



FBT Immigration Update: May/June 2016

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E-Verify will begin to deactivate certain user IDs on August 1, 2016

USCIS announced that, starting August 1, 2016, E-Verify will begin to deactivate user IDs that have not been accessed for 270 days. Therefore, employers that are registered with E-Verify and have not logged in for several months should do so before August 1 to prevent deactivation of their user IDs.

In addition, when accessing their accounts to prevent deactivation, employers should review their roster of current users and determine whether any should be deleted and others added. For guidance on how to delete and add users, employers should review the [E-Verify User Manual](#).

USCIS seeks comments on proposed changes to E-Verify

On May 20, 2016, USCIS notified the public that it has reopened the comment period for an additional 30 days in connection with the proposed changes to E-Verify. The proposed changes include the implementation of reverification functionality and streamlining the "Tentative Nonconfirmation" (TNC) process.

Reverification of Expiring Temporary Work Authorization

Currently, employers only utilize E-Verify for new hires. An employer must reverify an employee's authorization to work by updating Form I-9. In an effort to harmonize the I-9 and E-Verify processes, USCIS has proposed adding "reverification functionality" to E-Verify, to be utilized once Section 3 of Form I-9 has been completed and *no later than three days after the expiration of the employee's previous employment authorization*. As with new hires, E-Verify would check government records and either issue an "Employment Authorized" result or TNC. However, the timing for the proposed E-Verify reverification process conflicts with the timing required for the I-9

reverification, which requires the reverification to occur *prior to the expiration of their temporary employment authorization*.

According to USCIS' updated Supporting Statement, employers would have the option of reverifying in E-Verify (1) only employees hired after their enrollment in the system or (2) all employees that require reverification. Employers would make their selection after being prompted by E-Verify. Regardless of the selection made, employers would still need to comply with Form I-9 obligations regarding reverification of all employees requiring reverification.

Streamlined TNC Processes

As E-Verify is a tool for employers to verify the employment authorization of their employees, the employer has been the principal recipient of E-Verify communications. As a result, employees have been reliant on employers to relay important information to them. Recognizing that this could detrimentally impact employees that are not updated by their employers, especially in the context of TNCs, USCIS proposes communicating with employees via email. However, to gain this benefit, employees would need to provide an email address on Form I-9 and, then, employers must enter it into E-Verify.

Per USCIS, it is considering adding the following potential email communications:

- *Notification from E-Verify – TNC*: To be sent to notify an employee that a TNC case result has been returned by E-Verify, and that the employee should contact their employer for more information.
- *Reminder from E-Verify*: To be sent four days after a TNC is referred to the employer if the employee has not contacted DHS or SSA. The message reminds the employee of the eight Federal Government workday timeline to initiate TNC resolution and provides instructions for contacting DHS or SSA.
- *Courtesy Reminder from E-Verify – Update Records with SSA*: To be sent when DHS confirms employment authorization for a recently naturalized citizen, but also finds that SSA records need to be updated to reflect the employee's naturalized

status.

If employers are interested in learning more about the proposed changes and/or submitting comments about the impact these changes would have on their operations, they should visit the website of the [Federal Register](#).

Changes to ESTA eligibility questions

On June 17, 2016, U.S. Customs and Border Protection (CBP) announced that it added the following to the Electronic System for Travel Authorization (ESTA) application:

- Have you traveled to, or been present in, Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen on or after March 1, 2011?
- CBP Global Entry program number, if applicable.

If an individual is a national of a Visa Waiver Program (VWP) country, he/she may submit an ESTA application and, if it is approved, may then enter the U.S. for a period of up to 90 days as a tourist or business visitor without a visa.

Initially under the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015*, nationals of VWP countries who had been present in Iran, Iraq, Sudan, or Syria after March 1, 2011 were not eligible, absent a waiver, to enter the U.S. under the VWP. On February 18, 2016, the Department of Homeland Security added Libya, Somalia and Yemen to the list of “countries of concern.” To screen for such individuals, the ESTA application has been revised.

Employer required to pay back wages to H-1B following its failure to participate in OALJ proceedings

On [June 14, 2016](#), the United States Department of Labor, Office of Administrative Law Judges (OALJ) required an employer to pay \$15,067.20 in back wages to an H-1B employee, after the employer failed to participate in the hearing. While the employer objected to the DOL Wage and Hour Division’s determination and requested a

hearing before the OALJ, it subsequently failed to produce initial disclosures, participate in an initial conference, and appear at a prehearing conference. As a result, the OALJ issued a final determination holding the employer violated the Immigration and Nationality Act and, thereby, was required to pay the back wages assessed in the DOL Wage and Hour Division's determination.

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