

# Memorandum of Understanding

## **ARTICLE I**

### **PURPOSE AND AUTHORITY**

This Memorandum of Understanding (MOU) sets forth the agreement between the Social Security Administration (SSA), the Department of Homeland Security (DHS) and \_\_\_\_\_ the State Employment Agency (Agency) regarding the AGENCY's participation in the E-Verify Program (E-Verify). E-Verify is a Federal program that confirms a person's employment eligibility after the Employment Eligibility Verification Form (Form I-9) has been completed.

Authority for the E-Verify program 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, as amended (8 U.S.C. § 1324a note).

Authority for the AGENCY to verify employment authorization of individuals referred for employment, and certify eligibility to employers in lieu of the employer verifying eligibility, is found in Section 274A(a)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1324a(a)(5) and Section 274a.6 of Title 8, Code of Federal Regulations (C.F.R.). The AGENCY certifies that it is a State employment agency (e.g. State Workforce Agency) as defined in 8 C.F.R. § 274a.1 ("any State government unit designated to cooperate with the United States Employment Service in the operation of the public employment service system").

Authority for the AGENCY to expend funds for participation in this program is found in the Wagner-Peyser Act (29 U.S.C. §§ 49 et seq.) and the Department of Labor regulations promulgated thereunder.

The purpose of this MOU is to provide the AGENCY with the means through E-Verify to verify the information provided through the Form I-9 process by workers to be referred by the AGENCY to any employer. For the purpose of this MOU, these workers will be referred to as "referred workers." The AGENCY will verify referred workers using the procedures provided by 8 C.F.R. § 274a.6 and this MOU.

## **ARTICLE II**

### **FUNCTIONS TO BE PERFORMED**

#### **A. RESPONSIBILITIES OF THE SSA**

1. Upon completion of the Form I-9, and provided the AGENCY complies with the requirements of this MOU, SSA agrees to provide the AGENCY with available information that allows the AGENCY to confirm the accuracy of Social Security Numbers provided by referred workers and the employment authorization of such workers who are U.S. citizens.
2. The SSA agrees to provide to the AGENCY appropriate assistance with operational problems that may arise during the AGENCY's participation in the E-Verify program. The SSA agrees to provide the AGENCY with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. The SSA agrees to safeguard the information provided by the AGENCY through the E-Verify program 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 E-Verify program 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 provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for referred workers who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 10 Federal Government work days of the date of referral to SSA, unless SSA 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 and after SSA verifies the accuracy of SSA records through E-Verify, DHS agrees to provide the AGENCY access to selected data on aliens from DHS's database to enable the AGENCY to conduct:

- Automated verification checks on referred workers by electronic means, and
- Photo verification checks (when available) on alien referred workers.

2. DHS agrees to provide to the AGENCY appropriate assistance with operational problems that may arise during the AGENCY's participation in the E-Verify program. DHS agrees to provide the AGENCY with names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to provide to the AGENCY a manual (the E-Verify User Manual) containing instructions on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide the AGENCY with a notice that must be given to referred workers, which informs the referred workers that the AGENCY participates in E-Verify. DHS also will provide the AGENCY with an anti-discrimination notice that must be given to the referred worker.

5. DHS agrees to provide the AGENCY with a notice that must be provided by the AGENCY to each employer to whom the AGENCY refers a referred worker. The notice will inform the employer that the AGENCY has completed the Form I-9 employment eligibility verification process for the referred worker; that the AGENCY's referral may serve as evidence that the employer has complied with the verification requirements of section 274A of the INA for up to 21 business days pending receipt of AGENCY certification, as provided by 8 C.F.R. § 274a.6(c); that the AGENCY is participating in the E-Verify program; that verification of employment eligibility may or may not have been completed by the AGENCY at the time of referral; that the employer is subject to anti-discrimination requirements in its employment of the referred worker and may not take any adverse action against the referred worker based on the fact that the AGENCY may not have completed the E-Verify process at the time of referral; and that the AGENCY will follow up with the employer by providing the certification described in 8 C.F.R. § 274a.6(c)(1) within 21 days and/or further information on the referred worker's verification status.

6. DHS agrees to issue the AGENCY a user identification number and password that permits the AGENCY to verify information provided by alien referred workers with DHS's database.
7. DHS agrees to safeguard the information provided to DHS by the AGENCY, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the E-Verify program, 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.
8. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of referred workers' employment eligibility within 3 Federal Government work days of the initial inquiry.
9. DHS agrees to establish a means of secondary verification (including updating DHS records as may be necessary) for referred workers who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of such workers' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

### **C. RESPONSIBILITIES OF THE STATE EMPLOYMENT AGENCY**

1. The AGENCY agrees to provide to each referred worker the DHS-supplied notice concerning the AGENCY's participation in E-Verify, and the notice concerning protections from unlawful discrimination.
2. The AGENCY agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the AGENCY representatives to be contacted regarding E-Verify.
3. The AGENCY agrees to become familiar with and comply with the terms and procedures of the E-Verify User Manual. Including but not limited to, any supplemental information pertaining to verification by an AGENCY.
4. The AGENCY agrees that any AGENCY representative who will perform employment verification queries will complete the E-Verify tutorial before that individual initiates any queries.
  - A. The AGENCY agrees that all AGENCY representatives will take any refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.
  - B. Failure to complete a refresher tutorial will preclude the AGENCY from continued use of the program.
5. The AGENCY agrees that each AGENCY representative who will perform employment verification queries must have his or her own user ID and password.
6. For each referred worker, the AGENCY agrees to comply with established Form I-9 procedures for state employment agencies that choose to verify identity and employment eligibility for individuals referred for employment, as provided in 8 C.F.R. § 274a.6, with two exceptions:
  - If a job candidate presents a "List B" identity document, the AGENCY agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity).

- If a job candidate presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the AGENCY agrees to make a photocopy of the document and to retain the photocopy with the job candidate's Form I-9. The AGENCY will use the photocopy to verify the photo and to assist the Department with its review of photo non-matches that are contested by job candidates. Note that job candidates retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the Photo Screening Tool.

7. The AGENCY understands that participation in E-Verify does not exempt the AGENCY from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to referred workers, or from other requirements of applicable regulations or laws, except for the following modified requirements applicable by reason of the AGENCY's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the AGENCY has not violated Sections 274A(a)(1)(A) or 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (INA) with respect to the referral of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of E-Verify; (3) the AGENCY is subject to a rebuttable presumption that it has knowingly referred an unauthorized alien in violation of Section 101(a)(15)(H)(ii)(a) if the AGENCY refers any referred worker after receiving a final nonconfirmation; and (4) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

8. The AGENCY agrees to initiate E-Verify verification procedures prior to referral of a referred worker (but after both Sections 1 and 2 of the Form I-9 have been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual. The AGENCY may initiate E-Verify verification procedures at any step of its referral process following completion of the I-9 but prior to the employer hiring the worker. The AGENCY is prohibited from initiating verification procedures before the referred worker has completed the Form I-9. In all cases, the AGENCY must use the SSA verification procedures first, and use DHS verification procedures and Photo Screening Tool only after the SSA verification response has been given.

9. The AGENCY agrees not to use E-Verify procedures for screening of non-job applicants, support for any unlawful employment practice, or any other use not authorized by this MOU.

- The AGENCY must use E-Verify for all referred workers and agrees that it will not verify only certain such workers selectively.
- The AGENCY agrees not to use E-Verify procedures for re-verification of employment eligibility.
- The AGENCY agrees not to use E-Verify for any individuals referred for any employment before the date this MOU is in effect.
- The AGENCY understands that if the AGENCY uses E-Verify procedures for any purpose other than as authorized by this MOU, the AGENCY may be subject to appropriate legal action and the immediate termination of its access to SSA and DHS information pursuant to this MOU.
- The AGENCY agrees that it will not delay the referral of a referred worker or take other adverse action because of the receipt of a tentative nonconfirmation that is challenged by the worker.

10. The AGENCY understands that the obligation to verify under this MOU applies to referred workers. There is no authority or obligation to verify any individual who is not a referred worker. The AGENCY may not refer any individual unless the individual's Form I-9 process has been completed pursuant to 8 C.F.R. § 274a.6 and the E-Verify verification procedures initiated. The AGENCY agrees that it will not deny any referral to any individual because of the need to complete the verification process pursuant to this MOU.

11. The AGENCY agrees to follow appropriate procedures (see Article III.B. below) regarding tentative nonconfirmations, including promptly notifying referred workers of the finding, providing written instructions to such workers, allowing such workers to contest the finding, and not taking adverse action against such workers if they choose to contest the finding. Further, when referred workers contest a tentative nonconfirmation based upon a photo non-match, the AGENCY is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

12. The AGENCY agrees not to take any adverse action against a referred worker (including, but not limited to, declining to refer such worker or delaying the referral) based upon the job candidate's employment eligibility status while SSA or DHS is processing the verification request unless the AGENCY obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the referred worker is not work authorized. The AGENCY understands that an initial inability of the SSA or DHS automated verification to verify work authorization, a tentative nonconfirmation, or the finding of a photo non-match, does not mean, and should not be interpreted as, an indication that the referred worker is not work authorized. In any of the cases listed above, the referred worker must be provided the opportunity to contest the finding, and if he or she does so, may not suffer any adverse employment or potential employment consequences until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the referred worker does not choose to contest a tentative nonconfirmation or a photo non-match, then the AGENCY can find that such worker is not work authorized and take the appropriate action, including but not limited to, declining to issue or revoking the certification provided under 8 C.F.R. § 274a.6(c), and notifying the worker's employer.

13. The AGENCY agrees to comply with Section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral 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 AGENCY understands that such illegal practices may include, for example, use of E-Verify on some, but not all, referred workers, refusing to refer for hire referred workers because they appear or sound "foreign", delaying a referral until a tentative nonconfirmation is wholly resolved, and termination of the referral process based upon tentative nonconfirmations. Any violation of the unfair immigration-related employment practices provisions of the INA could subject the AGENCY to civil penalties pursuant to Section 274B of the INA and the termination of its participation in E-Verify. If the AGENCY has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-7688 or 1-800-237-2515 (TDD).

14. The AGENCY agrees to record the case verification number on the referred worker's Form I-9 or to print the screen containing the case verification number and attach it to the worker's Form I-9.

15. The AGENCY agrees that it will use the information it receives from the SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of referred workers, after completion of the Form I-9. The AGENCY agrees that it will safeguard this information, and means of access to it (such as PINS and 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 AGENCY who are authorized to perform the AGENCY's responsibilities under this MOU.

16. The AGENCY 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.

17. The AGENCY agrees to make employment and E-Verify related records available to DHS and the SSA, or their designated agents or designees, and allow DHS and SSA, or their authorized agents or designees, to make periodic visits to the AGENCY for the purpose of reviewing E-Verify-related records, i.e., Forms I-9, SSA Transaction Records, DHS verification records, and certification forms described in 8 C.F.R. § 274a.6(d), which were created during the AGENCY's participation in the E-Verify Program. In addition, for the purpose of evaluating E-Verify, the AGENCY agrees to allow DHS and SSA or their authorized agents or designees, to interview it regarding its experience with E-Verify, and to interview job candidates and hired employees concerning their experience with E-Verify. Failure to comply with the terms of this paragraph may lead DHS to terminate the AGENCY's access to E-Verify.

18. The AGENCY is authorized and encouraged to seek the cooperation and assistance of the employer of any referred worker in fulfilling the obligations of this MOU, including, but not limited to, seeking the assistance of the employer in locating workers for the purpose of providing notice of a tentative nonconfirmation and information on how to resolve it; providing the employer with information on the E-Verify process and anti-discrimination obligations; and advising the employer of any final nonconfirmation. The AGENCY understands, however, that it is expressly the AGENCY's obligation to comply with this MOU regardless of any action or inaction of an employer or other third party. If the AGENCY has reason to believe that an employer is unwilling to hire a referred worker because of the AGENCY's receipt of a tentative nonconfirmation, the AGENCY may raise such concerns with the Office of Special Counsel for Immigration-Related Unfair Employment Practices in the Civil Rights Division of the U.S. Department of Justice by calling 1-800-255-7688.

19. The AGENCY agrees to provide the DHS-supplied notice to each employer to whom the AGENCY refers a referred worker.

20. The AGENCY agrees that it will give immediate notice in writing to the employer of a referred worker if the worker is the subject of a final nonconfirmation, and will revoke any certification described in 8 C.F.R. § 274a.6 that has been previously provided to the employer.

### **ARTICLE III**

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

##### **A. REFERRAL TO THE SSA**

1. If the AGENCY receives a tentative nonconfirmation issued by SSA, the AGENCY must print the E-Verify tentative nonconfirmation notice and promptly provide it to the referred worker so that the worker may determine whether he or she will contest the tentative nonconfirmation.

2. The AGENCY will refer referred workers to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the AGENCY records the case verification number, reviews the input to detect any transaction errors, and determines that the worker wishes to contest the tentative nonconfirmation. The AGENCY will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The AGENCY will determine whether the referred worker contests the tentative nonconfirmation as soon as possible after the AGENCY receives it.

3. If the employee contests an SSA tentative nonconfirmation, the AGENCY will promptly provide the referred worker with the E-Verify SSA referral letter and instruct the job candidate to visit an SSA office to resolve the discrepancy within 8 Federal Government work days. SSA will electronically transmit the result

of the referral to the AGENCY within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

4. The AGENCY agrees not to ask the referred worker to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

## **B. REFERRAL TO THE DEPARTMENT OF HOMELAND SECURITY**

1. If the AGENCY receives a tentative nonconfirmation issued by DHS, the AGENCY must print the E-Verify tentative nonconfirmation notice and promptly provide it to the referred worker so that the worker may determine whether he or she will contest the tentative nonconfirmation.

2. If the AGENCY finds a photo non-match for an alien who provides a document for which the automated system has transmitted a photo, the AGENCY must print the E-Verify photo non-match tentative nonconfirmation notice and provide it to the referred worker so that the worker may determine whether he or she will contest the finding.

3. The AGENCY agrees to refer individuals to DHS only when the referred worker chooses to contest a tentative nonconfirmation received from the DHS automated verification process or when the AGENCY issues a tentative nonconfirmation based upon a photo non-match. The AGENCY will determine whether the worker contests the tentative nonconfirmation as soon as possible after the AGENCY receives it.

4. If the referred worker contests a tentative nonconfirmation issued by DHS, the AGENCY will promptly provide the worker with the E-Verify DHS referral letter and instruct the worker to contact the Department through its toll-free hotline listed on the referral letter within 8 Federal Government work days.

5. If the referred worker contests a tentative nonconfirmation based upon a photo non-match, the AGENCY will promptly provide the worker with the E-Verify referral letter to DHS. DHS will electronically transmit the result of the referral to the AGENCY within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

6. The AGENCY agrees that if a referred worker contests a tentative nonconfirmation based upon a photo non-match, the AGENCY will send a copy of the worker's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (furnished and paid for by DHS).

7. The AGENCY understands that if it cannot determine whether there is a photo match/non-match, the AGENCY is required to forward the referred worker's documentation to DHS by scanning and uploading, or by sending the document as described in the preceding paragraph, and resolving the case as specified by the Immigration Services Verifier at DHS who will determine the photo match or non-match.

## **ARTICLE IV**

### **SERVICE PROVISIONS**

The SSA and DHS will not charge the AGENCY for verification services performed under this MOU. The AGENCY is responsible for providing equipment needed to make inquiries. To access the E-Verify System, the AGENCY will need a personal computer with Internet access.

## **ARTICLE V**

### **PARTIES**

1. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program 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. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train the AGENCY on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify manual. Even without changes to E-Verify, DHS reserves the right to require the AGENCY to take mandatory refresher tutorials.

2. Termination by any party shall terminate the MOU as to all parties. The SSA or DHS 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 DHS that there has been a breach of system integrity or security by the AGENCY, or a failure on the part of the AGENCY to comply with established procedures or legal requirements. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine.

3. 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 the AGENCY, its agents, officers, or employees.

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

5. The AGENCY understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA).

6. The foregoing constitutes the full agreement on this subject among the SSA, DHS, and the SWA. This agreement is not intended to displace or modify any agreement between SSA and DHS regarding reimbursement to SSA for E-Verify-related work.

7. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the AGENCY, SSA and DHS, respectively. The SSA has agreed that DHS's signature to the MOU shall also constitute SSA's agreement to its terms and conditions.



Please only sign the AGENCY's Section of the signature page. You must provide a telephone number and valid email address in the event we need to contact you. If you have any questions, contact E-Verify at: 888-464-4218.

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**State Employment Agency**

**Name** (Please Type or Print)

**Title**

**Signature**

**Date**

**Telephone Number**

**Email Address**

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**Department of Homeland Security—Verification Division**

**Name** (Please Type or Print)

**Title**

**Signature**

**Date**

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## Information Required for E-Verify Registration

### Information Relating to Your Agency

**Agency Name:** \_\_\_\_\_

**Agency Physical Address:** \_\_\_\_\_

(This is the address of the agency that is completing this form)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**County or Parish:** \_\_\_\_\_

**Employer Identification**

**Number:** \_\_\_\_\_

(This number is issued by the IRS. You can obtain this number from your payroll office)

**North American Industry Classification**

**Systems Code:** **561** *(you do not need to complete this field)* \_\_\_\_\_

**Estimated Number of Referred Workers Per Year:** \_\_\_\_\_

**Anticipated Number of Sites that will be Using E-Verify for your State:** \_\_\_\_\_

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**Information Relating to the Program Administrator(s) for Your Agency**

A Program Administrator has the ability to create user accounts, perform verifications, view reports, update account information, and unlock user accounts. Additional Program Administrators can be added after registration.

**Program Administrator**

*(name, telephone number and email address are required for successful registration)*

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**Name** (Please Type or Print)

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**Telephone Number**

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**Email Address**

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**Fax Number****Program Administrator**

*(name, telephone number and email address are required for successful registration)*

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**Name** (Please Type or Print)

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**Telephone Number**

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**Email Address**

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**Fax Number****Program Administrator**

*(name, telephone number and email address are required for successful registration)*

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**Name** (Please Type or Print)

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**Telephone Number**

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**Email Address**

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**Fax Number**