E-Verify at VCU

VCU Human Resources
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What is E-Verify?

- Internet-based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA).

- Allows employers to electronically verify the employment eligibility of employees hired to work in the United States.

- Electronically checks information provided by the employee on the Form I-9 against records contained in DHS and SSA databases.
Why must we use E-Verify?

- Presidential Executive Order 13456 (June 2008) directed all federal agencies to require that federal contractors with contracts exceeding $100,000 use E-Verify.

- §40.1-11.2 of the Code of Virginia requires that “all agencies of the Commonwealth shall be enrolled in the E-Verify program by December 1, 2012… and use E-Verify for each newly hired employee who is to perform work within the Commonwealth.”
How to access E-Verify

Employers can access the E-Verify system in 2 ways:

1. Directly by entering the information into the DHS portal directly. Registration information is on the Department of Homeland Security website:  http://www.uscis.gov/portal/site/uscis

2. Contract with an E-Verify Third Party Agent to confirm the employment eligibility for you.

Regardless of the verification method, the institution is still responsible for resolving all cases.
Direct Access Option

- Employer registers with and signs an MOU with SSA and USCIS.
- Employer accesses and enters the required information directly into the E-Verify System from the I-9 form.
- Employer “resolves” all cases through the E-Verify portal.
Third Party Agent Option

- An E-Verify Third Party Agent is a liaison between E-Verify and employers who choose to outsource submission of employment eligibility verification queries for newly hired employees.
- E-Verify Third Party Agents conduct the verification process for the employer.
- An E-Verify Third Party Agent must register on-line and sign an MOU with SSA and USCIS.
- The employer will also be required to sign an MOU and will have a unique E-Verify client number.
Third Party Agent Option

• Employer provides I-9 information and agents submits information to the E-Verify system.

• Employer reviews claims through the agent’s portal.

• Employer “resolves” all cases through the agent’s portal.
Considerations

When deciding between direct use or contracting with a 3rd party the employer must consider:

- How many employees are hired annually?
- How do you currently handle I-9 form processing?
- Hiring process workflow?
- Turnaround time to process the I-9 forms and enter into E-Verify. (Centralized vs. Decentralized)
- Document retention – do you keep copies or only verify documents?
- Personnel available to enter and track submissions.
- Cost of having 3rd party handle I-9/E-Verify processing.
- Does processing though a 3rd party make sense for your organization?
Concerns with E-Verify

E-Verify has faced some criticism over “false negatives”; however, the Government Accountability Office (GAO) report issued January 2011 indicates that accuracy was at a level of 97.4 percent compared with 92 percent from fiscal 2006 to the second quarter of 2007.

It is important that the employer establish a process and designate personnel to resolve cases and non-confirmation issues in a timely manner.

E-Verify at VCU

• VCU contracts with an E-Verify Third Party Agent, HireRight, who processes our I-9’s electronically and then submits the information from the I-9 to the E-Verify system.

• VCU chose to use HireRight due to:
  – Established business relationship for background checks and I-9 processing.
  – Decentralized nature of handling personnel documentation.
Notification Requirements

• E-Verify requires employers to provide notice of participation in the program. For all new hires after April 10, 2011, notifications were added:
  – **Classified employees**: the requirement has been added to offer letters.
  – **Faculty employees**: the requirement has been added to the faculty contract Terms and Conditions.
  – **All other employees**: the PA must notify them that an E-Verify check will be done.
  – **Posters**: Posters are displayed in Human Resources
Federal Grants and Contracts

• For current employees working on federal grants and contracts that include the E-Verify clause:
  – VCU’s Office of Sponsored Programs notifies departments when contracts are awarded with the E-Verify clause or modified to add E-Verify.
  – PAs will notify employees that a new Form I-9 is required.

• For F1 visa holders (students) requesting a one-time 17-month extension of their OPT for degrees in the Science, Technology, Engineering, or Mathematics (STEM) fields:
  – Application process coordinated through VCU’s Office of Global Education.
Who is exempt from E-Verify?

• Employees hired on or before November 6, 1986 (IRCA effective) and have continued employment with VCU with no break in service.
  – Also, exempt from the Form I-9 process.

• Employees who were previously confirmed in E-Verify as authorized to work and have continued employment with VCU with no break in service.
Completing the Form I-9 and E-Verify at VCU

• The employee completes Section 1 on-line on or before the first day of work.
  – Must use their legal name (first, middle and last) as it appears on their Social Security Card to avoid verification problems with DHS and SSA.

• The Personnel Administrator (PA) reviews all documents provided by the employee; enter information in Section 2 on-line; and certifies (sign) the Form I-9 **within three days** of the employee’s start date.
  – When participating in E-Verify, employers may only accept List B documents that bear a photograph (Driver’s license, school or military ID, etc.)

Note: If you do not use a 3rd party provider, then this process is completed using a paper I-9 form.
E-Verify Compliance

- The E-Verify check will begin based on the start date in Section 2 of the Form I-9.
  - If the start date has not passed, E-Verify will not begin until the start date is listed.
    - If using E-Verify directly, the employer must go in within the 3 day window and process.
  - If the start date has passed when the Form I-9 is completed, E-Verify will automatically begin when the Form I-9 is submitted.

If submitted after three business days, the system prompts the employer to provide a reason to DHS!!
E-Verify Compliance

• You can either select one of the reasons provided or enter your own. The reasons provided are:
  – Awaiting Social Security Number
  – Technical Problems *(for E-Verify - not employer)*
  – Audit Revealed that New Hire Was Not Run *(late processing new hire paperwork)*
  – Federal Contractor with FAR E-Verify Clause verifying an existing employee
  – Other (must enter a reason and should not include any personally identifiable or sensitive information, such as SSN)
E-Verify Compliance

• **HOWEVER**, the DHS specifies the **ONLY** acceptable reasons for creating a case late are:

  – E-Verify was temporarily unavailable because of a technical outage; and after subtracting the time period for the outage, the case wouldn’t have been considered late.

  – The employee applied for but did not yet have a Social Security Number, and the case was created as soon as the employee was issued the Social Security Number.
E-Verify Compliance

• Per DHS, they are “committed to identifying and taking action against employers that consistently don’t follow the rules.”

• Because the information is being submitted directly to DHS and SSA, they will know each time a Form I-9 is processed untimely!
E-Verify Compliance

• **Penalties for Non-compliance:**
  – Monetary fines from DHS for not completing the E-Verify process in a timely manner can be up to $1,500 per incident.
  • At VCU, all fines are charged to the department at fault.
  – May also result in civil and/or criminal penalties under the Immigration and Naturalization Act (INA) for knowingly hiring or continuing to employ unauthorized aliens.
  – Employers are provided 10 days to resolve technical or procedural paperwork/process violations following a Immigration and Enforcement Control (ICE) Form I-9/E-Verify audit.
E-Verify Processing

• Once submitted, an initial response is normally returned from E-Verify within three to five minutes, but can take up to several more minutes.
E-Verify Responses

There are several possible responses:

- **Employment Authorized (EA):** No discrepancies were found by DHS or SSA – most common response.
  - Employer resolves case – no other action is required.

- **DHS Verification in Process:**
  - E-Verify's automated search of government records cannot immediately verify employment authorization, and a manual search is required.
    - The employer must check E-Verify until the employee's case is updated.
    - When updated, E-Verify will return either an "Employment Authorized" or "Tentative Nonconfirmation" response.

- **Final Nonconfirmation (FNC):** Employment cannot be authorized, resulting in termination of employment.
  - Employer must terminate the employee.
E-Verify Responses - TNC

Tentative Nonconfirmation (TNC): If the employee information does not match government records, the employer will receive a DHS TNC or a SSA TNC.

- Most common reason for a TNC is typographical error.

  To fix:
  » The form I-9 must be corrected if incorrect.
  » The old request must be resolved as an error.
  » A new E-Verify transaction is submitted with the correct information.
E-Verify Responses - TNC

If you receive a TNC and the information was submitted correctly:

• Designated employer representative must contact and meet with the employee to explain the situation. The employee must sign the TNC notice and state his/her intention to contest.
  » If the employee contests, he/she has 8 federal work days to contact DHS or visit SSA.
  » Designated employer representative will provide the employee with the appropriate notice to take to DHS or SSA.
  » DHS or SSA will automatically issue a FNC in 10 federal work days after issuance if the employee fails to meet the 8-federal-work-day deadline.
  » TNC does not disqualify the employee from working. However, if the employee does not contest, employment must be terminated immediately.
E-Verify Processing

- After meeting with the employee, DHS and SSA have 10 federal work days to update E-Verify. The database will automatically be updated.
- DHS and/or SSA will either:
  - authorize employment (EA); or
  - if the TNC cannot be resolved and employment is not authorized, HR will receive a response of “Final Nonconfirmation (FNC)” and employment must be terminated.
    - The employee must be notified immediately and terminated through your normal involuntary termination process.
E-Verify

Posters
- E-Verify Participation Posters must be displayed in common areas to inform current and prospective employees of their legal rights and protections.
  - For copies: USCIS/E-Verify Homepage/Publications

Access
- Training is mandatory prior to being given access to E-Verify.
  - Once an employee is given access, he/she will be required to complete a tutorial to use the site.

Important Note: E-Verify should never be used to verify employment for current, previously authorized employees.
This Employer Participates in E-Verify

To determine whether Form I-9 documentation is valid, this employer uses E-Verify’s photo screening tool to match the photograph appearing on some permanent resident and employment authorization cards with the official U.S. Citizenship and Immigration Services’ (USCIS) photograph.

Federal law requires all employers to verify the identity and employment eligibility of all persons hired to work in the United States.

Employers may not use E-Verify to pre-screen job applicants or to re-verify current employees and may not limit or influence the choice of documents presented for use on the Form I-9.

For more information on E-Verify, please visit www.erteen.com or call 1-888-464-4218.
Resources

• Department of Homeland Security – E-Verify
  http://www.dhs.gov/files/programs/gc_1185221678150.shtm

• U.S. Citizenship and Immigration Services – I-9
  http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD
  – Free Webinar at USCIS
  http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=413628ac1dc0c210VgnVCM10000082ca60aRCRD&vgnextchannel=413628ac1dc0c210VgnVCM10000082ca60aRCRD
Key Points

• E-Verify is a voluntary internet-based system operated by DHS in partnership with the SSA that electronically checks the employment eligibility of employees.

• The process is in addition to the I-9 form.

• The State of Virginia has mandated use of this system for all state agencies and universities.

• Employers can access the E-Verify data base directly or contract with a 3rd party to conduct the checks on their behalf.
Key Points

• Employer still must resolve the cases regardless of access choice. Designees must be established to handle resolution.

• Must be completed within 3 days of hire or you could face penalties.

• Must not be used for current employees unless they move to a federal contract and have not been through E-Verify.

• Employer must provide notification to potential employees that it participates in the E-Verify program.

• If an employee receives a final, nonconfirmation the employer must terminate employment.
Observations and Questions

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