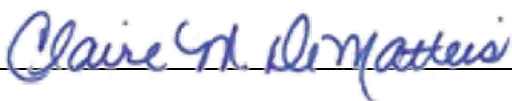




EMPLOYMENT ELIGIBILITY VERIFICATION (I-9 and E-Verify) POLICY AND PROCEDURES - Statewide	
DHR-STW-Policy #: To be assigned.	Authority: 8 CFR 274A of the Immigration and Nationality Act (INA); Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note).
Effective Date: September 22, 2023	Revision Date: September 22, 2023
Supersedes: January 13, 2021	Signature: 
Application: Executive Branch Agencies	

### 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. In addition to the I-9 process, the State of Delaware (State) utilizes E-Verify, to electronically confirm the employment eligibility of new hires. This policy governs the completion, filing, retention, and disposal of the State Executive Branch agencies' Forms I-9 and the E-Verify process for all employees.

### 2. Scope

This policy and procedures apply to all newly hired employees at Executive Branch agencies. Elected Agencies and Judiciary Members may elect to enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) and use E-Verify; and to adopt and administer this policy at their offices and with their employees.

### 3. Definitions and Acronyms

- **Authorized Representative** - Any person, besides the designated HR representative, that an agency designates to complete and sign Form I-9 on the employer's behalf. Agencies are liable for any statutory and regulatory violations made in connection with the form or the verification process, including any violations committed by any individual designated to act on the agency's behalf.
- **DHS** – U.S. Department of Homeland Security.
- **EAD** – Employment Authorization Document.
- **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.
- **E-Verify DHR Representative** – An Agency DHR 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-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. The Program Administrator can create and unlock user accounts, view reports, create cases, and update account information.
- **FNC** – Final Non-Confirmation occurs when E-Verify cannot confirm an employee's employment eligibility.
- **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 (or authorized representatives of the employer) and employees must properly complete the Form I-9 for each individual hired for employment in the U.S.
- **ICE** – U.S. Immigration and Customs Enforcement.
- **INA** – Immigration and Nationality Act.
- **MOU** (Memorandum of Understanding) - An agreement between the DHR/Executive Branch Agencies and the Department of Homeland Security (DHS) that sets forth terms and conditions that the State will follow while participating in E-Verify.<sup>1</sup>
- **Qualified Employer/Agency**- Those who participate and are in good standing with E-Verify.
- **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.
- **Reverification** – Employment authorization must be reverified when certain documents expire. Some examples are employment Authorization Documents (EADs) and temporary I-551 stamps/notations. Reverification is done through the Form I-9 Supplement B.
- **SSA** – Social Security Administration.
- **SSN** – Social Security Number.
- **Tentative Non-Confirmation (Mismatch)**- occurs when information an employer entered in E-Verify from the Form I-9, Employment Eligibility Verification, did not match records available to DHS and or SSA.
- **USCIS** – United States Citizenship and Immigration Services.

#### **4. Policy**

- a. In compliance with Federal law, each agency must complete Form I-9 to verify the identity and employment authorization of each person hired.
- b. An agency may designate an authorized representative to complete and sign Form I-9 on the agency's behalf. The agency is liable for any statutory and regulatory violations made in connection with the form or the verification process, including any violations committed by any individual designated to act on the agency's behalf.
- c. The Executive Branch 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. E-Verify shall not take the place of completing the Form I-9.

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

- d. Discrimination against individuals on the basis of national origin or citizenship is a violation of this policy and other applicable federal and state laws. E-Verify shall not be used to prescreen applicants for employment or to reverify employees who have temporary employment authorization.
- e. Each agency shall complete, retain, and make available for inspection Forms I-9 that relate to its employees or for other requirements of applicable regulations or laws.
- f. 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 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. Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C of the list of acceptable documents. Examples of these documents appear in the [Handbook for Employers \(M-274\)](#).
- g. The agency must honor an employee's request to perform the document verification in person. An employee might make this request if, for example, they have concerns over the security of transmitting their personal documents electronically.
- h. The Agency DHR or authorized 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 the break in service. An employee who is on leave but has a reasonable expectation of continued employment is not considered a rehire upon return.
- i. When an employee moves from one agency to another the employing agency must have the employee complete a new I-9 Form, provide supporting information, and complete the E-Verify process.
- j. A qualified agency may choose to offer the alternative procedure for remote hires only but continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity, so long as the employer does not adopt such a practice for a discriminatory purpose.
- k. Each agency 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
- l. An Agency DHR or authorized 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 a violation of federal and/or state laws. E-Verify participants

may accept any document or combination of documents from the Lists of Acceptable Documents on Form I-9, but if the employee chooses to present a List B and combination, the List B (identity only) document must have a photograph.

- m. Agencies shall not terminate or take any adverse employment action against an employee based on a Temporary Non-Confirmation (Mismatch 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.
- n. Employees are responsible for informing their Agency DHR representative of any changes that may affect the information contained on their Form I-9. The Agency DHR representative will update the Form I-9 to maintain accurate information. If an employee informs their Agency DHR representative of changes, the employee is required to 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.
- o. 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 law and the provisions of this Policy and procedures.
- p. Executive Branch Agencies shall designate authorized E-Verify DHR representatives, who will be granted E-Verify access to create E-Verify cases. Agencies shall promptly terminate an employee's E-Verify access if the employee is separated from the company or no longer needs access to E-Verify.<sup>2</sup>
- q. Agencies shall confirm that E-Verify DHR 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 DHR representative from continued use of E-Verify.
- r. As of July 1, 2023, the COVID-19 temporary flexibilities for Form I-9, Employment Eligibility Verification concluded. All employees who were onboarded using remote verification must provide their employer by August 30, 2023, verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification. Employers are required to complete an in-person physical inspection **or** examine documents consistent with an alternative procedure authorized by the Secretary of DHS, of identity and employment authorization documents and annotate Form I-9 accordingly for employees whose documents were inspected remotely during the temporary flexibilities by August 30, 2023. This provision **only applied** to employers and workplaces that were operating remotely. If there were employees physically present at a work location, no exceptions were

<sup>2</sup> 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.

implemented for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification.

- s. Once the original documents have been physically inspected **or** examined consistent with an alternative procedure authorized by the Secretary of DHS, the employer should add “documents physically examined **or** examined consistent with an alternative procedure authorized by the Secretary of DHS” with the date of inspection to the Section 2 Additional Information field on the Form I-9 or to Supplement B as appropriate. Any audit of subsequent Forms I-9 would use the “in-person completed date” as a starting point for these employees only.
- t. Failure to comply with this and related policies by the Agency DHR representative, E-Verify DHR 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.

## 5. Procedures

- 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. The Agency DHR representative must verify that the employee **fully and properly** completes Section 1. You may designate an authorized representative to act on your behalf to complete Section 2. Employees must choose and present acceptable original documents within three (3) business days of the date employment begins to be reviewed physically or examined consistent with an alternative procedure authorized by the Secretary of DHS.

Additionally, as an E-Verify employer, newly hired employees **must** provide their Social Security Number (SSN). 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 (3<sup>rd</sup>) business day after the employee started work for pay, indicate the reason for this delay. The E-Verify DHR representative may choose a reason from the drop-down list.

- b. The Agency DHR or authorized representative must review the employee’s original, unexpired documents in the physical presence of the employee or examine them consistent with an alternative procedure authorized by the Secretary of DHS, 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 of that week). 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. The Agency DHR or authorized representative, 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 DHR or the authorized representative 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. Documents extended by the issuing authority are considered unexpired. 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](#).)

- c. To examine documentation remotely, consistent with an alternative procedure authorized by the Secretary of DHS, the following steps must be followed:
- Examine copies transmitted by the employee (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt to validate that the documentation presented reasonably appears to be genuine;
  - Conduct a live video interaction with the individual presenting the document(s) to confirm that the documentation reasonably appears to be genuine and related to the individual. The employee **must first transmit a copy of the document(s) to the Agency DHR or authorized representative** (per Step 1 above) and then present the same document(s) during the live video interaction. During the live video interaction, the employer will watch as the employee completes Section 1 of Form I-9. The employee will then upload and send the form to the representative conducting the video interaction.
  - Indicate on the Form I-9, by completing the corresponding box, that an alternative procedure was used to examine documentation to complete Section 2 or for reverification in Supplement B, as applicable; and
  - Retain, consistent with applicable regulations, a clear and legible copy of all the documentation presented by the employee seeking to establish identity and employment eligibility for the Form I-9 (front and back if the documentation is two-sided).
  - In the event of a Form I-9 audit by a federal government official, make available the clear and legible copies of the identity and employment authorization documentation presented by the employee for document examination in connection with the employment eligibility verification process.
- d. The Agency DHR or authorized representative, must complete Supplement B 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 DHR or authorized representative must ask the employee to provide a different document from List A or C. The Agency DHR or authorized representative can also accept certain receipts for reverification; see the Acceptable Receipts table Section 4.4 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 Supplement B has been completed for a previous reverification or update, use Supplement B of a new Form I-9. Agency DHR or an authorized representative must also complete Supplement B of a new Form I-9 if the form used for the previous verification is no longer valid and attach it to the previously completed I-9 Form. Please check [uscis.gov/i-9](https://uscis.gov/i-9) for the current Form I-9. Supplement B must also be completed when an employee has a legal name change. Reverification is not required for U.S. citizens and noncitizen nationals, or lawful permanent residents (including conditional residents) who presented a Permanent Resident Card (Form I-551) or other employment authorization

documentation that is not subject to reverification (such as an unrestricted Social Security card). Reverification does not apply to List B documentation. Reverification may not apply to certain noncitizens. See the M-274 for more information about when reverification may not be required. Employees with expiring immigration status, employment authorization, or EADs should have the necessary application or petition filed well in advance so they maintain continuous employment authorization and/or valid documents. Review the Form I-9 instructions before completing Supplement B. Additional guidance can be found in [the Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) *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.

- e. If the Agency DHR or authorized representative chooses to copy or scan documents an employee presents when completing a Form I-9, the representative must retain the copies with their Form I-9 or the Administrative section of their personnel file. As an E-Verify employer, Agency DHR or an authorized 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 DHR 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.
- f. Once the E-Verify DHR 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** – The employee's information matched records available to SSA and/or DHS. After receiving the Employment Authorized status. In some cases, E-Verify issues a case result of Employment Authorized, but the name returned in E-Verify does not match exactly the name on Form I-9. This happens when the information matches, but there are name variations in DHS records. In this case, request a review of the employee's name so E-Verify can issue a final case result. To request a name review, follow the steps outlined in the [Request Name Review - Process Overview](#). **IMPORTANT:** Do not use this functionality in a discriminatory manner (e.g., based on an individual's race, national origin or ethnicity)
  - **E-Verify Needs More Time** - The case was referred to DHS for further verification. **The agency may not terminate or take adverse action against an employee because of the mismatch while SSA or DHS is reviewing the employee's case.**
  - **Tentative Non-Confirmation (Mismatch)** - Information did not match records available to SSA and/or DHS. Additional Action is required. **Agencies may not terminate or take any other adverse action against an employee (such as denying work, delaying training, withholding pay, or otherwise assuming that he or she is not authorized to work) because of the TNC, until the TNC becomes a Final Non-confirmation. Employee requests for time off to resolve a TNC are handled pursuant to existing policies for approved leave or time off.**
  - **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. **Agencies may not terminate**

**or take any other adverse action against an employee (such as denying work, delaying training, withholding pay, or otherwise assuming that he or she is not authorized to work) until the case result becomes a Final Nonconfirmation**

- Close Case and Resubmit- SSA or DHS requires that you close the case and create a new case for this employee. This result may be issued when the employee's U.S. passport, passport card, or driver's license information is incorrect.
- Final Non-confirmation- E-Verify cannot confirm the employee's employment eligibility after the employee visited SSA or contacted DHS.
- E-Verify Final Nonconfirmation (FNC) – If an employee receives a FNC from E-Verify, the following steps will be taken:
  - 1) The E-Verify DHR representative will advise the employee of the FNC status **in private**.
  - 2) The E-Verify DHR representative will notify the employee's supervisor as appropriate.
  - 3) The E-Verify DHR representative must close the case.
  - 4) 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 Agency DHR or the authorized representative has 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 an error is discovered in Section 1 of the Form I-9, the Agency DHR representative must ask the employee to correct the error. Only employees, or a translator who helped with Section 1 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. A written explanation should be attached to Form I-9 of why information was missing or needed correcting. If the employee's employment has ended, a signed and dated statement identifying the error or omission attach to the existing form and explain why corrections could not be made, for example, the employee no longer works for you. Only Agency DHR (or their authorized representative) may make corrections in Section 2 or Supplement B, Reverification and Rehires. To correct an error or missing information, the Agency DHR or authorized 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 DHR or authorized representative must attach a written explanation of why the



information was missing or needed correcting. If no date is entered when Section 2 and/or Supplement B, Reverification and Rehires, you must not backdate the form. Instead, enter the current date and initial by the date field. To correct multiple errors in one section, the Agency DHR or authorized 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 DHR or authorized 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. If you use an electronic Form I-9, your audit trail should reflect all corrections and additions made to Sections 1 and 2, and Supplements A and B.

## **6. Exclusions or Exceptions**

- a. 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.
- b. As of the effective date of the original policy, January 13, 2021, agencies with existing E-Verify MOUs will continue to comply with their individual MOU.

## **7. Dissemination and Training**

- a. Employees must acknowledge their review of this Policy within 30 days of the request from the Delaware Learning Center. Required policies will be distributed through the Delaware Learning Center (DLC) effective September 11, 2023.
- b. Assigned E-Verify representatives shall complete the E-Verify Tutorial before creating any cases and these representatives shall take the refresher tutorials when prompted by E-Verify.
- c. The State shall add the Notice of E-Verify Participation and Notice of Rights on the [main recruitment page](#). Required E-Verify notices can also be found on the [DHR policy and procedure page](#). Agency DHR offices shall include E-Verify conditional hire information on an employee's initial offer letter.

## **8. Data 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.

Agencies 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](#)

## **10. Appendices and Forms Associated with this Policy**

- [Form I-9 and List of Acceptable Documents](#)
- [Instructions for Form I-9](#)
- [Instructions for Form I-9 in Spanish](#)

## **11. Policy Owner**

- Division Name: Division of Talent Management
- Policy Administrator: Employee Engagement Section
- Website: [DHR - Employee Engagement \(delaware.gov\)](#)

*This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law. If there is a conflict with, i.e., the law or regulation and this policy, the law and/or regulation govern.*