

BASIC EMPLOYMENT VERIFICATION PILOT

MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Social Security Administration (SSA), the Department of Homeland Security and _____ (Employer) regarding the Employer's participation in the Basic Employment Verification Pilot ("Basic Pilot"). The Basic Pilot is a pilot program in which the employment eligibility of all newly hired employees will be confirmed after the Employment Eligibility Verification Form (Form I-9) has been completed.

Authority for the Basic Pilot is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF THE SSA

1. Upon completion of the Form I-9 by the employee and the Employer, and provided the Employer complies with the requirements of this MOU, SSA agrees to provide the Employer with available information that will allow the Employer to confirm the accuracy of Social Security Numbers provided by all newly hired employees and the employment authorization of some newly hired employees.
2. The SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the Basic Pilot. The SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the Basic Pilot.
3. The SSA agrees to safeguard the information provided by the Employer through the Basic Pilot procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the Basic Pilot or such other persons or entities who may be authorized by the SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).
4. SSA agrees to establish a means of automated verification that is designed (in conjunction with such Department of Homeland Security automated verification as may be necessary) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.
5. SSA agrees to establish a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide

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confirmation or final confirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to SSA, unless it determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF THE Department of Homeland Security

1. Upon completion of the Form I-9 by the employee and the Employer, and completion by the Employer of SSA verification procedures required prior to initiation of Department of Homeland Security verification procedures, the Department of Homeland Security agrees to provide the Employer access to selected data from the Department of Homeland Security ASVI database to enable the Employer to conduct automated verification checks on newly hired alien employees by use of a personal computer and modem.

2. The Department of Homeland Security agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the Basic Pilot. The Department of Homeland Security agrees to provide the Employer names, titles, addresses, and telephone numbers of Department of Homeland Security representatives to be contacted during the Basic Pilot, including one or more individuals in each Department of Homeland Security district office covering an area in which the Employer hires employees covered by this MOU.

3. The Department of Homeland Security agrees to provide to the Employer a manual containing instructions on Basic Pilot policy, procedures and requirements for both SSA and Department of Homeland Security, including restrictions on use of Basic Pilot procedures (the Basic Pilot Manual). The Department of Homeland Security agrees to provide training materials on the Basic Pilot.

4. The Department of Homeland Security agrees to provide to the Employer a notice that indicates the Employer's participation in the Basic Pilot. The Department of Homeland Security also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, Department of Justice.

5. The Department of Homeland Security agrees to issue the Employer an access code, user identification number, and password that will permit the Employer to verify information provided by employees.

6. The Department of Homeland Security agrees to safeguard the information provided to the Department of Homeland Security by the Employer, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the Basic Pilot, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the INA and federal criminal laws, and to ensure accurate wage reports to the SSA.

7. The Department of Homeland Security agrees to establish a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

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8. The Department of Homeland Security agrees to establish a means of secondary verification (including updating Department of Homeland Security records as may be necessary) for employees who contest Department of Homeland Security tentative nonconfirmations that is designed to provide confirmation or final nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to the Department of Homeland Security, unless it determines that more than 10 days may be necessary. In such cases, the Department of Homeland Security will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by the Department of Homeland Security in a prominent place that is clearly visible to prospective employees.

2. The Employer agrees to provide to the SSA and the Department of Homeland Security the names, titles, addresses, and telephone numbers of Employer representatives to be contacted regarding the Basic Pilot.

3. The Employer agrees that all Employer Representatives performing employment verification queries will complete the Basic Pilot Computer Based Tutorial (CBT). The Employer also agrees that upon completion of the CBT the Employer's Representative(s) will provide the Confirmation Code to the Department of Homeland Security Contractor to activate access to the Basic Pilot system.

4. The Employer agrees to become familiar with and comply with the Basic Pilot Manual.

5. The Employer agrees to comply with established Form I-9 procedures, with one exception: The Employer agrees that it will only accept Form I-9 "List B" documents (those documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) presented to establish identity by employees subject to Basic Pilot verification that contain a photograph.

6. The Employer understands that participation in the Basic Pilot does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, except for the following modified requirements applicable by reason of the Employer's participation in the Basic Pilot: (1) identity documents must have photographs, as described in paragraph 4 above; (2) a rebuttable presumption is established by section 403(b) of IIRIRA that the Employer has not violated section 274A(a)(1)(A) of the INA with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of the Basic Pilot; (3) the Employer must notify the Department of Homeland Security if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$500 and \$1,000 for each failure to notify the Department of Homeland Security of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ any employee after receiving a final nonconfirmation; and (5) no person or entity participating in the Basic Pilot shall be civilly or criminally liable under any law for any action taken in good faith on information

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provided through the confirmation system. The Department of Homeland Security reserves the right to conduct Form I-9 compliance inspections during the course of the Basic Pilot, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate the Basic Pilot verification procedures within 3 Employer business days after each employee has been hired (but after both sections 1 and 2 of the Form I-9 have been completed), and to complete as many steps (but only as many) of the Basic Pilot process as are necessary

according to the Basic Pilot Manual. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate Employers attempting, in good faith, to make inquiries during the period of unavailability.

8. The Employer agrees not to use the Basic Pilot procedures for pre-employment screening of job applicants, support for any unlawful employment practice, or any other use not authorized by this MOU. The Employer will not verify selectively; it agrees to use the Basic Pilot procedures for all new hires as long as this MOU is in effect. The Employer agrees not to use Basic Pilot procedures for reverification, or for employees hired before the date this MOU is in effect. The Employer understands that should the Employer use the Basic Pilot procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and the immediate termination of its access to SSA and Department of Homeland Security information pursuant to this MOU.

9. The Employer agrees not to take any adverse action against an employee based upon the employee's employment eligibility status while SSA or the Department of Homeland Security is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or Department of Homeland Security automated verification to verify work authorization, or a tentative nonconfirmation, does not mean, and should not be interpreted as, an indication that the employee is not work authorized.

10. The Employer agrees to comply with section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include discharging or refusing to hire eligible employees because of their foreign appearance or language, and that any violation of the unfair immigration-related employment practices provisions of the INA could subject the Employer to civil penalties pursuant to section 274B of the INA and the termination of its participation in the Basic Pilot. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-7688 or 1-800-237-2515 (TDD).

11. The Employer agrees to record the verification number on the employee's Form I-9 or to print the screen containing the verification number and attach it to the employee's Form I-9.

12. The Employer agrees that it will use the information it receives from the SSA or the Department of Homeland Security pursuant to the Basic Pilot and this MOU only to confirm the employment eligibility of

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newly-hired employees after completion of the Form I-9. The Employer agrees that it will safeguard this information, and means of access to it (such as passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who need it to perform the Employer's responsibilities under this MOU.

13. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any

person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

14. The Employer agrees to allow the Department of Homeland Security and SSA, or their authorized agents or designees, to make periodic visits to the Employer for the purpose of reviewing Basic Pilot-related records, i.e., Forms I-9, and verification records, that were created during the Employer's participation in the Basic Pilot Program. In addition, for the purpose of evaluating the Basic Pilot, the Employer agrees to allow the Department of Homeland Security and SSA or their authorized agents or designees, to interview it regarding its experience with the Basic Pilot, to interview employees hired during the Basic Pilot concerning their experience with the pilot, and to make employment and Basic Pilot-related records available to the Department of Homeland Security and the SSA, or their designated agents or designees.

ARTICLE III

REFERRAL OF INDIVIDUALS TO THE SSA AND THE DEPARTMENT OF HOMELAND SECURITY

A. REFERRAL TO THE SSA

1. The Employer will refer individuals to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer reviews the input to detect any errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

2. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a referral letter and instruct the employee to visit an SSA office to resolve the discrepancy within 8 Federal Government work days. The Employer will make a second inquiry to the SSA database using the Basic Pilot procedures on the date that is 10 Federal Government work days after the date of the referral in order to obtain confirmation, or final nonconfirmation.

3. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA (other than the Social Security Number Card).

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B. REFERRAL TO THE DEPARTMENT OF HOMELAND SECURITY

1. The Employer agrees to refer individuals to the Department of Homeland Security only when the verification response received from the Department of Homeland Security automated verification process indicates a tentative nonconfirmation, and the employee contests the tentative nonconfirmation. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

2. If the Employer receives a tentative nonconfirmation from the Department of Homeland Security, the Employer will record the verification code and date on the Form I-9 or print the screen showing the verification number and attach

the printout to the Form I-9, determine whether the employee contests the tentative nonconfirmation, and instruct an employee who contests to contact the Department of Homeland Security to resolve the discrepancy within 8 Federal Government work days, using Basic Pilot procedures. The Department of Homeland Security will electronically transmit the result of the referral to the Employer within 10 Federal government work days from the referral.

ARTICLE IV

SERVICE PROVISIONS

The SSA and the Department of Homeland Security will not charge the Employer for verification services performed under this MOU. The Employer shall be responsible for providing equipment needed to make inquiries. Equipment needed for participation in the Basic Pilot includes a personal computer with a modem.

ARTICLE V

PARTIES

This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and the Department of Homeland Security conduct the Basic Pilot unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Termination by any party shall terminate the MOU as to all parties. The SSA or the Department of Homeland Security may terminate this MOU without prior notice if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or the Department of Homeland Security that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. Some or all SSA and Department of Homeland Security responsibilities under this MOU may be performed by contractor(s).

Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against _____, its agents, officers, or employees.

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Each party shall be solely responsible for defending any claim or action against it arising out of or related to the Basic Pilot or this MOU, whether civil or criminal, and for any liability there from, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

The foregoing constitutes the full agreement on this subject between the SSA, the Department of Homeland Security, and the Employer.

The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer, SSA, and the Department of Homeland Security respectively.

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Employer

Name (Please type or print)

Title

Signature

Date

Social Security Administration

Name (Please type or print)

Title

Signature

Date

Department of Homeland Security

Name (Please type or print)

Title

Signature

Date

**INFORMATION REQUIRED
FOR THE BASIC PILOT PROGRAM**

Please complete a separate information sheet for each site that will be performing employment verification queries:

Information relating to your **Company**:

Company Name: _____

Company Address for Federal Express: _____

Company Address for Regular: _____

City State Zip Code

County or Parish: _____ Employer Identification Number: _____

Standard Industry Code (if known): _____

NOTE: Please provide your Standard Industrial Classification Code (SIC code.) If you do not know the SIC code, please write in what service and product type, your company provides (i.e., manufacturing, wholesale/retail trade, construction, mining, or agriculture).

Number of Employees: _____ Number of Sites Verified for: _____

Are you currently participating in an employment verification pilot? Yes No

If you checked yes, which pilot are you participating in? _____

Are you verifying for more than 1 site? If yes, please **provide the number of additional sites**: _____

Please provide the address for each site that you are verifying for:

1. _____

2. _____

3. _____

(If additional space is needed, please provide the information as an attachment to this sheet.)

Information relating to the **Person(s) Who Will Perform the Queries**:

User's Name(s): _____

User's Telephone Number(s): _____

User's Fax Number(s): _____

User's E-mail Address: _____

Information relating to a **Point of Contact** for your Company on policy questions or operational problems:

Name: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

INSTRUCTIONS FOR COMPLETING THE BASIC PILOT
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To participate in the Basic Pilot program, your company must sign a Memorandum of Understanding (MOU) for each site that will perform verifications .

Completing the MOU

1. After, submitting your company information on-line, sign on the Employer section of the signature page.
2. Fax the Signature page to the Department of Homeland Security SAVE Program at (202) 272-8744 or (202) 272-8745.

After the Department of Homeland Security receives the MOU, you will be notified by email when you can access the system.

If you need assistance in completing the MOU or have questions about the Basic Pilot Program, please call the SAVE Program at 1-888-464-4218.