
BOND INFORMATION MEMO

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Employers Have Until November 5 to Create E-Verify Cases for Employees Affected by the Federal Government Shutdown

After a brief hiatus prompted by the Federal Government shutdown, employers regained access to and use of the federal E-Verify system on October 17, 2013. E-Verify is an Internet-based employment eligibility verification system administered by the U.S. Citizenship and Immigration Services (“USCIS”). The E-Verify system does not serve as a replacement for the I-9 employment verification process, but rather serves as an additional method by which employers may confirm employee I-9 information against certain government databases (e.g., Department of Homeland Security and the Social Security Administration).

Beginning on October 1, 2013, employers were denied access to the E-Verify system for the duration of the government shutdown. Under normal circumstances, those employers enrolled in the E-Verify program – either voluntarily or involuntarily (e.g., mandatory for those federal contractors with a FAR E-Verify contract clause and employers in certain states such as Arizona and Mississippi) – are required to create a verification case in the E-Verify system for any newly-hired employee by no later than three business days after the employee starts to work for pay. During the government shutdown, however, the USCIS suspended the “three-day rule” in which enrolled employers are mandated to create a case in the E-Verify system. Now that E-Verify is once again operational, the USCIS has afforded employers a grace period in which to address E-Verify issues impacted by the government shutdown. Specifically, the USCIS has issued guidance indicating that employers have until no later than **November 5, 2013**, to create E-Verify cases that could not be created for those employees due to the unavailability of the system.

In its recent guidance, the USCIS also addressed how employers should properly enter a case in E-Verify now that access to the system has been restored. Generally, when an E-Verify query is made more than three days after the date of hire, the E-Verify system will require the employer to provide an explanation for the delayed entry. In its October 17 guidance, the USCIS advised that when an employer is prompted to provide a reason for a delayed case creation which was caused by the government shutdown, the employer should select “Other” from the drop-down list and enter the phrase “federal government shutdown” in the field.

In addition, the USCIS noted in its October 17 guidance that federal contractors should follow the same instructions. If a federal contractor was unable to comply with certain E-Verify deadlines due to the government shutdown, the federal contractor should contact its contracting officer and reference the instructions provided by the USCIS in its guidance.



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Additionally, the USCIS offered the following guidance on other tangential E-Verify issues that may have been impacted as a result of the government shutdown:

- Employees will be given an extension of 12 federal business days in order to contact the DHS or the SSA to resolve any Tentative Non-Confirmation (TNC) notice received or referred between September 17, 2013, and September 30, 2013, that the employee was unable to resolve due to the government shutdown. Employers may add 12 business days to the date printed on either the Referral Letter or the Referral Date Confirmation.
- Employers are instructed to now initiate referral processing in E-Verify for employees who decide to contest any TNC issued during the unavailability period of E-Verify.
- Employers must close E-Verify cases for those employees who received a Final Nonconfirmation (FNC) or No Show due to the federal government shutdown by selecting one of the following options from the drop-down menu: (1) "The employee continues to work for the employer after receiving a Final Non-Confirmation result"; or (2) "The employee continues to work for the employer after receiving a No Show result." The employer must then create a new E-Verify case for the employee.

Finally, employers should be aware that the USCIS' suspension of the "three-day rule" during the government shutdown period did not extend or otherwise impact employers' obligations regarding the timely completion of the Form I-9 or any other Form I-9 requirements. Employers should also be mindful that the "three-day rule" for E-Verify cases is once again in effect for all newly-hired employees.

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