

LEHIGH UNIVERSITY
Controller's Office Policy Manual

Policy Number: 107
Effective Date: circa 2004
Revisions: 6/30/2009

IDENTITY AND EMPLOYMENT ELIGIBILITY POLICY

INTRODUCTION AND BACKGROUND

The *Immigration Reform and Control Act of 1986 (IRCA)* makes it unlawful for any United States employer to hire for employment anyone known not to be authorized to work in the United States. The law requires that the employer must verify the identity and employment eligibility of each person hired after the date of enactment of the law, November 6, 1986, to work in the United States. This verification applies to United States citizens, as well as noncitizens, and is done by filling out a government form, retained by the employer, on which a representative of the employer certifies that he/she has seen original documentary proof of the right of the individual being employed to work in the United States. It should be noted that non-immigrant aliens must have secured the necessary United States Citizenship and Immigration Services (USCIS), (formerly *Immigration and Naturalization Service (INS)*) approval to work in the United States before Lehigh can lawfully employ the individual.

Protection from Discrimination:

The IRCA prohibits employers from discriminating against any person on the basis of national origin in hiring, discharge, recruitment, assignment, compensation, or other terms and conditions of employment. The I-9 process may not be used to pre-screen employees for hiring. Furthermore, an employer may not demand more or different documents than an employee chooses to present, provided that the documents presented are accepted under the I-9 requirements. In addition, the employer may not consider the fact that work authorization documents have future expiration dates as cause not to hire or to terminate.

POLICY

Government Form to be Used: The USCIS *Form I-9* for verification is available through the Payroll web page at <http://www.lehigh.edu/~inctr/Forms.shtml#PR>. Please make

Continuation:

copies (remember to copy both sides of the form). The instruction page must be provided to all individuals at the time that the person is completing the I-9 form. There are three sections of the Form I-9. The employee must complete Section 1 whereas the employer must complete Sections 2 and 3 as appropriate.

When Form must be Completed: Employees must complete Section 1 no later than their **first** day of work. Lehigh's representative must complete the I-9 for all new employees, citizens, and noncitizens, permanent or temporary, full-time or part-time (including students), within three business days from the hire date, or be subject to substantial fines per employee. For employees that are hired within three (3) years of completing an original I-9, please skip to the instructions for Section 3. If Lehigh knowingly hires or continues to employ an unauthorized alien, Lehigh will be subject to substantial fines per employee. Note that the certification in Section 2 contains space to write the employee's hire date. The hire date is required and the USCIS can easily compare the hire date to the completion date to determine compliance. It is imperative therefore, that both employee and Lehigh's representative date and sign the I-9 within three business days of the hire date. Lehigh's representative is responsible for ensuring that the I-9 is timely and properly completed. If the paperwork is not completed within three days, **the employee cannot continue to work.**

Special rule for employees funded by or assigned to directly perform work under a federal contract or subcontract: Effective June 30, 2009, all employees, existing or new, who are directly performing work on a federal contract that meets all of the following criteria must also have work eligibility confirmed via the E-Verify system: (1) contract is subject to Federal Acquisition Regulations (FAR), (2) the contract term exceeds 120 days, (3) the contract value is greater than \$100,000 (threshold is \$3,000 for subcontracts involving services or construction), and (4) the terms of the contract include a requirement that Lehigh use the E-Verify system. The Department of Homeland Security, U.S. Citizenship and Immigration Services, is responsible for administering the E-Verify system for the government and the Payroll Office is responsible for administering the E-Verify system at Lehigh. This rule does not apply to contracts for commercially available off-the-shelf items or for employees funded by federal research grants that are not subject to FAR. See section below **"If E-Verify is Required"** for additional procedural information.

Section 1: The employee must complete Section 1 no later than the close of business on his/her first day of work. Lehigh's representative must review this section to ensure that it is fully and properly completed. If an alien's work authorization document has an expiration date, the Payroll Office will track this, notify the department and follow up with the employee **90 days before the expiration date** by having the employee produce a document that either shows continuing employment eligibility or a new grant of work authorization. If such new evidence of employment eligibility is not produced, the department will be notified that the individual's employment must be terminated on or before the expiration date.

Continuation:

Section 2: No later than the close of business on the employee's third day of employment, Lehigh's representative must complete Section 2 by examining *original* documents of identity and employment eligibility. Lehigh's representative may not specify which document(s) an employee must present and he/she is not allowed to request more or different documents than the minimum necessary to comply with I-9 regulations. Employees may choose the documents they wish to present for I-9 certification; however, the documents presented must be original documents. Verification by Lehigh's representative from the documents presented consists of two steps: (1) identification of the individual, and (2) establishment of that individual's right to work in the United States. Identity and employment eligibility can be established by presentation of any of those documents under List A, such as a United States passport. If none of those documents listed in A is available, then identity must be established by one of the documents under List B and employment eligibility by one of the documents listed under C. In all cases, the person being employed must appear in person before the person signing the form for Lehigh in order for the identification verification process to take place from the photograph or other descriptive information contained in the documents presented. If an employee is unable to physically be on-campus to complete his/her I-9 form, it is acceptable to have a notary view the original documents and complete Section 2.

Employees who do not possess the required documentation when employment begins may not submit receipts showing that they have applied for initial applications for documents or for applications for extension of documents. Receipts may be accepted for a replacement document in lieu of the required document if that document was lost, stolen or damaged. The replacement document must be presented within 90 days of the hire or, in the case of a reverification, the date employment authorization expires. A receipt is never acceptable for employment lasting less than three (3) working days.

Lehigh's representative must record:

- (1) Document title
- (2) Issuing authority
- (3) Document number
- (4) Expiration date, if any
- (5) The date of hire

Lehigh's representative must sign and date the certification and should photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the original I-9. The hiring supervisor/department should keep a copy of all paperwork and send the original I-9 and copies of all other paperwork to the Payroll Office.

Continuation:

Section 3. Updating and Re-verification: When a former employee is hired within three years of the initial verification of employment eligibility (i.e., this is the date the original I-9 was endorsed), his/her employment eligibility must be verified. If you have retained the original I-9, complete Section 3 Block A (if applicable), Block B and the signature block. Updates/re-verifications can only be recorded on **original** I-9 forms. If the employee was rehired after April 1, 2004, send the employee to the Payroll Office for re-verification. This section must be completed no later than three days after the date of rehire. **IMPORTANT: if an employee is rehired more than three years after the initial verification of employment eligibility, he/she must complete a new I-9 form.**

If Section 3 has already been completed due to a previous re-verification, you can reverify by completing Section 3 of a new I-9 form. Forward the new I-9 form, the original I-9 and copies of the documents to the Payroll Office. It is important that the employee's name is written in Section 1 of the new I-9 form.

Who Should Execute the Form on Behalf of Lehigh: The following Lehigh representatives, and others in these offices, will be available to sign the form on behalf of Lehigh after examining the documents identifying the individual being employed and his or her right to work in the United States:

Employment Category	Type of I-9	Lehigh's representatives
Nonexempt Staff	Original	Human Resources
Exempt staff hired through Human Resources	Original	Human Resources
All International (non-citizen)	Original	Office of International Students & Scholars
Faculty, adjunct, visitors, students, wage, exempt staff not hired through Human Resources	Original	Employment Coordinator in Hiring Department
All Employees	Re-verification	Payroll Office

Any of the designated offices and individuals responsible for completing I-9 forms is available to answer questions about this form. Execution of this form is a serious matter. Attention is called to the following statement on the form, above the space for the signature of Lehigh's representative:

"I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above listed document (s) appear to be genuine and to relate

Continuation:

to the employee named, that the employee began employment on (month/day/year) ___/___/___ and that to the best of my knowledge the employee is eligible to work in the United States.”

In judging the authenticity of the documents being submitted, Lehigh’s representative should use the “reasonable basis” rule, i.e., would the average person reasonably believe that the documents are authentic. If documents appear to be invalid, employment should be postponed until receipt of such authentication. ***If there is doubt about the USCIS validity of documents, please consult the Payroll Office or the Office of International Students and Scholars.***

Record Retention:

1. The person completing the I-9 form may retain a copy of the form with attached copy of the documents presented. The original, including copies of the supporting documents, must be forwarded to the Payroll Office, along with the necessary authorization that results in the new employee being placed on the payroll.
2. In order to have I-9 forms readily available for inspection by USCIS personnel, the Payroll Office will file the original I-9 forms in alphabetical order in an I-9 file separate from the employee’s personnel file.
3. If the employee has a work authorization expiration date, the Payroll Office will follow-up with the employee within the 90 days before the expiration date to determine whether the employee has filed for an extension. If any problems are encountered during this process, the department will be notified.
4. The Payroll Office will maintain the original I-9 form on file for three years after the date of employment or one year after the date the individuals' employment is terminated, whichever is later.

Copies of Documents Relied on Should Be Made and Attached to Form: For the protection of the person signing this form on behalf of Lehigh, he/she should make sure that copies are made of the documents relied on and those copies are attached to the form. The original documents should be promptly returned to the owner.

If E-Verify is Required:

The Office of Research and Sponsored Programs (ORSP) will be responsible for reviewing the terms of all new federal contracts to determine if existing employees directly performing work on those contracts must be processed through the E-Verify system. If ORSP determines that such processing is required, it will notify the Principal Investigator for the contract and also

Continuation:

provide the Payroll Office with the name and identification number of the existing employees assigned to the contract.

The Principal Investigator is responsible for notifying the Payroll Office of any new hires on the contract in sufficient time to allow the employment verification information to be processed in the E-Verify system within three days after the date the employee begins work. The Payroll Office will be responsible for entering the I-9 information into the E-Verify system within three days after the employee begins work on the contract.

Note: if E-verify is required, the identity documents used for verification purposes must have photos.

If Lehigh is assessed financial penalties for failure to meet the E-Verify deadlines and such delay was due to a failure to promptly notify the Payroll Office of an employee assignment to a federal contract subject to E-Verify procedures, such penalties will be assessed against the department responsible for that failure.

If the E-Verify system is unable to verify the employee's I-9 information against Social Security Administration or USCIS records, the Payroll Office will receive a "Tentative Nonconfirmation Notice". The Payroll Office will provide the employee with a "Notice to Employee of Tentative Nonconfirmation" which is generated by the E-Verify system. The employee must then indicate on the notice whether he or she contests or does not contest the finding that he or she appears unauthorized to work, and both the employee and his or her supervisor must sign the notice. If the employee chooses to contest the Tentative Nonconfirmation, the Payroll Office must print a second notice from the E-Verify system called a "Referral Letter" which contains information about resolving the Tentative Nonconfirmation. The employee then has eight (8) Federal Government workdays to visit a Social Security Administration office or to call USCIS to resolve the discrepancy. During this period, Lehigh is prohibited from terminating or otherwise taking adverse action against the employee while awaiting final resolution from the federal agency.

If the employee fails to contest the Tentative Nonconfirmation, or if the discrepancy is not resolved within the eight (8) workday period, the Payroll Office will receive a "Notice of Final Nonconfirmation" and the employee may be terminated.

Lehigh Resources:

Office of International Students & Scholars	x84859
Payroll Office	x83150
Human Resources Office-Exempt Employees	x85195
Human Resources Office-Non-Exempt Employees	x83916