for gaining and maintaining access to the E-Verify system, how to run an E-Verify query as well as how to appropriately respond to a Tentative Non-confirmation and Final Non-confirmation. Time burdens have been estimated for each step. AILA has reviewed the supplemental information and the proposed E-Verify slides that accompany this notice and seeks to provide input specifically on how DHS may enhance the quality, utility and clarity of the information requested, while minimizing the burden of the collection on those who are to respond.

Enrollment in E-Verify

E-Verify remains a voluntary program in many respects; however, several states mandate enrollment in E-Verify for certain employers, including Florida's new E-Verify mandate, which went into effect on July 1, 2023.² Other states mandating the use of E-Verify for all or most businesses include Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Utah. Each state has its own permutations regarding whether an out-of-state employer is subject to E-Verify enrollment based on employees performing services in another state. In addition, there are also state by state considerations as to employees performing services for the benefit of an employer in an E-Verify subject state from outside of that state. For example:

1. Is there an exemption from a state E-Verify enrollment based on the number of employees employed by the employer (in state or out of state)?
2. Does the state law allow employees of an out of state employer to be exempt from a required employee count (for E-Verify purposes) based on providing less than full-time services in the subject state?
3. How does the state count employees who are performing services wholly outside of the particular E-Verify mandate state?
4. Are there exemptions from a state employee count tied to nonimmigrant status of certain employees (e.g., Utah and its exemption of H-2A and H-2B guestworkers)?

More recently, the 2023 DHS optional verification rule increased the likelihood of additional employers needing to enroll in E-Verify when it tied the availability of remote verification of Form I-9 to enrollment in E-Verify.³ This remote verification option and the associated increased demand for enrollment in E-Verify necessitates that DHS streamline the enrollment process as much as possible and make it consistent with today's business world as well as to simplify compliance for employers.

² Florida Senate Bill 1718/Section 448.095, Florida Statutes.

³ 8 FR 47749 (July 7, 2023).

Proposed slides 1-15 address the process for how an employer can enroll in E-Verify. Slide 4 states that the employer will “need to know” a variety of information before it can even begin the enrollment process. Three of the items on this list raise significant concerns because of the ambiguity of the information requested:

- the physical address of the location from which your company will access E-Verify;
- the total number of employees for all of your company’s hiring sites that will participate in E-Verify in each state; and
- the number of hiring sites that will participate in E-Verify in each state.

Each question is fraught with difficulty in identifying the relevant information requested in a post-COVID world when many employers no longer have a traditional brick-and-mortar company headquarters and employees are fully remote.

Physical Address of the location where employer will access E-Verify

Slide 5 states that if a company has multiple “locations,” employer access allows the employer to choose to use E-Verify for some or all of its locations. If the company has a central office desiring to manage E-Verify use for all locations that “access” E-Verify, then the use of enrollment as a Corporate Administrator may be used ONLY to manage “multiple employer accounts” and does not allow for the creation and management of E-Verify cases.

The physical address of the location from which a company will access E-Verify raises the following preliminary questions about what “access” means in this context:

- Where E-Verify queries are manually submitted to the E-Verify website? This definition would require reporting the physical address of every single E-Verify user, many of whom may work from home.
- Where a Corporate Administrator might review a dashboard?
- Where an E-Verify Employer Agent is located, which entity facilitates the entry of Form I-9 data from an employer into the E-Verify system?

As noted above, the question of physicality is even more confusing in the context of a data push of information on an electronically prepared Form I-9 directly to the E-Verify website through a Web Services Employer or E-Verify Employer-Agent. The information listed in the slide does not provide clear guidance as to what constitutes the “access” point in this scenario, when no one is responsible for “submitting” a query independent of completion of Form I-9.

We encourage DHS to define “access” to recognize the reality that many employees no longer have centralized operations to perform services at with a single headquarters address. The proposed slides’ reliance on an undefined term does nothing to guide employers about the information that they are expected to assess and report. This ambiguity opens the door to employers using different definitions of “access.”

AILA recommends that DHS specify why the agency is collecting information on the “physical location” of the company, as opposed to the use of general contact information (phone, fax, email) requested for users of the system. As E-Verify is an entirely electronic system, with even Monitoring & Compliance (also recently referred to by DHS as “Account Compliance”) operating almost exclusively by email, communicating and posting operational and training material on its dedicated website; it seems inconsistent to place such emphasis on the physical site.

E-Verify does provide contact phone numbers as well as a listing of enrolled E-Verify employers, which may be used from an enforcement perspective by the states. The E-Verify employer list explains to the public the following as to its data provided:

- **Workforce size** – Appears as long as the employer reported they have at least five employees.
- **Number of hiring sites** – The locations where employers hire employees and where they complete Form I-9.
- **Hiring site locations (by state)** – The geographic location(s) of hiring sites, by state, reported by the employer.

The E-Verify employer listing site includes a link to the explanation of [Employer Data Parameters](#) which contains the following information:

- The E-Verify search tool only includes employers, E-Verify employer agents, and federal contractors, who self-reported that they had five or more employees at the time they enrolled.
- USCIS updates the search tool data quarterly.
- The public may not recognize business names that employers use.

Example: An employer enrolls in E-Verify using their business name (e.g., Baristas Incorporated), but the public may only recognize their DBA name (e.g., Coffee First). If a user searches for the DBA name (Coffee First), the search tool will not recognize it, because the employer enrolled using their business name.

- If the search tool results include the name of a business that has more than one hiring site **or business location**, it does not necessarily mean

that all of the hiring sites are enrolled in E-Verify. **A hiring site is the location where the employer hires employees and completes Form I-9, Employment Eligibility Verification.** Employers with multiple locations may choose which of their sites participate in E-Verify.

Example: A user may search for Candy Company and find a listing for Candy Company in the search tool. That does not mean every Candy Company store across the United States is enrolled in E-Verify.

- The search tool can identify hiring site location(s), by state, but does not provide the addresses of each hiring site.

AILA recommends that DHS not bury these parameters in a link, which might not be readily apparent to most users.

Please note that E-Verify enrollment is also relevant regarding the ability of qualifying STEM students to extend their work eligibility when working for E-Verify employers. The instructions provided by U.S. Immigration and Customs Enforcement (ICE) as to the Form I-983 training plan request information as to a physical address where services will be performed for the E-Verify employer and the total number of full-time employees of the employer without regard to state of location.⁴ In May 2023, ICE further clarified that OPT STEM students may work remotely from within the United States, but not from outside of the United States and that the SEVIS record should be updated with the remote location.⁵ ICE focuses on the location of the performance of services, which of course is not necessarily the same as an E-Verify “access” point. We suggest that the enrollment process be updated to refer to the primary physical company location (headquarters), if it exists, or the registered agent for service of process.

Hiring Sites

The enrollment process also requests that employers identify the number of “hiring sites” in each state. The proposed slide requesting that employers “Enter Hiring Site Information” states that, “If your company will **verify** employees hired at multiple locations, these are called ‘Hiring Sites.’”⁶

However, the E-Verify Manual provides the following contrary guidance:

- 1.4 Verification Locations and Hiring Sites. **It is important to know the meaning of a verification location, a hiring site and the differences between the two.** For a description of each, review the ‘Verification Location – Hiring Site – Overview.’

⁴ [Instructions for the Form I-983 \(ice.gov\)](https://ice.dhs.gov/i-983)

⁵ [FAQs for SEVP Stakeholders about Covid-19](#)

⁶ Slide 12 (emphasis added).

VERIFICATION LOCATION – HIRING SITE – OVERVIEW

- A verification location is where the employer's staff takes the information from an employee's Form I-9 and creates a case in E-Verify. Generally, each verification location has its own employer account. If the employer has staff at each location that uses E-Verify, then each location is considered a verification location. If the employer centralizes the use of E-Verify to certain locations, then only those locations are considered verification locations.

- A hiring site is the location where the employer hires employees and they complete Form I-9. If your company creates cases in E-Verify at the same location, it is both a verification location and a hiring site. Employers select which sites participate in E-Verify on a hiring site by hiring site basis. This means that if you decide to have a hiring site participate in E-Verify, you must verify all newly hired employees for that hiring site. If you decide not to have a hiring site participate, you are not permitted to verify any employees at that location.⁷

The proposed slide advises employer to identify “hiring sites” by where it will “verify” employees, which is where the employer creates a case in E-Verify, not where it creates the Form I-9. The proposed slide conflates the two topics, making it extremely difficult for an employer to collect and provide relevant information consistent with the E-Verify Manual.

Even if DHS amends Slide 12 to mirror the definition of “Hiring Site” found in the E-Verify Manual, employers may still be confused about how to proceed in the enrollment process, which of course endangers the accuracy of data entered into or pulled from E-Verify. In the proposed slides, DHS defines the term, “hiring site,” as a singular location where the employer: (1) hires the employee; and (2) completes Form I-9, ignoring the noted reference to “business location.” This definition presupposes a world where an employee works on-site at an employer location and comes in physically to complete Section 1 and Section 2 (by the presentation of documents) of Form I-9 at that same location. This definition, however, is outdated and represents an increasingly smaller percentage of the hiring that occurs in today's business world.

Today's hiring practices often bifurcate the “hiring” process from the “completion of Form I-9.” Further, Form I-9 completion itself is frequently divided between the employee completing Section 1 electronically in one location and the employer completing Section 2 (either virtually or through physical inspection by a designated agent) in a second location. This practice leaves an employer attempting to enroll in E-Verify with an inability to identify one hiring site for the hiring of an employee, because it might encompass three distinct locations (e.g., Section 1 completion, Section 2 worksite, and E-Verify access point). It is critically important for DHS to clarify which one should be identified.

DHS acknowledged and endorsed this change in employers' hiring practices and the reliance by employers on remote work when it created a remote verification methodology for completing Form I-9 in 2023. AILA recommends that DHS now amend the definition of “hiring

⁷ 1.4 Verification Locations and Hiring Sites (e-verify.gov) (emphasis and highlighting added).

site” to accommodate that same business reality. We recommend that DHS specify which of several locations involved in the hiring process (as listed below) would be considered the hiring site and we suggest that the use of a business location or performance of services location at the time of Section 2 completion may be the most straight forward.

- Location where offer of employment was made?
- Location where Section 1 is completed?
- Location where Section 2 is completed?
- Location where employee will work?
- Employer’s mailing address?
- Employer’s service of process location for those without brick-and-mortar offices?

E-Verify Screenshots: Tutorial Slides 16-21

While DHS has proposed slides on enrollment and compliance, it must also review all E-Verify related informational and instructional materials to ensure the accuracy and consistency of the information provided to the public. For example, slide 20 of proposed slides refers to a tutorial completion screen including five lesson modules followed by a test. Slide 21 provides an example of the screen for successful completion of the tutorial including a user score. However, this information does not match the E-Verify User Manual posted on the E-Verify site,⁸ which has not been updated since April 23, 2018, and the E-Verify User Manual for Corporate Administrators.⁹

Similarly, the Training Requirements and Guidelines for Web Services Users is posted as current as of “September 2019,” however, it contains updates from August of 2023. The Guideline refers to a required training curriculum overview and that Web Services Employers and E-Verify employer agents must include topics from four modules listed as part of a required E-Verify user training course. In sections C and D of the guidelines, it states that Web Services Employers and E-Verify employer agents must not allow users to access E-Verify until the users achieve a passing score of at least 70% on the knowledge test.¹⁰ We realize that the slides are merely proposed, but they are currently not consistent with the material in the training requirements manual updated as recently as August of 2023.

When DHS announced the remote verification process for I-9 completion, it also created a training relating to fraudulent documents awareness, which was posted on the E-Verify site as of July 31, 2023.¹¹ However, it is not included in the proposed slides for tutorial training that were part of this comment from October 26, 2023. Please note the separate web posting of the E-Verify Training Requirements and Guidelines for Web Services Users also references only four modules and does not include fraudulent document awareness training. AILA requests clarification

⁸ [Employer Resources \(e-verify.gov\)](https://www.e-verify.gov/employer-resources)

⁹ Based on postings last viewed November 21, 2023.

¹⁰ If the required score is 70% and it may be acquired after numerous test attempts, we believe this information is relevant for inclusion in the proposed slides.

¹¹ <https://www.e-verify.gov/fraudulent-documents-awareness>

regarding whether the fraudulent document section is meant to be included in the training modules for the proposed E-Verify slides.

For employers enrolling in E-Verify directly, the Memorandum of Understanding with DHS instructs them to require that any employer representative, who will create E-Verify cases must complete the E-Verify tutorial before doing so. There is also an agreement that all employer representatives will take refresher tutorials when prompted by E-Verify or lose the ability to access E-Verify. We believe these basic points should be reflected in the proposed slides.

AILA also believes the slides should include a clarification as to what new E-Verify enrollees must review in connection with their qualifying tutorial in order to use the optional alternative procedure to physical document examination for the Form I-9. Currently, I-9 Central notes that such new users must complete an E-Verify tutorial that includes fraudulent document awareness training.¹² Existing employers who are already enrolled in E-Verify, however, have access to this tutorial and may retake it at any time. This posting requires clarification as to when this tutorial must be taken by existing employers to be considered employers in good standing to use the optional alternative remote procedure.

E-Verify Screenshots: Slides 32 and 47; Form I-9 Section 2

AILA continues to be concerned that employers and employees are often unable to determine appropriate qualifying DHS documents from the catch all phrase noted on the slides of “Employment authorization document issued by the U.S. Department of Homeland Security.” USCIS has an opportunity in these slides to explain the flexibility of the options encompassed in #7 of Form I-9, List C. The current Form I-9 now includes a reference to the following clarification in recognition of the challenge posed by List C #7 acceptable documents:

Due to the ever-changing nature of U.S. immigration laws and policies, employers are unable to rely entirely on the M-274 Handbook for Employers as to the completion of the Form I-9.

The public has to rely on numerous postings on “uscis.gov” to discern for example, whether a holder of Temporary Protected Status (TPS) is work authorized. In a liaison meeting between AILA and the USCIS Ombudsman’s Office on September 12, 2023, AILA outlined that there are now approximately 40 additional document combinations that can be presented to complete Form I-9 that are not included in the List of Acceptable Documents (LOAD) for Form I-9. We encourage DHS to take advantage of this opportunity to make compliance easier for employers. Thus, AILA suggests that DHS provide additional clarifying slides recognizing this point, which can impact an employer’s or employee’s understanding of the process. In the alternative, DHS should, at a minimum, create its own ongoing updated LOAD list in real time available in the “What’s New” portion of I-9 Central.

As DHS is aware, the Immigrant and Employee Rights (IER) section of the Department of Justice (DOJ) provides worker and employer hotline resolutions as well as technical assistance

¹² [Remote Examination of Documents \(Optional Alternative Procedure to Physical Document Examination\) | USCIS](#)

letters for guidance. We suggest that DHS consider gathering this type of information as well on an ongoing basis to provide updated guidance on compliance issues. Please note that the DOJ's postings include IER telephonic interventions and transmittal letters regarding E-Verify.¹³ While we recognize the fast-moving nature of immigration enforcement policies, any training and reference resources need to be updated timely to track the history of evolving agency legal and policy interpretations of applicable compliance standards.

Conclusion

AILA appreciates the opportunity to provide feedback to USCIS in connection with Form I-9, Employment Eligibility Verification and we look forward to a continuing dialogue with USCIS on this and related matters.

Please address any concerns or questions to AILA Director of Government Relations Sharvari (Shev) Dalal-Dheini at SDalal-Dheini@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

¹³ [Civil Rights Division | Hotline, Technical Assistance & Referral Agencies \(justice.gov\)](#)