



EMPLOYMENT ELIGIBILITY VERIFICATION (I-9 and E-Verify) POLICY AND PROCEDURES	
Policy #: To be assigned.	Authority: 8 CFR 274A of the Immigration and Nationality Act (INA); Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note).
Effective Date: January 13, 2021	Supersedes: N/A
Application: Executive Branch Agencies	Signature: 

1. POLICY PURPOSE STATEMENT

The United States Citizenship and Immigration Services (USCIS) requires employees to provide identification and proof of their authorization to work in the United States via the Form I-9. This policy governs the completion, filing, retention, and disposal of the State of Delaware (State) Executive Branch agencies’ Forms I-9 for all employees.

As an E-Verify employer, the State will provide the Social Security Administration (SSA) and, if necessary, the Department of Homeland Security (DHS) with information from each new employee’s Form I-9 to confirm work authorization.

2. SCOPE

This policy and procedures apply to all newly hired employees at Executive Branch agencies.

3. DEFINITIONS AND ACRONYMS

- a. DHS – U.S. Department of Homeland Security
- b. EAD – Employment Authorization Document
- c. E-Verify – a program that electronically confirms an employee’s eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification.
- d. E-Verify HR Representative – an Agency HR representative who has been authorized by the Department of Human Resources (DHR) Central to process E-Verify queries for their designated Agency. Such authorization is obtained upon designation of access to

- the E-Verify system and successful completion of the Federally mandated E-Verify tutorial.
- e. E-Verify Program Administrator – A DHR Central employee who is responsible for following all E-Verify program rules and staying informed of changes to E-Verify policies and procedures.
 - f. FNC – Final Non-Confirmation
 - g. Form I-9 – a Federal form used to verify the identity and employment authorization of individuals hired for employment in the United States (U.S.). All U.S. employers must ensure proper completion of the Form I-9 for each individual hired for employment in the U.S.
 - h. ICE – U.S. Immigration and Customs Enforcement
 - i. INA – Immigration and Nationality Act
 - j. MOU (Memorandum of Understanding) - An agreement between the DHR and the State or a State Agency that sets forth terms and conditions which the State will follow while participating in E-Verify.¹
 - k. Rehire – An individual who previously worked for the State and who separated (i.e., resignation, termination) with a break in service, and who is subsequently hired again.
 - l. Reverification – Employment authorization must be reverified when certain documents expire. Some examples: Employment Authorization Documents (EADs), Temporary I-551 stamps/notations. Reverification is done through the Form I-9 Section 3.
 - m. SSA – Social Security Administration
 - n. SSN – Social Security Number
 - o. TNC – Tentative Non-Confirmation
 - p. USCIS – United States Citizenship and Immigration Services

4. POLICY

- a. In compliance with the Federal law, the State must verify the identity and employment authorization of each person hired.
- b. The State shall not discriminate against individuals on the basis of national origin or citizenship.
- c. The State has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees or from other requirements of applicable regulations or laws.
- d. The State is an E-Verify employer. E-Verify shall be used for all new hires, both U.S. citizens and noncitizens, and shall not be used selectively.

¹ The Department of Homeland Security requires each employer to enter into a Memorandum of Understanding in order to use E-Verify services.

- e. E-Verify shall not be used to prescreen applicants for employment or to reverify employees who have temporary employment authorization.
- f. The State shall not terminate or take any adverse employment action against an employee based on a Temporary Non-Confirmation (TNC) or while Social Security Administration (SSA) or Department of Homeland Security (DHS) is processing the verification request unless the employer obtains knowledge (*as defined in 8 C.F.R. § 274a.1(l)*) that the employee is not work authorized.
- g. The State shall display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
 - 1) Notice of E-Verify Participation
 - 2) Notice of Rights
- h. The Form I-9 and E-Verify process cannot be completed until an offer has been extended and accepted. Newly hired employees must complete and sign Section 1 of the Form I-9 after acceptance of the offer of employment but no later than the close of business of his/her first day of work for pay. Within three (3) business days of the date employment begins, the employee must present an original document or documents (or an acceptable receipt) to their Agency HR representative that shows the employee's identity and employment authorization.
- i. Agency HR representative must complete a new Form I-9 for ALL new hires. This includes completing a new Form I-9 for rehires or those who have previously worked for the State, regardless of the length of break in service. An employee who is on leave but has a reasonable expectation of continued employment is not considered a rehire upon return.
- j. Agency HR representative **cannot** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may constitute illegal discrimination.
- k. Employees are responsible for informing their Agency HR representative of any changes that may affect the information contained on their Form I-9. Agency HR representative will update Forms I-9 to maintain accurate information. If an employee informs their Agency HR representative of changes, Agency HR representative requires that employee present original documentation to show the reason for the change or misinformation on their current Form I-9. Changes must be well documented in this manner in case of a government audit.
- l. The State is committed to employing a legal workforce. Any violations identified in government audits of Forms I-9, supporting documentation, and E-Verify data can

result in substantial fines, criminal penalties and even the possibility of debarment from Federal contracts. It is critical that employment verification is conducted in accordance with the policy and procedures outlined.

- m. Agencies must designate authorized E-Verify HR representatives, who will be granted E-Verify access to create E-Verify cases. Employers must promptly terminate an employee’s E-Verify access if the employee is separated from the company or no longer needs access to E-Verify.²
- n. Agencies must assure that E-Verify HR representatives complete the E-Verify Tutorial before creating any cases, and that these representatives take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the E-Verify HR representative from continued use of E-Verify.
- o. Failure to comply with this and related policies by the E-Verify HR representative or the employee is subject to disciplinary action, up to and including suspension without pay or termination of employment, in accordance with applicable disciplinary measures.
- p. Due to precautions implemented by employers and employees related to physical proximity associated with COVID-19, DHS provided guidance that it will exercise discretion to defer the physical presence requirements associated with the Employment Eligibility Verification (Form I-9) under Section 247A of the Immigration and Nationality Act. Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee’s identity and EADs in the employee’s physical presence. However, employers must inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2. Employers also should enter “COVID-19” as the reason for the physical inspection delay in the Section 2 Additional Information field **once physical inspection takes place after normal operations resume**. Once the original documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 Additional Information field on the Form I-9, or to Section 3 as appropriate. These provisions may be implemented by employers for a period of 60 days from the date of this notice OR within three (3) business days after the termination of the National Emergency, whichever comes first.

Employers who avail themselves of this option must provide written documentation of their remote onboarding and telework policy for each employee. This burden rests

² As of the effective date of this policy and the State’s MOU, agencies with existing E-Verify MOUs will continue to comply with their individual MOU. Any Agencies without an individual E-Verify MOU will comply with the State’s E-Verify MOU.

solely with the employers. Once normal operations resume, all employees who were onboarded using remote verification must report to their employer within **three (3) business days** for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification.

Once the original documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 Additional Information field on the Form I-9, or to Section 3 as appropriate.

Any audit of subsequent Forms I-9 would use the “in-person completed date” as a starting point for these employees only.

This provision only applies to employers and workplaces that are operating remotely. If there are employees physically present at a work location, *no exceptions* are being implemented at this time for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification. However, if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, DHS will evaluate this on a case-by-case basis. Additionally, employers may designate an authorized representative to act on their behalf to complete Section 2. An authorized representative can be any person the employer designates to complete and sign the Form I-9 on their behalf. The employer is liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on the employer’s behalf.

DHS continues to monitor the ongoing National Emergency and will provide updated guidance as needed. This temporary guidance will remain in effect until DHS rescinds it or the National Emergency has been lifted. Employers are required to monitor the DHS and ICE websites for additional updates regarding when the extensions will be terminated, and normal operations will resume.³

5. PROCEDURES ASSOCIATED WITH THIS POLICY

- a. **After employment has been offered and accepted**, the employee must complete and sign Section 1 of the Form I-9 on or before the close of business of his/her first day of work for pay. As an E-Verify employer, newly hired employees **must** provide their Social Security Number (SSN). Agency HR representative must ensure that the employee **fully and properly** completes Section 1. Employees must choose and present acceptable original documents within three (3) business days of the date employment begins. If applicable, see also Procedure 5e, and Procedure 5f.

³ <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>;
<https://www.ice.gov/news/releases/ice-announces-extension-i-9-compliance-flexibility-0>

- If a newly hired employee has applied for but has not yet received an SSN (for example, the employee is a newly arrived immigrant), attach an explanation to the employee's Form I-9 and continue to monitor the status of the employee's receipt of SSN. Allow the employee to continue to work and create a case in E-Verify using the employee's SSN as soon as it is available. If the case was not created by the third (3rd) business day after the employee started work for pay, indicate the reason for this delay. The E-Verify HR representative may choose a reason from the drop-down list or state a specific reason in the field provided.
- b. The Agency HR representative must review the employee's original, unexpired documents and complete and sign Section 2 within three (3) business days of the employee's first day of work for pay (i.e., work begins Monday, Section 2 must be completed no later than Thursday). If employment is for less than three (3) days, Section 2 must be completed by the close of business on the first day of work for pay. The Date of Hire indicated in this section (i.e., "employee began employment on _____") is the date that the employee actually begins work for pay. The employee may either present one document from List A, OR a combination of one document from List B and one document from List C. HR must certify that the employee's original documents of identity and employment eligibility reasonably appear on their face to be genuine and relate to the employee. Note that HR may accept Employment Authorization Documents (Forms I-766) and Permanent Resident Cards (Forms I-551) that appear to be expired on their face but have been extended by USCIS. Some documents, such as birth certificates and Social Security cards, do not contain an expiration date and should be treated as unexpired. (See [USCIS M-274 I-9 Handbook](#).) If applicable, see Procedure 5f.
- c. The Agency HR representative must complete Section 3 of the Form I-9 when it is necessary to update or reverify an employee's work authorization. Reverification must be completed no later than the date employment authorization expires. The employee must present an original document that shows current employment authorization, such as any document from List A or C, including an unrestricted Social Security card. A restricted Social Security card is not acceptable, and the Agency HR representative must ask the employee to provide a different document from List A or C. The Agency HR representative can also accept certain receipts for reverification; see the Acceptable Receipts table Section 4.3 in the [USCIS M-274 I-9 Handbook](#) for more information. Employment cannot continue for an employee who does not provide proof of current employment authorization. If Section 3 has been completed for a previous reverification or update, use Section 3 of a new Form I-9. Agency HR representative must also complete Section 3 of a new Form I-9 if the form used for the previous verification is no longer valid. Please check uscis.gov/i-9 for the current Form I-9. Section 3 must also be completed when an employee has a name change. Reverification is not required for U.S. citizens or noncitizen nationals. Reverification is also never required when the following documents expire: U.S. passports, U.S. passport cards, Forms I-551 (Alien Registration Receipt Cards/Permanent Resident Cards, which are

also known as Green Cards), and List B documents. Employees with expiring immigration status, employment authorization, or EADs should have the necessary application or petition filed well in advance to ensure they maintain continuous employment authorization and/or valid documents. When completing a Form I-9 to reverify, use the reverification functionality in the electronic I-9 system. If completing the reverification on paper for a work authorization update, write “**REVERIFICATION**” across the top left of a blank Form I-9 and enter the employee’s name only in Section 1. Complete Section 3 of the form. Section 2 remains blank. In the case of an employee’s name change only, write “**NAME CHANGE**” across the top left of the new form and enter the employee’s former name only in Section 1. Enter the employee’s new name only in Section 3; sign and date Section 3. Section 2 remains blank. *If applicable, see Procedure 5f.* **Note:** An individual can be reverified on Form I-9 multiple times as needed but may be E-Verified only once.

- d. If Agency HR representative chooses to copy or scan documents an employee presents when completing a Form I-9, Agency HR representative must retain the copies with their Form I-9 or their personnel file. As an E-Verify employer, the Agency HR representative must copy the following List A documents used as part of photo matching: U.S. Passport; U.S. passport card; Form I-551, Permanent Resident Card; and Form I-766, Employment Authorization Document. Making photocopies of an employee’s documents does not take the place of completing a Form I-9. Even if Agency HR representative retains copies of documents, it is a requirement to fully complete and retain the Form I-9. Copies or electronic images of the employee’s documents must be retrievable consistent with DHS’s standards on electronic retention, documentation, security, and electronic signatures for employers and employees, as specified in 8 *CFR* 274a.2(b)(3). Copies or electronic images of the employee’s documents must be made available at the time of a Form I-9 inspection by DHS or any other Federal government Agency.
- e. In the event that an employee’s appointment will begin on a weekend or a holiday, every effort should be made to complete the Form I-9 prior to his/her first day of work for pay (as long as it is after the employee has accepted the job offer). When completing the Form I-9 in advance is not practicable, a consistent procedure should be adhered to for employees who meet all the following criteria:
- Appointment and first day of work for pay begin on a Saturday, Sunday, or holiday; and
 - No administrative personnel are present on the employee’s first day of work for pay; and
 - The employee does not have internet access to complete Section 1 online prior to his/her first day of work for pay.

In these instances, Section 1 may be signed and dated on the first business day after the employee’s first day of work for pay. The Section 2 Hire Date must always reflect the actual date the employee began work for pay. Agency HR representative must review the employee’s original documents and complete and sign Section 2 by the end of the

third (3rd) business day. Just as every effort should be made to complete the Form I-9 prior to an employee's first day of work for pay when that first day occurs on a weekend or holiday, every effort should be made to complete Section 2 of the Form I-9 in such cases as close in time as possible to the completion of Section 1.

- f. Once the E-Verify HR representative submits an employee's Form I-9 information via an E-Verify query, the E-Verify system will return one of the following results:
- Employment Authorized – An Employment Authorized result indicates the employee is authorized to work.
 - Employment Authorized, Request Name Review – In some cases, the name returned in E-Verify does not match exactly with the name on the Form I-9. The E-Verify HR representative must determine if a name review is required and must reach out to the E-Verify Program Administrator. The E-Verify Program Administrator must request the DHS to review the variation to ensure the case result belongs to the intended employee.
 - Review and Update Employee Data – SSA has found a discrepancy in the information it received on the E-Verify referral. This generally means typographical errors and/or incorrect information in the Form I-9. The E-Verify HR representative will coordinate review of the Form I-9 with the employee, correction of information and updating the case.
 - DHS Verification in Process – Information provided did not match DHS records. The case is automatically referred to DHS for further verification. The E-Verify HR representative will check E-Verify **daily** for a follow-up response.
 - Tentative Non-Confirmation (TNC) – The E-Verify HR representative will advise the employee of the TNC status **in private**. An employee shall be allowed the option to continue working while resolution of a TNC is pending. **It is unlawful to take any adverse action against an employee who has received a TNC based on the employee's decision to contest a TNC or because the case is still pending with the government.** Employee requests for time off to resolve a TNC are handled pursuant to existing policies for approved leave or time off. Normally, a TNC can be resolved by phone call to the appropriate Federal Agency.
 - Case in Continuance – The employee has visited an SSA field office or contacted DHS, but more time is needed to determine a final case result. The E-Verify HR representative will check E-Verify periodically (at least once a week – more often if possible) for an update in the case result.
 - E-Verify Final Non-Confirmation (FNC) – If an employee receives an FNC from E-Verify, the following steps will be taken:
 - 1) The E-Verify HR representative will advise the employee of the FNC status **in private**.
 - 2) The E-Verify HR representative will notify the DHR E-Verify Administrator or the employee's supervisor as appropriate.

- 3) If a candidate was conditionally hired based on the FNC, s/he will NOT have successfully become a State employee. However, if the candidate worked at any time, s/he shall be compensated for that time worked.
- g. Electronically Signing Form I-9: If the Form I-9 is completed electronically using an electronic signature, the system for capturing electronic signatures must:
- Allow individuals to acknowledge that they read the attestation;
 - Attach the electronic signature to an electronically completed Form I-9;
 - Affix the electronic signature at the time of the transaction;
 - Create and preserve a record verifying the identity of the person producing the signature;
 - Upon the employee's request, provide a printed confirmation of the transaction; and
 - Include a method to acknowledge that the Agency HR representative have attested to the required information in Section 2.

If choosing to use an electronic signature to complete Form I-9 but do not comply with these standards, DHS will determine that the Form I-9 was not properly completed and are in violation of section 274A(a)(1)(B) of the INA (8 CFR Part 274a.2(b)(2)).

- h. Self-Audits and Correcting Mistakes: If Agency HR representative discovers an error in Section 1 of the Form I-9, Agency HR representative should ask the employee to correct the error. Only employees may correct errors or omissions made in Section 1. To correct the form, have the employee: draw a line through the incorrect information; enter the correct or missing information; and, initial and date the correction. Agency HR representative must attach a written explanation of why information was missing or needed correcting. An Agency HR representative may only make corrections in Section 2 or 3. To correct an error or missing information, the Agency HR representative must: draw a line through the incorrect information; enter the correct or missing information; and initial and date the correction or missing information. The Agency HR representative must attach a written explanation of why information was missing or needed correcting. If no date is entered when Section 2 and/or 3 was completed, Agency HR must not back date the form. Instead, enter the current date and initial by the date field. To correct multiple errors in one section, the Agency HR representative may redo the section on a new Form I-9 and attach it to the old form. A new Form I-9 can also be completed if it contains major errors (such as entire sections that were left blank or if Section 2 was completed based on unacceptable documents). The Agency HR representative must attach a written explanation to the employee's Form I-9 describing why changes were made to an existing Form I-9 or why a new Form I-9 was created. If changes were made on the form, do NOT conceal them by, for example, erasing text or using correction fluid. Doing so may lead to increased liability under Federal immigration law. If these types of changes were made, it is recommended that a signed and dated written explanation for the changes be attached to the Form I-9.

6. EXCLUSIONS OR EXCEPTIONS

This policy does not confer a term of employment, nor is the language intended to establish a contract of employment, express or implied, between any employee and the State.

As of the effective date of this policy and the State’s MOU, agencies with existing E-Verify MOUs will continue to comply with their individual MOU.

7. DISSEMINATION AND TRAINING

The State shall add the Notice of E-Verify Participation and Notice of Rights on the main recruitment page www.delawarestatejobs.com. Agency HR representative office shall include E-Verify conditional hire information on an employee’s initial offer letter.

8. DATA REQUIREMENTS/REPORTING

Agencies may retain Forms I-9 on paper or electronic system, or a combination of both. Agencies must retain Forms I-9 for three (3) years after the date of hire or one (1) year after the date the individual’s employment is terminated, whichever is later. Photocopies or faxed copies of completed Forms I-9 are not acceptable to meet this retention requirement.

Employers may choose to scan and upload the original, signed form, correction or update, and retain it electronically. Once these Forms I-9 are securely stored in electronic format, the original paper Form I-9 may be destroyed. Employers must follow USCIS published guidance on retaining and storing Forms I-9. Copies or electronic images of documents must be retrievable consistent with DHS’s standards on electronic retention, documentation, security, and electronic signatures for employers and employees, as specified in 8 *CFR* 274a.2(b)(3).

9. ASSOCIATED POLICY/REGULATIONS/INFORMATION

[E-Verify Notice of Participation \(English/Spanish\)](#)

[E-Verify Notice of Rights](#)

[E-Verify User Manual](#)

[IER Right to Work Poster \(English/Spanish\)](#)

Immigration and Nationality Act of 1952 (INA)

Immigration Reform and Control Act of 1986 (IRCA)

Immigration Act of 1990

[U.S. Citizenship and Immigration Services \(USCIS\) M-274 Handbook for Employers](#)

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10. FORMS ASSOCIATED WITH THIS POLICY

- [Form I-9 and List of Acceptable Documents](#)
- [Form I-9 Supplement, Section 1 Preparer and/or Translator Certification](#)
- [Instructions for Form I-9](#)
- [Instructions for Form I-9 in Spanish](#)

This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.