



August 7, 2015

Submitted via www.regulations.gov

Ms. Laura Dawkins
Chief of the Regulatory Coordination Division
USCIS Office of Policy and Strategy
20 Massachusetts Avenue NW.
Washington, DC 20529-2140

**Re: Agency Information Collection Activities: E-Verify Program; Revision of a
Currently Approved Collection, published at 80 Fed. Reg. 32480 (June 8, 2015);
Docket Number USCIS-2007-0023; OMB Control Number 1615-0092**

Dear Ms. Dawkins:

The Council for Global Immigration (CFGI) and the Society for Human Resource Management (SHRM) are pleased to submit these comments in connection with the revisions to E-Verify. CFGI and SHRM always welcome the opportunity to work with U.S. Citizenship and Immigration Services (USCIS) to improve the employment verification process.

CFGI, founded in 1972 as the American Council on International Personnel, is a strategic affiliate of SHRM. It is a nonprofit trade association comprised of leading multinational corporations, universities, and research institutions committed to advancing the employment-based immigration of high-skilled professionals. CFGI bridges the public and private sectors to promote sensible, forward-thinking policies that foster innovation and global talent mobility.

Founded in 1948, SHRM is the world's largest HR membership organization devoted to human resource management. Representing more than 275,000 members in over 160 countries, the Society is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

Comments and Recommendations

CFGI and SHRM have long been pushing for real solutions to ensure that employers have the tools they need to verify a legal workforce. While we commend USCIS for the improvements it has made to E-Verify, the program requires additional changes to be truly effective as a deterrent to prevent unauthorized employment. As we explain on our [Employer Immigration Solutions website](#), such a system should build upon the success of E-Verify by preempting the patchwork of state E-Verify laws, create a fully integrated system that eliminates the need for a paper Form I-9, use state-of-the-art multidimensional, dynamic technology to authenticate identity and provide safeguards against identity theft, provide safe harbor for employers who use the system in good faith, protect employees, and, with limited exceptions, apply employment verification only to new hires. Requiring employment verification of an employer's existing verified workforce is redundant, expensive and unnecessary.

We offer the following recommendations with regard to the proposed changes to E-Verify:

Reverification

a. Reverification in E-Verify should apply only to employees for whom an initial E-Verify record already exists

We have no philosophical problem with reverification, but there are several technical, legal, and ethical challenges with its implementation. We recognize that there are certain circumstances in which it is necessary to reverify employees with expiring work authorization. All employers are already required to reverify such employees using Section 3 of Form I-9. The agency now seeks to add reverification to E-Verify to align the system with the Form I-9 process.

Reverification of employees without a preexisting E-Verify case history may result in serious logistical and ethical problems for employees and employers. If employers will be required to retrieve, extract, and confirm the information from the employee's original Form I-9, in addition to the new Section 3 reverification information being required it would be unduly burdensome. For employees who completed Form I-9s many years ago and have been subject to numerous reverifications, their original I-9 information may not be up to date, such as citizenship status or name changes. This outdated information may result in greater incidences of tentative nonconformations (TNCs) and require employees to resolve discrepancies due to historical changes.

If employers are required to update the information from the original Form I-9 prior to an E-Verify reverification submission, this may result in instances of document abuse or allegations of requesting specific documents.

We thus recommend, should reverification be added to E-Verify, that it should only be effective for employees for whom work authorization has expired and for whom employers have previously created E-Verify records.

b. Before reverification is included in E-Verify, the process must allow reverification prior to the expiration date of current work authorization

Given that the stated goal of the proposed rule is to mirror the Form I-9 process, the timing of reverification in the proposed rule makes little sense. In the Form I-9 process, employers are required to reverify using Section 3 no later than the date of expiration of prior work authorization. The proposed E-Verify modification, however, will not even permit employers to reverify prior to the date of expiration.

This is problematic for two reasons:

1) Not every situation in which an employer reverifies work authorization involves immediately expiring prior work authorization. For instance, an employee with F-1 Optional Practical Training (OPT) might begin work on an H-1B visa prior to the date his or her OPT is set to expire, or an H-1B visa holder might receive an Employment Authorization Document (EAD) through the adjustment of status process while continuing to maintain a valid H-1B visa.

2) Even in those circumstances where prior work authorization will expire before the new work authorization takes effect, the proposed process creates a major burden for employers with an unnecessarily short three day window to reverify employees. In some situations, this means employees will have the documents necessary to reverify for months prior to expiration; for instance, an H-1B employee might get a renewal six months prior to the expiration of his or her current status. Under the proposed system, employers will have to mark their calendar, plan schedules, and balance other workloads to ensure the key people are available in a specific three day window to reverify, even if they had the necessary documents to reverify six months in advance.

Before reverification is included in E-Verify, it must be permitted before expiration of work authorization, just like the Form I-9 process. If E-Verify technology is not yet capable of allowing reverification before expiration, reverification should not be included in E-Verify at this time.

Streamlined Tentative Nonconfirmation (TNC) Process

a. When TNCs are issued, send only basic emails to employees telling them their employer has more information

Employers are currently required, per the Memorandum of Understanding (MOU), to promptly notify employees of a TNC. Most employers abide by the MOU and follow proper procedures to determine whether the employee will contest the TNC.

The employee notification procedures outlined here appear to be directed at the minority of employers who fail to abide by the MOU and to provide safeguards for employees in those situations. While we understand that such notices serve a purpose, they must be carefully constructed to avoid confusion that might cause employees to attempt to resolve a TNC outside of the formal process required by an employer.

According to USCIS' supporting statement for this proposed change, the initial employee notification "is sent to notify an employee that a TNC case result has been returned by E-Verify, and that the employee should contact their employer for more information." We support this approach, but the notification must truly be that simple. We urge the agency to not include any extraneous information, such as a copy of the TNC, as that would cause confusion for the employee and create the risk of an employee trying to resolve the issue on his or her own, creating unnecessary burdens for compliant employers.

b. Allow users of E-Verify web services to opt out of employee notifications if their system automatically notifies employees

The MOU requires employers to notify employees upon receipt of a TNC and many E-Verify web services systems automatically notify employees when a TNC occurs. If USCIS implements the proposed change to send employees a TNC notification without an accommodation for those who use web services, this will result in a disruptive, duplicative notification to the employee and may be confusing. We urge the agency to allow for employers using web services to be exempted from an additional TNC notification being sent by USCIS to the employee.

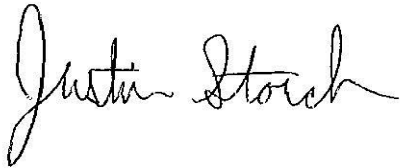
System Flexibility

a. E-Verify should allow flexibility in case submissions and corrections to case information after submission

E-Verify's customer support line frequently advises employers to close a case and resubmit a new case when incorrect information has been inadvertently sent to E-Verify. E-Verify has indicated that their software does not allow for corrections and submissions of cases under the same case query. With the proposed change of contesting final nonconfirmations (FNCs), E-Verify should allow users to modify and correct information that may have been mistakenly submitted. A typographical error on a Form I-9 should not result in a TNC and possibly an FNC which may need to be contested. Users should be able to correct information prior to a case resulting in a TNC and be permitted to submit the case under the original query.

CFGI and SHRM once again thank USCIS for the opportunity to comment in response to the proposed changes for E-Verify. We remain available and willing to provide additional information and feedback at any time.

Sincerely,

A handwritten signature in black ink that reads "Justin Storch". The signature is written in a cursive style with a large, looped 'J' and a clear 'Storch'.

Justin Storch
Manager of Agency Liaison
Council for Global Immigration

A handwritten signature in black ink that reads "Mike Aitken". The signature is written in a cursive style with a large, looped 'M' and a clear 'Aitken'.

Mike Aitken
Vice President, Government Affairs
Society for Human Resource Management