



# Navigating the Treacherous Waters of Form I-9

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Spring 2022





# INTRODUCTIONS

- **John W. Mazzeo**, Associate General Counsel – Director of I-9 and E-Verify Compliance
  - John Mazzeo is Truescreen's new Associate General Counsel and Director of I-9 and E-Verify compliance. Previously, John served as an Assistant Chief Counsel with Immigration and Customs Enforcement, a component of the Department of Homeland Security where he served as the legal counsel for all worksite enforcement and Form I-9 investigations and sanctions in Pennsylvania, Delaware, and West Virginia. During his tenure with DHS-ICE, John conducted regular meetings with Homeland Security Investigations Auditors and Special Agents concerning changes in the law and points of concern. In his role at Truescreen, John focuses on supporting our I-9 and E-Verify operations division regarding compliance and best practices. John is available to all of our clients as a subject matter expert on issues involving I-9 and E-Verify. John holds a Juris Doctor from the Drexel University Thomas R. Kline School of Law, and an undergraduate degree from Ursinus College. Like Alex, John is also a member of the Association of Corporate Counsel.
- **N. Alexander Erlam**, General Counsel
  - Alex Erlam is Truescreen's general counsel and employment law specialist. Alex has over 25 years of experience in all areas of employment law, and has developed expertise in background screening law, including the FCRA, the Gramm-Leach-Bliley Act, and the Drivers Protection Act, discrimination law, and immigration law, as well as general human resources expertise. Alex recently served on the Association of Corporate Counsel Board of Directors and is a past president of its Greater Philadelphia chapter. In his role at Truescreen, Alex directs the company's legal affairs and is responsible for maintaining compliance with all applicable laws and regulations. He serves as our expert resource to clients on legal and regulatory developments and case law. Alex has a law degree from the Temple University James E. Beasley School of Law and a bachelor's degree in political science/pre-law from Villanova University.

# AGENDA

- Session I – Overview of Form I-9
- Session II – Advanced Form I-9 Issues
- Session III – Handling the Form I-9 Audit
- **Session IV – Overview of the E-Verify Program**

FORM I-9 Compliance  
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This webinar is designed solely for informational purposes, and should not be inferred or understood as legal advice or binding case law, nor shared with any third parties. Persons in need of legal assistance should seek the advice of competent legal counsel.

# TODAY'S AGENDA

- Background of E-Verify
- E-Verify Process
- Mandatory E-Verify
- COVID-19 Considerations



# WHAT IS E-VERIFY?

- Complements the Form I-9
- Partnership between SSA and DHS
- Mandated by some states
- Mandatory for all federal contractors subject to FAR E-Verify Regulation (all federal contracts signed after September 8, 2009 and some that have been amended to include it).



A close-up photograph of two hands shaking, symbolizing agreement or partnership. The hands are positioned in the upper left corner of the slide, with the background being a solid dark blue.

# HOW IT WORKS

- Information from Section 1 of the Form I-9 is compared to information in Social Security Administration and Department of Homeland Security databases.
  - Form I-9 and E-Verify work together and complement each other.
- If the data matches and the employee is work authorized, then the case closes automatically.
- If the data does not match, or there is an issue with the employment authorization status, a Tentative Nonconfirmation is issued.
  - Sends the employee to either DHS or SSA (or both) to remedy any errors
  - After this visit(s), employee will either be considered employment authorized *or* be issued a Final Nonconfirmation.

A close-up photograph of two hands shaking, symbolizing an agreement or partnership. The hands are positioned in the upper left corner of the slide, with the background being a solid dark blue.

# SPECIFIC E-VERIFY ISSUES

- An E-Verify case must be created within three days of hire.
  - Same completion requirement as Section 2 of Form I-9.
  - Includes Form I-94 with 551 Stamp and Form I-94 with RE Stamp.
- If the employee presents a receipt for a lost, stolen, or damaged document, you cannot complete E-Verify. **You must wait until the individual proffers the *actual* document.**
- You only create a case upon hire, not reverification.



# I-9/E-VERIFY ISSUES

- Changes to Form I-9 process:
  - List B document must have a photograph
  - Social Security Number must be recorded on Form I-9
    - If employee does not have a SSN, cannot process E-Verify
- Naming conventions/formatting:
  - If only one name, enter it in the “Last Name” field of Form I-9/E-Verify and enter “Unknown” in the “First Name” field.



# E-VERIFY PROCESS

## Verification Process Overview

### CREATE A CASE



1

The employer uses information from the employee's Form I-9 to create a case in **E-Verify**.

### GET RESULTS



2

**E-Verify** displays an initial case result within a few seconds, though some cases may require additional action.

### CLOSE THE CASE

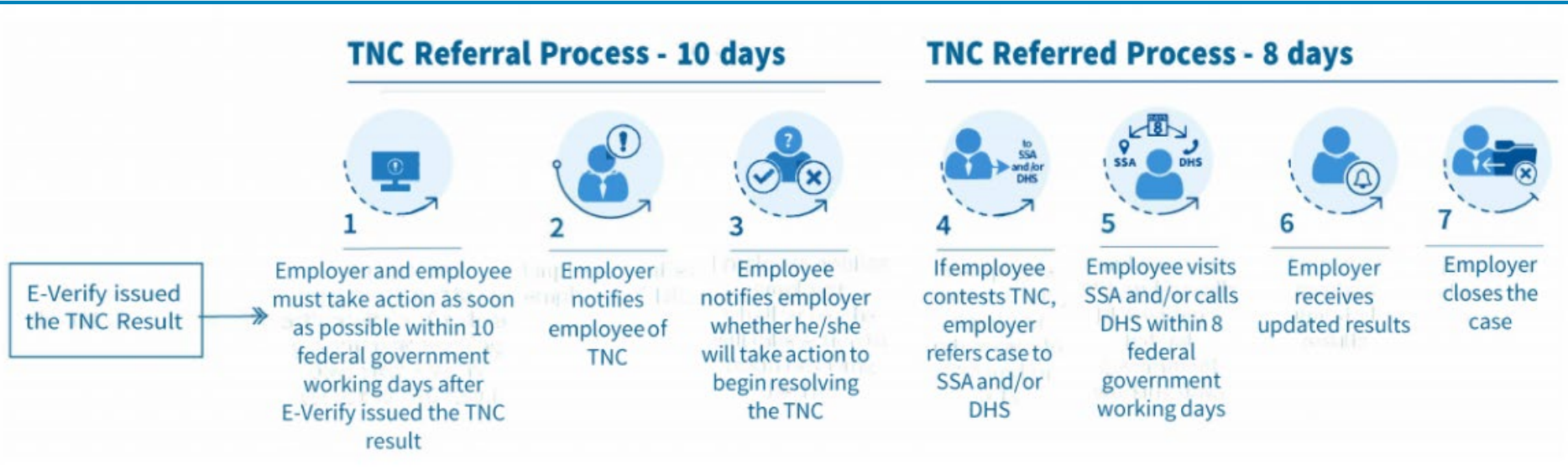


3

The employer closes the case once **E-Verify** displays a final case result.

# TENTATIVE NONCONFIRMATION PROCESS

- Both the employer and employee have responsibilities when E-Verify returns a TNC result:





# FINAL RESULTS

- **Employment Authorized** – The employee's information matched records available to SSA and/or DHS.
- **Verification in Progress** – This case was referred to DHS for further verification.
- **Case in Continuance** – The employee has visited an SSA field office or contacted DHS, but more time is needed to determine a final case result.
- **Final Nonconfirmation** – E-Verify cannot confirm the employee's employment eligibility after the employee visited SSA or contacted DHS
- **Close Case and Resubmit** – The SSA or DHS requires that you close the case and create a new case for this employee, possibly due to submitting incorrect information.



# EMPLOYER RESPONSIBILITIES

## EMPLOYERS MUST NOT:

- Terminate an employee until a Final Nonconfirmation is received
- Use E-Verify to pre-screen employment applicants
- Use E-Verify selectively; must be used for all new hires
- Influence or coerce an employee's decision to contest
- Ask for additional documentation in response to a TNC

A close-up photograph of two hands shaking, symbolizing agreement or partnership. The hands are positioned at the top of the slide, with the left hand wearing a blue sleeve and the right hand wearing a dark blue sleeve. The background is a blurred office setting.

# COVID-19 ISSUES SURROUNDING E-VERIFY

- If case creation is delayed due to COVID-19 precautions, you may select “Other” from the drop-down and enter “COVID-19” as the specific reason.
- Extending the timeframe for employees to respond to TNC with SSA and DHS.
- Delays in SSA processing of TNCs.
- Delays in DHS processing.
- Difficulty finding appointments at DHS/SSA offices.
- Inconsistent SSA office policies.

A close-up photograph of two hands shaking, symbolizing agreement or partnership. The hands are positioned at the top of the slide, with the left hand wearing a dark suit sleeve and the right hand wearing a light-colored shirt sleeve. The background is blurred, focusing on the handshake.

# CASE STUDY (PHOTO MATCHING)

- Case is created using Section 1 data from Form I-9 and either:
  - US Passport; Passport card; Form I-551; or Form I-766.
- Next, E-Verify will present the photo they have on file.
- You will be asked to confirm it matches.
- If match, then almost immediately employment authorized.
- If no match, then likely TNC.
- If an employee objects to providing a photo document for religious reasons, call E-Verify at 888-464-4218.



A close-up photograph of two hands shaking, symbolizing an agreement or partnership. The hands are positioned in the upper left corner of the slide, with the fingers interlaced. The background is a blurred office setting.

# CASE STUDY (TNC)

- Case is created using Form I-9 S1 data and documents entered from S2.
- Somehow end up in TNC status.
- Timely notify employee, they elect to contest.
  - Then, they have 8 days to contact either SSA or DHS.
- Cannot take adverse action while in TNC status.
- Eventually, a resolution will come, either:
  - Employment authorized; or
  - Final Nonconfirmation.
- If Final Nonconfirmation, then must either terminate employee (and update E-Verify and close case) or update E-Verify saying why you are keeping them on.

# COMMON SSA TNC CAUSES



- Your citizenship or immigration status changed since you last received your Social Security number.
- You changed your name but did not report the change to SSA.
- Your name, Social Security number, or date of birth was recorded incorrectly in SSA records.
- There is another type of mismatch with your SSA record.
- Your employer did not enter your information correctly in E-Verify.
- The name you provided on your Form I-9, Employment Eligibility Verification, is not consistent with your name in SSA records.



# COMMON DHS TNC CAUSES



- Your name, Alien number, I-94, and/or foreign passport number were recorded incorrectly in DHS records.
- Your U.S. Passport, Passport Card, driver's license or state ID card information could not be verified.
- Your information was not updated in DHS records at the time your information was checked in E-Verify.
- Your citizenship or immigration status changed.
- There is another type of error on your DHS record.
- Your employer did not submit your information correctly to E-Verify.
- The name you provided on your Form I-9, Employment Eligibility Verification, is not consistent with your name in DHS records.



# E-VERIFY VERSION 31

- Extends “lookback period” that prevents employer from running E-Verify again for a year.
- If a TNC is issued due to data mismatch or incorrect form completion, you must close the first case *and then* create a second case with the correct data.
- Ability to close a case at scan and upload stage.
- Expands number of cases displayed during a duplicate case check.
- Employer is required to download the Further Action Notice (FAN) prior to being able to notify the employee and refer them.



# DUNS ARE ... DONE

- On April 4, 2022, the federal government stopped using DUNS numbers to identify entities.
- Entities are required to register for a Unique Entity Identifier (UEI) with [sam.gov](https://sam.gov).
  - If your organization has already registered, the UEI can be retrieved from [sam.gov](https://sam.gov) as well.
- Federal contractors who are required to participate in E-Verify *must* update their E-Verify account to include the UEI.

A close-up photograph of two hands shaking in a firm grip, symbolizing agreement or partnership. The hands are positioned at the top of the slide, with the left hand wearing a dark suit sleeve and the right hand wearing a light-colored shirt sleeve. The background is blurred, focusing attention on the handshake.

# HOW CAN TRUESCREEN HELP YOU?

- Digitizing and indexing of historical Forms I-9;
- Auditing and remediation services;
- Remote completion of Section 2 of Form I-9;
- I-9 Management tool that allows a user to monitor the status of Form I-9
  - Completion status, hire date, etc. – completely customizable
  - Customizable reverification alerts
- Automatic and manual E-Verify Case creation and management.



# TRUESCREEN'S INTEGRATION CAPABILITIES

- If Form I-9 and E-Verify is selected:
  - Information from Form I-9 is automatically transferred to E-Verify;
  - Creates a case in E-Verify;
  - If the first result is employment authorized, then the E-Verify case is delivered to the client with the E-Verify certification.
  - If a TNC is issued, a Truescreen technician:
    - Reviews the Further Action Notice (FAN) with the employee via phone and/or email.
    - The E-Verify case is documented by selecting the corresponding links within the client portal (I-9/E-Verify Management System)
      - Employee notified of TNC - date
      - Employee Contests - date
      - Referred to SSA/DHS - date
      - \* If employee chooses not to contest that is documented as well



# QUESTIONS?

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ALEX ERLAM | JOHN MAZZEO

[aerlam@truescreen.com](mailto:aerlam@truescreen.com)

[jmazzeo@truescreen.com](mailto:jmazzeo@truescreen.com)