

University of California
E-Verify Guidelines
August 2009

I. Introduction

The following procedures are required only when a covered federal contract or subcontract specifically includes the following Federal Acquisition Regulation clause: FAR 52.222-54 Employment Eligibility Verification. This clause is referred to as the E-Verify clause.

These Guidelines are prepared to provide assistance to locations with the new E-Verify implementation process and posting requirements for federal contractors and subcontractors, including Institutions of Higher Education, such as the University of California. The process will require UC to verify the work status of qualifying new and existing employees hired after November 6, 1986, who work directly on a federal contract and subcontract by using the E-Verify system. The E-Verify requirements are in addition to the current requirements governing the Employment Eligibility Verification Form (Form I-9) procedures, and are not a substitute.

UC, as a federal contractor, must verify qualifying new and existing employees, including employees who may be assigned through a transfer to a qualified federal contract/subcontract. Grants are not subject to the federal rule, only qualified federal contracts/subcontracts. The E-Verify process must be done in a nondiscriminatory manner and, in the case of new hires, only after the individual has accepted an offer of employment and completed the Form I-9.

Employers cannot refuse to employ or terminate the employment of individuals based on their national origin or citizenship status due to the Immigration Reform and Control Act of 1986 (IRCA). Examples of inadvertent discrimination are improperly rejecting documents, requesting additional documents beyond those required, and inconsistency in I-9 and E-Verify compliance. It should be noted that the federal government asserts that E-Verify promotes integrity of the employment verification process and is a useful tool for the employer in ensuring compliance with employment laws and regulations.

As a participating employer in the E-Verify program, the University is also required to post the Right to Work poster and the E-Verify Notice, which informs employees of their rights and responsibilities under the program. (The required posters may be downloaded from the E-Verify website once the employer signs the Memorandum of Understanding.)

These Guidelines are in complement with University policies and practices as they relate to citizenship and immigration requirements in the employment hiring process. For further information, please see PPSM 21. Appointment, F. Citizenship and Immigration Requirements:

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http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/personnel_policies/spp21.html

Included in these Guidelines are the recommended steps to follow in the E-Verify implementation and administration, as well as “Frequently Asked Questions” (Appendix 5) to assist in the process. This information has been prepared by the UCOP E-Verify Workgroup, whose membership names are provided in Appendix 1 of this document.

II. Background on E-Verify

Effective September 8, 2009, all federal contractors and subcontractors will be required to use "E-Verify," the Internet-based employment verification system to check the status of new and existing employees assigned to a federal/subcontract containing the E-Verify clause. The E-Verify system is operated by the United States Citizenship and Immigration Service (USCIS) through the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). E-Verify electronically compares information contained on the Form I-9 with records contained in the Social Security Administration (SSA) and DHS databases to verify the identity and employment eligibility of employees working on federal government contracts and subcontracts. On June 6, 2008, the President issued Executive Order 13465, requiring the use of E-Verify for federal contractors.

The new federal rule (73 Federal Register 67651) requires federal contractors to insert a clause into their federal contracts on the use of E-Verify. Under the final rule, UC, along with other Institutions of Higher Education, is required to enroll in E-Verify when awarded a federal contract or subcontract that requires participation in E-Verify as a term of the contract. The work eligibility only of those newly hired and existing employees hired after November 6, 1986 (including transferred employees) who are assigned to a qualified covered federal contract/subcontract that contains the E-verify clause - not the work eligibility of all employees - will need to submit to the E-Verify process. This is based upon an exemption in the final rule for Institutions of Higher Education and is in contrast to most other federal contractors who are required to E-Verify the work eligibility of all existing employees on the federal contract and all new hires.

On November 24, 2008, UC Executive Vice Chancellors were sent a letter under signature of Executive Vice President Lapp and Interim Provost and Executive Vice President Grey notifying locations of the E-Verify final rule affecting UC as a federal contractor. (For a copy of the letter, please see Appendix 2 of this document.)

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III. Definition of and Criteria for Covered Federal Contracts and Subcontracts

A covered federal contract is one that is required to contain the E-Verify clause and is one for which the solicitation is issued, or the contract awarded on or after September 8, 2009. In the case of an Indefinite-Delivery, Indefinite-Quantity (IDIQ) contract, it is one that is bilaterally amended on or after September 8, 2009, to include the E-Verify clause if such contracts have a remaining performance period of at least six months and the amount of work remaining is “substantial.”

The federal contract must also have a value above \$100,000; a performance period longer than 120 days; and the performance of the contract must take place in the United States.

A covered subcontract is defined as one that is based on a prime contract with the E-Verify clause; is a subcontract for services or construction; and has value above \$3000.

Exemptions from E-Verify:

- (1) As stated above, only the work eligibility of those newly hired and existing employees hired after November 6, 1986 assigned to a qualified covered federal contract/subcontract that contains the E-Verify clause will need to be E-Verified. Newly hired and existing employees who normally perform support work on the federal contract/subcontract, such as indirect or overhead functions and who do not perform any substantial duties under the federal contract/subcontract are exempt from the E-Verify process.
- (2) UC employees hired prior to November 6, 1986 are exempt from the E-Verify process.
- (3) Also exempt from the E-Verify process are employees with a current HSPD-12 credential, or have an active Confidential, Secret, or Top Secret security clearance.
- (4) All other new UC hires and existing UC employees not assigned to a qualified federal contract/subcontract are exempt from the E-Verify process. (Unless the existing employee through a transfer becomes assigned to a qualified federal contract/subcontract.)

Definition of "Assigned to the Contract"

The rule defines an “employee assigned to the federal contract” as any employee hired after November 6, 1986, who is directly performing work in

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the United States under a contract that includes the clause committing the contractor to use E-Verify.

As mentioned above, an employee is not considered to be directly performing work under the contract if the employee normally performs support work, such as indirect or overhead functions, and does not perform any substantial duties under the contract.

An employee who directly performs work on a contract for only a minimal amount of time is still subject to E-Verify. The rule does not exempt employees based on the intermittent nature of the work or the length of time spent performing the work.

Further information on the meaning of “assigned to the contract” and how it can be interpreted in the context of UC’s qualifying federal contracts/subcontracts is found in Appendix 4 to these Guidelines.

IV. Timeline and Location Implementation Steps

A UC location that has been awarded a covered federal contract/subcontract as defined above that contains the E-Verify clause will need to enroll in E-Verify within 30 days of the award/amendment of the contract. There is then a 90 day phase-in period in which the University has to initiate E-Verify on each new qualified hire assigned to a federal contract/subcontract.

For existing employees (as opposed to new hires) assigned to a federal contract/subcontract, the University must initiate their E-Verification by the end of the 90 day period, or within 30 days of their being assigned to the qualifying federal contract/subcontract, whichever is later.

After the 90 day phase-in period, a three business day rule will apply to any employee (new or existing) assigned to a federal contract/subcontract, meaning, within three business days of assignment to the federal contract/subcontract, E-Verify must be initiated.

The E-Verify Implementation is initiated by the location and consists of the following steps:

- Identify E-Verify Project Team members to assist in implementation and problem resolution. It is advisable that these members consist of employees from academic and staff Human Resources (Employee Relations/Labor Relations) Payroll Management, and Contract and Grants functions.

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Gain access to the "Employer Eligibility Verification" DHS website which contains instructions on how to complete the E-Verify registration process at URL: <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>

- Sign a Memorandum of Understanding (MOU) from this website that provides the terms of agreement between the location, the SSA, and the DHS. It is advised that the Chancellor/Lab Director or a senior-level administrator who has signature authority for their location sign the MOU.
- Once the location has registered and signed the MOU, locations should designate individuals to serve in the two key roles: the E-Verify Program Administrators and E-Verify General Users of the E-Verify system.

Program Administrators should be those individuals, such as the Payroll Manager and/or Human Resources Manager, responsible for the employment or payroll process who will oversee the E-Verify process for the location and serve in a lead role to resolve any discrepancies related to E-Verify, the Form I-9 and supporting work eligibility documents. It is recommended that the Program Administrators be responsible for the required retention of the appropriate documents.

E-Verify General Users should be those individuals at the hiring department level responsible for handling the appropriate hiring forms in the employment hiring process on behalf of the hiring department, including the processing of the Form I-9. E-Verify General Users will be responsible for performing the online E-Verify queries in determining the new hire's or existing employee's work eligibility.

- All individuals performing E-Verify queries must successfully complete a free, online tutorial on the E-Verify website. At this website, they should also review the user manual and MOU. The tutorials explain the E-Verify process in detail and provide step-by-step examples of how the E-Verify General User can successfully enter a query.
- Download and post the required posters from the E-Verify website after signing the MOU.

V. The E-Verify Administrative Process – Flow Chart Included (Appendix 3)

The following information details the administrative process required to perform E-Verify. (The steps involved in the process are also visually identified in the E-Verify Flow Chart located in Appendix 3 of this document.)

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For new hires assigned to the federal contract/subcontract meeting the conditions for E-Verify, the Form I-9 must first be completed within three business days of the hire date (the employee has until the third business day to present the Form I-9 documents). The current I-9 process does not require a Social Security Number (SSN) and also allows for non-photo identity documents to be submitted. Under E-Verify, however, the Form I-9 process will now require both a valid SSN and photo ID. The E-Verify process also requires copying the Permanent Resident Card (PRC) or the Employment Authorization Document (EAD) if used as Form I-9 "List A" supporting documents.¹ If the new employee assigned to the federal contract/subcontract meeting the conditions for E-Verify does not have a SSN at the time of the Form I-9 completion, but shows acceptable proof of identity and employment eligibility per the I-9 rules, it is permissible for the employer to wait to run the E-Verify query until the employee has received a SSN. (Also, the current E-Verify system does not allow for the direct upload of information from an electronic Form I-9 system, so information from electronic I-9 forms needs to be manually entered by a General User or an electronic I-9 service vendor will need to work with the location and the USCIS to develop an interface between the commercial I-9 system and the E-Verify database.)

Query Responses: Confirmation and Tentative Non-Confirmation

By the third business day, the General User initiates the E-Verify query. If employment is authorized, the General User will receive an E-Verify response as "Confirmation" and the General User should print and retain this record with the Form I-9. If there are no input errors, the E-Verify system should return an instantaneous result of "Employment Verified." If information provided by the worker matches the information in the database, no further action is required and the process is complete.

If employment authorization can not be immediately confirmed and the information cannot be verified, the General User will receive an E-Verify response as "SSA Tentative Non-confirmation Notice" or "DHS Tentative Non-confirmation Notice" depending on the category of information that could not be confirmed. This response may be no more than a result of typos or misinformation keyed into the system. But if correctly inputted data results in a "Tentative Non-confirmation," the General User should print out the "Tentative Non-confirmation Notice" and provide this information to the employee for signature. The employee can choose to contest or not contest the information.

¹ On December 17, 2008, USCIS published an interim final rule in the *Federal Register* to streamline the Form I-9 process. The interim final rule narrows the list of acceptable identity documents and specifies that expired documents are not considered acceptable forms of identification. In accordance with the new rule, as of April 3, 2009, employers must use the revised Form I-9 for all new hires and to re-verify any employee with expiring employment authorization. For the new I-9 form and the accompanying USCIS "Handbook for Employers" (Form M-274), please see:

<http://www.uscis.gov/files/nativedocuments/m-274.pdf>

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If the employee contests the “Tentative Non-confirmation,” the General User also prints a "Referral Letter" generated by the E-Verify system that instructs the employee to contact SSA or DHS within eight (8) federal government work days. It is the employee's responsibility to follow up in attempting to resolve the tentative non-confirmation status.

The employer is prohibited from terminating or taking any adverse action against the worker while waiting for the final resolution from SSA or DHS. If the worker fails to contest the non-confirmation status within the prescribed period of time, or the employer receives a “Final Non-confirmation Notice,” the worker may be subject to reassignment or possibly termination in accordance with E-Verify legal requirements, and applicable University policy and collective bargaining agreements. The location must notify DHS if a decision is made to continue to employ a worker after a final determination of non-confirmation. Failure to do so may be cited with civil penalties of \$500-\$1000 and federal contracts awarded to UC may also be at risk.

If the employee chooses to not contest the tentative non-confirmation, the employee may possibly not be authorized to work in the United States. Locations are advised to develop the appropriate communications to indicate the reasons for reassignment or possible termination based upon the E-Verify requirements, and in consultation with their Academic Personnel Director/Chief Human Resource Officer and in accordance with University policy and collective bargaining agreements.

If the employee chooses to contest the results of the “Tentative Non-confirmation,” he/she must be allowed to continue employment until there is either a “Confirmation” or a "Final Non-confirmation" issued. It generally does not take more than four to six weeks for a Tentative Non-confirmation to become a Final Confirmation or Non-confirmation.

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VI. Appendices

Appendix 1: UCOP E-Verify Workgroup Members List

Appendix 2: November 24, 2008 Letter to Executive Vice Chancellors

Appendix 3: E-Verify Flow Chart

Appendix 4: Definition of “Assigned to the Contract”

Appendix 5: Frequently Asked Questions

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OFFICE OF THE PROVOST AND EXECUTIVE VICE PRESIDENT --
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November 24, 2008

EXECUTIVE VICE CHANCELLORS

Re: E-Verify Final Rule - 73 Federal Register 67651 (November 14, 2008)

Dear Colleagues:

A final federal rule, issued on November 14, states that effective January 15, 2009, all federal contractors including institutions of higher education will be required to use "E-Verify," the Department of Homeland Security's online employment verification system.¹ E-Verify is the internet-based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) used to verify the work status of employees working on federal government contracts.²

The University of California will have 30 days to enroll in E-Verify, followed by a 90-day implementation phase-in period to verify the work status of qualifying existing and new employees who work directly on specific government contracts and sub-contracts. After the 90-day phase-in concluding May 16, 2009, e-verifications must occur within three days of assigning an employee to a qualifying contract. This new process will be in addition to the I-9 employment eligibility process that the University is currently required to practice.

The Office of the President has established a workgroup with the Office of the General Counsel and campus representatives to prepare guidelines for campus implementation. The guidelines will identify the specific functions and steps each campus will need to undertake to implement E-Verify. UCOP guidance will cover the topic areas crucial to understanding how to implement E-Verify, including:

- The process by which UC and campuses will be directed to enroll in E-Verify
- Identifying the federal contracts and subcontracts that are subject to E-Verify
- Identifying the new and existing employees subject to E-Verify, and exceptions
- Implementation deadlines
- A summary of the E-Verify protocol and integration with I-9 compliance

You may wish to share this letter with the campus office(s) that may be assigned responsibility for the rollout, and others who will need to be aware, which will include at least the following (there may be more or fewer depending on your specific campus circumstances):

¹ <http://edocket.access.gpo.gov/2008/F8-26904.htm>

² <http://www.uscis.gov/portal/site/uscis>

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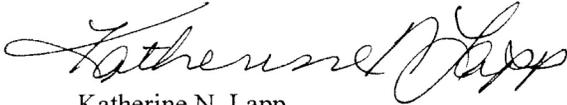
- Human Resources
- Academic Affairs
- Office of Research, including Contract and Grant Offices
- Business Contracts
- Services to International Students and Scholars

An important reminder: *Employers must verify employees in a non-discriminatory manner only after the individual has accepted an offer of employment and completed the Employment Eligibility Verification Form (Form I-9).*

For additional information or questions regarding the UCOP E-Verify workgroup, please contact Manager Deborah Larson (deborah.larson@ucop.edu, 510-987-0823). For questions regarding academic employees, please contact Associate Director Janet Lockwood (janet.lockwood@ucop.edu, 510-987-9499); and for staff employees, please contact Director Christopher Simon (christopher.simon@ucop.edu, 510-987-0503).

Thank you very much for your attention to this matter.

Sincerely,



Katherine N. Lapp
Executive Vice President, Business Operations



Robert D. Grey
Interim Provost and Executive Vice President

cc: President Yudof
Senior Vice President Vacca
Vice Provosts – Academic Personnel
Vice Chancellors – Research
Acting Associate Vice President Cammidge
Medical Center Directors
Executive Director Boland
Academic Personnel Directors
Chief Human Resource Officers
Directors - International Students and Scholars

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Definition of Employee “Assigned to the Contract”

After enrollment in E-Verify as a federal contractor that is an institution of higher education, the University will be required to E-Verify new hires and existing employees “assigned to the contract.”

The Regulatory Definition

The final FAR regulation provides the following definition:

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

- (1) Normally performs support work, such as indirect or overhead functions; and*
- (2) Does not perform any substantial duties applicable to the contract.*

Discussion in the Preamble to the FAR

The preamble that was published with the final FAR regulation, in addressing the concerns of those who commented to the proposed rule, provides only slight elaboration on the meaning of “assigned to the contract” (see <http://edocket.access.gpo.gov/2008/E8-26904.htm>). The preamble contains this guidance and example:

[I]t is immaterial whether services are provided intermittently or for only a small portion of an individual employee’s time as long as the work is done in the United States in direct support of a contract. However, tangential involvement, if it is in terms of indirect involvement instead of directly working on a contract, does not necessarily trigger the E-Verify requirement. For example, a mailroom clerk who delivers mail to a program office supporting a contract as well as to all other offices served by the mailroom, would not be required to go through the E-Verify process.

Two-Pronged Test for Exemption from E-Verify -- Ministerial/Clerical Nature of the Job Duties May Not Control

Note that, to be exempt from E-Verify, the employee must meet both regulatory criteria:

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

In the mailroom clerk example given in the FAR preamble, the mailroom clerk delivers mail not only to a program office supporting a contract, but also to other offices served by the mailroom. His/her involvement in the contract is said to be “tangential, indirect” involvement, and therefore E-Verify is not required.

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The mailroom clerk example begs the question whether it is the ministerial/clerical nature of the job duties (delivering mail), or the fact that the duties are not exclusively performed for an office supporting a federal contract, that leads to the conclusion that this employee is not subject to E-Verification. Useful guidance, for the University’s purposes, may be drawn from OMB Circular A-21.

OMB Circular A-21 as a Guide to “Assigned to the Contract”

OMB Circular A-21 establishes the principles and guidelines for determining which of a university's costs are applicable to federal contracts, grants, etc. (referred to collectively as "sponsored" agreements, projects or activities). This Circular, not mentioned in any materials related to the FAR regulation on E-Verify, nevertheless provides useful parallel concepts from which to draw guidance on the meaning of “assigned to the contract.”

At a very simplified level, OMB Circular A-21 makes a fundamental distinction between:

- (1) "direct" costs; and
- (2) "indirect" costs, now called "F&A" (for facilities and administration) costs.

Whether employee compensation is a "direct cost" or an "F&A cost" depends on if his/her work can be readily identified with a specific "sponsored" activity. If the work is not readily identified with a specific "sponsored" activity, but instead is for common or joint objectives, it is an "F&A" cost.

Salaries of technical staff are treated as a "direct cost" wherever identifiable to a particular cost objective. Salaries of administrative and clerical staff are normally treated as "F&A costs," however, they sometimes can be treated as "direct costs" (meaning the federal government bears most or all of the expense) where a major project or activity explicitly budgets for administrative or clerical services and individuals involved can be specifically identified with the project or activity. ("Major project" is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. A non-exhaustive list of examples of "major projects" is provided in Exhibit C to OMB Circular A-21.)

This distinction in the Circular between administrative and clerical staff salaries that can be considered "direct costs" and those that cannot sheds light on the puzzling example of the mailroom clerk given in the preamble to the new FAR regulation. Under the FAR, to be exempt from E-Verify, the employee must meet both of two regulatory criteria:

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

In the mailroom clerk example given in the FAR preamble, a mailroom clerk who delivers mail not only to a program office supporting a contract, but also to other offices served by the mailroom, is not “assigned to the contract.” This example begs the

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question whether the clerk was deemed not to be “assigned to the contract” because his/her duties were ministerial/clerical in nature, or because his/her duties were not exclusively performed for an office supporting a federal contract. However, applying the general principles of OMB Circular A-21 to the mailroom clerk example, a mailroom clerk’s compensation would normally be treated as “F&A costs” (i.e., not billed to the federal government), but would be treated as “direct costs” (i.e., billed to the government) if the mailroom clerk exclusively delivers mail for a “major project or activity” that explicitly budgeted for administrative or clerical services and the mailroom clerk’s services can be specifically identified with that project or activity.

In short, a legitimate way to assess whether an employee is “assigned to the contract” for E-Verify purposes would be whether any part of the employee’s compensation is classified as a “direct cost” under OMB Circular A-21. However, two caveats should be considered:

- The Circular lumps together federal contracts, grants, cooperative agreements, etc., so it will be necessary to segregate out the federal contracts subject to E-Verify from the rest of the sponsored agreements (grants, cooperative agreements, state contracts, etc.)
- Due to “cost-sharing,” there may be employees “assigned to the contract” whose compensation is not a “direct cost” of the contract. “Cost-sharing” refers to resources contributed or allocated by the University to a sponsored project over and above the support provided by the extramural sponsor, in accordance with the University’s principal mission of supporting the search for and dissemination of knowledge. Employees whose compensation is not listed as a “direct cost” of a federal contract, but who nevertheless are “assigned to the contract” within the meaning of the FAR, will need to be identified and E-Verified. This apparently is often the case with Principal Investigators (PIs) on research projects.

E-Verify Frequently Asked Questions

What is E-Verify?

E-Verify is an internet-based employment verification system. The system is operated by the United States Citizenship and Immigration Service (USCIS) through the Department of Homeland Security (DHS) and in partnership with the Social Security Administration (SSA). E-Verify electronically compares information contained on the Form I-9 with records contained in the Social Security Administration (SSA) and DHS databases to verify the identity and employment eligibility of employees working on federal government contracts and subcontracts.

Why must UC participate in E-Verify?

Executive order 13465 of June 6, 2008, and the implementing federal regulation published November 14, 2008 (73 Federal Register 67651) require federal contractors, beginning September 8, 2009, to insert a clause into their federal contracts on the use of E-Verify. Under the final rule, UC (as a federal contractor), along with other Institutions of Higher Education, is required to enroll in E-Verify when awarded a federal contract or subcontract that requires participation in E-Verify as a term of the contract.

The federal contracts that will contain the E-Verify clause will be those meeting all of these criteria:

- Solicitation issued, or contract awarded, or IDIQ contract bilaterally amended, on or after 9/8/2009; and
- Value above \$100,000; and
- Performance period longer than 120 days; and
- Performance to take place in the United States

Subcontracts that will have a flow-down of the prime contract's E-Verify clause will be those subcontracts meeting both of these criteria:

- Subcontract is for services or construction; and
- Value above \$3,000.

The work eligibility of those newly hired and existing employees hired after November 6, 1986 assigned to a qualified covered federal contract and/or subcontract that contains the E-verify clause will need to submit to the E-Verify process. Other employees, i.e., those not assigned to a federal contract/subcontract with the E-Verify clause, will not be E-Verified. Although federal contractors and subcontractors have the option of verifying their entire workforce, including those not assigned to a federal contract, UC will use E-

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Verify to the extent required by law, but will not adopt its use for optional E-Verifications.

When are we required to enroll in E-Verify?

A UC location that has been awarded a covered federal contract or subcontract, that contains the E-Verify clause, will need to enroll in E-Verify within 30 days of the award/amendment of the contract. There is then a 90 day phase-in period in which the University has to initiate E-Verify on each new hire assigned to the federal contract/subcontract. By the end of the 90 day period or within 30 days of being assigned to the qualifying federal contract, whichever is later, the E-Verify process must be initiated on each existing employee assigned to the contract.

Are we required to notify job applicants and employees of our participation in E-Verify?

Each UC location is required to post the notice provided by DHS indicating participation in the E-Verify program as well as the anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice. Once a location is enrolled in E-Verify and able to log into the E-Verify online system, the required notices can be printed out from the “On-line Resources” section. These postings must appear in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system. It is also advisable to reproduce the posters electronically for display on web pages used by job applicants.

Which employees must be verified through the E-Verify system?

As a federal contractor participant in E-Verify that is an institution of higher education, UC is required to use E-Verify for all new or existing employees hired after November 6, 1986 assigned to a federal contract with the E-Verify clause, or to a subcontract for which the prime contract contains the E-Verify clause. EXCEPTIONS:

- Employees assigned to a qualified contract/subcontract who UC has already verified through E-Verify should not be re-E-Verified.
- Employees assigned to a qualified contract/subcontract who have an active federal agency HSPD-12 credential or who have been granted and hold an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual do not need to be E-Verified.

E-Verify Frequently Asked Questions

What is the definition of an “employee assigned to the federal contract”?

The rule defines an “employee assigned to the federal contract” as any employee hired after November 6, 1986, who is directly performing work in the United States under a contract that includes the clause committing the contractor to use E-Verify.

An employee is not considered to be directly performing work under the contract if the employee normally performs support work, such as indirect or overhead functions, and does not perform any substantial duties under the contract.

An employee who directly performs work on a contract for only a minimal amount of time is still subject E-Verify. The rule does not exempt employees based on the intermittent nature of the work or the length of time spent performing the work.

What is the role of the E-Verify General User?

The E-Verify General User is the individual at the hiring department level responsible for handling the appropriate hiring forms in the employment hiring process on behalf of the hiring department, including the processing of the Form I-9. E-Verify General Users will be responsible for performing the online E-Verify queries in determining the new hire’s or existing employee’s work eligibility.

How does the E-Verify General User register for participation in E-Verify?

As soon as DHS updates the E-Verify online enrollment process to accommodate enrollment by federal contractors and, in particular, federal contractors that are Institutions of Higher Education, you can register for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, it is advised that the Chancellor/Lab Director or a senior-level administrator who has signature authority for their location sign the MOU that provides the terms of agreement between the UC location the SSA, and USCIS.

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

Using an automated system, the process involves verification checks of SSA and DHS databases.

Can one E-Verify General User verify all new hires subject to E-Verification across all departments?

Yes, but this is not required. If the location has a centralized process for I-9 documents for all hires at that location, it may be appropriate for one E-Verify General User to perform E-Verifications for that location. By contrast, locations with a decentralized I-9 process may find it more appropriate to have each E-Verify General User verify hires for his/her respective department.

E-Verify Frequently Asked Questions

When does the E-Verify General User initiate an E-Verify query?

The earliest is after the employee accepts employment and after the Form I-9 has been completed. The E-Verify General User must initiate the query no later than the end of three (3) business days after the actual start date. The query may also be initiated before a new hire's actual start date; however, 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 addition, an employer cannot use an employment authorization response to speed up an employee's start date. This would be unfair treatment to use E-Verify results to accelerate employment for this employee compared to another who may have received a tentative non-confirmation.

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 characteristic that is prohibited by U.S. law.

What information is required to conduct a verification of a new employee?

The E-Verify General User must submit a query that includes information from Sections 1 and 2 of the Form I-9, including: employee's name and date of birth; social security number; citizenship status attested to; an A number or I-94 number if applicable; type of document(s) provided on the Form I-9 to establish work authorization; and proof of identity and its expiration date, if applicable. The E-Verify system will respond to the initial query within seconds. Please note that the identification documents presented for I-9 purposes must contain a photograph.

Does E-Verify certify the immigration status of a new hire who is not a U.S. citizen?

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

What should the E-Verify General User do if our new employee does not have a Social Security Number (SSN)?

The E-Verify system requires that the new employee have a valid SSN, and there are no exceptions. If your employee has completed the I-9 process with acceptable evidence of identity and employment eligibility, but does not yet have an SSN, you should wait until s/he obtains a SSN before running the E-Verify query. You should note on the Form I-9 why you have not yet run the E-Verify query, and your employee should be instructed to provide you with the new SSN as soon as possible. In the meantime, because you will have completed the I-9 process with that new employee to verify work authorization, your employee is allowed to work temporarily without the SSN or the E-Verify system result.

E-Verify Frequently Asked Questions

What documentation do you need to keep indicating that you initiated a query in E-Verify for a new hire?

If employment eligibility is confirmed by the E-Verify system, the E-Verify General User will receive an E-Verify response as "confirmation" and should print and retain this record with the Form I-9.

Does E-Verify require that you make copies of documents presented for I-9 purposes?

The E-Verify system requires employers to make and attach copies of Permanent Resident Cards and Employment Authorization Cards but only if they are presented by the new employee as their freely chosen documents for completion of Section 2 of the Form I-9. E-Verify does not require that copies of any other employee documents be made or kept.

What do you do when the employee's query receives a SSA or DHS "Tentative Non-confirmation" result?

When this occurs, the E-Verify General User should print out the "Notice" and provide this information to the employee, who can contest or not contest the information. If the employee contests the tentative non-confirmation, print the "Referral" that instructs the employee to contact SSA or DHS within eight federal government work days. It is the employee's responsibility to follow up in attempting to resolve the tentative non-confirmation status. The E-Verify General User will receive updates on the employee directly from the E-Verify system. However, if the employee chooses not to contest the Tentative Non-confirmation, or if the employee contests but this results in a "Final Non-confirmation," appropriate personnel action should be taken following consultation with your Academic Personnel Director/Chief Human Resource Officer, and the E-Verify Program Administrator at your location who will serve in a lead role to resolve any discrepancies related to E-Verify process.

If a foreign national – or a U.S. citizen – has a one-word legal name (meaning, not a "first" name + "last" name), how do you enter it into the E-Verify system?

When the employee only has one legal name, enter "unknown" into the "first name" block, and the one legal name into the "last name" block. If the employee only has one initial for a first name, enter a period after the initial in the "first name" block.

How can I find out more information about E-Verify?

To find out more information about the E-Verify system, visit www.dhs.gov/e-verify. In addition, you may also call E-Verify Customer Support at 1-888-464-4218. The E-Verify web site was to be updated on E-Verify procedures and requirements, in particular, for federal contractors that are Institutions of Higher Education.