

**The E-Verify and Form I-9 Process
Questions and Answers
September 2009**

Introduction

The following Questions and Answers (Q&As) provide assistance to University of California locations in complying with the new E-Verify implementation process, specifically as it relates to the Employment Eligibility Verification Form (Form I-9) process.

For further information regarding E-Verify, locations are advised to follow the E-Verify Guidelines and FAQs issued by the UCOP E-Verify Workgroup in January 2009 and re-issued in August 2009, and the E-Verify Implementation Schedule issued in August 2009. For complete information, including Q&As about the Form I-9 and E-Verify and how to download the current Form I-9, please see the U.S. Citizenship and Immigration Services (USCIS) website: <http://www.uscis.gov/portal/site/uscis>

Background on E-Verify

As of September 8, 2009, the E-Verify final rule will become effective requiring federal contractors and subcontractors, such as the University of California, to E-Verify qualifying new and existing employees assigned to and performing substantial work on a qualified federal contract/subcontract that contains the Federal Acquisition Regulation (FAR) clause, referred to as the E-Verify clause.

Locations have 30 calendar days from the date a contract is amended to include the E-Verify clause to enroll in the E-Verify system by signing the MOU, followed by a 90 calendar day phase-in period from the date of enrollment to initiate the E-Verify process for qualifying employees. After the 90 day phase-in period, locations are required to initiate verification within three business days for new hires assigned to a covered federal contract/subcontract and existing employees newly assigned to a covered federal contract/subcontract.

Under the Immigration Reform and Control Act of 1986 (IRCA) all U.S. employers must verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986 by completing the Form I-9. The University must comply with the I-9 requirements. Now, the University must also comply with the E-Verify regulations. UC only needs to E-Verify newly hired and existing employees hired after November 6, 1986 assigned to a qualified covered federal contract/subcontract that contains the E-Verify clause. E-Verify is not to be used as a prescreening employment device or applied in a discriminatory manner, so for those applicable new hires, the E-Verify process is initiated only after the Form I-9 has been completed.

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E-Verify/Form I-9 Q&As

When initiating the E-Verify process on an existing employee, what do I need to review on the completed Form I-9?

In initiating the E-Verify process, first check that the Form I-9 is complete, including the employee's Social Security Number (SSN); whether the employee's work authorization has expired, if applicable; and whether the employee's stated basis (in Section 1 of the Form I-9) for work authorization has changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. Citizen).

If the Form I-9 is incomplete, or the employee's basis for work authorization has expired or changed, or the Form I-9 contains no SSN, the employee will need to complete a new I-9 or update the previous I-9 to provide the necessary information.

Please recall that the Form I-9 was recently revised. The version dated 2/2/2009 took effect April 3, 2009. A new version dated 8/7/2009 was then released in August 2009. (The only difference between the 8/7/2009 version and the 2/2/2009 version is the expiration date.) Both the 2/2/2009 and 8/7/2009 versions are currently acceptable versions of the Form I-9. Revisions prior to 2/2/2009 are unacceptable. Beginning April 3, 2009, employers may only accept documents listed on the List of Acceptable Documents on the revised Form I-9. When an employee must be re-verified because his or her employment authorization has expired, the employer must use the *revised* Form I-9 with its new List of Acceptable Documents. According to the Department of Homeland Security, an employer may not re-verify the employee by completing Section 3 – Updating and Re-Verification -- on a previous version of Form I-9. See http://www.uscis.gov/files/article/I9_qa_12dec08.pdf.

What do I do if an employee who is subject to E-Verify wants to complete a Form I-9 without providing a SSN?

Completing a Form I-9 does not require a Social Security number, but the E-Verify process does. You should complete the Form I-9 process and wait to run the E-Verify query until receiving the employee SSN. You will need to note on the Form I-9 why you did not run the E-Verify query. The employee is responsible for obtaining a SSN as soon as possible. The employee is allowed to work temporarily without a SSN under a "tentative nonconfirmation" status.

What do I do if the employee, on the completed Form I-9, used an employment authorization card or I-551 stamp that has since expired and I need to complete the E-verify process?

When an employee must be re-verified because his or her employment authorization has expired, you must use the *revised* Form I-9 with its new List of Acceptable Documents. According to the Department of Homeland Security, an employer may not re-verify the

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employee by completing Section 3 – Updating and Re-Verification -- on a previous version of Form I-9. (The 2/2/2009 and 8/7/2009 revisions are currently the only acceptable versions of Form I-9. Revisions prior to 2/2/2009 are not acceptable.)

What is the difference between a revised Form I-9 and the former one?

The USCIS issued a reminder effective April 3, 2009 that all U.S. employers are required to use a revised Form I-9 (Rev. 02/02/09 or 8/7/09). (CHROs were notified on August 27, 2009.) The revised Form I-9 reflects changes made to the list of acceptable documents. The list of approved documents that employees can present to verify their identity employment authorization is divided into three sections: List A documents verify both identity and employment authorization, List B documents establish identity only, and List C documents establish employment authorization only. An individual should provide documents either from List A only or from Lists B and C only, not from all 3 lists. The main difference between the revised Form I-9 and the previous Form I-9 is that all documents presented during the Form I-9 process must now be unexpired documents.

Is there a handbook available for employers and if so, has it been updated?

Yes, the *Handbook for Employers, Instructions for Completing the Form I-9* (M-274) has been updated to reflect the revisions to the Form I-9 and can be downloaded from the USCIS website.

What do I do if an existing employee used a non-photo document on the Form I-9 and now must submit to the E-Verify process?

The E-Verify MOU requires if an employee uses a List B identity document for his/her Form I-9, the employer now cannot accept it unless it contains a photo. Therefore, an existing employee who used a non-photo List B document when hired previously would need to redo that part of the Form I-9 if he/she is assigned to a federal contract/subcontract that has been amended to require E-Verify or assigned to a future federal contract/subcontract that requires E-Verify.

What do I do if an existing employee's Form I-9 is lost or damaged and that employee needs to submit to the E-Verify process?

The University is legally required to have a Form I-9 for all employees and is required by law to E-Verify a person assigned to an amended federal contract/subcontract and cannot complete this process legally without a Form I-9. You would need to do a new I-9 with the employee.

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At my location we have stored our I-9 forms electronically. Can we use a copy of the Form I-9 for annotation purposes when submitting to E-Verify?

The Department of Homeland Security's regulations allow for the Form I-9 to be signed and retained electronically. Several locations provide electronic storage of the Form I-9 which is perfectly acceptable.

Please note that, when an employee's work authorization is confirmed by E-Verify, that employee's I-9 must be annotated with the E-Verify case number. Also, if an employee has provided a Permanent Resident Card or Employment Authorization Document for the I-9 process, E-Verify rules require that the employer retain a photocopy of the document with the Form I-9. If the I-9 has been electronically stored, there will need to be a procedure for downloading it, adding the necessary E-Verify case number and, if applicable, photocopied document(s), and then re-storing the I-9 electronically with your location's Office of Records. (The official Office of Records varies by location. Some locations have Payroll Services as the Office of Records, where others may have Human Resources or the hiring department.)

What do I do if an employee holds F-1 Optional Practical Training (OPT) status obtained with a prior employer under the Science, Technology, Engineering, or Math (STEM) extension?

The University of California campuses are participating in E-Verify under the Federal Acquisition Regulation (FAR) for federal contractors, which provides a partial exemption to institutions of higher education. After successful submission of the MOU to DHS, the campus will be registered as a participating employer under the FAR exemption. The E-Verify identification number assigned to the campus after successful submission of the MOU must be annotated on the F-1 OPT STEM extension employee's Form I-9. UC campuses would not submit a separate E-Verify action for the employee **unless s/he is assigned to a qualified federal contract/subcontract that contains the E-Verify clause.**

What do I do if a student wishes to obtain employment authorization under the F-1 OPT STEM program? Or the extra 17 months employment authorization allowed under the STEM program?

Since F-1 OPT STEM employment authorization applications require university sponsorship, direct the student to your campus International Students and Scholars Office (ISS). ISS staff will prepare the required sponsorship documents to insure that 1) the student is eligible for the program; and 2) all USCIS employment application forms are properly annotated with the campus E-Verify identification number.