

**FEDERAL CONTRACTORS WILL BE REQUIRED
TO USE E-VERIFY TO CHECK LEGAL
STATUS OF EMPLOYEES**

On June 6, 2008, President Bush amended Executive Order 12989 to include the requirement that all federal departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic eligibility verification system designated by the Secretary of the Department of Homeland Security. The Order specifies that all federal government contractors will be required to use the electronic system to verify the employment eligibility of all persons hired in the United States during the contract term and all persons assigned by the contractor to perform work on the contract in the United States. Shortly after issuance of the Order, DHS issued a statement designating the controversial E-Verify program as the electronic employment eligibility verification system that must be used by all federal contractors as required by the Executive Order.

E-verify, operated by U.S. Citizenship and Immigration Services in partnership with the Social Security Administration, is a free Internet-based system that allows employers who are enrolled in the program to confirm the legal status of new hires.

Formerly known as the “Basic Pilot Program,” the system, although voluntary, has been the subject of considerable debate. Critics have noted the degree to which participating employers are required to make information on their employees and their business operations available to the federal government. Employers who participate in the program are required to sign a Memorandum of Understanding (“MOU”) which provides the government with broad access to company business records, for the purpose of verifying employee data and otherwise enforcing the law, without the need for a subpoena. There has also been considerable dispute concerning the accuracy of the governmental data, which some commentators claim has a 10% error rate.

The Executive Order, as amended, directs the DHS to establish regulations implementing the new requirement, and the use and implementation of the electronic verification system. Other federal agencies are charged with amending federal regulations to implement debarment responsibility on non-compliant contractors.

What does this mean for your company?

While the Executive Order appears to take effect immediately, contractors will likely not feel the effects of the new requirement until after rulemaking is completed. As with the Social Security Mismatch regulations last year, it is possible that there could be litigation over the new requirement. All business which have contracts with the federal government are urged to review their employment verification procedures, and their overall compliance with federal immigration laws.

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