

INSTITUTIONS OF HIGHER EDUCATION AND E-VERIFY

Frequently Asked Questions

What is the E-Verify program?

E-Verify is a free, internet-based system operated by the Department of Homeland Security (DHS) in which the employment eligibility of certain employees is confirmed after the I-9 Employment Eligibility Verification Form has been completed. E-Verify does not replace the Employment Eligibility Verification Form (I-9) requirement. Rather, in addition to the completion of the I-9 form, certain employers enter the worker's identity and employment eligibility information into the E-Verify system. E-Verify conducts a two-step verification process that checks employee information electronically against records contained in DHS and Social Security Administration (SSA) databases.

Who is required to enroll in E-Verify?

Federal contractors must begin using the E-Verify System to verify the employment eligibility of their workforces pursuant to Executive Order 13465 signed by President Bush on June 6, 2008 and implementing regulations issued November 14, 2008. All institutions of higher education entering into **covered federal government contracts** will be required to use the E-Verify system to establish the employment eligibility of **certain employees**.

What types of federal contracts will require institutions of higher education to enroll in E-Verify?

E-Verify enrollment is required for all prime federal contracts with a period of performance longer than 120 days, a value above the simplified acquisition threshold of \$100,000, and all subcontracts for services or for construction with a value over \$3000. **These federal contracts and solicitations for these contracts issued after September 8, 2009 will incorporate a clause committing institutions to use E-Verify.**

What types of contracts are exempt from the E-Verify Program?

The following contracts are exempt from E-Verify requirements:

- Contracts less than the simplified acquisition threshold (\$100,000)
- Contracts less than 120 days
- Unmodified contracts existing prior to September 8, 2009
- Contracts that include only commercially available off-the-shelf (COTS) items¹

¹ COTS items are commercial items sold in substantial quantities in the commercial marketplace and offered to the government in the same form that is available in the commercial marketplace or with minor modifications (ex: food and agricultural products).

- Contracts where all work is performed outside the United States (Includes the 50 states, District of Columbia, Guam, Puerto Rico, and U.S. Virgin Islands)
- Grants²
- Cooperative agreements

When are institutions of higher education required to enroll?

Institutions are required to enroll in E-Verify if and when they are awarded a covered federal contract or subcontract that requires participation in E-Verify as a term of the contract. Covered federal contracts awarded and solicitations issued after September 8, 2009 will include a clause committing government contractors to use E-Verify. Existing indefinite-delivery/indefinite-quantity contracts are to be amended by federal Contracting Officers on a bilateral basis to include the E-Verify clause for future orders if the remaining period of performance extends at least six months after the September 8, 2009 and the amount of work or number of orders expected under the remaining performance period is substantial.

Which employees must I verify through the E-Verify System? Are any employees exempt from E-Verify?

Unlike most federal contractors, institutions of higher education need only use E-Verify to verify **employees assigned to the covered federal contract.**³ These are employees hired after November 6, 1986, who are **directly performing work** in the United States under a contract that includes the E-Verify clause. It is immaterial whether services are provided intermittently or for only a small portion of an individual employee's time as long as the work is done in the United States in direct support of a contract.

Institutions are not required to use E-Verify for any employee who holds an active U.S. Government security clearance of confidential, secret or top secret or for whom background investigations were completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12. Employees hired on or before November 6, 1986 are also exempt from E-Verify.

How do I assess which employees are not "directly performing work" under a covered contract?

Employees who normally provide support work, such as general company administration or indirect or overhead functions, and that do not perform any substantial duties applicable

² The federal government employs a "procurement contract" when "the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government." 31 U.S.C. §6303. A "grant agreement" is used when "the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government..." 31 U.S.C. §6304.

³ Questions concerning "assigned employees" and "covered federal contracts" should be submitted to the institution's counsel or to the Office of General Counsel.

to the contract, are not considered to be directly performing work under the contract and are excluded from verification. Example: A mailroom clerk, who delivers mail to a program office supporting a contract as well as to all other offices served by the mailroom, is not required to go through the E-Verify process. Further, working on a proposal, as opposed to working on an awarded contract, does not constitute work under the contract in question and would not trigger E-Verify requirements. Also, there is no indication that it makes a difference where the employee is working, as long as it is in the United States. Institutions are to interpret the definition of “assigned employee” as it applies to various individual circumstances.

My institution is required to use E-Verify as a federal contractor for the first time. How would I proceed?

Before using E-Verify, the institution needs to enroll in the program. The institution can obtain information on registration at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

How does an institution enroll in E-Verify?

The institution can register at:

<https://www.vis-dhs.com/EmployerRegistration/StartPage.aspx?JS=YES>

The enrollment requires the institution to provide basic contact information and for the institution to agree to follow the rules of the program. At the end of the process, the institution will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between DHS and the institution. Once the enrollment process has been completed, the information will be reviewed and the institution’s account will be activated. The institution will receive an e-mail with login instructions, user ID and password.

What is the timeframe for complying with the E-Verification requirements if my institution is not currently enrolled in the E-Verify program?

The institution must **enroll in the program within 30 calendar days from the date of the contract award.**

Upon initial enrollment, the institution must initiate verification queries as follows:

- **Existing employees:**

The institution must initiate verification queries for “assigned employees” who are already on staff **within 90 calendar days after date of enrollment or within 30 days of the employee’s assignment to the contract, whichever date is later.**

- **New hires:**

The institution must begin to use E-Verify to initiate verification of newly hired “assigned employees” **within 90 calendar days of enrollment in the program.**

After the 90-day window, the institution will be required to initiate verification on each newly hired “assigned employee” within three business days of their start date.

My institution is already enrolled in E-Verify but has been enrolled for less than 90 days. What are the time requirements for verifying new hires and existing employees assigned to work on a federal contract that contains the E-Verify clause?

If the institution has been enrolled less than 90 days the institution must initiate verification as follows:

- **New hires:**
Within 90 days of the date of enrollment and after the 90 day window, within 3 business days of the employee’s start date.
- **Existing employees:**
Within 90 days of the date of enrollment or 30 days of the employee’s assignment to the contract, whichever is later.

My institution has already been enrolled in E-Verify for more than 90 days. When must we begin verifying new hires and existing employees newly assigned to work on a federal contract that contains the E-Verify clause?

If the institution has been enrolled 90 calendar days or more, the institution must initiate verification as follows:

- **New hires:**
Within 3 business days after date of hire institutions must initiate verification of newly hired employees. The 90-day window to start using E-Verify for new hires does not apply to institutions already enrolled in E-Verify.
- **Existing employees newly assigned to the contract:**
Within 90 calendar days from the contract award date, institutions must begin using E-Verify for each employee already on staff who is assigned to the contract **or 30 days after assignment to the contract, whichever is later.**

May I use E-Verify prior to making a job offer to a job applicant?

No. All users are prohibited from using E-Verify prior to a job offer and acceptance by the applicant. By signing the MOU to participate in E-Verify, all employers agree not to use E-Verify for pre-employment screening of job applicants, support for any unlawful employment practice, or any other use not authorized by the MOU. Should the institution use E-Verify procedures for any purpose other than as authorized by the MOU, the institution may be subject to appropriate legal action and termination of its access to the E-Verify systems.

However, the institution may use E-Verify to confirm a newly hired employee's employment status before his/her start date if the employee accepted the job offer and filled out the Form I-9.

When must an institution re-verify an employee under the E-Verify process?

Once an employee has been run through E-verify by the institution and employment authorization has been confirmed, the employee need not be re-verified by the institution if the employee moves to another contract under the E-Verify system. On the other hand, institutions are required to enter the identity and employment eligibility information for workers who have been previously verified under the E-Verify system by other employers. This means that new hires from other System institutions must be re-verified under the E-Verify process.

How quickly will E-Verify provide a confirmation?

E-Verify compares the employee information against both the SSA and DHS databases and a confirmation will be generated in three to five seconds. Note that a discrepancy with one or both SSA and DHS databases may result in a tentative non-confirmation and E-Verify will prompt the institution to review the submitted information to assure its accuracy.

What documents does an institution need to E-Verify an employee?

- Information from Section 1 and 2 from the Form I-9
 - Employee's name
 - Date of birth
 - Social Security number
 - Citizenship status employee attests to
 - A# or I-94# if applicable
 - Document type(s) submitted for I-9
 - Expiration dates for identification and eligibility documents
- Current employees not otherwise exempt from E-Verify and who did not provide photo identification when their initial I-9 was filed, must provide such documentation to complete the E-Verify process.

What does the institution do if it receives a tentative non-confirmation?

- If the submitted information is correct, the institution must report the tentative non-confirmation to the employee immediately to determine whether the employee intends to contest it. There is a form generated by the E-Verify system, called "Notice to Employee of Tentative Non-confirmation" that both the employee and institution must sign. The employee must check the line showing his or her decision to contest or not to contest.

- If the employee chooses to contest the non-confirmation, he or she must continue to work during the contest period. **Prior to a final non-confirmation, no adverse action, including suspension or termination, may be taken against the employee.**
- The institution must give the employee the referral directing the employee to either the SSA or DHS (depending on the type of document at issue).

How is an SSA non-confirmation resolved?

- To resolve an SSA discrepancy in some instances the SSA will prompt the institution to review and update the employee information entered into E-Verify and resubmit the case.
- An employee may resolve a tentative non-confirmation from the SSA by contacting the SSA within 8 federal work days.
- The SSA will automatically issue a final non-confirmation 10 federal work days after issuance of the referral if the employee fails to meet this deadline. The institution must close out the E-Verify case with a “Final Non-confirm.”
- In some instances, the SSA needs additional time outside of the 10 federal work days to resolve a case. In those instances, the SSA will notify the institution that the case is still pending.

How is a DHS non-confirmation resolved?

- To resolve a DHS discrepancy the employee must contact the DHS within 8 federal work days.
- The DHS will automatically issue a final non-confirmation, a “DHS No-Show”, if 10 federal work days have passed since the referral and the employee has not contacted the DHS. The institution must close out the E-Verify case with a “Final Non-confirm.”
- The DHS will respond to most of its referral cases within 24 hours; although some responses may take up to 3 federal work days. In some cases, the DHS needs more than 10 federal work days to resolve employment eligibility and the institution will receive a “Case in Continuance” response. DHS will notify the institution when the verification process is complete.
- With either an SSA or DHS referral, if the employee chooses not to contest, have them check the form and sign it. Then the institution must resolve the case in the E-Verify system. If the employee does not contest, the institution must choose “Unauthorized/terminated” and terminate the employee.

Is the institution required to provide any notification to employees or applicants regarding the E-Verify process?

Yes, a required notice provided by DHS indicating the institution’s participation in the E-Verify program as well as the anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice must be posted. The posting must take place in a prominent place that is clearly

visible to prospective employees and all employees who are to be verified through the system. Once you are enrolled, and able to log into the E-Verify online system, these notices can be found in the “On-line Resources” section.

What does the institution do once the contract is over?

After the contract is over, the institution should update its Maintain Company page to reflect the revised status. After that, existing employees may not be run through E-Verify. If the institution chooses to terminate participation in E-Verify, it can select “request termination” in the E-Verify system.

How can institutions prepare for E-Verify implementation?

Institutions should institute best practices by:

- Reviewing and defining applicable hiring policies and practices
 - Who is responsible for initial completion of I-9?
 - Who is responsible for re-verification of I-9?
 - Does it vary by department?
 - Does it vary by student, staff or faculty employee?
 - Is there a central resource to go to for questions?
 - What I-9 supporting documentation is maintained? What is the record retention of maintained documents?
 - Who is responsible for enrolling in and entering data into the E-Verify System?
 - Who will be responsible for handling a tentative non-confirmation?
- Applying applicable policies consistently
- Training to maximize understanding
- Conducting regular internal reviews or audits to identify and correct problems

Where can I find additional resources?

Once enrolled in E-Verify, the institution is able to log into the system and obtain additional resources. Customer Support may be contacted at 1-888-464-4218.