



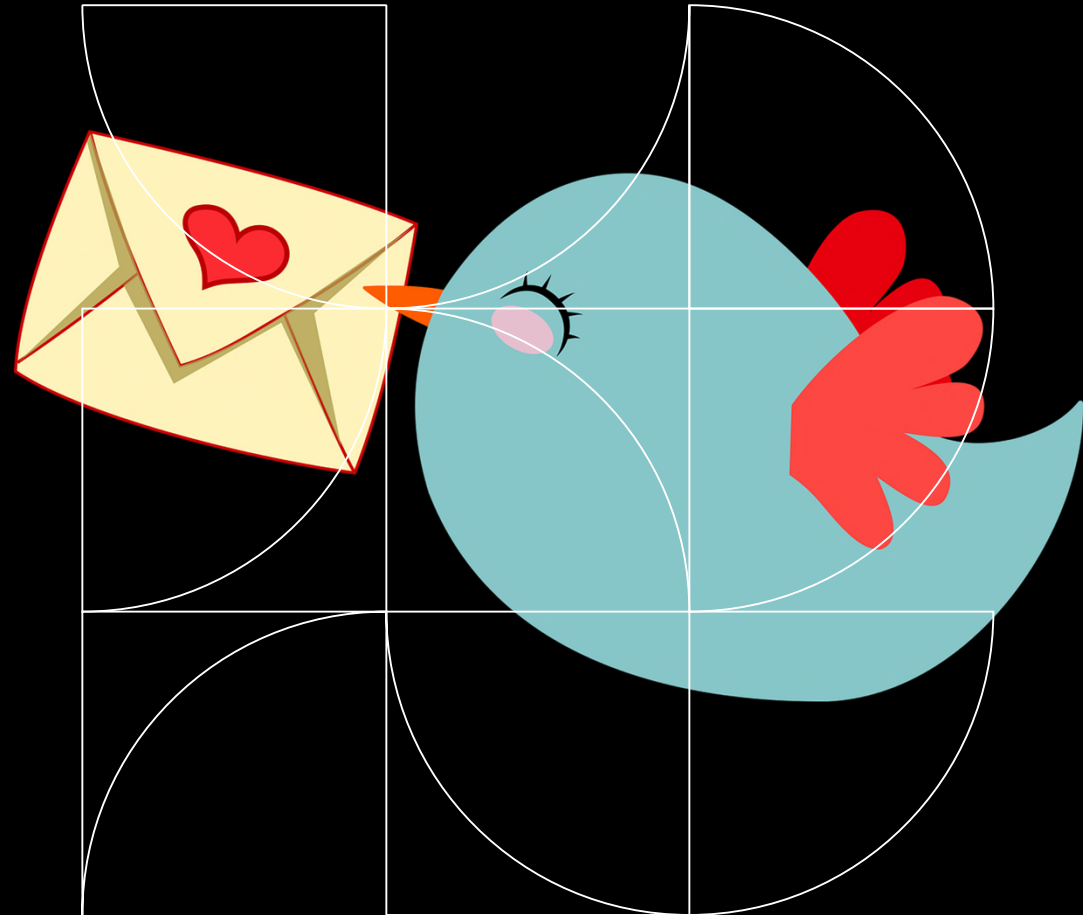
SPECIAL DELIVERY: Unwelcome Outreach from the Government

Part 1: Love Letters From E- Verify – Complexities and Nuances

June 28, 2022

Seyfarth Shaw LLP

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Joining You Today



Leon Rodriguez
Partner
Washington D.C.
lerodriguez@seyfarth.com



Dawn M. Lurie
Senior Counsel
Washington D.C.
dlurie@seyfarth.com

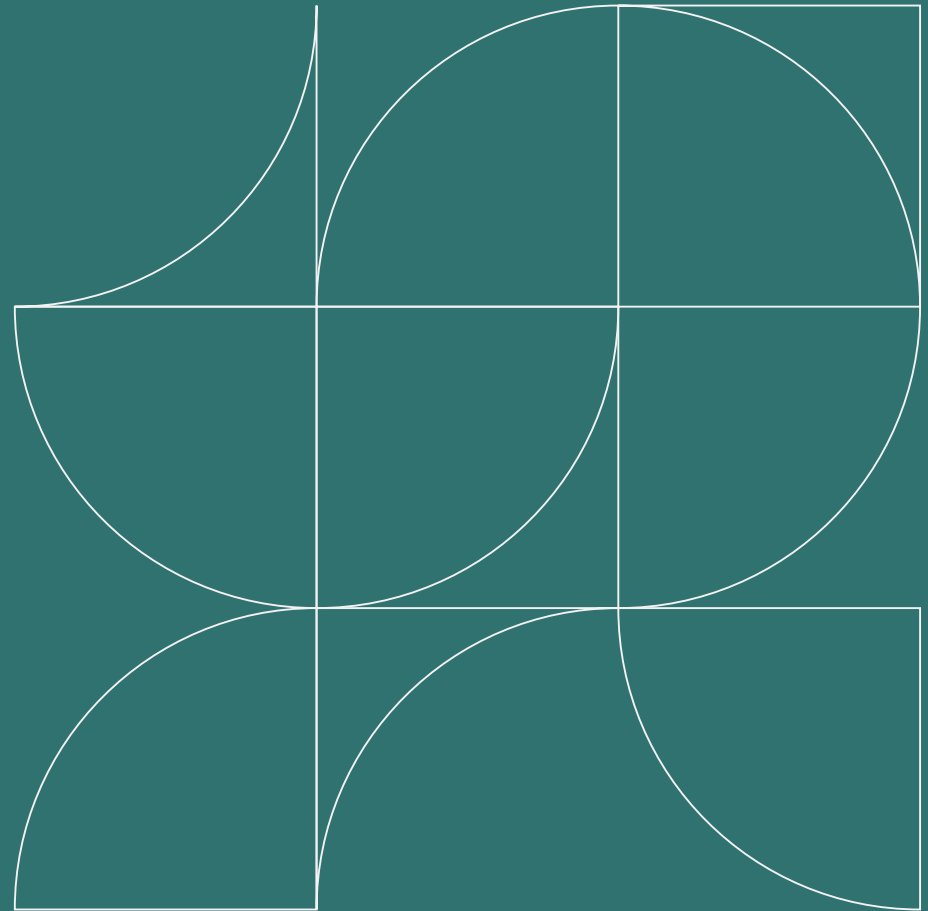


Zachary B. Perez
Staff Attorney
Washington D.C.
zperez@seyfarth.com

Today's Agenda

- 01** A View From Washington DC - Introduction and Overview
- 02** Voluntary E-Verify Participation
- 03** Mandatory E-Verify Participation
- 04** State E-Verify Audits
- 05** E-Verify Account Monitoring
- 06** Agency Oversight
- 07** Compliance Challenges

A View from Washington D.C.





“[DHS] can maximize the impact of our efforts by focusing on unscrupulous employers” and further that “unscrupulous employers create an unfair labor market.”

Mayorkas Memo



Focus under this Administration

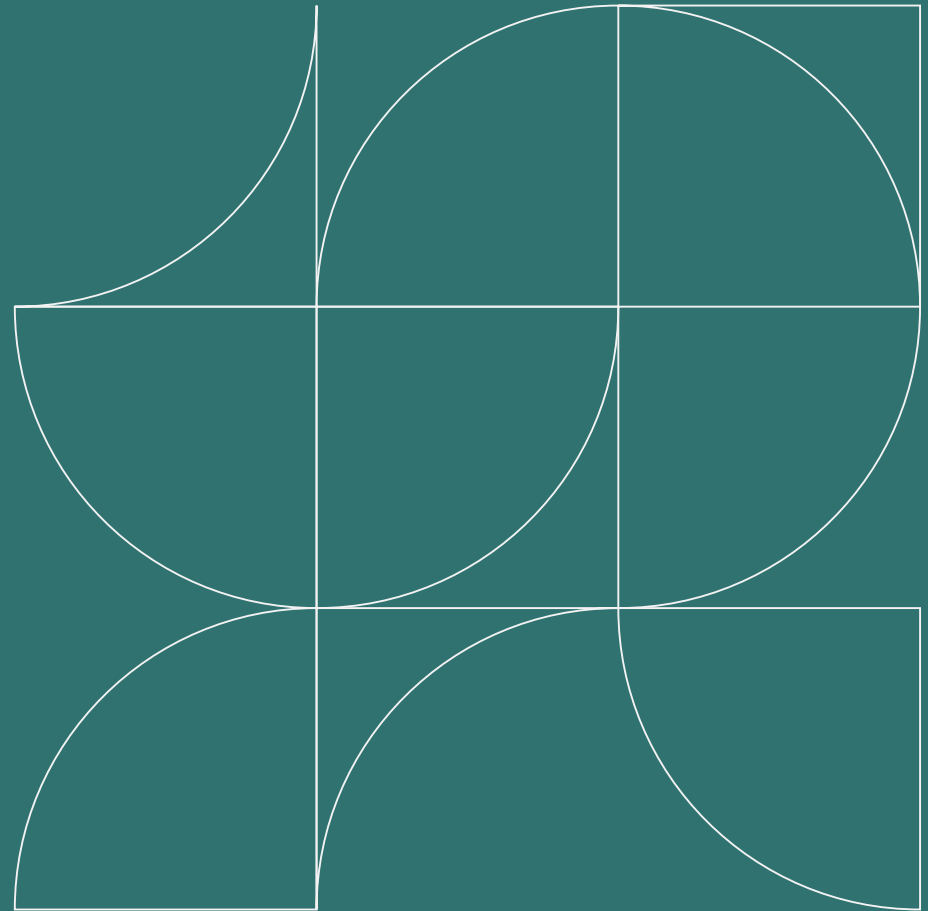
- General Chatter from DC
- USCIS Director Mayorkas's October 2021 memorandum called for:
 - Calls for a review of E-Verify
 - Soliciting recommendations for “how E-Verify can be further strengthened” to prevent exploitative labor practices
 - in line with the worksite enforcement focus
 - Multiple references to enforcement on non-compliant employers
 - LABOR EXPLOITATION and MODERNIZATION

Current View from the Top

- What is E-Verify?
- Administered by US Citizenship and Immigration Services
- E-Verify continues to grow:
 - More than 1 million participating employers
 - Over 1.2 million enrolled MOUs
 - Over 3 million hiring sites
- New Initiatives: Modernization and reducing the burden on compliant employers
 - Next Generation EV
 - Improvements to Employer and Employee experience
 - TNC EE owned process, makes sense!
 - Virtual I-9s?



Volunteer for E-Verify?



Voluntary E-Verify Participation

- E-Verify remains voluntary UNLESS:
 - Federal contractor/subcontractor (with certain exemptions)
 - State/local requirement
 - Participating in the STEM OPT Program
 - Risk vs. Benefit: So why volunteer?

Pros	Cons
<ul style="list-style-type: none">• Best practice• Good faith protection<ul style="list-style-type: none">• Undocumented workers• Good look• Benefit from F-1 STEM OPT	<ul style="list-style-type: none">• Additional responsibility• Time and training costs• System errors• False sense of security• Agency Information Sharing

Voluntary: A World of “Howevers”

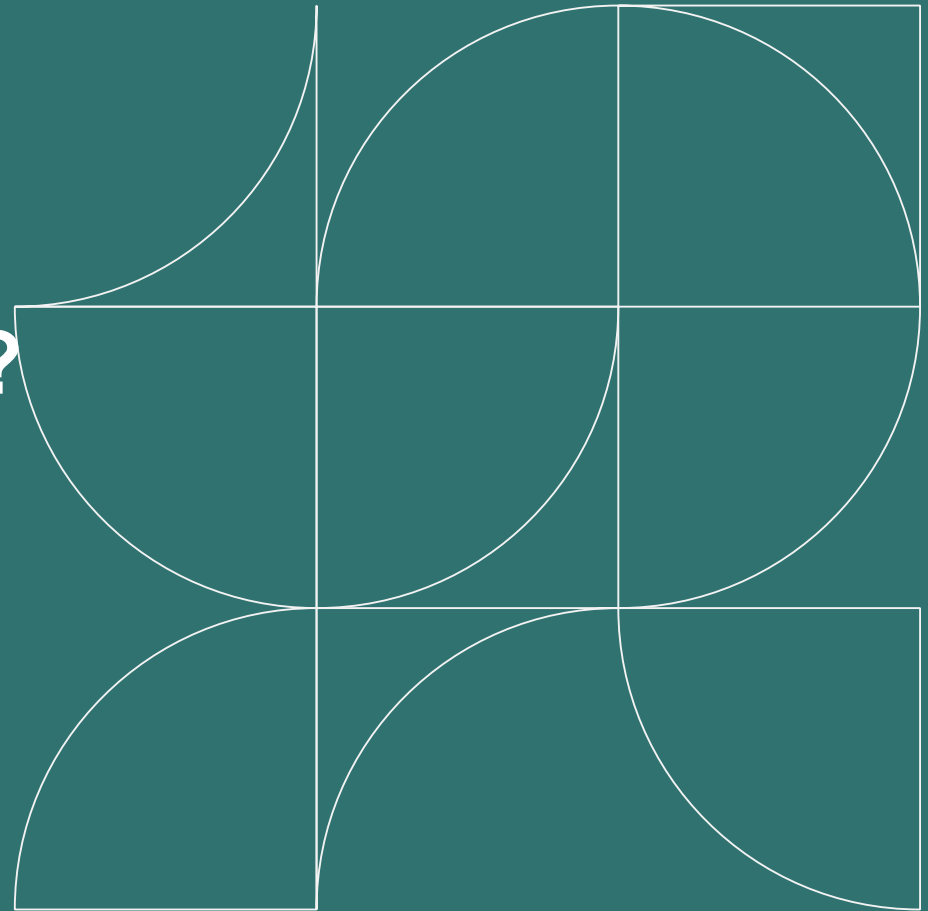


- Enrolling in E-Verify is voluntary (unless in situations previously noted)...
- Overall, E-Verify is viewed favorably by its users, routinely scoring high in customer satisfaction (especially as compared with other federal government programs)...
- Participation in E-Verify is “free” (in the sense that the government does not charge a fee to use)...
- An electronic I-9 system with integrated E-Verify can reduce the burden and help employers manage the entire process...



- However, once enrolled, it’s a contractual commitment governed by an MOU.
- However, critics question the program’s accuracy, highlighting that E-Verify can effectively block legal (i.e., work-authorized) individuals under certain circumstances.
- However, employers have noted significant setup/maintenance costs with learning all of the E-Verify rules, training staff, and implementing processes.
- However, electronic I-9 system issues can cause an array of E-Verify concerns.

Volun- “told” for E-Verify?



Mandatory E-Verify Participation: Federal Contractors

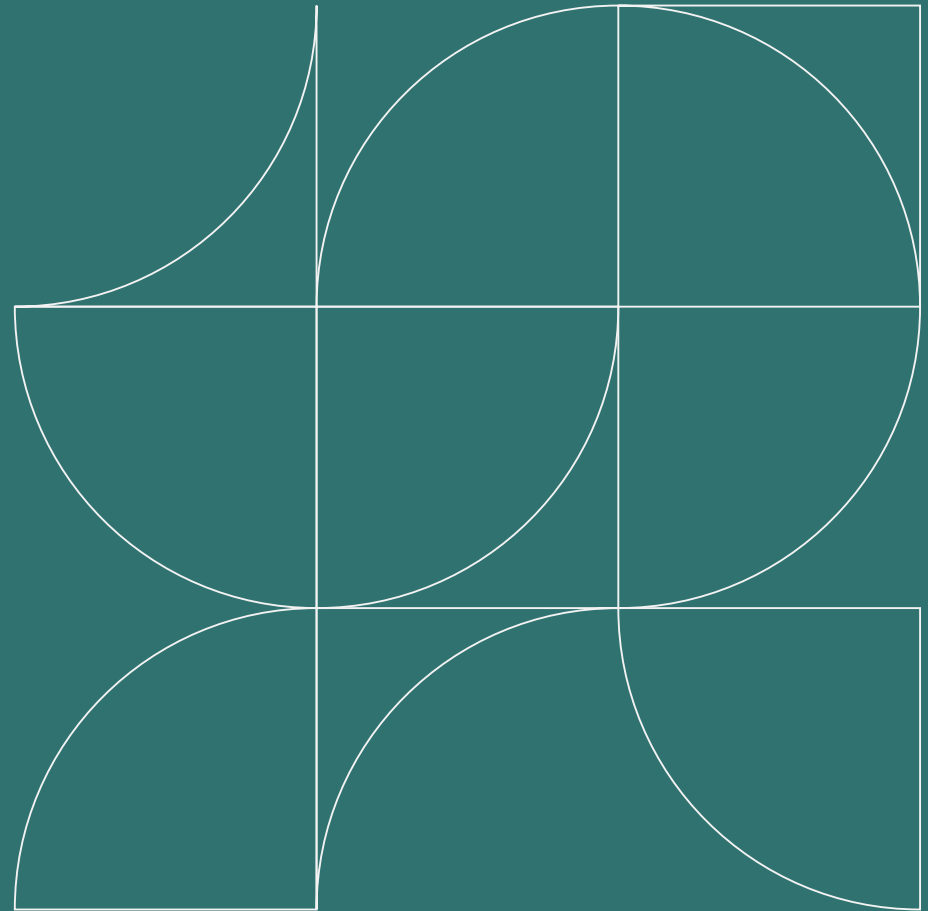
- Federal Acquisition Regulation (or “FAR”) 48 C.F.R. 52.222-5. Generally:
 - Applies to all federal contractors, with some exemptions for date of contact, amount, timing, outside the U.S.
- Applies to all federal subcontractors, with some exemptions:
 - Not flow down from the Prime, not for commercial or noncommercial services or construction, small contract value amount, outside the U.S.
- Contract Exemptions
 - Timing-under 120 days, contract value, outside the U.S., or COTS

*Review the Federal Contractor Supplemental Guide

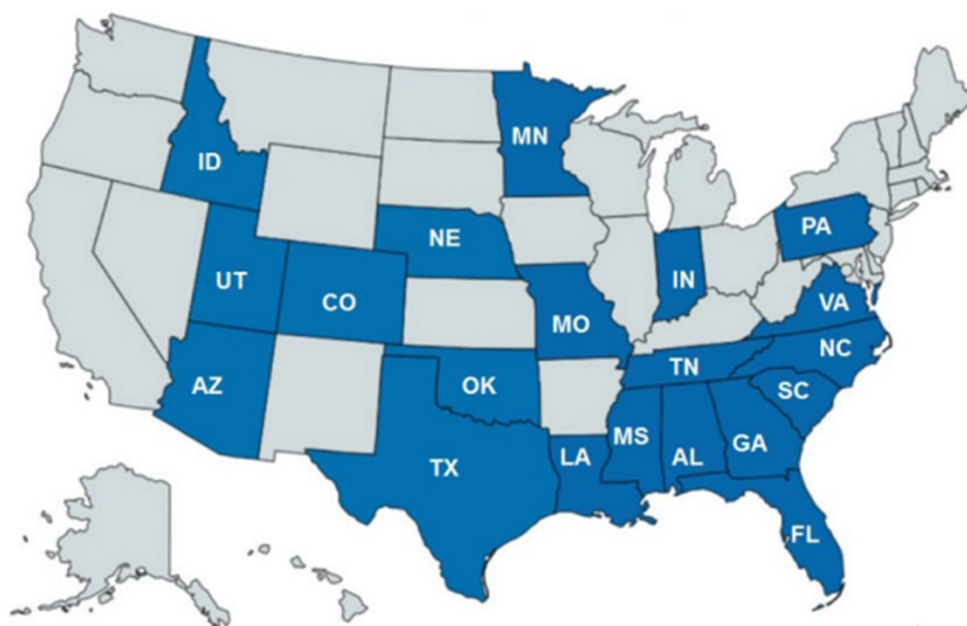
Mandatory E-Verify Participation: FAR Enrollment

- When enrolling or updating the MOU federal contractors first must note what type of employer they are
- If enrolling with the FAR E-Verify clause will select either E-Verifying:
 - All new hires and all those existing employees assigned to a federal contract,
OR
 - the entire workforce - that means everyone, new and existing!
- Federal contractors have a big decision to make during registration
- Also need to consider: existing EV company or initial registration is in play
- Work with your counsel and obtain current information

E-Verify State Requirements and Related Audits



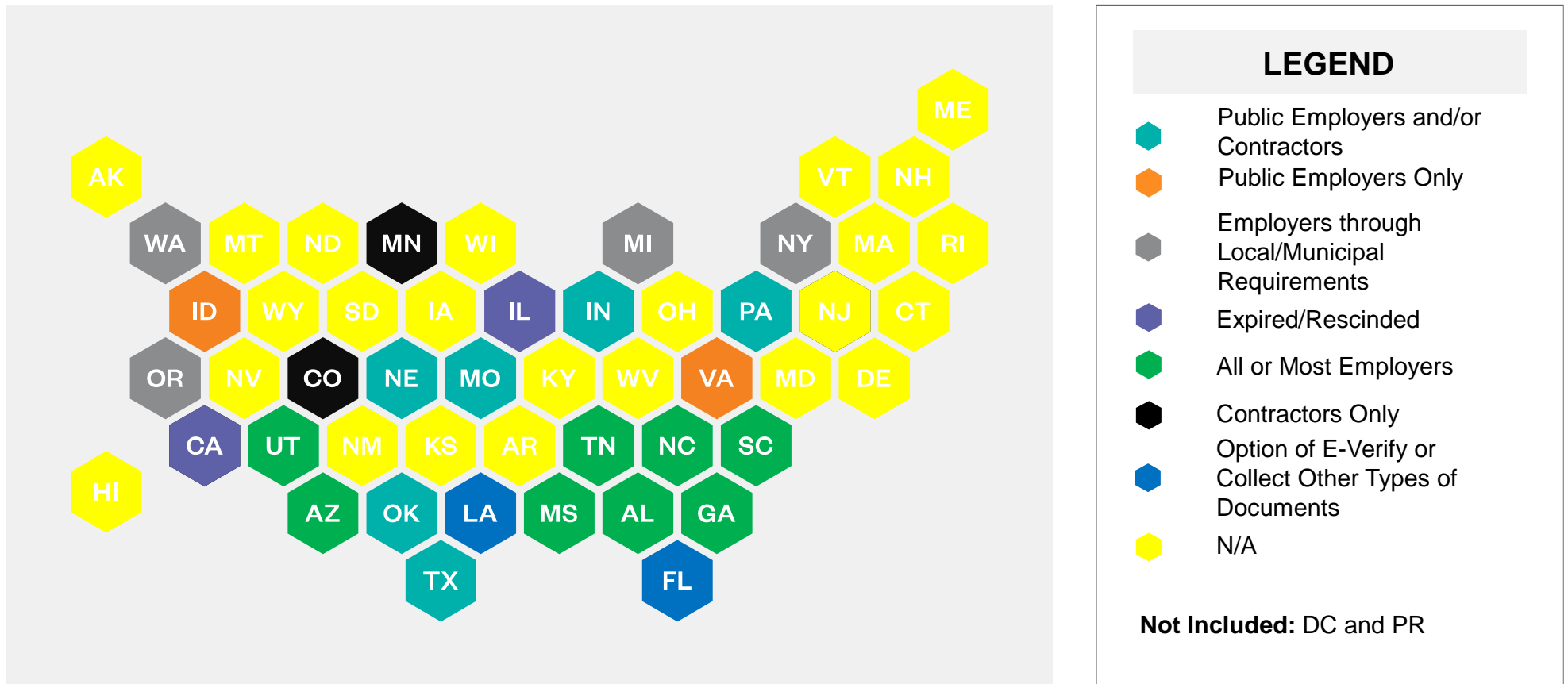
The 'State' of Play-USCIS Illustration



Enacted
legislation
requiring
mandatory use of
E-Verify that may
include most
employers,
various public
entities /
contractors

**credit USCIS, <https://www.e-verify.gov/>*

Mandatory E-Verify Participation: State Requirements



Knock, Knock!- Who is there?



Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-2606
FAX: (803) 896-0064

South Carolina
Department of Labor, Licensing and Regulation
Office of Immigration Compliance



Henry D. McMaster
Governor

Emily H. Farr
Director

10/06/2021



Department of
**Labor & Workforce
Development**

Workplace
Regulations & Compliance

Dear Sir or Madam:

Your business has been selected for audit to determine compliance with the "Illegal Aliens and Private Employment" chapter of the South Carolina Illegal Immigration Reform Act (Code of Laws of South Carolina §§ 41-8-10 through 41-8-140).

LABOR STANDARDS UNIT
PO Box 234 Jefferson City, TN 37760

John Anderson, 865-310-6998, john.p.anderson@tn.gov

REQUEST FOR INFORMATION

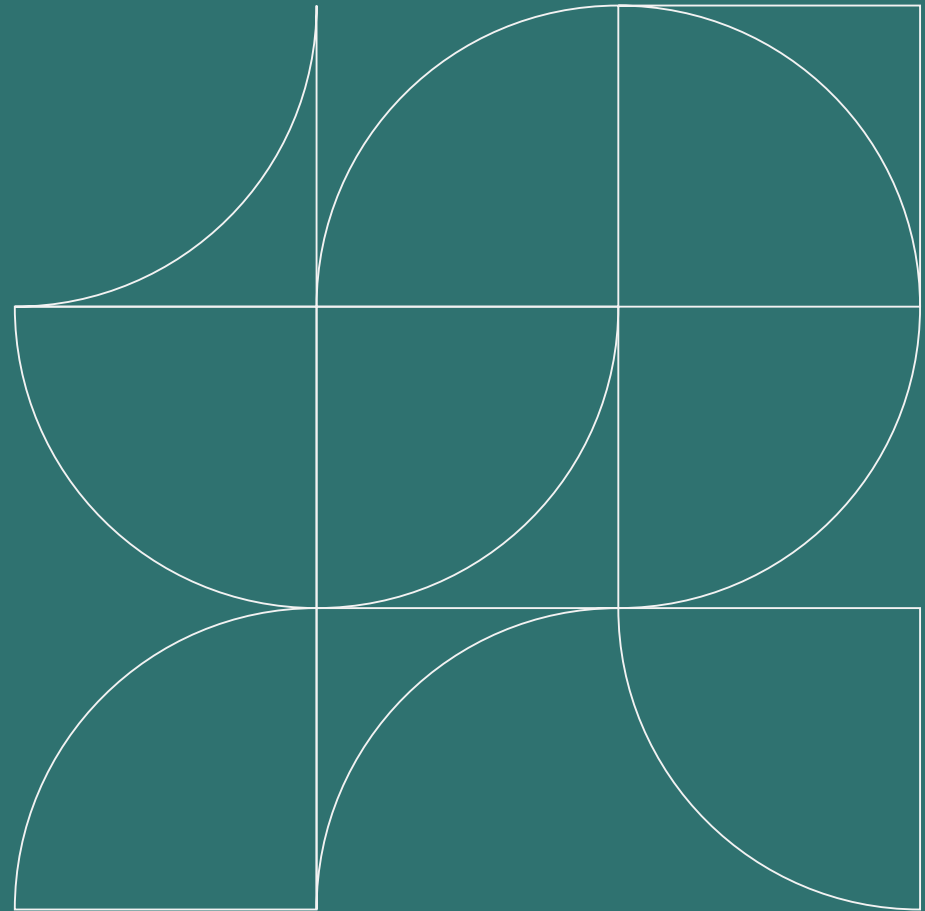
RE: Request For Work Authorization Documents

Effective January 1, 2017, private employers with fifty (50) or more employees, under the same FEIN, must provide proof of enrollment in the E-Verify program as well as a copy of the employee's E-Verify individual case authorization report or quick audit report.

What Must Be Submitted In the Event of an Audit

- Review the state request carefully-take it seriously
 - This is not administrative, legal should be involved
- Do not submit Forms I-9, just proof of E-Verify queries
 - Sharing I-9s is prohibited by federal regulation
- Do not submit anything outside of the time frame, location.
 - Case sheets or Reports? Can you cut it down
- Use E-Verify to generate user report, then review the data
- What are the consequences of non compliance with laws?
 - fines
 - suspension of licenses
 - barred from state contracts/funding...and others

E-Verify Account Compliance



Understanding your E-Verify Obligations

- Preparing for what those enforcement actions and how to respond is critical
- USCIS offers webinars, job aids, and even a self-assessment guide to assist EV employers
- USCIS's E-Verify Account Compliance states their mission is:
 - Detects employer misuse
 - Identifies and deters possible discriminatory practices
 - Gives guidance on the proper use of E-Verify
 - Contacts employers about potential case processing errors
 - Conducts desk reviews and site visits to assist employers with E-Verify program compliance
- USCIS says it does not directly pursue a punitive posture

Assistance from our Friends at E-Verify

- Goals with this and other interactions with USCIS E-Verify compliance includes:
 - Detecting, resolving, and preventing noncompliant activities quickly and effectively;
 - Improving the efficiency of employment operations and human resource management; and
 - Promoting proper use of E-Verify
- What does EV do that you may not know it does
 - Validate DL information with over 40 states (in addition to RIDE)
 - Uses AI and other secretive ways to review

E-Verify Best Practices

- **Companies** should
 - Correctly register your account (consideration on structure, entities, sites etc.)
 - Conduct initial and ongoing training for Users
 - Set a cadence to regularly updating site, locations, entities, users and running reports
 - Update Program Admins
 - Create SOPs on overall process, reporting, TNCs, FNCs (including dealing with errors)
 - Understand responsibilities in restructuring
 - correctly identify if a FAR contractor, STEM OPT or State mandated participant
- **Users** should
 - Respect timelines: Case creation, TNCs, FNCs and more
 - Review only acceptable documents
 - Review a document with a photo
 - Understand the TNC process and privacy expectations, as well as possible errors
 - address employees that refuse to sign and keep your account clean
 - Close cases properly

E-Verify Bad Practices

- Companies should not:
 - Use E-Verify to prescreen an applicant for employment
 - Take any adverse action against an employee unless E-Verify issues a FNC
 - Have a policy noting Form I-9 documentation an employee is to use
 - Use E-Verify to discriminate against ANY job applicant or new hire on the basis of national origin, citizenship or immigration status
- E-Verify Users should not:
 - Selectively verify the employment of newly hired employees
 - Share their user ID and/or password
 - Use E-Verify instead of the Form I-9
 - Create duplicate cases for the same employee
 - Create cases for employees hired before employer enrolled as a FAR contractor
 - Request specific documents from employees
 - Immediately terminate employees who receive a TNC

Historical Reporting

- Specifics will depend if you are direct EV or Webservices, and what vendor
- Have an owner(s)
- Pull the reports - set a cadence
 - Learn how to manipulate the data and understand it
 - Look for open TNCs
 - Look for cases that were never closed with a Employment Authorized
 - Look for cases that were closed with FNC and are still working
 - Look for employees with no cases at all
 - Look for user violators
 - Look for duplicates, triplicates and other interesting practices
 - Look for fraud

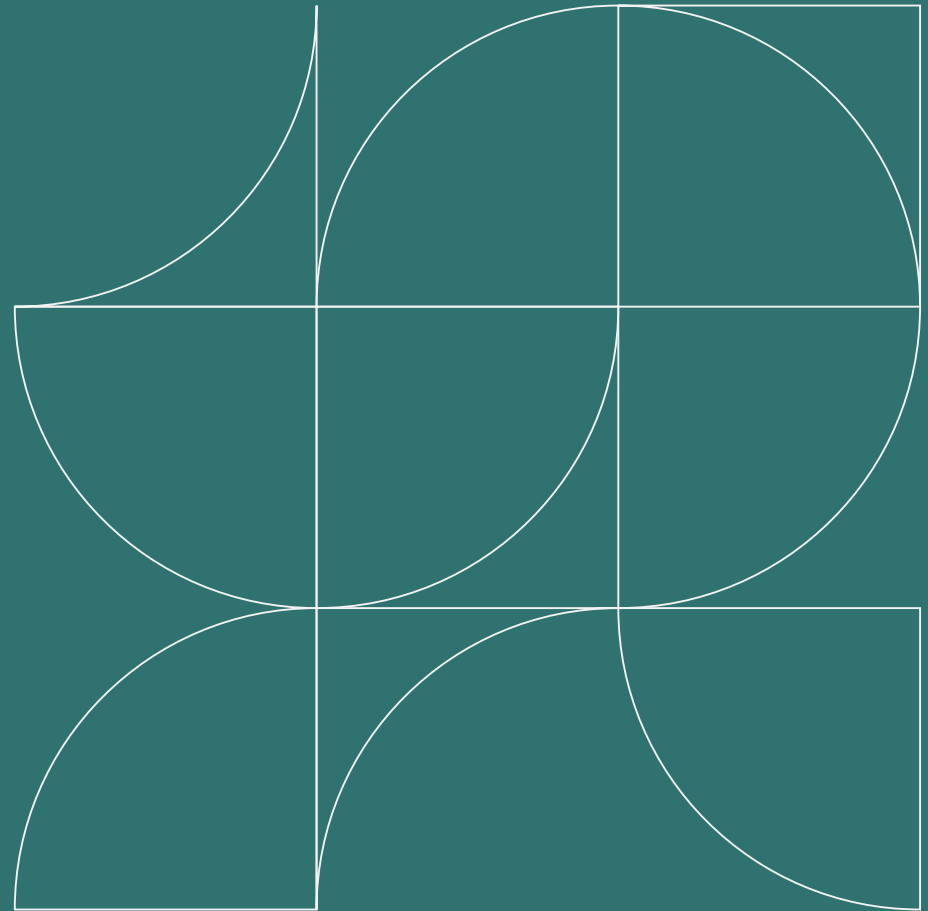
Agency Considerations

- Interagency Agreement
 - One big happy family? ICE, DOJ, DOL, State Labor Agencies/AGs, USCIS
- How may agencies mine E-Verify data? What are they looking for?
- Let's walk through some scenarios including
 - DOL and other state labor agencies
 - derivative use of e-verify data – are certain citizenship status or documentation patterns suspicious (e.g. – disproportionate numbers of LPRs suggest potential employment of undocumented workers and resultant worker abuse)
- Considerations for electronic I-9 systems and the data the USCIS stores
 - Can be reviewed/shared with other agencies

Questions?

**Please contact the Seyfarth
Immigration Compliance &
Enforcement Group**

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thank
you

For more information please contact :

Dawn Lurie

email: dlurie@seyfarth.com

Leon Rodriguez

email: lerodriguez@seyfarth.com

Zachary Blas Perez

email: zperez@seyfarth.com