



August 7, 2015

VIA ELECTRONIC SUBMISSION

[USCISFRComment@uscis.dhs.gov](mailto:USCISFRComment@uscis.dhs.gov)

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Laura Dawkins  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

RE: OMB Control Number: 1615-0092  
Department of Homeland Security  
Docket ID: USCIS-2007-0023-0037

Dear Ms. Dawkins:

Equifax Workforce Solutions appreciates the opportunity to provide comments in response to the Federal Register notice on the E-Verify program and a proposed revision of a currently approved collection of information. Specifically, Equifax Workforce Solutions' comments are in response to the proposed expansion of the E-Verify program to require section 3 reverification of existing employees, the time frame in which that must be completed, the Final Nonconfirmation (FNC) Review process, and comments related to one of the revised Memorandum of Understanding (MOU).

Equifax Workforce Solutions a/k/a TALX Corporation is a wholly owned subsidiary of Equifax, Inc. We are based in St. Louis, Missouri and provide human resource, analytics and verification services. One of our compliance solutions offered to employers is an I-9 and E-Verify tool called I-9 Management. Equifax Workforce Solutions is one of the largest providers of electronic I-9 services in the market as well as one of the largest E-Verify Employer Agents. In calendar year 2014, Equifax Workforce Solutions added approximately 3.5 million Forms I-9 to its system and conducted approximately 2.9 million E-Verify transactions on behalf of employers as their E-Verify Employer Agent.

### **Section 3 Reverification and the Three Day Requirement**

Reverification of existing employees is not currently allowed in E-Verify unless the employer is a Federal contractor subject to the FAR E-Verify clause. In its Supporting Statement to the Federal Register notice, U.S. Citizenship and Immigration Services (USCIS) states, "[i]n addition to improving the TNC and referral process and formalizing the FNC review process, USCIS is seeking to more closely align E-Verify and Form I-9 by mirroring the Form I-9 reverification process in E-Verify. This will

allow employers to electronically verify continuing employment authorization through E-Verify for those employees with existing temporary work authorization documents.”<sup>1</sup> Accordingly, “USCIS proposes to add reverification functionality to E-Verify, and require participating employers to update existing cases or create a new case, if applicable, for all employees requiring reverification.”<sup>2</sup>

In order to reverify an employee, the employer will access the previously created E-Verify case or create a new case where no previous case exists. According to the USCIS Supporting Statement to the Federal Register notice, the employer must access the existing case or create a new case *no later than three days after expiration* of the previous employment authorization. This is problematic for several reasons, as highlighted below, and we recommend that employers be able to conduct the E-Verify reverification process *prior* to expiration of the current work authorization document:

- Waiting until after expiration of the temporary work authorization document is at odds with the legal requirement found in 8 C.F.R. § 274a.2(b)(1)(vii) requiring that reverification on the Form I-9 “must occur not later than the date work authorization expires.”
- Notwithstanding the fact that the regulations require reverification prior to expiration of an employee’s work authorization, practically speaking, differing time frames will cause confusion for employers and remove any flexibility in their human resources functions if they seek to complete the reverification process prior to expiration of the work authorization document.
- If employers are forced to wait post-expiration to complete the E-Verify reverification process, what assurances do they have that they will not be found in noncompliance and an allegation made by Immigration and Customs Enforcement that they did not timely complete the reverification, particularly if they mistakenly assume that the Form I-9 must not be completed until post-expiration as well? Furthermore, what if the employee is in fact not work authorized during that time period? Is an employer at risk of violating section 274A(a)(2) of the Immigration and Nationality Act (INA) related to continuing employment if the employee is not work authorized and the employer waited until after expiration of their work authorization to complete section 3 of the Form I-9 and/or E-Verify?
- Taking the above bullet point one step further, what if post-expiration the employer completes E-Verify and it results in issuance of a Tentative Nonconfirmation (TNC) by the E-Verify system from the Department of Homeland Security (DHS) or Social Security Administration (SSA)? The E-Verify MOUs state that an employer cannot take adverse action against the employee if they choose to contest a Tentative Nonconfirmation (TNC) and while their case is pending. The employee has eight federal working days to contact DHS or SSA to correct the TNC. Hypothetically speaking, eight federal working days elapse, the employee continues to work during the pendency and then the E-Verify system returns either a “DHS No Show” or “DHS Final Nonconfirmation”. Waiting post-expiration to complete the reverification process in E-Verify creates

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<sup>1</sup> Supporting Statement, E-Verify Program, page 2.

<sup>2</sup> *Id.*, page 5.

a disconnect between the current Form I-9 process and E-Verify, and potentially forces an employer to continue to employ an individual who is not work authorized.

Finally, USCIS proposes to require participating employers to update existing cases or create new cases, if applicable, for all employees requiring reverification. USCIS offers no explanation of when that will begin, the universe of employees covered (pre-Federal Register notice or post-Federal Register Notice), if there will be a grace period and consequences of noncompliance. The best date to begin would be the effective date of any new changes to E-Verify and then moving forward for employees that must be reverified.

### **Final Nonconfirmation Review**

With regard to the Proposed Formal Final Nonconfirmation (FNC) Review Process, the Supporting Statement indicates that an employee could continue to work during a FNC review. This should be clarified as an employer is under no obligation to continue to employ an individual once a FNC has been issued by either DHS or SSA. If a FNC is issued, either because the employee's work authorization was not confirmed or that employee failed to take action on a TNC which results in a FNC, an employer may terminate the employee. A clear distinction should be made that unlike a TNC, where an employer cannot take an adverse action against an employee while the employee is contesting the TNC, the same does not apply if an employee is terminated as a result of the FNC and then appeals same. It should be made clear to employers that they are under no obligation to continue to employ an employee once a FNC has been issued, even if the employee is appealing the FNC and it is under review, and any corresponding literature provided by DHS should explain same to individuals appealing a FNC.

By way of example, the proposed Final Nonconfirmation Email Notification Messages, including specifically the *Final Nonconfirmation Under Review Update Email Notification Message*, should clearly state that upon receipt of a final FNC, even if the employee appeals, the employer may terminate employment and is under no obligation or requirement to continue to employ the individual during the pendency of the appeal.

### **Revisions to the Memorandums of Understanding**

Finally, we note what appears to be a typo in one of the documents which should be removed. In Article VI, Modification and Termination of *The E-Verify Memorandum of Understanding for Employers Using a Web Services E-Verify Employer Agent* (USCIS-2007-0023-0034) (page 20), a sentence has been added along with a comment which is as follows, "The Web Services E-Verify Employer Agent may not refuse to terminate the Employer based upon an outstanding bill for verification services." It includes the following comment in a box next to it, "Should we include this? If so, We'd have to add it to the WS EEA MOU as well." The corresponding revised *The E-Verify Memorandum of Understanding for Web Services E-Verify Employer Agents and Software Developer*" (USCIS-2007-0023-0035) does not include corresponding language in Article VI, Modification and Termination. We are uncertain of the intent or meaning

of this language as there appears to be a double negative. All of the language should be stricken. We respectfully submit that USCIS should not dictate contractual terms between private parties related to grounds for termination.

As one of the largest providers of electronic I-9 services in the market and one of the largest E-Verify Employer Agents, Equifax Workforce Solutions respectfully requests that USCIS take under consideration our specific concerns regarding this Federal Register notice. We appreciate the opportunity to engage on this issue with you.

Sincerely,



Paul Zurawski  
Senior Vice President, External Affairs  
Equifax