

# COLORADO DIVISION OF LABOR

## GUIDE TO PUBLIC CONTRACTS FOR SERVICES AND ILLEGAL ALIENS LAW

*The information contained herein is provided for general educational purposes only. This information is not intended to expand, narrow, or contradict current state or federal laws. Every attempt has been made to ensure the accuracy and utility of the information contained in this publication. The Colorado Division of Labor does not give legal advice. Please contact the Division if you have any questions, comments, or feedback.*

Effective May 13, 2008, contractors who enter into or renew a public contract for services with Colorado state agencies or political subdivisions must participate in ***either*** the federal **E-Verify program**, OR the newly created **Colorado Department of Labor and Employment Program (“Department Program”)**. The option to enroll in the new Department Program instead of E-Verify was created by Colorado State Senate Bill 08-193, which amended the Public Contracts for Services and Illegal Aliens Law, 8-17.5-101 and 102, C.R.S.

### I. COLORADO PUBLIC CONTRACTS FOR SERVICES AND ILLEGAL ALIENS

**LAW** (8-17.5-101 & 102, C.R.S.). Contact the [Colorado Division of Labor](#) at 303-318-8441 for more information on this law.

- a. [Overview](#)
- b. [General requirements and definitions](#)
- c. [Certification by the prospective contractor](#)
- d. [Provisions of public contracts](#)
- e. [The Department Program](#)
- f. [Termination of a contract for a violation](#)
- g. [Secretary of State violation list](#)
- h. [Department of Labor investigations](#)
- i. [Contact information and filing complaints](#)
- j. [Fact Sheet on 8-17.5-101 & 102, C.R.S.](#) (external link)
- k. [Actual text of 8-17.5-101 & 102, C.R.S.](#)

### II. FEDERAL EMPLOYMENT ELIGIBILITY VERIFICATION PROGRAM (E-Verify, formerly called Basic Pilot)

Contact [USCIS](#) (1-888-464-4218) for information and questions related to the use of the federal E-Verify/Basic Pilot Program. Note that the information linked below is reproduced from federal websites.

- a. [Overview](#)
- b. About [E-Verify](#) (external link)
- c. [Registration for E-Verify](#) (external link)
- d. [E-Verify Questions and Answers](#)
  - i. [Am I required to participate?](#)
  - ii. [Why should I consider participating in E-Verify?](#)
  - iii. [How many employers currently participate in E-Verify?](#)
  - iv. [How do I register for participation in E-Verify?](#)
  - v. [Our company has several hiring sites interested in participating in E-Verify. Each site will be conducting the verification process for its newly hired employees. How should these sites register?](#)
  - vi. [If I sign one MOU, can I use a controlled rollout to implement E-Verify across the organization?](#)

- vii. [After an employer registers, how does E-Verify work?](#)
- viii. [Can I verify the immigration status of a new hire that is not a U.S. citizen?](#)
- ix. [What information is required to conduct an E-Verify initial verification?](#)
- x. [When may an employer initiate a query under E-Verify?](#)
- xi. [What is the required timeframe for conducting an employment eligibility check on a newly hired employee?](#)
- xii. [Which employees should be verified through E-Verify?](#)
- xiii. [I would like to use electronic I-9s for my employees. Does USCIS offer a system that would automatically generate E-Verify queries from the electronic I-9s?](#)
- xiv. [I am an employer with multiple hiring sites. Can one site verify everyone? How?](#)
- xv. [What is an E-Verify Third Party Agent?](#)
- xvi. [What is a Corporate Administrator for E-Verify?](#)
- xvii. [Can I disenroll from E-Verify at any time?](#)
- xviii. [Does participation in E-Verify provide "safe harbor" from worksite enforcement?](#)
- xix. [Is there a "batch access" method in the system?](#)
- xx. [Are federal contractors required to use E-Verify?](#)

### **III. FORM I-9; FEDERAL EMPLOYMENT VERIFICATION LAW (8 U.S.C. 1324a)**

Contact [USCIS](#) (national service center: 1-800-375-5283; employer hotline: 1-800-357-2099) for information and questions on any of the following federal employment verification topics. Note that these requirements are distinct from the requirements under the Colorado State law described in Section I.

- a. [Overview](#)
- b. [Questions & Answers about Revised Form I-9, Employment Eligibility Verification](#)
- c. [For whom must employers complete Form I-9?](#)
- d. [Current version of Form I-9](#)
- e. [What should be done with Forms I-9 after they are completed?](#)
- f. [Discrimination](#)
- g. [Availability of Forms I-9 in foreign languages](#)
- h. [Employee's responsibility regarding Form I-9](#)
- i. [Employer's responsibility regarding Form I-9](#)
- j. [Questions about genuineness of documents](#)
- k. [Discovering unauthorized employees](#)
- l. [Discovering false documentation](#)
- m. [Photocopies of documents](#)
- n. [Green cards](#)
- o. [Social security card issues](#)
- p. [Retention of Forms I-9](#)
- q. [Form I-9 requirements of new owners of existing businesses](#)
- r. [Remote hires](#)
- s. [Service providers](#)
- t. [Frequently asked questions about employment eligibility](#)
- u. [Actual text of 8 U.S.C. 1324a](#)

## COLORADO LAW

### **I. PUBLIC CONTRACTS FOR SERVICES AND ILLEGAL ALIENS LAW**

A new Colorado State law concerning public contracts for services and illegal aliens became effective on August 7, 2006, 8-17.5-101 & 102, C.R.S. This law was **amended on May 13, 2008**, allowing contractors to use the newly created Department Program as an alternative to E-Verify. Section I of this guide provides an overview of the law and its requirements.

Be aware that this law is distinct from federal law and federal requirements (for example, Form I-9 requirements). Sections II and III of this guide provide information and resources on federal laws and requirements; contact the appropriate federal agency for questions on federal topics.

#### **GENERAL REQUIREMENTS AND DEFINITIONS (8-17.5-101, 102(1))**

A state agency or political subdivision shall not enter into or renew a public contract for services with a contractor who:

1. Knowingly employs or contracts with an illegal alien to perform work under the contract, or
2. Who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract.

**Contractor** means a person having a public contract for services with a state agency or political subdivision of the state.

**Newly hired for employment** means hired to work in the United States since the effective date of the public contract for services.

**Department program** means the employment verification program established pursuant to section 8-17.5-102(5)(c).

**E-Verify program** means the employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program.

**Public contract for services** means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services. Public contracts for services does not include:

1. Agreements relating to the offer, issuance, or sale of securities, including but not limited to agreements pertaining to:

## COLORADO LAW

- a. Underwriting, marketing, remarketing, paying, transferring, rating, or registering securities; or
  - b. The provision of credit enhancement, liquidity support, interest rate exchanges, or trustee or financial consulting services in connection with securities or
2. Agreements for investment advisory services or fund management services;
  3. Any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract. For purposes of this subparagraph (III), “sponsored project” means an agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations.
  4. Intergovernmental agreements; or
  5. Agreements for information technology services or products and services.

**Services** are defined as the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

**State agency** means any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

**Political subdivision** means any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

### **CERTIFICATION BY THE PROSPECTIVE CONTRACTOR (8-17.5-102(1))**

Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification:

- 1) It does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services; and
- 2) That the contractor will participate in the [E-Verify](#) Program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

## COLORADO LAW

### **PROVISIONS OF PUBLIC CONTRACTS (8-17.5-102(2))**

Each public contract for services shall include a provision that the contractor shall not:

- 1) Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or
- 2) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

Each public contract for services shall also include the following provisions:

- 1) A provision stating that the contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify or the Department Program.
- 2) A provision that prohibits the contractor from using either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while the public contract for services is being performed;
- 3) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:
  - a) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - b) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;
- 4) A provision that requires the contractor to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to 18-17.5-102(5).

## COLORADO LAW

### **THE DEPARTMENT PROGRAM**

Any contractor may participate in the department program in lieu of utilizing the Department of Homeland Security's E-Verify Program. Any contractor who participates in the department program shall notify the department and the contracting state agency or political subdivision of such participation.

Any participating contractor shall comply with the following department program requirements:

1. A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents of such employees.
2. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.
3. The contractor shall consent to department audits.

### **TERMINATION OF CONTRACT FOR A VIOLATION (8-17.5-102(3))**

If a contractor violates a provision of the public contract for services required pursuant to 8-17.5-102(2), the state agency or political subdivision may terminate the contract for a breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and consequential damages to the state agency or political subdivision.

### **SECRETARY OF STATE VIOLATION LIST (8-17.5-102(4))**

A state agency or political subdivision shall notify the office of the secretary of state if a contractor violates a provision of a public contract for services required pursuant to 8-17.5-102(2) and the state agency or political subdivision terminates the contract for such breach.

Based on this notification, the secretary of state shall maintain a [list](#) that includes the name of the contractor, the state agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to 8-17.5-102(2).

A state agency or political subdivision shall notify the office of the secretary of state if a court has made such a determination. The [list](#) shall be available for public inspection at the office of

## COLORADO LAW

the secretary of state and shall be published on the internet on the website maintained by the office of the secretary of state.

### **DEPARTMENT OF LABOR INVESTIGATIONS (8-17.5-102(5))**

The department of labor and employment may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to 8-17.5-102(2).

Department Authority:

- 1) The department may conduct on-site inspections where a public contract for services is being performed within the state of Colorado;
- 2) Request and review documentation that proves the citizenship of any person performing work on a public contract for services; or
- 3) Take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to 8-17.5-102(2).

The department may conduct random audits of state agencies, political subdivisions, or contractors to review documentation required by this law.

### **RECEIPT OF COMPLAINTS:**

The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to 8-17.5-102(2) and shall have discretion to determine which complaints, if any, are to be investigated.

The results of any investigation shall not constitute final agency action. The department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of 8-17.5-102(5).

### **CONTACT INFORMATION AND FILING COMPLAINTS**

The Colorado Division of Labor assists with certain aspects of this law. For more information or to file a complaint, contact the Division of Labor at 303-318-8441. You may also download a complaint form from our web site at <http://www.coworkforce.com/LAB/pcs/>. Please submit this form by mail to 633 17<sup>th</sup> Street Ste 200; Denver, CO 80202-3611, or fax to 303-318-8400.

COLORADO LAW

ARTICLE 17.5

ILLEGAL ALIENS - PUBLIC CONTRACTS FOR SERVICES

**8-17.5-101. Definitions.**

As used in this article, unless the context otherwise requires:

(1) Deleted by Laws 2008, Ch. 208 §1, effective May 13, 2008.

(2) "Contractor" means a person having a public contract for services with a state agency or political subdivision of the state.

(3) "Department" means the department of labor and employment.

(3.3) "Department program" means the employment verification program established pursuant to section 8-17.5-102(5)(c).

(3.7) "E-Verify program" means the electronic employment verification program created in public law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(4) "Executive director" means the executive director of the department of labor and employment.

(4.5) "Newly hired for employment" means hired to work in the United States since the effective date of the public contract for services.

(5) "Political subdivision" means any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(6)(a) "Public contract for services" means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services.

(b) "Public contract for services" does not include:

(I) Agreements relating to the offer, issuance, or sale of securities, including but not limited to agreements pertaining to:

(A) Underwriting, marketing, remarketing, paying, transferring, rating, or registering securities; or

(B) The provision of credit enhancement, liquidity support, interest rate exchanges, or trustee or financial consulting services in connection with securities; or

(II) Agreements for investment advisory services of fund management services;

## COLORADO LAW

(III) Any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract. For purposes of this subparagraph (III), "sponsored project" means an agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations;

(IV) Intergovernmental agreements; or

(V) Agreements for information technology services or products and services.

(7) "Services" means the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

(8) "State agency" means any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

**Source: L. 2006:** Entire article added, p. 1694, § 1, effective August 7.

COLORADO LAW

**8-17.5-102. Illegal aliens - prohibition - public contracts for services - rules**

(1) A state agency or political subdivision shall not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification, it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the contractor will participate in the E-Verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

(2) (a) Each public contract for services shall include a provision that the contractor shall not:

(I) Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or

(II) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

(b) Each public contract for services shall also include the following provisions:

(I) A provision stating that the contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify program or the department program.

(II) A provision that prohibits the contractor from using either the E-Verify program or the department program procedures to undertake preemployment screening of job applicants while the public contract for services is being performed;

(III) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

(A) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(B) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (A) of this subparagraph (III) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;

## COLORADO LAW

(IV) A provision that requires the contractor to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to the authority established in subsection (5) of this section.

(3) If a contractor violates a provision of the public contract for services required pursuant to subsection (2) of this section, the state agency or political subdivision may terminate the contract for a breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and consequential damages to the state agency or political subdivision.

(4) A state agency or political subdivision shall notify the office of the secretary of state if a contractor violates a provision of a public contract for services required pursuant to subsection (2) of this section and the state agency or political subdivision terminates the contract for such breach. Based on this notification, the secretary of state shall maintain a list that includes the name of the contractor, the state agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to subsection (2) of this section. A state agency or political subdivision shall notify the office of the secretary of state if a court has made such a determination. The list shall be available for public inspection at the office of the secretary of state and shall be published on the internet on the web site maintained by the office of the secretary of state.

(5) (a) The department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department may conduct on-site inspections where a public contract for services is being performed within the State of Colorado, request and review documentation that proves the citizenship of any person performing work on a public contract for services, or take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to subsection (2) of this section and shall have discretion to determine which complaints, if any, are to be investigated. The results of any investigation shall not constitute final agency action. The department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of this subsection (5).

(b) The executive director shall notify a state agency or political subdivision if he or she suspects that there has been a breach of a provision in a public contract for services required pursuant to subsection (2) of this section.

(c)(I) There is hereby created the department program. Any contractor who participates in the department program shall notify the department and the contracting state agency or political subdivision of such participation. A participating contractor shall comply with the provisions of subparagraph (II) of this paragraph (c) and shall consent to department audits conducted in accordance with subparagraph (III) of this paragraph (c). Failure to meet either of these obligations shall constitute a violation of the department program. The executive director shall notify a contracting state agency or political subdivision of such violation.

## COLORADO LAW

(II) A participating contractor shall within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

(III) The department may conduct random audits of state agencies or political subdivisions to review the affidavits and of contractors to review copies of the documents required by subparagraph (II) of this paragraph (c). Audits shall not violate federal law.

(6) Nothing in this section shall be construed as requiring a contractor to violate any terms of participation in the E-Verify program.

**Source: L. 2006: Entire article added, p. 1695, § 1, effective August 7. L. 2007: (1) and (2)(b)(I) amended, p. 119, § 1, effective August 3.**

## II. FEDERAL LAW OVERVIEW AND RESOURCES

[United States Citizenship and Immigration Services](#) (USCIS) is a federal agency responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities. USCIS is a component of the federal [Department of Homeland Security](#) (DHS).

The following public information is either reproduced or summarized from content provided on the USCIS website, and is subject to change. This information is independent from the requirements of the Colorado State employment verification law described in Section I.

Contact USCIS (national service center: 1-800-375-5283; employer hotline: 1-800-357-2099; E-Verify/Basic Pilot: 1-888-464-4218) for information and questions on any of the following federal topics.

### **E-Verify Questions and Answers**

The Employment Eligibility Verification Program (E-Verify) is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). The E-Verify is currently free to employers and is available in all 50 states. The E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

#### **Q: Am I Required To Participate? (Note: You must participate in either E-Verify or the Department Program if you have a contract for public services with a state agency or political subdivision.)**

E-Verify is voluntary for all employers with very limited exceptions. (Some Federal government contractors and employers covered by other state immigration laws may be ordered to participate.)

#### **Q: Why should I consider participating in E-Verify? (Note: You must participate in either E-Verify or the Department Program if you have a contract for public services with a state agency or political subdivision.)**

E-Verify is currently the best means available for employers to electronically verify the employment eligibility of their newly hired employees. The E-Verify virtually eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers, and helps U.S. employers maintain a legal workforce. For more information about the Form I-9, Employment Eligibility Verification process, please see the related link.

#### **Q: How many employers currently participate in E-Verify?**

As of June 2007, over 69,000 employers representing over 260,000 sites are participating in the E-Verify program.

**Q: How do I register for participation in E-Verify?**

You can register E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you the employer, the SSA and USCIS. An employee who has signatory authority for the employer can sign the MOU. Employers can use their discretion in identifying the best method by which to sign up their locations for E-Verify. For example, an employer may choose to designate one site to perform the verification queries for newly hired employees on behalf of the entire company. Only one MOU would need to be signed for this option. An employer may also choose to have each site perform their own verification queries. This option requires each site performing verification queries to register and to submit an MOU to participate in the program.

**Q: Our company has several hiring sites interested in participating in E-Verify. Each site will be conducting the verification process for its newly hired employees. How should these sites register?**

Each site that will perform the employment verification queries must go through the registration process and sign an individual MOU.

**Q: If I sign one MOU, can I use a controlled rollout to implement E-Verify across the organization?**

Yes, you can choose which sites to enroll. However, remember that each site that has signed an MOU must verify the status of **all** new hires for that site. A new MOU is required only for a new site performing verification queries. However, if a central location, which is already registered, does the verification queries, then the company would only need to amend the number of hiring sites.

**Q : After an employer registers, how does E-Verify work?**

Using an automated system, the program involves verification checks of SSA and USCIS databases. The E-Verify MOU, User Manual and Tutorial contain instructions and other related materials on E-Verify procedures and requirements. Once the user has completed the tutorial, he or she may begin using the system to verify the employment eligibility of all newly hired employees.

**Q : Can I verify the immigration status of a new hire that is not a U.S. citizen?**

No. E-Verify evaluates a new hire's employment eligibility, not his or her immigration status.

**Q : What information is required to conduct an E-Verify initial verification?**

After hiring a new employee and completing the Employment Eligibility Verification form (Form I-9, required for all new hires regardless of E-Verify participation), one must submit a query that includes information from sections 1 and 2 of the Form I-9, including the employee's name, date of birth, Social Security account number (SSN), the citizenship status he or she attests to, an A# or I-

## FEDERAL LAW

94# (if applicable), the type of document provided on the Form I-9 to establish work authorization status and proof of identity, and its expiration date (if applicable). Response to the initial query is sent within seconds of submitting the query. Documents presented for Form I-9 identification only purposes (documents from "List B") to E-Verify employers must have a photograph.

### **Q : When may an employer initiate a query under E-Verify?**

The earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete the Form I-9. The employer must initiate the query no later than the end of three business days after the new hire's actual start date.

Although an employer may initiate the query before a new hire's actual start date, it may not pre-screen applicants and may not delay training or an actual start date based upon a tentative non-confirmation or a delay in the receipt of a confirmation of employment authorization. In short, an employee should not face any adverse employment consequences based upon an employer's use of E-Verify unless a query results in a final nonconfirmation.

For this reason, if the query returns an employment authorization response, an employer cannot speed up the employee's agreed upon start-date, as that would be disparate treatment based upon E-Verify results of this employee compared to another who may have received a tentative non-confirmation. For example, Company X always assigns a start-date to new employees that are two weeks after the employee has submitted an approved drug test. After the employee has accepted a job with Company X, and after the employee and Company X complete the Form I-9, the company can initiate the E-Verify query. However, the company cannot speed up or delay the employee's start-date based upon the results of the query (unless the program issues a final non-confirmation, in which case the employee should not be further employed).

Employers must verify employees in a non-discriminatory manner, and may not schedule the timing of queries based upon the new hire's national origin, citizenship status, race, or other prohibited characteristic.

### **Q : What is the required timeframe for conducting an employment eligibility check on a newly hired employee?**

Employers must make verification inquiries within three business days of hiring.

### **Q : Which employees should be verified through E-Verify?**

As a participant in E-Verify, employers are required to verify all newly hired employees, both U.S. citizens and non-citizens. Employers may not verify selectively, and must verify all new hires while participating in the program. The program may not be used to prescreen applicants for employment, go back and check employees hired before the company signed the MOU, or re-verify employees who have temporary work authorization.

**Q : I would like to use electronic I-9s for my employees. Does USCIS offer a system that would automatically generate E-Verify queries from the electronic I-9s?**

Currently, USCIS does not offer this service, but several private companies do.

**Q : I am an employer with multiple hiring sites. Can one site verify everyone? How?**

Yes, one site may verify new hires at all sites. When registering, the individual at the site that will be verifying new hires should select "multiple site registration" and give the number of sites per states it will be verifying.

**Q : What is an E-Verify Third Party Agent?**

An E-Verify Third Party Agent is a liaison between the E-Verify Program and employers wishing to participate, but who choose to outsource submission of employment eligibility verification queries for newly hired employees. The E-Verify Third Party Agents conduct the verification process for other employers/clients. An E-Verify Third Party Agent must register on-line and sign an MOU with SSA and USCIS. Once the MOU is approved, the E-Verify Third Party Agent can then begin registering employers/clients who have designated it to perform the company's verification services. Each employer/client will also be required to sign an MOU and will have a unique E-Verify client number.

**Q : What is a Corporate Administrator for E-Verify?**

An employer has the option to designate an employee as a Corporate Administrator. A Corporate Administrator is someone who has management oversight authority of the employer's hiring sites that participate in the program but generally does not perform employment eligibility verification queries. The Corporate Administrator role enables oversight of all the company sites participating in the E-Verify. To become a Corporate Administrator, an individual only needs to register and does not need to sign an MOU. Once registered, this individual will be able to register company sites, add and delete users at company sites, and view reports generated by company sites. The Corporate Administrator, however, does not submit queries for verification.

**Q : Can I disenroll from E-Verify at any time? (Note: You must participate in either E-Verify or the Department Program if you have a contract for public services with a state agency or political subdivision.)**

Yes, you may choose to leave the E-Verify Program at any time.

**Q : Does participation in E-Verify provide “safe harbor” from worksite enforcement?**

An employer who verifies work authorization under the E-Verify Program has established a rebuttable presumption that it has not knowingly hired an unauthorized alien. However, participation in E-Verify or the department program does not provide a “safe harbor” from worksite enforcement by DHS Investigations and Criminal Enforcement (ICE).

## FEDERAL LAW

### **Q : Is there a "batch access" method in the system?**

Yes, it is called "Web-services" and is a real-time batch method. It requires a company to develop an interface between its personal system or electronic I-9 system and the E-Verify database. For more information and help with design speculations, contact USCIS at **1-888-464-4218**.

### **Q : Are federal contractors required to use E-Verify?**

Yes, effective May 21, 2009, in accordance with [Frequently Asked Questions: Federal Contractors and E-Verify](#).

## FEDERAL LAW

### **III. FORM I-9; FEDERAL EMPLOYMENT VERIFICATION LAW (8 U.S.C. 1324A)**

[United States Citizenship and Immigration Services](#) (USCIS) is a federal agency responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities. USCIS is a component of the federal [Department of Homeland Security](#) (DHS).

The following public information is either reproduced or summarized from content provided on the USCIS website, and is subject to change. This information is independent from the requirements of the Colorado State employment verification law described in Section I.

Contact USCIS (national service center: 1-800-375-5283; employer hotline: 1-800-357-2099) for information and questions on any of the following federal topics.

### **QUESTIONS & ANSWERS ABOUT REVISED FORM I-9, EMPLOYMENT ELIGIBILITY VERIFICATION** (excerpt from USCIS publication)

The Immigration Reform and Control Act made all U.S. employers responsible to verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986. To implement the law, employers are required to complete Employment Eligibility Verification forms (Form I-9) for all employees, including U.S. citizens.

#### **FOR WHOM MUST EMPLOYERS COMPLETE FORM I-9?**

Every U.S. employer must have a Form I-9 in its files for each new employee, unless:

- 1) The employee was hired before November 7, 1986, and has been continuously employed by the same employer.
- 2) Form I-9 need not be completed for those individuals:
  - a) Providing domestic services in a private household that are *sporadic, irregular, or intermittent*;
  - b) Providing services for the employer as an independent contractor (i.e. carry on independent business, contract to do a piece of work according to their own means and methods and are subject to control only as to results for whom the employer **does not** set work hours or provide necessary tools to do the job, or whom the employer does not have authority to hire and fire); and
  - c) Providing services for the employer, under a contract, subcontract, or exchange entered into after November 6, 1986. (In such cases, the contractor is the employer for I-9 purposes; for example, a temporary employment agency.)

**CURRENT VERSION OF FORM I-9** (link to external site; a sample is included in the following three pages of this document, go to the USCIS site for actual Form I-9)

The current version of the Form I-9 is dated 2/2/09 and the Handbook for Employers is dated 4/3/09.

## FEDERAL LAW

### **WHAT SHOULD BE DONE WITH FORMS I-9 AFTER THEY ARE COMPLETED?**

Unlike tax forms, for example, I-9 forms are not filed with the U.S. government. The requirement is for employers to maintain I-9 records in its own files for 3 years after the date of hire or 1 year after the date the employee's employment is terminated, whichever is later. This means that Form I-9 needs to be retained for all current employees, as well as terminated employees whose records remain within the retention period. Form I-9 records may be stored at the worksite to which they relate or at a company headquarters (or other) location, but the storage choice must make it possible for the documents to be transmitted to the worksite within 3 days of an official request for production of the documents for inspection. *Note:* U.S. immigration law does not prescribe or proscribe storage of a private employer's I-9 records in employee personnel files. As a practical matter, however, particularly if a large number of employees are involved, it may be difficult to extract records from individual personnel files in time to meet a 3-day deadline for production of I-9 records for official inspection.

### **DISCRIMINATION**

The law protects certain individuals from unfair immigration-related employment practices of a U.S. employer, including refusal to employ based on a future expiration date of a current employment authorization document. The U.S. government entity charged with oversight of the laws protecting against unfair immigration-related employment practices is the [Office of Special Counsel for Immigration Related Unfair Employment Practices](#), which is part of the Civil Rights Division of the U.S. Department of Justice.

### **AVAILABILITY OF FORMS I-9 IN FOREIGN LANGUAGES**

The Spanish version of Form I-9, available below on this page, may be filled out by employers and employees in Puerto Rico ONLY. Spanish-speaking employers and employees in the 50 states and other U.S. territories may print this for their reference, but may only complete the form in English to meet employment eligibility verification requirements. The form may be downloaded at <http://www.uscis.gov/files/form/I-9Spanish.pdf>.

### **EMPLOYEE'S RESPONSIBILITY REGARDING FORM I-9**

A new employee must complete Section 1 of a Form I-9 no later than close of business on his/her first day of work. The employee's signature holds him/her responsible for the accuracy of the information provided. The employer is responsible for ensuring that the employee completes Section 1 in full. No documentation from the employee is required to substantiate Section 1 information provided by the employee.

### **EMPLOYER'S RESPONSIBILITY REGARDING FORM I-9**

The employer is responsible ensuring completion of the entire form. No later than close of business on the employee's third day of employment services, the employer must complete section 2 of the Form I-9. The employer must review documentation presented by the employee and record document information on the form. Proper documentation establishes both that the employee is authorized to work in the U.S. and that the employee who presents the employment authorization document is the person to

## FEDERAL LAW

whom it was issued. The employer should supply to the employee the official list of acceptable documents for establishing identity and work eligibility. The employer may accept any List A document, establishing both identity and work eligibility, or combination of a List B document (establishing identity) and List C document (establishing work eligibility), that the employee chooses from the list to present (the documentation presented is not required to substantiate information provided in Section 1). The employer must examine the document(s) and accept them if they reasonably appear to be genuine and to relate to the employee who presents them. Requesting more or different documentation than the minimum necessary to meet this requirement may constitute an unfair immigration-related employment practice. If the documentation presented by an employee does not reasonably appear to be genuine or relate to the employee who presents them, employers must refuse acceptance and ask for other documentation from the list of acceptable documents that meets the requirements. An employer should not continue to employ an employee who cannot present documentation that meets the requirements.

### **QUESTIONS ABOUT GENUINENESS OF DOCUMENTS**

Employers are not required to be document experts. In reviewing the genuineness of the documents presented by employees, employers are held to a reasonableness standard. Since no employer which is not participating in one of the employment verification pilots has access to receive confirmation of information contained in a document presented by an employee to demonstrate employment eligibility, it may happen that an employer will accept a document that is not in fact genuine – or is genuine but does not belong to the person who presented it. Such an employer will not be held responsible if the document reasonably appeared to be genuine or to relate to the person presenting it. An employer who receives a document that appears not to be genuine may request assistance from the nearest Immigration field office or contact the [Office of Business Liaison](#).

### **DISCOVERING UNAUTHORIZED EMPLOYEES**

It occasionally happens that an employer learns that an employee whose documentation appeared to be in order for Form I-9 purposes is not actually authorized to work. In such case, the employer should question the employee and provide another opportunity for review of proper Form I-9 documentation. If the employee is unable under such circumstances to provide satisfactory documentation, employment should be discontinued (alien employees who question the employer's determination may be referred to an Immigration field office for assistance).

### **DISCOVERING FALSE DOCUMENTATION**

False documentation includes documents that are counterfeit or those that belong to someone other than the employee who presented them. It occasionally happens that an employee who initially presented false documentation to gain employment subsequently obtains proper work authorization and presents documentation of this work authorization. In such a case, U.S. immigration law does not require the employer to terminate the employee's services. However, an employer's personnel policies regarding provision of false information to the employer may apply. The employer should correct the relevant information on the Form I-9.

## FEDERAL LAW

**PHOTOCOPIES OF DOCUMENTS** (\*note that Colorado Employment Verification Law §8-2-122 C.R.S. requires the photocopying and retention of identity documents; the information below refers to federal law)

There are two separate and unrelated photocopy issues in the employment eligibility verification process. First is whether an employer may accept photocopies of identity or employment eligibility documents to fulfill I-9 requirements. The answer is that only original documents (not necessarily the first document of its kind ever issued to the employee, but an actual document issued by the issuing authority) are satisfactory, with the single exception of a certified photocopy of a birth certificate. Second is whether the employer may or must attach photocopies of documentation submitted to satisfy Form I-9 requirements to the employee's Form I-9. The answer is that this is permissible, but not required. Where this practice is undertaken by an employer, it must be consistently applied to every employee, without regard to citizenship or national origin.

### **GREEN CARDS**

The terms *Resident Alien Card*, *Permanent Resident Card*, *Alien Registration Receipt Card*, and *Form I-551* all refer to documentation issued to an alien who has been granted permanent residence in the U.S. Once granted, this status is permanent. However, the document that an alien carries as proof of this status may expire. Starting with the "pink" version of the Resident Alien Card (the "white" version does not bear an expiration date), and including the new technology Permanent Resident Cards, these documents are valid for either two years (conditional residents) or ten years (permanent residents). When these cards expire, the alien cardholders must obtain new cards. An expired card cannot be used to satisfy Form I-9 requirements for new employment. Expiration dates do not affect current employment, since employers are neither required nor permitted to re-verify the employment authorization of aliens who have presented one of these cards to satisfy I-9 requirements (this is true for conditional residents as well as permanent residents). **Note:** Even if unexpired, "green cards" must appear genuine and establish identity of the cardholder.

### **SOCIAL SECURITY CARD ISSUES**

The Social Security Administration (SSA) currently issues SSA numbers and cards to aliens only if they can present documentation of current employment authorization in the U.S. Aliens such as lawful permanent residents, refugees, and asylees are issued unrestricted SSA cards that are undistinguishable from those issued to U.S. citizens.

Note on restricted SSA and other cards:

SSA "Valid only with INS (or DHS) Authorization" card – issued to aliens who present proof of temporary work authorization; these cards do not satisfy the Form I-9 requirements.

SSA "Not Valid for Employment" card – issued to aliens who have a valid non-work reason for needing

## FEDERAL LAW

a social security number (e.g., federal benefits, State public assistance benefits), but are not authorized to work in the U.S.

Internal Revenue Service (IRS) Individual Taxpayer Identification Numbers (ITINs) – issued to aliens dealing with tax issues (e.g., reporting unearned income such as savings account interest, investment income, royalties, scholarships, etc.). An Individual Taxpayer Identification Number card is **NOT** employment eligibility verification.

Aliens who satisfy I-9 requirements have been known to present a restricted SSA card for payroll administration purposes (consistent with advice from SSA and IRS). In cases like this, the employer needs to encourage the individual to report the change in status to SSA immediately.

### **RETENTION OF FORMS I-9**

All of an employer's current employees (unless exempt) must have Forms I-9 on file. A retention date can only be determined at the time an employee is terminated. It is determined by calculating and comparing two dates. To calculate date A, the employer should add three years to the hire date. To calculate date B, the employer should add one year to the termination date. Whichever of the two dates is later in time is the date until which that employee's form I-9 must remain in the employer's employment eligibility verification files.

### **FORM I-9 REQUIREMENTS OF NEW OWNERS OF EXISTING BUSINESSES**

In a case where a new owner of a business is a *successor in interest*, having acquired an existing business, the new employer may keep the acquired employer's I-9 records rather than complete new Forms I-9 on employees who were also employees of the acquired employer. However, since the new employer would be responsible for any errors, omissions or deficiencies in the acquired records, it may choose to protect itself by having a new Form I-9 completed for each acquired non-exempt employee and attached to that employee's original Form I-9.

### **REMOTE HIRES**

It is not unusual for a U.S. employer to hire a new employee who doesn't physically come to that employer's offices to complete paperwork. In such cases, employers may designate agents to carry out their I-9 responsibilities. Agents may include notaries public, accountants, attorneys, personnel officers, foremen, etc. An employer should choose an agent cautiously, since it will be held responsible for the actions of that agent. **Note:** Employers should not carry out I-9 responsibilities by means of documents faxed by a new employee or through identifying numbers appearing on acceptable documents. The employer must review original documents. Likewise, Forms I-9 should not be mailed to a new employee to complete Section 2 himself or herself.

## FEDERAL LAW

### **SERVICE PROVIDERS**

Some business entities contract with professional employer organizations (PEOs) to handle the personnel and benefits aspects of the business. This may include completion and retention of Forms I-9. Where the business entity and the PEO are "co employers," one Form I-9 need be completed between the co-employers for each employee who was simultaneously hired by the co-employers. A business entity and PEO will be deemed a "co-employer" if, among other things, an employer/employee relationship is said to exist between the business entity and PEO on the one hand, and the individual on the other, even though the employee is only performing one set of services for both co-employers. Therefore, the authority to hire or terminate employment would have to be in the hands of both the business entity and the PEO. Since both entities are employing the individual, however, both entities remain equally responsible for meeting the Form I-9 requirements and equally liable for any failures to meet those requirements. Accordingly, the employer is fully responsible for errors, omissions, and deficiencies in the PEO's processing.

**FREQUENTLY ASKED QUESTIONS ABOUT EMPLOYMENT ELIGIBILITY** (excerpt from USCIS publication)

**Do citizens and nationals of the U. S. need to prove, to their employers, they are eligible to work?**

Yes. While citizens and nationals of the U.S. are automatically eligible for employment, they too must present proof of employment eligibility and identity and complete an Employment Eligibility Verification form (Form I-9). Citizens of the U.S. include persons born in Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. Nationals of the U.S. include persons born in American Samoa, including Swains Island.

**Do I need to complete a Form I-9 for everyone who applies for a job with my company?**

No. You need to complete Form I-9 only for people you actually hire. For purposes of the I-9 rules, a person is "hired" when he or she begins to work for you for wages or other compensation.

**I understand that I must complete a Form I-9 for anyone I hire to perform labor or services in return for wages or other remuneration. What is "remuneration"?**

Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

**Can I fire an employee who fails to produce the required document(s) within three (3) business days?**

Yes. You can terminate an employee who fails to produce the required document(s), or a receipt for a replacement document(s) (in the case of lost, stolen or destroyed documents), within three (3) business days of the date employment begins. However, you must apply these practices uniformly to all employees. If an employee has presented a receipt for a replacement document(s), he or she must produce the actual document(s) within 90 days of the date employment begins.

**What happens if I properly complete a Form I-9 and the ICE discovers that my employee is not actually authorized to work?**

You cannot be charged with a verification violation; however, you cannot knowingly continue to employ this individual. You will have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien unless the government can prove you had actual knowledge of the unauthorized status of the employee.

**What is my responsibility concerning the authenticity of document(s) presented to me?**

You must examine the document(s) and, if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If a document does not reasonably appear on its face to be genuine and to relate to the person presenting it, you must not accept it. You may contact your local ICE office for assistance.

**May I accept a photocopy of a document presented by an employee?**

No. Employees must present original documents. The only exception is an employee may present a certified copy of a birth certificate.

**INA: ACT 274A - UNLAWFUL EMPLOYMENT OF ALIENS**

Sec. 274A. [8 U.S.C. 1324a]

(a) Making Employment of Unauthorized Aliens Unlawful.-

(1) In general.-It is unlawful for a person or other entity-

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B) (i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).

(2) Continuing employment.-It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense.-A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract.-For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of state employment agency documentation.-For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(6) 1/ Treatment of documentation for certain employees.-

## FEDERAL LAW

(A) In general. - For purposes of this section, if-

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual, the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) Period.-The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability.-

(i) In general.-If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) Rebuttal of presumption.-The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) Exception.-Clause (i) shall not apply in any prosecution under subsection (f)(1).

(7) 2/Application to Federal Government.\_ For purposes of this section, the term "entity" includes an entity in any branch of the Federal Government.

(b) Employment Verification System.-The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation.-

(A) In general.-The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining-

FEDERAL LAW

- (i) a document described in subparagraph (B), or
- (ii) a document described in subparagraph (C) and a document described in subparagraph (D).

Such attestation may be manifested by either a hand-written or an electronic signature. 2a/ A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity.-A document described in this subparagraph is an individual's-

- (i) United States passport;
- (ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document-

(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

(II) is evidence of authorization of employment in the United States, and

(III) 3/ contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(C) Documents evidencing employment authorization.-A document described in this subparagraph is an individual's-

- (i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or
- (ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual.-A document described in this subparagraph is an individual's-

- (i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section;

FEDERAL LAW

or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(E) 4/ Authority to prohibit use of certain documents.- If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

(2) Individual attestation of employment authorization.-The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or an electronic signature . 2a/

(3) Retention of verification form.-After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain a paper, microfiche, microfilm, or electronic version of 2a/ the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending-

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual-

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated, whichever is later.

(4) Copying of documentation permitted.- Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form.-A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

FEDERAL LAW

(6) 5/ Good faith compliance.-

(A) In general.-Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

(B) Exception if failure to correct after notice.- Subparagraph (A) shall not apply if-

(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

(iii) the person or entity has not corrected the failure voluntarily within such period.

(C) Exception for pattern or practice violators.- Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

(c) No Authorization of National Identification Cards.-Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and Changes in Employment Verification System.-

(1) Presidential monitoring and improvements in system.-

(A) Monitoring.-The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system.-To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system.-Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

## FEDERAL LAW

(A) Reliable determination of identity.-The system must be capable of reliably determining whether-

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents.-If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system.-Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information.-The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification.-A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes.-The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(G) Restriction on use of new documents.-If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

(3) Notice to congress before implementing changes.-

(A) In general.-The President may not implement any change under paragraph (1) unless at least-

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D), before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the

## FEDERAL LAW

Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report.-In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes.-

(i) Hearings and review.-The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action.-No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes defined.-As used in this paragraph, the term "major change" means a change which would-

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

(E) General revenue funding of social security card changes.-Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

(4) Demonstration projects.-

## FEDERAL LAW

(A) Authority.-The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

(B) Reports on projects.-The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance.-

(1) Complaints and investigations.-The Attorney General shall establish procedures-

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) under this subsection.

(2) Authority in investigations.-In conducting investigations and hearings under this subsection-

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) 6/immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing.-

(A) In general.-Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time

## FEDERAL LAW

(of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing.-Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders.-If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations.- With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection-

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of-

(i) not less than \$250 and not more than \$2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than \$2,000 and not more than \$5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than \$3,000 and not more than \$10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity-

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations.- With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a

## FEDERAL LAW

civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Order for prohibited indemnity bonds.-With respect to a violation of subsection (g)(1), the order under this subsection may provide for the remedy described in subsection (g)(2).

(7) Administrative appellate review.-The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, 7/ in which case the decision and order of the Attorney General shall become the final agency decision and order 8/ under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) Judicial review.-A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) Enforcement of orders.-If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal Penalties and Injunctions for Pattern or Practice Violations.-

(1) Criminal penalty.-Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than \$3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations.-Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of Indemnity Bonds.-

## FEDERAL LAW

(1) Prohibition.-It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty.-Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e), to have violated paragraph (1) shall be subject to a civil penalty of \$1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous Provisions.-

(1) Documentation.-In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption.-The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien.-As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

(i)-(n) [9/](#)

### FOOTNOTES FOR SECTION 274A

#### INA: ACT 274A FN 1

**FN 1** Added by [§ 412\(b\) of IIRIRA](#), effective as "to individuals hired on or after 60 days after the date of enactment of this Act."

#### INA: ACT 274A FN 2

**FN 2** Paragraph (7) added by [§ 412\(d\) of IIRIRA](#), effective for "hiring occurring before, on, or after the date of the enactment of [IIRIRA], but no penalty shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act for such hiring occurring before such date."

#### INA: ACT 274A FN 2a

FEDERAL LAW

**FN 2a** Section 274A(b)(1)(A), (2) and (3) were amended by [Section 1 of Public Law 108-390](#), dated October 30, 2004.

EFFECTIVE DATE.--The amendments of Public Law 108-390 shall take effect on the earlier of--

- (1) the date on which final regulations implementing such amendments take effect; or
- (2) 180 days after the date of the enactment of this Act.

**INA: ACT 274A FN 3**

**FN 3** Added by [§ 412\(a\) of IIRIRA](#), effective "with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA]) as the Attorney shall designate."

**INA: ACT274A FN 4**

**FN 4** Added by [§ 412\(a\) of IIRIRA](#), effective "with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA]) as the Attorney shall designate."

**INA: ACT274A FN 5**

**FN 5** Added by [§ 411 of IIRIRA](#), effective for "failures occurring on or after the date of the enactment of [IIRIRA]."

**INA: ACT274A FN 6**

**FN 6** / Added by [§ 416 of IIRIRA](#).

**INA: ACT274A FN 7**

**FN 7** Amended by [§ 379\(a\)\(1\) of IIRIRA](#), effective for "orders issued on or after the date of the enactment of this Act."

**INA: ACT274A FN 8**

**FN 8** Amended by [§ 379\(a\)\(2\) of IIRIRA](#), effective for "orders issued on or after the date of the enactment of this Act."

**INA: ACT274A FN 9**

**FN 9** Subsections (i) through (n) were struck as "dated provisions" by [§ 412\(c\) of IIRIRA](#).

---