

Appendix A

Response to 60-Day Public Comments:

DHS thanks commenters for sharing their thoughts about the revised E-Verify MOUs. Although most of the comments received by the agency were within the scope of the comment request, some commenters submitted comments that were outside of the scope of this request. Where possible, DHS has responded to those out of scope comments, but only for informational purposes and not for the purpose of evaluating changes to the revised E-Verify MOUs.

Registration and Enrollment Process

One commenter suggested that the Department of Homeland Security (DHS) and Social Security Administration (SSA) make samples of their referral letters and Tentative Nonconfirmation (TNC) notices available before the enrollment process.

Response:

Samples of both DHS and SSA referral letters and TNC notices are available on the E-Verify website, under “Publications” on the left navigation bar. The sample notices and referral letters are also available in various languages.

The commenter suggested that, to improve efficiency, E-Verify allow users who transfer to a different location with the same employer to retain the same user ID.

Response:

DHS agrees with this commenter and will explore ways to implement this suggestion.

The commenter suggested that DHS provide specific instructions or specialized training for users who must convert newly acquired companies that have previously enrolled in E-Verify to the acquiring company’s corporate account.

Response:

E-Verify Customer Support currently assists employers with this process.

DHS agrees with the commenter’s suggestion. DHS intends to provide additional instructions about this process on the E-Verify public website.

The commenter also suggested that DHS provide corporate administrators access to reports in E-Verify that provide activities of all users under their account. These reports should include information such as user ID, type of access, location and last login.

Response:

Much of this information is currently contained in the various E-Verify reports available to corporate administrators. DHS appreciates the commenter's suggestion, however, and will explore creating different reports or adding additional data fields to existing reports available to corporate administrators.

The E-Verify Tutorial

One commenter suggested that DHS create an automatic tutorial waiver process for those users who have already taken the tutorial. The commenter stated that the current process of calling E-Verify to receive a tutorial waiver is time-consuming.

Response:

DHS agrees with the commenter's suggestion and will look into creating an automatic tutorial waiver process.

The commenter further suggested that DHS provide on-demand instructional videos on the E-Verify website.

Response:

DHS provides instructional videos under the "Multimedia" field along the right-hand side of the E-Verify [homepage](#), including "How to Enroll," "How to Create a Case," and "How to Respond to a TNC." You can access other videos online as well on topics like Employee Rights and Responsibilities.

Creating a Case

One commenter suggested that E-Verify remove the drop-down lists for dates and states, as it takes longer to complete those fields than it would to type the information.

Response:

DHS will not adopt this suggestion. Use of drop-down lists increases the accuracy of information that employers enter into E-Verify. DHS has found that increasing the accuracy of information reduces the chances of a tentative nonconfirmation.

The commenter stated that the additional required driver's license information adds a significant amount of time to the overall process of creating a case in E-Verify.

Response:

Employers already enter the driver's license information E-Verify requires on Form I-9 when using a driver's license to verify work authorization, so in these cases the information should be easy for employers to access when entering a case in E-Verify.

Also, DHS has taken steps to further reduce this burden by only requesting driver's license information from the state drivers' licenses that can be verified, currently Mississippi and Florida. Since close to 80 percent of new hires present a driver's license for Form I-9, DHS believes that verifying this information is an important step in E-Verify's anti-fraud measures.

The commenter stated that E-Verify users should be able to enter information into E-Verify in the same order it is presented on Form I-9. For instance, the commenter stated that it would be easier and less confusing if users entered Section 1 information before entering Section 2 information.

Response:

E-Verify requests information in a specific order to reduce the amount of information employers are required to enter into the system. The information the system requires is based on the employment authorization status the employee chose on Form I-9, which reduces employer errors. DHS will, however, consider this suggestion for future releases.

The commenter stated that the photo-matching tool can be time-consuming and burdensome. The commenter also stated that photo matching prevents automation of this part of the process.

Response:

Photo matching happens automatically in E-Verify when a user creates a case using certain employment authorization documents. The tool prompts users to compare the photo on the employee's document to the photo displayed on the E-Verify screen. This tool helps the employer to combat fraud by ensuring the validity of the document the employee presented. DHS believes that this benefit of photo matching outweighs the additional burden of completing this photo-matching process.

The commenter suggested the development of batch processing for employers.

Response:

Employers may enroll in Web Services, which offers an option for automated case processing, or batch processing. DHS will continue to explore additional developments for batch processing within E-Verify.

Responding to Tentative Nonconfirmations (TNCs)

One commenter suggested that DHS permit electronic signature of SSA and DHS referral letters in the E-Verify system instead of requiring the user to print and sign the letters.

Response:

Employers using the browser to access E-Verify cannot do this because the application is user-specific. However, DHS supports this capability for employers using a Web Services interface to access E-Verify.

If a Web Services provider chooses to sign the TNC or FNC notices and the DHS and SSA referral letters electronically, it must ensure that:

- It follows the guidance provided in the Interface Control Agreement (ICA) starting on page 41, section 3.3.3.1.4, relating to the SSA Notice and page 57, section 3.3.3.1.12, relating to the DHS Notice; the system that captures the electronic signature includes a way to acknowledge that the letter or notice to be signed has been read by the person signing; and
- The electronic signature is attached to or logically associated with the electronically completed TNC or FNC notice, DHS or SSA referral letter and the appropriate Form I-9 at the time the letter is signed.

Additionally, the employer must:

- Create and preserve a record verifying the identity of the person producing the signature; and
- Provide a printed copy of the notice or letter to the employee.

Case Resolution

A commenter suggested that it would be helpful to receive e-mails from E-Verify when there has been a change in case status.

Response:

DHS will explore the feasibility of sending e-mails for changes in case status in E-Verify.

Web Services (WS)

A commenter recommended that DHS limit major system upgrades to the E-Verify system to one per year.

Response:

DHS limits the number of major E-Verify system upgrades as much as possible, but is frequently required to make enhancements to the system based on changes in laws, rules or regulations, as well as business policy, capability or need. Web Services providers who are unable to make timely upgrades may choose to start using the E-Verify browser instead, which does not require users to make upgrades.

The commenter recommended that DHS no longer require Web Services developers to obtain a Web Application ID and complete the certification.

Response:

DHS believes that certification ensures developer compliance with E-Verify processes and policies, which is an important step in the Web Services process.

The commenter recommended removing the dependency on Web Services Extensions (WSE) 3.0 because it is an outdated technology that has been replaced by Windows Communications Foundation (WCF).

Response:

The E-Verify program is in the process of adopting Windows Communications Foundation (WCF). Future Web Services releases will begin to leverage this more modern framework.

Responses to Other Comments

Another commenter expressed concerns about receiving due process under the provisions within the draft MOUs addressing termination and suspension of user accounts.

Response:

The MOUs set forth the basic framework for termination or suspension of a user account or an MOU, and are meant to comply with all due process requirements DHS may have in these circumstances. DHS agrees to consider describing these processes more fully in program guidance documents, subject to the agency's discretion in addressing these issues on a case-by-case basis.

DHS received two other general comments on immigration policy that were outside of the scope of the request for comments on the revised E-Verify Memoranda of Understanding. DHS has chosen not to respond to those comments at this time.