

PUBLICATION

Old E-Verify Data: Download it or Lose It

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USCIS is giving participating employers the chance, in the final quarter of every calendar year starting now, to download for employers' storage E-Verify records older than 10 years before USCIS destroys those historical records on its own system.

U.S. Citizenship & Immigration Services (USCIS), which operates the E-Verify program, announced that on January 1, 2015 it will start to delete from its system all records that are 10 years or older and will do so every year after that. After December 31, 2014 employers will no longer have access to any data or record they created on or before that date. In the future, for example, on January 1, 2016, USCIS will dispose of records created on or prior to December 31, 2005, and this process will continue from then on. This will affect records in active and inactive E-Verify accounts.

As part of the agreement signed to enroll in E-Verify, employers have the responsibility to record the E-Verify case number on the related I-9 Form or to print the screen containing the case verification number and attach it to the employee's Form I-9. When conducting compliance inspections and audits, Immigration and Customs Enforcement (ICE) usually requests that employers provide E-Verify case information and summaries in addition to Forms I-9. Failure to do so may prevent the employer from defending itself with the rebuttable presumption that the Employer has complied with employment verification requirements with respect to the hiring of any individual that was not authorized to work in the U.S. because it obtained confirmation of the identity and employment eligibility of the individual in good faith compliance with the terms and conditions of E-Verify. Employers are required to retain I-9 forms for longer than 10 years for workers they continue to employ that long.

In order to assist employers that want to retain this information, E-Verify has created a new Historic Records Report. Employers wanting a record of its E-Verify cases that are more than 10 years old must download the new Historic Records Report before December 31, 2014. The report will include all transaction records for cases more than 10 years old. The report is only available until December 31, 2014. This report should be downloaded for each E-Verify account the employer may have.

Employers that enrolled in E-Verify on or before December 31, 2004 and have not retained E-Verify information, or want to be absolutely sure they have access to it, should take steps to download the Historic Reports as soon as possible. Now that this report is available, employers should make an annual reminder to complete this download as part of their compliance efforts. This initial report will **ONLY BE AVAILABLE** from October 1 through December 31, 2014. For employers that enrolled in E-Verify after 2004, this year's report will not have any case information, so there would be no point in trying to download.

How We Can Help

Baker Donelson's Immigration Group regularly counsels employers on I-9 and E-Verify compliance. We perform private audits of I-9 and E-Verify documents, prepare compliance programs and train managers and workers in implementing those programs. We evaluate particular questionable documents and situations. We help employers decide whether and how to create or store I-9 forms electronically, to use Social Security Administration's Number Verification System, or to participate in the Department of Homeland Security's "E-Verify" program. We defend sanctions actions by ICE for paperwork and "knowingly hire" violations of I-9 rules.

We work with our strong Litigation Department to bring and defend claims against competitors based on employment of unauthorized aliens. We advise and defend employers and managers in the increasingly common criminal investigations and proceedings relating to employment of aliens. We coordinate our Team's services closely with our firm's well-respected Labor and Employment Law Group and with our firm's White Collar Crime Group. We provide advice and coordinate with U.S. and foreign preparers concerning U.S. taxation of international companies doing business in the U.S., and concerning the U.S. taxation of international workers placed in the U.S. and abroad.