

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
DEPARTMENT OF HOMELAND SECURITY, SOCIAL SECURITY ADMINISTRATION, AND
DESIGNATED AGENT REGARDING
E-VERIFY**

1. **PARTIES.** The parties to this Agreement are the Department of Homeland Security, U.S. Citizenship and Immigration Services (DHS-USCIS), the Social Security Administration (SSA), and _____ (Designated Agent).

2. **AUTHORITY.** This E-Verify Agreement is authorized under the provisions of Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009.

3. **PURPOSE.** The purpose of this Agreement is to set forth terms by which SSA and DHS will provide information to _____ (Designated Agent) on behalf of their client in order to confirm the employment eligibility of all newly hired employees of their client following completion of the Employment Eligibility Verification Form (Form I-9).

4. RESPONSIBILITIES:

a.SSA

i. Upon completion of the Form I-9 by the employee and the Employer, and provided the Employer complies with the requirements of this MOU, SSA agrees to provide the Designated Agent on behalf of the Employer with available information that will allow the Employer to confirm the accuracy of Social Security Numbers provided by all newly hired employees and the employment authorization of some newly hired employees.

ii. The SSA agrees to provide to the Designated Agent appropriate assistance with operational problems that may arise during the Employer's participation in E-Verify. The SSA agrees to provide the Designated Agent with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during participation in E-Verify.

iii. The SSA agrees to safeguard the information provided by the Employer through E-Verify procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the confirmation of Social Security Numbers and for evaluation of E-Verify or such other persons or entities who may be authorized by the SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

iv. SSA agrees to establish a means of automated confirmation that is designed (in conjunction with the Department of Homeland Security's automated system if necessary) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government workdays of the initial inquiry.

v. SSA agrees to establish a means of secondary confirmation (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10

Federal Government work days of the date of referral to SSA, unless it determines that more than 10 days may be necessary. In such cases, SSA will provide additional confirmation instructions.

b. DHS-USCIS

i. Upon completion of the Form I-9 by the employee and the Employer, and completion by the Designated Agent of SSA confirmation procedures required prior to initiation of Department of Homeland Security confirmation procedures, DHS-USCIS agrees to provide the Designated Agent on behalf of the Employer access to selected data from the DHS-USCIS' database to enable the Designated Agent to conduct automated confirmation checks on newly hired alien employees by electronic means.

ii. DHS-USCIS agrees to provide to the Designated Agent appropriate assistance with operational problems that may arise during the Employer's participation in E-Verify. DHS-USCIS agrees to provide the Designated Agent names, titles, addresses, and telephone numbers of DHS-USCIS representatives to be contacted during participation in E-Verify, including one or more individuals in each DHS-USCIS district office covering an area in which the Employer hires employees covered by this MOU.

iii. DHS-USCIS agrees to provide to the Employer, through the Designated Agent, E-Verify and Designated Agent E-Verify User Manual containing instructions on E-Verify policies, procedures and requirements for both SSA and DHS-USCIS, including restrictions on use of E-Verify procedures. DHS-USCIS agrees to provide training materials on E-Verify.

iv. DHS-USCIS agrees to provide to the Employer, through the Designated Agent, a notice, which indicates the employer's participation in E-Verify. DHS-USCIS also agrees to provide to the Employer, through the Designated Agent, anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

v. DHS-USCIS agrees to issue the Designated Agent a user identification number and password that will be used exclusively to access the confirmation system for the Employer. This user identification number and password will permit the Designated Agent, on behalf of the Employer, to verify information provided by newly hired employees.

vi. DHS-USCIS agrees to safeguard the information provided to DHS-USCIS by the Employer, and to limit access to such information to individuals responsible for the confirmation of alien employment eligibility and for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and Nationality Act (INA) and federal criminal laws, and to ensure accurate wage reports to the SSA.

vii. DHS-USCIS agrees to establish a means of automated confirmation that is designed in conjunction with SSA confirmation procedures to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government workdays of the initial inquiry.

viii. DHS-USCIS agrees to establish a means of secondary confirmation, including updating DHS-

USCIS records as may be necessary, for employees who contest DHS-USCIS tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS-USCIS, unless it determines that more than 10 days may be necessary. In such cases, DHS-USCIS will provide additional confirmation instructions.

c. EMPLOYER

i. The Employer agrees to obtain the notices, described in paragraph 4.b.iv. above, from the Designated Agent and display them in a prominent place that is clearly visible to prospective employees.

ii. The Employer agrees to provide to the SSA and the DHS-USCIS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

iii. The Employer agrees to obtain the E-Verify Manual from the Designated Agent and become familiar with such manual.

iv. The Employer agrees to comply with established Form I-9 procedures, with one exception: When an employee presents a "List B" identity document, the Employer agrees that it will only accept "List B" documents that contain a photograph. List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B) can be presented during the Form I-9 process to establish identity.

v. The Employer agrees to initiate E-Verify procedures within 3 Employer business days after each employee has been hired, but after both sections 1 and 2 of the Form I-9 have been completed, and to complete as many steps of the E-Verify process as are necessary according to the E-Verify Manual. The Employer agrees not to initiate confirmation procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. In all cases, the Employer, through the Designated Agent, will use the SSA verification procedures first, and will use DHS-USCIS confirmation procedures only as directed by the SSA confirmation response.

vi. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, support for any unlawful employment practice, or any other use not authorized by this MOU. The Employer will not verify selectively; it agrees to use E-Verify procedures for all new hires as long as this MOU is in effect. The Employer agrees not to use E-Verify procedures for reverification, or for employees hired before the date this MOU is in effect. The Employer understands that should the Employer use E-Verify procedures for any purpose other than as authorized by this MOU and by law, the Employer may be subject to appropriate legal action and the immediate termination of its access to SSA and DHS-USCIS information pursuant to this MOU.

vii. The Employer agrees not to take any adverse action against an employee based upon the employee's employment eligibility status while SSA or DHS-USCIS is completing the confirmation process set forth in paragraphs 4.a.iv., 4.a.v., 4.b.vii., and 4.b.viii. above unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The

Employer understands that an initial inability of the SSA or DHS-USCIS automated confirmation to verify work authorization, or a tentative nonconfirmation, does not mean and should not be interpreted as an indication that the employee is not work authorized.

viii. The Employer agrees to comply with section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include discharging or refusing to hire eligible employees because of their foreign appearance or language, and that any violation of the unfair immigration-related employment practices provisions of the INA could subject the Employer to civil penalties pursuant to section 274B of the INA and the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice at 1-800-255-7688 or 1-800-237-2515 (TDD).

ix. The Employer agrees to record the case verification number on the employee's Form I-9 or to attach a printout of the screen containing the case verification number to the employee's Form I-9.

x. The Employer will refer individuals to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will resubmit the Social Security Number to SSA for confirmation again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

xi. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a referral letter and instruct the employee to visit an SSA office to resolve the discrepancy within 8 Federal Government work days. The Employer, through the Designated Agent, will make a second inquiry to the SSA database using E-Verify procedures within 10 Federal Government workdays after the date of the referral in order to obtain confirmation, or final nonconfirmation.

xii. The Employer agrees that it will use the information it receives from the SSA or DHS-USCIS through its Designated Agent pursuant to E-Verify and this MOU only to confirm the employment eligibility of newly-hired employees after completion of the Form I-9. The Employer agrees that it will safeguard this information, and means of access to it, such as User ID and passwords, to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who need it to perform the Employer's responsibilities under this MOU.

xiii. The Employer acknowledges that the information which it receives from SSA through its Designated Agent is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to civil or criminal penalties.

xiv. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA other than the Social Security Number Card.

xv. The Employer agrees to refer individuals to the DHS only when the response received from the DHS automated confirmation process indicates a tentative nonconfirmation, and the employee contests the tentative nonconfirmation. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

xvi. If the Employer receives a tentative nonconfirmation from the DHS-USCIS, the Employer will record the case verification number and date on the Form I-9 or print the screen showing the case verification number and attach the printout to the Form I-9, determine whether the employee contests the tentative nonconfirmation, and instruct an employee who contests to contact the DHS-USCIS to resolve the discrepancy within 8 Federal Government work days, using E-Verify procedures. The DHS-USCIS will electronically transmit the result of the referral to the Employer within 10 Federal Government workdays of the referral.

xvii. The Employer agrees to allow DHS and SSA, or their authorized agents or designees, to make periodic visits to the Employer for the purpose of reviewing E-Verify-related records, i.e., Forms I-9, SSA and DHS confirmation records, which were created during the Employer's participation in E-Verify. In addition, for the purpose of evaluating E-Verify, the Employer agrees to allow DHS and SSA or their authorized agents or designees, to interview the Employer, employees handling the program, and employees hired during participation in E-Verify concerning their experience with the pilot, and to make employment and E-Verify -related records available to DHS and the SSA, or their designated agents or designees.

d. DESIGNATED AGENT

i. The Designated Agent agrees to provide to the SSA and the DHS-USCIS the names, titles, addresses, and telephone numbers of the Designated Agent representatives who will be accessing information through E-Verify.

ii. The Designated Agent agrees to become familiar with and comply with the E-Verify Manual and provide a copy of the manual to the Employer so that the Employer can become familiar with and comply with E-Verify policy and procedures.

iii. The Designated Agent agrees that all Designated Agent Representatives performing employment verification queries will complete the E-Verify Web-Based Tutorial.

iv. The Designated Agent agrees to obtain the necessary equipment to utilize E-Verify.

v. The Designated Agent agrees to provide the Employer with the notices described in paragraph 4.b.iv. above.

vi. The Designated Agent agrees to initiate E-Verify procedures on behalf of the Employer in accordance with the E-Verify Manual and E-Verify Web-Based Tutorial. The Designated Agent will query the automated system using information provided by the Employer and will immediately

communicate the response back to the Employer. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Designated Agent's attempting, in good faith, to make inquiries on behalf of the Employer during the period of unavailability. In all cases, the Designated Agent will use the SSA confirmation procedures first, and will use DHS-USCIS confirmation procedures only as directed by the SSA confirmation response.

vii. The Designated Agent agrees to allow DHS and SSA, or their authorized agents or designees, to make periodic visits to the Designated Agent for the purpose of reviewing E-Verify-related records, i.e., Forms I-9, and DHS confirmation records, which were created during the Designated Agent's participation in E-Verify. In addition, for the purpose of evaluating E-Verify, the Designated Agent agrees to allow DHS and SSA or their authorized agents or designees, to interview the Designated Agent and employees handling the program concerning their experience with the pilot, and to make E-Verify -related records available to DHS and the SSA, or their designated agents or designees.

5. POINT OF CONTACT:

You may call E-Verify toll free at 1-888-464-4218, or write to:

U.S. Citizenship and Immigration Services
Verification Division
470 L'Enfant Plaza, SW
Washington , DC 20024

6. OTHER PROVISIONS.

a. Nothing in this agreement shall be construed to supersede, conflict, or modify the employer's responsibilities under section 274A of the INA not to employ unauthorized aliens or to hire individuals without verifying identity and employment eligibility on Form I-9.

b. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the DHS-USCIS or SSA. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

c. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability there from, including, but not limited to, any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

d. Each party understands that some or all SSA and DHS-USCIS responsibilities under this MOU may be performed by contractor(s).

e. Each party understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and USCIS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA).

7. EFFECTIVE DATE. The terms of this agreement will become effective upon the signature of all parties, and shall continue in effect for as long as the SSA and the DHS-USCIS administer E-Verify.

8. MODIFICATION. This agreement may be modified upon the mutual written consent of all parties.

9. TERMINATION. This agreement, as modified with the consent of all parties, may be terminated by any party upon 30 days prior written notice to the others. Termination by any party shall terminate the MOU as to all parties. The SSA or the DHS-USCIS may terminate this MOU without prior notice if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or the DHS-USCIS that there has been a breach of system integrity or security by your client, or _____ (Designated Agent) or a failure on the part of your client or _____ (Designated Agent) to comply with established procedures or legal requirements.