



Ryan, Swanson & Cleveland, PLLC

# I-9 Audit Basics and Best Practices for Employers

Presented by:  
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# Who Can Legally Work In The US?

- U.S. Citizens
- Noncitizen Nationals (Guam, Puerto Rico, CNMI, U.S. Virgin Islands)
- Lawful Permanent Residents
- Aliens Authorized to Work

# To Comply With Federal Regulations Regarding Employment Eligibility Verification

- Use the current form! (3/8/13) (expires 3/31/16)
- Verify the identity and employment authorization documents of employees hired after Nov 6, 1986.
- Complete and retain a Form I-9 for each employee.
- Refrain from discrimination against individuals based on actual or perceived knowledge of national origin, citizenship, or immigration status.

# Who DON'T You Have To Complete I-9 For?

- You are required to complete and retain a Form I-9 for every employee you hire for employment in the United States, except for:
  - Individuals hired on or before Nov. 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times
  - Individuals employed for casual domestic work in a private home on a sporadic, irregular or intermittent basis
  - Independent contractors or individuals providing labor to you who are employed by a contractor providing contract services
  - Individuals not physically working in the United States

# When Should I Complete Section 1?

- Section 1 - You may have your employees complete Form I-9:
  - On their first day of employment (i.e., first day of work for remuneration)
  - Before their first day of hire, if you have offered the individual a job and if they have accepted the offer
  - Be careful with Pre-Population!!
  - Use physical address (descriptors if not actual address)



## Employment Eligibility Verification

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-9  
OMB No. 1615-0047  
Expires 03/31/2016

► **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.  
**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town	State	Zip Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	E-mail Address			Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States *(See instructions)*
- ☐ A lawful permanent resident (Alien Registration Number/USCIS Number): \_\_\_\_\_
- ☐ An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) \_\_\_\_\_. Some aliens may write "N/A" in this field. *(See instructions)*

*For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:*

1. Alien Registration Number/USCIS Number: \_\_\_\_\_

**OR**

2. Form I-94 Admission Number: \_\_\_\_\_

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: \_\_\_\_\_

Country of Issuance: \_\_\_\_\_

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. *(See instructions)*

Signature of Employee:	Date (mm/dd/yyyy):

**Preparer and/or Translator Certification** *(To be completed and signed if Section 1 is prepared by a person other than the employee.)*

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator:		Date (mm/dd/yyyy):	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State Zip Code



Employer Completes Next Page



# When Should I Complete Section 2?

- Employers must complete and sign Section 2 of Form I-9 within three business days of the date of hire of their employee (the hire date means the first day of work for pay).
  - For example, if your employee began work for pay on Monday, you must complete Section 2 by Thursday of that week. If the job lasts less than three days, you must complete Section 2 no later than the first day of work for pay.

## Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

Employee Last Name, First Name and Middle Initial from Section 1:

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title:		Document Title:		Document Title:
Issuing Authority:		Issuing Authority:		Issuing Authority:
Document Number:		Document Number:		Document Number:
Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):
Document Title:		<div>3-D Barcode Do Not Write in This Space</div>		
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				

## Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): \_\_\_\_\_ (See instructions for exemptions.)

Signature of Employer or Authorized Representative	Date (mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name (Family Name)	First Name (Given Name)	Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)		City or Town	State Zip Code

## Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable) Last Name (Family Name) First Name (Given Name) Middle Initial	B. Date of Rehire (if applicable) (mm/dd/yyyy):	
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.		
Document Title:	Document Number:	Expiration Date (if any)(mm/dd/yyyy):

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative:	Date (mm/dd/yyyy):	Print Name of Employer or Authorized Representative:
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# Who Examines The Documents?

- An employer or an authorized representative of the employer completes Section 2
- The person who examines the employee's documents must be the same person who signs Section 2 and the examiner and the employee must both be physically present during the examination.
- Notaries?
- To copy or not to copy?

# Acceptable Documents

## LISTS OF ACCEPTABLE DOCUMENTS

All documents must be UNEXPIRED

Employees may present one selection from List A  
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. Native American tribal document
		6. Military dependent's ID card		6. U.S. Citizen ID Card (Form I-197)
		7. U.S. Coast Guard Merchant Mariner Card		7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		8. Native American tribal document		8. Employment authorization document issued by the Department of Homeland Security
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to Section 2 of the instructions, titled "Employer or Authorized Representative Review and Verification," for more information about acceptable receipts.

# Common I-9 Mistakes

- Signing the I-9 before the hire date
- Signing Section 1 of I-9 after the hire date
- Not entering the name on the I-9 form (TOP OF PAGE 2!)
- Not completing Section 2 of the I-9
- Not entering the hire date on the I-9 in the certification section
- Pre-Population of the Form
- Wrong dates entered (entering birth date where signature date should be)
- Accepting too many documents (recent TAL on this)

# Section 3 - Reverification/Rehire

## – Reverify when:

- Your employee's employment authorization or documentation of employment authorization has expired ("reverification").
- Your employee is rehired within three years of date Form I-9 was originally completed. (Be sure to check work authorization doesn't need updating).
- Your employee changes his or her name. (Optional)

<b>Section 3. Reverification and Rehires</b> <i>(To be completed and signed by employer or authorized representative.)</i>		
A. New Name <i>(if applicable)</i> Last Name <i>(Family Name)</i> First Name <i>(Given Name)</i> Middle Initial		B. Date of Rehire <i>(if applicable)</i> (mm/dd/yyyy):
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.		
Document Title:	Document Number:	Expiration Date <i>(if any)</i> (mm/dd/yyyy):
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative:	Date (mm/dd/yyyy):	Print Name of Employer or Authorized Representative:

# Receipt Rule

- Receipts may be used as temporary proof of employment eligibility if a List A, B, or C document is lost, stolen, or damaged.
- Receipt must be issued by originating agency.
- Employee must present the actual document within **90 days** of hire date.
- Attach receipt with I-9 until required document issued.
- Do not accept receipts for employment lasting less than 3 days.

# Retention And Storage

## Retaining Form I-9

To calculate how long to keep an employee's Form I-9, enter the following:

1. Date the employee began work for pay
  - A. Add 3 years to the date on line 1
2. The date employment was terminated
  - B. Add 1 year to the date on line 2
3. Which date is later; A or B?
  - C. Enter the later date.

Employers must retain original I-9 forms for three years after the date of hire, or one year after the date employment ends, whichever is later. The forms should be stored separately from other personnel files.

1. \_\_\_\_\_
  - A. \_\_\_\_\_
2. \_\_\_\_\_
  - B. \_\_\_\_\_
3. \_\_\_\_\_
  - C. \_\_\_\_\_

# I-9 Audits

U.S. Immigration and Customs Enforcement (ICE) has focused on creating a 'culture of compliance' by heavily relying on I-9 inspections to find and fine Employers who do not follow immigration laws regarding employment eligibility verification.

The number of businesses subjected to I-9 audits has soared from 250 in 2007 to more than 3,000 businesses audited in 2013. HSI continues to issue Notices of Intent to Fine (NOFs) at an unprecedented rate for Form I-9 related violations.



# How Will I Know I'm Being Audited?

- The Employer will learn of the inspection through a Notice of Inspection (NOI) requiring them to produce I-9s and supporting documentation (such as payroll records, list of employees, Articles of Incorporation, and business licenses).
- Employers are typically given three days (72 hours) to produce the stated documents in the audit notice. Employers are required to deliver these documents to the designated ICE office.
- If ICE appears to review your I-9 forms and conduct an audit, insist on a written Notice of Inspection and your right to have three business days before you turn over your original I-9 forms.



U.S. Immigration  
and Customs  
Enforcement

# NOTICE OF INSPECTION

June 14, 2013

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify the employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

Federal regulations require the provision of three days' notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) has scheduled a review of your forms for June 20, 2013. However, you may waive the three-day period, should you wish to do so, by annotating and signing page two of this letter and advising this office of your decision.

During the review, Auditor Sandra Hollcraft will discuss the requirements of the law with you and inspect your Forms I-9. In addition to the presentation of your Forms I-9, you will need to present any documents copied as part of the employment eligibility verification process. If your business utilizes software for the electronic generation and storage of Forms I-9, you will need to present: the name of the software and vendor utilized; the internal business practices/protocols related to the generation of, use of, storage of, security of, and inspection and quality assurance programs your electronically generated Forms I-9; the indexing system identifying how the electronic information contained in the Form I-9 is linked to each employee; documentation of the system used to capture the electronic signature, including the identity and attestation of the individual signing the Form I-9; and the audit trail. Further, pursuant to 8 CFR 274a.2(e)(8)(ii), Auditor Sandra Hollcraft may contact you in the future to schedule a live demonstration of the creation and maintenance of an electronically generated Form I-9.

SUBJECT: Notice of Inspection

Page 2

The purpose of this review is to assess your compliance with the provisions of the law. HSI will make every effort to conduct the review of records in a timely manner so as not to impede your normal business routine. For more information on the Form I-9 inspection process please visit <http://www.ice.gov/news/library/factsheets/i9-inspection.htm>.

Sincerely,

Aaron G. Wilson  
Assistant Special Agent-in-Charge

## Waiver of the Three-Day Period

I wish to waive the three day notice to which I am entitled by regulation.

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

## Certificate of Service

This Notice of Inspection was <sup>mailed to</sup> served upon the employer by me on 6-11-2013, in the following manner: (Date)

☐ In person

☒ By certified mail, return receipt requested

(Signature of Agent/Auditor)

\_\_\_\_\_  
(Signature of Employer if personally served)

1. To (Name, Address, City, State, Zip Code)	<b>DEPARTMENT OF HOMELAND SECURITY</b> <b>IMMIGRATION ENFORCEMENT</b> <b>SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4	
Subpoena Number		
2. In Reference To		
Request for Documents and Forms I-9 (Title of Proceeding) (File Number, if Applicable)		

4. Records required to be produced for inspection continued

- 2) Employee roster or payroll report listing current and former employees hired since November 1, 2011 containing the following information:
- Full employee name (First Name, Middle Initial, Last Name) and date of birth
  - Social security number
  - Date of hire and date of termination (if applicable). If employee has multiple dates of hire, provide all dates of hire and all dates of termination occurring from November 1, 2011 to present.
- 3) Monthly Payroll Reports for November 2011 through May 2013 with wage detail by employee.
- 4) Copies of the 4 most recent Washington State Unemployment Insurance Quarterly Tax Reports and Quarterly Wage Detail Reports.
- 5) Independent contractor roster listing the dates of hire and termination (if applicable) for all independent contractors employed from January 1, 2012 to present.
- 6) A current listing of all paid on-call individuals you employ on a sporadic, irregular, or intermittent basis and not deemed to be an employee.
- 7) Copies of any Citizenship and Immigration Services (CIS) Forms I-129 or I-140 petitions and Department of Labor (DOL) ETA-750 certifications submitted or received from 2012 to present.
- 8) Copy of articles of incorporation, business license and most recent annual report.
- 9) Employer Identification Number (EIN) and Taxpayer Identification Number (TIN) documentation. Names of all Managers, Supervisors and Legal Owners.
- 10) If available, copy of company procedures or policies regarding Form I-9 preparation.
- 11) Yes or No response to the following questions:
- Participate in E-Verify program?
  - Previously received an I-9 Inspection by the Department of Labor?
  - Obtain employees from a temporary staffing agency? If yes provide the names of the temporary staffing agencies used from November 2011 to the present.

1. To (Name, Address, City, State, Zip Code)	<b>DEPARTMENT OF HOMELAND SECURITY</b> <b>IMMIGRATION ENFORCEMENT</b> <b>SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4	
Subpoena Number		
2. In Reference To		
Request for Documents and Forms I-9 (Title of Proceeding) (File Number, if Applicable)		

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A) ☐ **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B) ☒ **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear	(B) Date 06/20/2013
Name Sandra Hollcraft	
Title Auditor	
Address 1000 2nd Avenue, Suite 2300, Seattle, WA 98104	(C) Time 10:00 <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number (206) 442-2235	
4. Records required to be produced for inspection	
1) Original I-9 Forms, (Employment Eligibility Verification Forms) OR I-9 Forms electronically retained in a storage system, along with associated audit trails, and any copies of attached documents presented at time of I-9 completion for all current employees and all employees hired since November 1, 2011.	
Items 2) - 11) are listed on the continuation sheet.	



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official
(Signature)
Aaron G. Wilson
(Printed Name)
Assistant Special Agent-in-Charge
(Title)
6-11-2013
(Date)

# Reviewing And Correcting I-9

- **Step 1 Create a Spreadsheet:** Match employee I-9s to the rosters. If no I-9 is located for an employee, note this on the roster as a corrective action item. For corrective action to cure the deficiency, an I-9 must be completed. In completing the I-9, use the date of the audit or the date supporting documents are reviewed; do not back date the I-9.
- **Step 2 Inspect Sections 1-3:** Ensure that they are completed properly, information is current, and that employment authorizations are valid. Section 3 should only be completed for changes, employment re-verifications and re-hires. If deficiencies are noted or re-verification is required, enter updated data in Section 3 of the form using the date changes or re-verifications that have been conducted. Remember that documents supporting the change or re-verification must always be viewed when Section 3 is completed.
- **Step 3 Correct Mistakes:** If deficiencies are noted or if information is incomplete in Section 1, have the employee insert correct information as appropriate, and date and initial the I-9 using the date corrected. If Section 2 has deficiencies or missing information, correct or add information as appropriate, and then date and initial the form using the date corrected. The person that inspected the documents should be the person to correct if possible.

# Interacting With Employees During Audit

- Be transparent about the process, let employees know that you are undergoing an audit.
- Provide employees with a reasonable amount of time to correct discrepancies in their records. Treat all workers in the same manner during the audit (same timeframes, same choice of Form I-9 documents to present).
- If workers represented by union, inform the union of the audit and determine whether a collective bargaining agreement triggers any obligations.
- Communicate in writing with employees regarding information you need, be specific.

# How Do I Correct Mistakes?

- The best way to correct the form is to:
  - Draw a line through the incorrect information.
  - Enter the correct information.
  - Initial and date the correction.
  - To correct multiple, recording errors on the form, you may redo the section on a new Form I-9 and attach it to the old form. A new Form I-9 can be completed if major errors need to be corrected.
  - Memorandums are key! A note should be included in the file regarding the reason you made changes to an existing Form I-9 or completed a new Form I-9.
  - Never get rid of an I-9 due to mistakes!

Civil Violations	First Offense		Second Offense		Third Offense	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Hiring or continuing to employ a person, or recruiting or referring for a fee, knowing that the person is not authorized to work in the United States.	\$375 for each worker.	\$3,200 for each worker.	\$3,200 for each worker.	\$6,500 for each worker.	\$4,300 for each worker.	\$16,000 for each worker.
Failing to comply with Form I-9 requirements.	\$110 for each form.	\$1,100 for each form.	\$110 for each form.	\$1,100 for each form.	\$110 for each form.	\$1,100 for each form.
Committing or participating in document fraud.	\$375 for each worker.	\$3,200 for each worker.	\$3,200 for each worker.	\$6,500 for each worker.	\$3,200 for each worker.	\$6,500 for each worker.
Committing document abuse.	\$110 per violation.	\$1,100 per violation.	\$110 per violation.	\$1,100 per violation.	\$110 per violation.	\$1,100 per violation.
Unlawful discrimination against an employment-authorized individual in hiring, firing, or recruitment or referral for a fee.	\$375 per violation.	\$3,200 per violation.	\$3,200 per violation.	\$6,500 per violation.	\$4,300 per violation.	\$16,000 per violation.
Asking an employee for money guaranteeing that the employee is authorized to work in the United States, also called an indemnity bond.					<ul style="list-style-type: none"> <li>Pay \$1,100 for each bond the employee paid to the employer.</li> <li>Refund the employee the full amount of the bond. If the employee cannot be found, this refund will go to the U.S. Treasury.</li> </ul>	
Criminal Violations	First Offense		Second Offense		Third Offense	
Engaging in a pattern or practice of hiring, recruiting or referring for a fee unauthorized aliens.	<ul style="list-style-type: none"> <li>Up to \$3,000 for each unauthorized alien.</li> <li>Up to 6 months in prison for the entire pattern or practice.</li> </ul>		<ul style="list-style-type: none"> <li>Up to \$3,000 for each unauthorized alien.</li> <li>Up to 6 months in prison for the entire pattern or practice.</li> </ul>		<ul style="list-style-type: none"> <li>Up to \$3,000 for each unauthorized alien.</li> <li>Up to 6 months in prison for the entire pattern or practice.</li> </ul>	

# Notices

## – The following are the most common notices:

- **Notice of Inspection Results** – also known as a "compliance letter," used to notify a business that they were found to be in compliance.
- **Notice of Suspect Documents** – advises the Employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has determined that an employee is unauthorized to work and advises the Employer of the possible criminal and civil penalties for continuing to employ that individual.
- **Notice of Discrepancies** – advises the Employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has been unable to determine their work eligibility.
- **Notice of Technical or Procedural Failures** – identifies technical violations identified during the inspection and gives the Employer ten business days to correct the forms.
- **Warning Notice** – issued in circumstances where substantive verification violations were identified, but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the Employer.
- **Notice of Intent to Fine (NIF)** – may be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations.

# Employer I-9 Compliance Memo

- Identify the level of employee permitted to complete Form I-9 on behalf of the company to ensure that the employee is knowledgeable and responsible.
- Ensure that these employees have been trained to review I-9 documents and complete the I-9 without violating discrimination laws. Periodically review and update I-9 training materials, being sure to document such review and all efforts to provide training to hiring managers.
- Determine how I-9 records should be maintained and seek to ensure uniformity in completion and maintenance of the I-9s—hard copy or electronically. If the decision is made to maintain copies of the documents presented to verify employment eligibility, copy both sides of the document and ensure that copies are maintained for all employees going forward from the date of implementation. Maintaining copies of the documents is generally recommended.
- Ensure that I-9 records are not kept with personnel files, but in a separate I-9 file, whether hard copy or electronic.

# Employer I-9 Compliance Memo (cont.)

- Ensure timely completion of the I-9 form. Employees should complete Section 1 by their first day of employment for wages but can complete it in advance, if the job offer has been offered and accepted. The authorized Employer representative should complete Section 2 within three business days of the Employee's hire date (defined as the date they start employment for wages). The authorized Employer representative must verify documents in person. Note that CWU uses a university portal to electronically complete and store the I-9 form.
- Confirm that the company has a "tickler system" in place to reverify work authorization for employees with temporary status or work authorization. The employer will want to ensure that its software system captures expiration dates from section 1 of the I-9 for temporary work authorizations—for example, employment authorization documents, visas, and I-94 forms.
- Make sure that I-9 documents are included in the company's document retention schedules, as employers are permitted to destroy I-9 Forms and supporting documents after the statutory period of time. Employers may destroy I-9 records for former employees either one year after termination or three years after the date of hire, whichever is later.

# Employer I-9 Compliance Memo (cont.)

- Set forth a schedule for conducting internal I-9 audits on a regular basis. This is one of the most important provisions of a compliance policy. The employer can analyze potential risks and possibly mitigate fines and damages by conducting internal audits prior to any government action.
- Develop an internal mechanism to address post-hire and initial I-9 completion issues, including instances in which third parties (for instance, clients or sub-contractors) provide information indicating that an employee is not authorized to work.

# Best Practice Tips

- Establish a uniform written I-9 compliance policy and train your staff on it. Utilize the recent version of the I-9 Employer Handbook (M-274, Rev 4/30/13).
- Avoid discrimination claims by educating your staff on the appropriate way to verify documents and treat all job applicants the same regardless of their citizenship or immigration status, or their national origin.
- Create a “tickler” system to notify HR staff of upcoming re-verifications for individuals that possess temporary employment authorization.
- Establish a best practice method for proper cataloging and retention of I-9’s—separate former and active employee’s I-9’s.
- Keep your I-9 forms organized and separate from general personnel files. Establish a consistent policy regarding obtaining and retaining copies of documents verified.
- Purge old I-9’s that are past the retention period on an annual basis (3 years from date of hire or 1 year after termination, whichever is longer).
- Conduct routine formalized self-audits and document each internal audit.

# Avoiding Immigration-Related Employment Discrimination



# Office Of Special Counsel

- The Office of Special Counsel (OSC) enforces the laws that prohibit discriminatory practices in the recruitment, hiring, employment eligibility verification process or dismissal of persons authorized to work in the U.S.
- In general, employers may not request more or different documents than are required to establish a worker's identity and eligibility to work in the United States OR reject documents that appear to be reasonably genuine on their face and relate to the employee.

# Employers Should...

- Treat all people the same during the application, interview, job offer, employment verification, hiring and firing stages.
- Examine and accept original documents if they appear reasonably genuine and relate to the employee.
- Do not demand different or additional documents.
- Avoid requiring job applicants to have a particular citizenship status unless mandated by federal law/contract.
- Give out the same information and use the same application for all applicants.
- Base all decisions about firing on job performance, not on appearance, accent, name or citizenship status.
- Consistency is key!!!!

# SSN No Matches

- Compare the failed SSN with your employment records.
- If your employment records match your submission, ask your employee to check his/her Social Security card and inform you of any name or SSN difference between your records and his/her card.
- If your employment record and the employee's Social Security card match, ask the employee to check with any local Social Security Administration (SSA) Office to resolve the issue. Once the employee has contacted the SSA Office, he/she should inform you of any changes. Take NO Adverse Actions!
- The employee should be given a reasonable period of time to remedy the problem.
- If the employee is unable to provide a valid SSN, you are encouraged to document your efforts to obtain the correct information.
- If you are unable to contact the employee, you are encouraged to document your efforts.

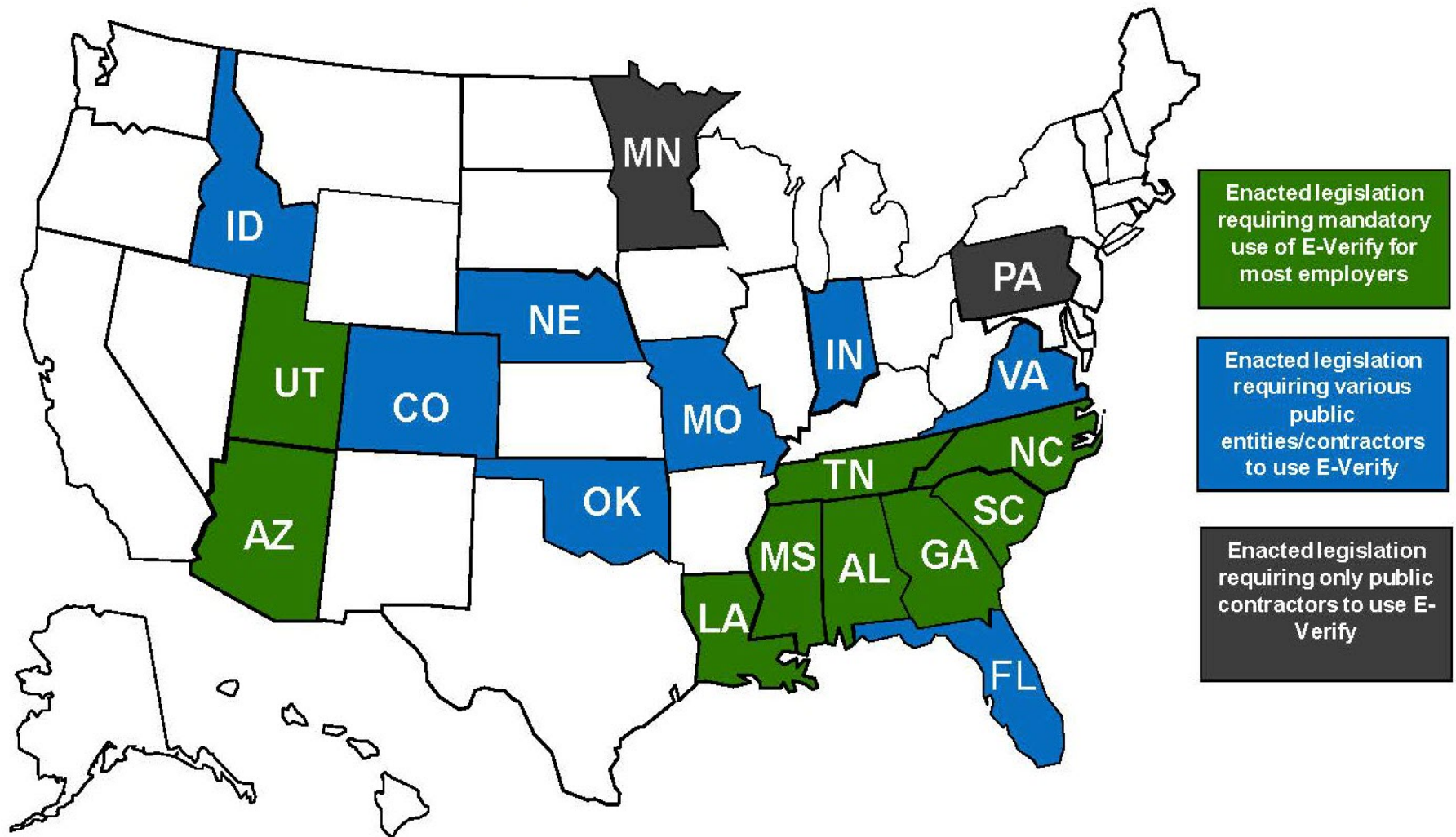
# E-Verify

- Electronic (internet-based) employment eligibility administered by DHS and SSA.
  - Required for federal contracts
  - Required for STEM OPT (17 month extensions)
- If using E-Verify must use on ALL new hires, do not use for pre-screening.
- If utilizing E-Verify, SSN is mandatory (unlike on Form I-9. If an employee doesn't have a SSN yet (usually takes approx. 90 days after applying with the Social Security Administration), fill out the Form I-9 initially and in List C write the receipt number and keep on file.
  - The employer does not have to run the employee's information through E-Verify until the actual SSN arrives and at that point E-Verify will prompt them regarding the discrepancy in time (outside the 3 day window), however, there is an option to select called "awaiting documents" to answer that prompt.
- An employer may not terminate or take any adverse action against a worker who chooses to contest a tentative non-confirmation (TNC).

# E-Verify Facts

- As of the end of 2013, half a million employers are now using E-Verify, at 1.5 million worksites. Federal legislation has been proposed to change this, but as of today regulation of E-Verify is up to the states. It is up to each state government to decide how it wants to influence or regulate the use of E-Verify for employers in the state.
- About 30% of states mandate that some private employers use E-Verify, typically those working state contracts, or those with more than a certain number of employees.
- Immigration Reform—likely E-Verify will become mandatory.

# State E-Verify Requirements



# Washington E-Verify

- **Washington Hoquiam, WA**

The Hoquiam City Council passed a resolution that will require the use of the federal E-Verify program to verify that each employee of a contractor and subcontractor are legally authorized to work in the United States.

- **Pierce County, WA**

Contractors and subcontractors doing business with Pierce County are required to use E-Verify to check the employment eligibility of all new hires, effective since February 1, 2010.

- **Penalties:** Ineligibility for a Pierce County contract(s).

- **Woodland, WA**

All companies awarded city contracts of \$10,000 or more are required to use E-Verify to check the employment eligibility of all employees and enter into a memorandum of understanding (MOU) with the DHS within 60 days of the city extending the contract, effective since February 23, 2011.

- **Penalties:** Contractors who fail to E-Verify or meet the reporting deadlines may be considered in breach of contract and be suspended from bidding on future projects for two years or until they meet the requirements.

# Resources

- Resources for I-9 Questions
  - **Employer Handbook**  
<http://www.uscis.gov/sites/default/files/files/form/m-274.pdf>
  - **Website**  
<http://www.uscis.gov/i-9-central>
  - **Email**  
[I-9Central@dhs.gov](mailto:I-9Central@dhs.gov) (general I-9 questions)  
or
  - **Telephone:** 888-464-4218  
For E-Verify employers: 877-875-6028 (TTY)
- Office of Special Counsel (specifically for unfair immigration-related employment practices and discrimination)
  - 800-255-8155
  - <http://www.justice.gov/crt/about/osc/>
  - [osc crt@usdoj.gov](mailto:osc crt@usdoj.gov)



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*Thank you!*

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***NEXT WEBINAR PRESENTATION:***

How to Win the H-1B Lottery in 2015

January 21, 2015

Noon - 1 p.m. (Pacific)

Presented by Joel Paget & Marsha Mavunkel

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